
Delaware Register of Regulations

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IN THIS ISSUE:

Regulations:
Proposed
Final

General Notices

Calendar of Events &
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before May 15, 2019.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

965

DELAWARE REGISTER OF REGULATIONS

The *Delaware Register of Regulations* is an official State publication established by authority of 69 *Del. Laws*, c. 107 and is published on the first of each month throughout the year.

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

The *Register* will also publish some or all of the following information:

- Governor's Executive Orders
- Governor's Appointments
- Agency Hearing and Meeting Notices
- Other documents considered to be in the public interest.

CITATION TO THE DELAWARE REGISTER

The *Delaware Register of Regulations* is cited by volume, issue, page number and date. An example would be:

19 **DE Reg.** 1100 (06/01/16)

Refers to Volume 19, page 1100 of the *Delaware Register* issued on June 1, 2016.

SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the *Delaware Register of Regulations* is \$135.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-744-4114 or 1-800-282-8545 in Delaware.

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

Delaware citizens and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the *Register of Regulations*. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the *Register of Regulations*. At the conclusion of all hearings and after receipt, within the time allowed, of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the *Register of Regulations*, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

Any person aggrieved by and claiming the unlawfulness of any regulation may bring an action in the Court for declaratory relief.

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken.

When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

Except as provided in the preceding section, no judicial review of a regulation is available unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the *Register of Regulations*.

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
July 1	June 17	4:30 p.m.
August 1	July 15	4:30 p.m.
September 1	August 15	4:30 p.m.
October 1	September 16	4:30 p.m.
November 1	October 15	4:30 p.m.

DIVISION OF RESEARCH STAFF

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TABLE OF CONTENTS

967

Cumulative Tables 969

PROPOSED

DEPARTMENT OF EDUCATION

Office of the Secretary

545 K to 12 School Counseling Programs 976
609 District and School Based Intervention Services 978
705 Leave for Training Camp or Special Duty in the National Guard or the Military Reserves of
the United States 980
917 Accelerated Academic Programs 982
1001 Participation in Extra Curricular Activities 986
1007 DIAA Sportsmanship 987

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Developmental Disabilities Services

2103 Reportable Incident Management and Corrective Measures 989

Division of Health Care Quality

3335 Office-Based Surgery 990

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Office of the Secretary

101 Regulations Governing Delaware's Coastal Zone 993

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

Division of State Police

1300 Board of Examiners of Private Investigators & Private Security Agencies 994

DEPARTMENT OF TRANSPORTATION

Delaware Transit Corporation

2289 Transportation Network Companies 995

FINAL

DEPARTMENT OF AGRICULTURE

Food Products Inspection

302 Produce Safety Regulations 997

Thoroughbred Racing Commission

1001 Thoroughbred Racing Rules and Regulations 1000

DEPARTMENT OF EDUCATION

Office of the Secretary

108A Administrator Appraisal Process Delaware Performance Appraisal System
(DPAS II) Revised 1002
235 Teacher of the Year Award 1003
245 Michael C. Ferguson Achievement Awards Scholarship 1006
247 Delaware Post Secondary Internship Program at The Washington Center (TWC) for
Internships and Academic Seminars 1009

TABLE OF CONTENTS

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Public Health

4202 Control of Communicable and Other Disease Conditions..... 1012

Division of Social Services

Food Supplement Program: DSSM 9055..... 1013

Purchase of Care - Determination of Homeless: DSSM 11003..... 1014

DEPARTMENT OF INSURANCE

Office of the Commissioner

904 Privacy of Consumer Financial and Health Information..... 1017

1318 Compensation for Chiropractic Services 1019

1321 Compensation for Physical Therapy Services..... 1021

1410 Reporting Medical Management Protocols for Insurance Coverage for Serious Mental
Illness and Drug And Alcohol Dependency..... 1025

1501 Medicare Supplement Insurance Minimum Standards..... 1026

DEPARTMENT OF STATE

Division of Professional Regulation

3900 Board of Clinical Social Work Examiners 1028

DEPARTMENT OF TRANSPORTATION

Delaware Transit Corporation

2287 Public Carrier Regulations..... 1030

GENERAL NOTICES

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Watershed Stewardship

Revised Regulatory Guidance Documents Supporting Regulation 5101 Sediment and
Stormwater Regulations..... 1032

CALENDAR OF EVENTS/HEARING NOTICES

Dept. of Education, Notice of Monthly Meeting..... 1033

Dept. of Health and Social Services, Div. of Developmental Disabilities Services; Div. of Health Care
Quality; Notices of Public Comment Periods..... 1033

Dept. of Natural Resources and Environmental Control; Office of the Secretary; Notice of Public Hearing
and Public Comment Period..... 1034

Dept. of Safety and Homeland Security, Div. of State Police; Notice of Public Comment Period..... 1034

Dept. of Transportation, Delaware Transit Corporation; Notice of Public Comment Period..... 1034

The table printed below lists the regulations that have been proposed, adopted, amended or repealed in the preceding issues of the current volume of the *Delaware Register of Regulations*.

The regulations are listed alphabetically by the promulgating agency, followed by a citation to that issue of the *Register* in which the regulation was published. Proposed regulations are designated with (Prop.); Final regulations are designated with (Final); Emergency regulations are designated with (Emer.); and regulations that have been repealed are designated with (Rep.).

DELAWARE HEALTH INFORMATION NETWORK

103 Delaware Health Care Claims Database Data Collection Regulation.....	22 DE Reg. 251 (Prop.)
	22 DE Reg. 465 (Final)

DEPARTMENT OF AGRICULTURE

Delaware Forest Service

402 State Forest Regulations.....	22 DE Reg. 760 (Final)
-----------------------------------	-------------------------------

Food Products Inspection

302 Produce Safety Regulations.....	22 DE Reg. 83 (Prop.)
-------------------------------------	------------------------------

Harness Racing Commission

501 Harness Racing Rules and Regulations.....	22 DE Reg. 47 (Final)
	22 DE Reg. 48 (Final)
	22 DE Reg. 253 (Prop.)
	22 DE Reg. 467 (Final)

Office of the State Veterinarian

901 Poultry Disease Prevention Regulations.....	22 DE Reg. 434 (Prop.)
	22 DE Reg. 667 (Final)

Plant Industries Section

804 Rules and Regulations for Spotted Lanternfly.....	22 DE Reg. 650 (Prop.)
	22 DE Reg. 810 (Emer.)
	22 DE Reg. 850 (Final)

Thoroughbred Racing Commission

1001 Thoroughbred Racing Rules and Regulations.....	22 DE Reg. 255 (Prop.)
	22 DE Reg. 295 (Final)
	22 DE Reg. 468 (Final)

DEPARTMENT OF EDUCATION

Office of the Secretary

106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.....	22 DE Reg. 49 (Final)
	22 DE Reg. 894 (Prop.)
107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.....	22 DE Reg. 51 (Final)
	22 DE Reg. 897 (Prop.)
108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.....	22 DE Reg. 816 (Prop.)
235 Teacher of the Year Award.....	22 DE Reg. 821 (Prop.)
237 Educational Support Professional of the Year.....	22 DE Reg. 714 (Prop.)
	22 DE Reg. 937 (Final)
	22 DE Reg. 825 (Prop.)
245 Michael C. Ferguson Achievement Awards Scholarship.....	22 DE Reg. 828 (Prop.)
247 Delaware Post Secondary Internship Program at The Washington Center (TWC) for Internships and Academic Seminars.....	22 DE Reg. 716 (Prop.)
282 Private Business and Trade Schools.....	22 DE Reg. 939 (Final)
	22 DE Reg. 11 (Prop.)
290 Approval of Educator Preparation Programs.....	22 DE Reg. 219 (Final)
	22 DE Reg. 333 (Prop.)
	22 DE Reg. 582 (Final)
415 Voluntary School Assessment.....	22 DE Reg. 109 (Prop.)

CUMULATIVE TABLES

415 Voluntary School Assessment.....	22 DE Reg. 296 (Final)
505 High School Graduation Requirements and Diplomas.....	22 DE Reg. 335 (Prop.)
	22 DE Reg. 762 (Final)
507 Student Success Planning.....	22 DE Reg. 562 (Prop.)
	22 DE Reg. 763 (Final)
601 Schools and Law Enforcement Agencies.....	22 DE Reg. 52 (Final)
	22 DE Reg. 100(Emer.)
	22 DE Reg. 161 (Final)
608 Unsafe School Choice Option Policy.....	22 DE Reg. 297 (Final)
610 Limitations on Use of Seclusion and Restraint.....	22 DE Reg. 55 (Final)
616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings.....	22 DE Reg. 337 (Prop.)
	22 DE Reg. 583 (Final)
750 Support Personnel Salary Supplements for Additional Training.....	22 DE Reg. 585 (Final)
901 Education of Homeless Children and Youth.....	22 DE Reg. 832 (Prop.)
910 Delaware Requirements for Issuance of the Secondary Credential.....	22 DE Reg. 720 (Prop.)
	22 DE Reg. 944 (Final)
915 James H. Groves High School.....	22 DE Reg. 388 (Prop.)
	22 DE Reg. 587 (Final)
1006 Delaware Interscholastic Athletic Association (DIAA).....	22 DE Reg. 56 (Final)
	22 DE Reg. 469 (Final)
1007 DIAA Sportsmanship.....	22 DE Reg. 162 (Final)
1008 DIAA Junior High and Middle School Interscholastic Athletics.....	22 DE Reg. 60 (Final)
	22 DE Reg. 186 (Prop.)
	22 DE Reg. 395 (Final)
	22 DE Reg. 440 (Prop.)
	22 DE Reg. 765 (Final)
	22 DE Reg. 836 (Prop.)
1009 DIAA High School Interscholastic Athletics.....	22 DE Reg. 61 (Final)
	22 DE Reg. 187 (Prop.)
	22 DE Reg. 395 (Prop.)
	22 DE Reg. 443 (Prop.)
	22 DE Reg. 767 (Final)
	22 DE Reg. 838 (Prop.)
1204 High Needs Educator Student Loan Payment Program.....	22 DE Reg. 256 (Prop.)
	22 DE Reg. 470 (Final)
1205 Ada Leigh Soles Memorial Professional Librarian and Archivist Incentive Program.....	22 DE Reg. 344 (Prop.)
	22 DE Reg. 589 (Final)
Professional Standards Board	
1507 Alternative Routes to Teacher Licensure and Certification Program (Repeal).....	22 DE Reg. 473 (Rep.)
1510 Issuance of Initial License.....	22 DE Reg. 13 (Prop.)
	22 DE Reg. 221 (Final)
	22 DE Reg. 899 (Prop.)
1511 Issuance and Renewal of Continuing License.....	22 DE Reg. 63 (Final)
	22 DE Reg. 901 (Prop.)
1513 Denial of License.....	22 DE Reg. 478 (Final)
1514 Revocation, Limitation, or Suspension of Licenses.....	22 DE Reg. 481 (Final)
1515 Hearing Procedures and Rules.....	22 DE Reg. 489 (Final)
1517 Paraeducator Permit.....	22 DE Reg. 13 (Prop.)
	22 DE Reg. 259 (Prop.)
1549 Dance Teacher.....	22 DE Reg. 907 (Prop.)
1558 Theater Teacher.....	22 DE Reg. 912 (Prop.)
1560 Art Teacher.....	22 DE Reg. 918 (Prop.)
1563 Music Teacher.....	22 DE Reg. 923 (Prop.)
1565 World Language Teacher.....	22 DE Reg. 64 (Final)

DEPARTMENT OF FINANCE

Office of the State Lottery

202 Delaware Lottery Rules and Regulations.....	22 DE Reg. 261 (Prop.)
203 Video Lottery and Table Game Regulations.....	22 DE Reg. 494 (Final) 22 DE Reg. 261 (Prop.)
204 Delaware Sports Lottery Rules and Regulations.....	22 DE Reg. 500 (Final)
205 Charitable Video Lottery Rules and Regulations.....	22 DE Reg. 592 (Final)
	22 DE Reg. 163 (Final)

Office of Unclaimed Property, State Escheator

104 Department of Finance Abandoned or Unclaimed Property Reporting and Examination Manual.....	22 DE Reg. 851 (Prop.)
---	-------------------------------

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Health Care Quality

3320 Intensive Behavioral Support and Educational Residence.....	22 DE Reg. 839 (Prop.)
3325 Financial Capability Reporting.....	22 DE Reg. 723 (Prop.)
3330 Regulations Governing Dialysis Centers.....	22 DE Reg. 853 (Final)
Regulations Governing Dialysis Centers.....	22 DE Reg. 565 (Prop.)

Division of Medicaid and Medical Assistance

Asset Verification Program.....	22 DE Reg. 127 (Prop.) 22 DE Reg. 301 (Final)
CHIP Premium Requirements.....	22 DE Reg. 122 (Prop.) 22 DE Reg. 299 (Final)
Chiropractic Services.....	22 DE Reg. 566 (Prop.) 22 DE Reg. 768 (Final)
Eligibility Determination.....	22 DE Reg. 570 (Prop.) 22 DE Reg. 859 (Final)
Health Home Services.....	22 DE Reg. 262 (Prop.) 22 DE Reg. 502 (Final)
Long Term Care Medicaid: DSSM 20101, 20103, 20103.1.2 and 14100.3.....	22 DE Reg. 194 (Prop.) 22 DE Reg. 400 (Final)
MAGI Methodology.....	22 DE Reg. 66 (Final) 22 DE Reg. 361 (Prop.)
Medicaid Recovery Audit Contractors Program.....	22 DE Reg. 668 (Final) 22 DE Reg. 15 (Prop.)
Physician Assistants.....	22 DE Reg. 222 (Final) 22 DE Reg. 347 (Prop.)
Prescription Assistance.....	22 DE Reg. 597 (Final) 22 DE Reg. 354 (Prop.)
PRTFs - Provision of EPSDT Services.....	22 DE Reg. 595 (Final)
Reimbursement Methodology for FQHCs.....	22 DE Reg. 728 (Prop.) 22 DE Reg. 6 (Errata)

Division of Public Health

4202 Control of Communicable and Other Disease Conditions.....	22 DE Reg. 733 (Prop.)
4455 Delaware Regulations Governing a Detailed Plumbing Code.....	22 DE Reg. 651 (Prop.)
4458A Cottage Food Regulations.....	22 DE Reg. 840 (Prop.)
4465 Delaware Radiation Control Regulations.....	22 DE Reg. 401 (Final)
4470 State of Delaware Medical Marijuana Code.....	22 DE Reg. 652 (Prop.)
4471 Massage and Bodywork Facilities.....	22 DE Reg. 132 (Prop.) 22 DE Reg. 734 (Prop.)
4502 Regulations for Certification of Animal Welfare Officers.....	22 DE Reg. 197 (Prop.) 22 DE Reg. 770 (Final)

Division of Social Services

Child Care Eligibility.....	22 DE Reg. 264 (Prop.) 22 DE Reg. 505 (Final)
DSS Application Process.....	22 DE Reg. 652 (Prop.)

CUMULATIVE TABLES

Food Supplement Program: DSSM 9055.....	22 DE Reg. 740 (Prop.)
Income Reporting Requirements for Child Care.....	22 DE Reg. 658 (Prop.)
Purchase of Care - Determination of Homeless: DSSM 11003.....	22 DE Reg. 741 (Prop.)
Purchase of Care Plus.....	22 DE Reg. 138 (Prop.)
Temporary Assistance for Needy Families (TANF).....	22 DE Reg. 20 (Prop.)
Temporary Assistance for Needy Families (TANF) - CMR: DSSM 3000.....	22 DE Reg. 744 (Prop.)
	22 DE Reg. 773 (Final)

DEPARTMENT OF HUMAN RESOURCES

Division of Statewide Benefits

2007 Disability Insurance Program Rules and Regulations.....	22 DE Reg. 861 (Final)
--	------------------------

DEPARTMENT OF INSURANCE

Office of the Commissioner

302 Captive Insurance Financial Regulation.....	22 DE Reg. 862 (Final)
610 Automobile Premium Consumer Comparison.....	22 DE Reg. 364 (Prop.)
	22 DE Reg. 603 (Final)
704 Homeowners Premium Consumer Comparison.....	22 DE Reg. 751 (Prop.)
	22 DE Reg. 946 (Rep.)
904 Privacy of Consumer Financial and Health Information.....	22 DE Reg. 754 (Prop.)
1318 Compensation for Chiropractic Services.....	22 DE Reg. 164 (Final)
1319 Arbitration of Disputes Between Carriers and Primary Care and Chronic Care Management Providers.....	22 DE Reg. 366 (Prop.)
	22 DE Reg. 605 (Final)
1320 Minimum Standards for Short-Term, Limited Duration Health Insurance Plans	22 DE Reg. 326(Emer.)
	22 DE Reg. 371 (Prop.)
	22 DE Reg. 607 (Final)
1321 Compensation for Physical Therapy Services.....	22 DE Reg. 756 (Prop.)
1405 Filing Requirements for Multiple Employer Welfare Arrangements.....	22 DE Reg. 180(Emer.)
	22 DE Reg. 202 (Prop.)
	22 DE Reg. 509 (Final)
1410 Reporting Medical Management Protocols for Insurance Coverage for Serious Mental Illness and Drug And Alcohol Dependency.....	22 DE Reg. 843 (Prop.)
1510 Medicare Supplement Insurance Minimum Standards.....	22 DE Reg. 846 (Prop.)

DEPARTMENT OF JUSTICE

Fraud and Consumer Protection Division

Rules Pursuant to the Delaware Securities Act.....	22 DE Reg. 377 (Prop.)
	22 DE Reg. 609 (Final)

DEPARTMENT OF LABOR

Division of Industrial Affairs

1322 Prevailing Wage Regulations.....	22 DE Reg. 203 (Prop.)
	22 DE Reg. 403 (Final)

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Air Quality

1101 Definitions and Administrative Principles.....	22 DE Reg. 610 (Final)
1102 Permits.....	22 DE Reg. 613 (Final)
1134 Emission Banking and Trading Program.....	22 DE Reg. 405 (Final)
1140 Delaware Low Emission Vehicle Program.....	22 DE Reg. 646(Emer.)
	22 DE Reg. 660 (Prop.)
	22 DE Reg. 888(Emer.)
	22 DE Reg. 949 (Final)
1147 CO ₂ Budget Trading Program.....	22 DE Reg. 141 (Prop.)

1147 CO ₂ Budget Trading Program.....	22 DE Reg. 511 (Final)
1150 Outer Continental Shelf Air Regulations.....	22 DE Reg. 645 (Errata) 22 DE Reg. 447 (Prop.) 22 DE Reg. 928 (Prop.)
Division of Climate, Coastal & Energy	
2105 Evaluation, Measurement and Verification Procedures and Standards...	22 DE Reg. 210 (Prop.) 22 DE Reg. 514 (Final)
2201 (Published as Final as 108) Delaware Coastal Management Program Federal Consistency Policies and Procedures.....	22 DE Reg. 407 (Final) 22 DE Reg. 433 (Errata)
Division of Fish and Wildlife	
3301 Definitions.....	22 DE Reg. 572 (Prop.) 22 DE Reg. 776 (Final)
3304 Creel Limits, Size Limits and Seasons.....	22 DE Reg. 572 (Prop.) 22 DE Reg. 776 (Final)
3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements.....	22 DE Reg. 267 (Prop.) 22 DE Reg. 648 (Emer.) 22 DE Reg. 674 (Final)
3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas.....	22 DE Reg. 21 (Prop.) 22 DE Reg. 227 (Final)
3511 Summer Flounder Size Limits; Possession Limits; Season.....	22 DE Reg. 24 (Prop.) 22 DE Reg. 101 (Emer.) 22 DE Reg. 304 (Final)
3531 Tautog; Size Limits, Creel Limits and Seasons.....	22 DE Reg. 103 (Emer.) 22 DE Reg. 142 (Prop.) 22 DE Reg. 517 (Final)
3723 Jonah Crab (<i>Cancer borealis</i>).....	22 DE Reg. 929 (Prop.)
3755 Lobsters.....	22 DE Reg. 929 (Prop.)
3900 Wildlife.....	22 DE Reg. 778 (Final)
Division of Parks and Recreation	
9201 Regulations Governing State Parks.....	22 DE Reg. 779 (Final)
Division of Waste and Hazardous Substances	
1302 Regulations Governing Hazardous Waste.....	22 DE Reg. 270 (Prop.) 22 DE Reg. 678 (Final)
1375 Regulations Governing Hazardous Substance Cleanup.....	22 DE Reg. 448 (Prop.) 22 DE Reg. 781 (Final)
Division of Water	
7102 Regulations Governing Underground Injection Control.....	22 DE Reg. 10 (Errata)
Division of Watershed Stewardship	
5101 Sediment and Stormwater Regulations.....	22 DE Reg. 211 (Prop.) 22 DE Reg. 680 (Final)
7402 Shellfish Sanitation Regulations.....	22 DE Reg. 450 (Prop.) 22 DE Reg. 863 (Final)
Office of the Secretary	
109 Regulations Governing the Guidelines to Evaluate Land Being Considered for Permanent Protection.....	22 DE Reg. 99 (Errata)
DEPARTMENT OF SAFETY AND HOMELAND SECURITY	
Delaware Council on Police Training	
801 Regulations of the Delaware Council on Police Training.....	22 DE Reg. 26 (Prop.) 22 DE Reg. 230 (Final) 22 DE Reg. 452 (Prop.) 22 DE Reg. 783 (Final)
802 COPT K-9 Training Standards and Requirements.....	22 DE Reg. 453 (Prop.) 22 DE Reg. 951 (Final)

Division of State Police

1300 Board of Examiners of Private Investigators & Private Security Agencies	22 DE Reg. 69 (Final)
	22 DE Reg. 212 (Prop.)
	22 DE Reg. 407 (Final)
2400 Board of Examiners of Constables.....	22 DE Reg. 70 (Final)
	22 DE Reg. 378 (Prop.)
	22 DE Reg. 664 (Prop.)
	22 DE Reg. 685 (Final)
5500 Bail Enforcement Agents.....	22 DE Reg. 214 (Prop.)
	22 DE Reg. 306 (Final)
	22 DE Reg. 455 (Prop.)

Office of the Secretary

102 Regulations Governing the Destructive Weapon Compensation Program (DWCP).....	22 DE Reg. 105(Emer.)
	22 DE Reg. 145 (Prop.)
	22 DE Reg. 307 (Final)

Sex Offender Management Board

1100 Delaware Sex Offender Management Board.....	22 DE Reg. 271 (Prop.)
	22 DE Reg. 617 (Final)

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

Division of Family Services

101 DELACARE: Regulations for Early Care and Education and School-Age Centers.....	22 DE Reg. 379 (Prop.)
	22 DE Reg. 574 (Prop.)
	22 DE Reg. 865 (Final)
103 Regulations for Family and Large Family Child Care Homes.....	22 DE Reg. 380 (Prop.)
	22 DE Reg. 576 (Prop.)
	22 DE Reg. 866 (Final)
201 Child Placing Agencies.....	22 DE Reg. 933 (Prop.)

DEPARTMENT OF STATE

Division of Corporations

Registered Agent Customer Entity Verification Requirements.....	22 DE Reg. 215 (Prop.)
	22 DE Reg. 519 (Final)

Division of Historical and Cultural Affairs

901 Historic Preservation Tax Credit Program.....	22 DE Reg. 147 (Prop.)
	22 DE Reg. 409 (Final)
902 Curation Fee For Archaeological Collections.....	22 DE Reg. 72 (Final)

Division of Professional Regulation

300 Board of Architects.....	22 DE Reg. 27 (Prop.)
	22 DE Reg. 412 (Final)
1770 Respiratory Care Practice Advisory Council.....	22 DE Reg. 232 (Final)
1795 Midwifery Advisory Council.....	22 DE Reg. 234 (Final)
1900 Board of Nursing.....	22 DE Reg. 272 (Prop.)
	22 DE Reg. 686 (Final)
	22 DE Reg. 785 (Final)
	22 DE Reg. 935 (Prop.)
2000 Board of Occupational Therapy Practice.....	22 DE Reg. 153 (Prop.)
	22 DE Reg. 523 (Final)
2600 Examining Board of Physical Therapists and Athletic Trainers.....	22 DE Reg. 618 (Final)
2925 Real Estate Commission Education Committee.....	22 DE Reg. 275 (Prop.)
2930 Council on Real Estate Appraisers.....	22 DE Reg. 280 (Prop.)
	22 DE Reg. 867 (Final)
3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals.....	22 DE Reg. 78 (Final)

3700 Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers.....	22 DE Reg. 30 (Prop.) 22 DE Reg. 619 (Final)
3900 Board of Clinical Social Work Examiners.....	22 DE Reg. 759 (Prop.)
Uniform Controlled Substance Act Regulations.....	22 DE Reg. 79 (Final)
Office of the State Bank Commissioner	
102 Procedures Governing the Creation and Existence of an Interim Bank....	22 DE Reg. 456 (Prop.) 22 DE Reg. 688 (Final)
Public Service Commission	
1010 Regulations Governing the Administration of the Electric and Natural Gas Utility Distribution System Improvement Charge (“DSIC”).....	22 DE Reg. 381 (Prop.)
3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard (Opened August 23, 2005).....	22 DE Reg. 37 (Prop.) 22 DE Reg. 525 (Final)
3011 Rules for Certification of Electric Transmission Suppliers.....	22 DE Reg. 80 (Final)
DEPARTMENT OF TRANSPORTATION	
Delaware Transit Corporation	
2287 Public Carrier Regulations.....	22 DE Reg. 287 (Prop.)
2289 Transportation Network Companies.....	22 DE Reg. 288 (Prop.)
Division of Planning and Policy	
2309 Development Coordination Manual.....	22 DE Reg. 954 (Final)
2306 Crash Data Release.....	22 DE Reg. 577 (Prop.) 22 DE Reg. 786 (Final)
Division of Transportation Solutions	
2403 Special Events Policies and Procedures - Traffic Management.....	22 DE Reg. 387 (Prop.) 22 DE Reg. 621 (Final)
2406 Policies and Procedures for Acquisition of Certain Real Property.....	22 DE Reg. 289 (Prop.) 22 DE Reg. 545 (Final)
2408 Performance-Based Contractor Evaluation Procedures.....	22 DE Reg. 460 (Prop.) 22 DE Reg. 691 (Final)

Symbol Key

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

Proposed Regulations

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the *Register of Regulations*. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

DEPARTMENT OF EDUCATION**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(a) (14 **Del.C.** §122(a))
14 **DE Admin. Code** 545

PUBLIC NOTICE**Education Impact Analysis Pursuant to 14 Del.C. Section 122(d)****545 K to 12 School Counseling Programs****A. Type of Regulatory Action Required**

Reauthorization of Existing Regulation

B. Synopsis of Subject Matter of the Regulation

Pursuant to 14 **Del.C.** §122(a), the Secretary of Education seeks the consent of the State Board of Education to reauthorize 14 **DE Admin. Code** 545 K to 12 School Counseling Programs. The Department has reviewed the regulation in order to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring bases every four years and concluded that the regulation should be reauthorized without any changes.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before July 5, 2019 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary, located at the address above.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is intended to help improve student achievement as measured against state achievement standards by providing guideline for K to 12 school counseling programs.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended

regulation is intended to continue to help ensure all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation does not address students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help that all student's legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements on decision makers.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated does not change because of the amended regulation.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation is consistent with and not an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected cost to implementing this amended regulation.

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/june2019/proposed/22 DE Reg 976RFA 06-01-19.pdf>

545 K to 12 School Counseling Programs

1.0 Definitions

"American School Counselor Association (ASCA)" means the national organization that supports school counselors' efforts to help students focus on academic, career and social/emotional development so they achieve success in school and are prepared to lead fulfilling lives as responsible members of society.

"ASCA National Model" means a framework for implementing a comprehensive, data driven school counseling program. The model identifies K-12 College- and Career- Readiness Standards for every student in the domains of academic, career and social/emotional development. The model is made up of four components: Foundation, Delivery, Management and Accountability.

2.0 School District Counseling Programs and Written Plans

2.1 Every school in each district shall implement a comprehensive school counseling program aligned with the American School Counselor Association's (ASCA) National Model.

2.2 Every school in each district shall have a written plan, using the model templates provided by the Department, for the school counseling program that:

2.2.1 Is implemented by a school counselor certified in accordance with the applicable Professional Standards Board regulations.

2.2.2 Utilizes nationally recognized student standards as defined by the ASCA National Model.

2.2.3 Aligns vertically K-12 within the district.

2.2.4 Contains all four components of the ASCA National Model:

2.2.4.1 The Foundation component, which consists of vision and mission statements, program goals and student and professional competencies.

- 2.2.4.2 The Management component, which utilizes assessments and tools to develop, implement and evaluate the school counseling program.
- 2.2.4.3 The Delivery component, which focuses on the implementation of the school counseling program through direct and indirect student services.
- 2.2.4.4 The Accountability component, which ensures regular analysis of data to determine program effectiveness in measureable terms and inform program decisions.
- 2.2.5 Is on file at the district office and in the school.
- 2.2.6 Is reviewed annually and updated as needed by the school counselor in collaboration with the building administrator and district supervisor.

3.0 Reporting Requirements and Timelines

- 3.1 Annually, by August 15, every district shall electronically submit their schools' plans to the Department. The plans shall reflect any updates pursuant to 2.2.6 above.
- 3.2 The Department may periodically monitor for alignment to the requirements in 2.0.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 1603 (14 **Del.C.** §1603)
14 **DE Admin. Code** 609

PUBLIC NOTICE

Education Impact Analysis Pursuant to 14 Del.C. Section 122(d)

609 District and School Based Intervention Services

A. Type of Regulatory Action Required

Reauthorization of Existing Regulation

B. Synopsis of Subject Matter of the Regulation

Pursuant to Title 14 **Del.C.** §1603, the Secretary of Education intends to reauthorize 14 **DE Admin. Code** 609 District and School Based Intervention Services. The Department has reviewed the regulation in order to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring bases every four years and concluded that the regulation should be reauthorized without any changes.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before July 5, 2019 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, located at the address listed above.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The proposed regulation helps improve student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The proposed regulation is intended to continue to help ensure all students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The proposed regulation helps to ensure that students' health and safety are adequately protected.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The proposed regulation continues to ensure that all student's legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The proposed regulation does not change the decision making at the local board and

school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The proposed regulation does not place any unnecessary reporting or administrative requirements on decision makers.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated does not change because of the proposed regulation.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The proposed regulation is consistent with and not an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the proposed regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected cost to implementing this proposed regulation.

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/june2019/proposed/22 DE Reg 978RFA 06-01-19.pdf>

609 District and School Based Intervention Services

1.0 Provision of Services

Each school district shall provide services for students whose behavior disrupts the classroom setting and creates distractions that impede the learning process, but who are not eligible for placement in an alternative program pursuant to 14 **DE Admin. Code** 611. School districts may offer such services based on the identified needs of the district and its individual schools, subject to the requirements of this regulation.

2.0 Application for Funding

- 2.1 Any school district requesting an incentive or supplemental grant to provide intervention services shall apply for such funds using the LEA Consolidated Application process provided by the Department of Education.
- 2.2 Any incentive or supplemental grant approved as part of the LEA Consolidated Application process shall be in the amount appropriated for that purpose by law.

3.0 Student Population to be Served

Services funded under this regulation may be provided to any student in grades K to 12, subject to the terms of the district's approved LEA Consolidated Application. Notwithstanding any of the provisions to the contrary, IDEA-identified students with disabilities shall be served pursuant to the provisions in 14 **DE Admin. Code** 925 and students with disabilities identified under Section 504 of the Rehabilitation Act shall be served in conformity with 34 C.F.R. Part 104.

4.0 School Based Intervention Programs

- 4.1 If a district, through its LEA Consolidated Application, provides a School Based Intervention Program as part of the services provided to disruptive students, such Program shall meet the following requirements:
- 4.2 A School Based Intervention Program shall include both short term and long term intervention strategies. Such strategies may include character education, short or long term counseling to improve behavior which impacts educational performance, and methods to identify the need to refer students for additional services either within the district or to other agencies. The Program shall also include support services to provide a smooth transition for students who are returning to their regular school

from a Consortium Discipline Alternative Program or from a Department of Services to Children, Youth and their Families (DSCYF) setting.

4.3 The decision to place a student in the School Based Intervention Program shall be made by the student's Intervention Team. The Intervention Team shall include the building principal or assistant principal, school nurse, counselor, social worker (if the student receives social work services), and a teacher familiar with the student. Other individuals, including parents, guardians or Relative Caregivers, may be invited as appropriate.

4.4 When placing an IDEA-identified student with a disability in a School Based Intervention Program, the Intervention Team and a student's IEP team may be the same as long as the membership of the Intervention Team also meets the requirements of 14 **DE Admin. Code** 925. When placing a student with a disability identified under Section 504 of the Rehabilitation Act, the Intervention Team may be the same as a multidisciplinary team authorized to make placement decisions as long the Intervention Team also meets the requirements of 34 C.F.R. 104.35

5.0 Evaluation of Services

Any local school district receiving a grant pursuant to this regulation shall submit an annual evaluation report on the effectiveness of its District and School Based Intervention Services. Such report shall be submitted as part of the LEA Consolidated Application process and shall conform to content and format standards.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122 (14 **Del.C.** §122)
14 **DE Admin. Code** 705

PUBLIC NOTICE

Education Impact Analysis Pursuant to 14 Del.C. Section 122(d)

705 Leave for Training Camp or Special Duty in the National Guard or the Military Reserves of the United States

A. Type of Regulatory Action Required

Reauthorization of Existing Regulation

B. Synopsis of Subject Matter of the Regulation

Pursuant to 14 **Del.C.** §122, the Secretary of Education intends to reauthorize 14 **DE Admin. Code** 705 Leave for Training Camp or Special Duty in the National Guard or the Military Reserves of the United States. The Department has reviewed the regulation in order to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring bases every four years and concluded that the regulation should be reauthorized without any changes.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before July 5, 2019 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, located at the address listed above.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not address improving student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended

regulation is intended to continue to ensure all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments do not address students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to ensure that all student's legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements on decision makers.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated does not change because of the amendment.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amendment is consistent with and not an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected cost to implementing this amended regulation.

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/june2019/proposed/22 DE Reg 980RFA 06-01-19.pdf>

705 Leave for Training Camp or Special Duty in the National Guard or the Military Reserves of the United States

1.0 Leave for Training or Special Duty

1.1 Any permanent and full time employee shall be excused from work with pay to attend training camp or special duty on orders as a member of the military reserves of the United States or the National Guard, not to exceed fifteen (15) days or the equivalent hours as required by the **Delaware Code**, on a prorated basis in any calendar year.

1.1.1 Such training or special duty leave shall not be deducted from their annual leave or in any other way result in loss of privileges or compensation to said employee.

1.1.2 Any permanent or full time employee shall file a request for military leave with their employer at least two weeks prior to their leave, along with a copy of their official orders.

(Non regulatory Note: See 29 **Del.C.** §5105 Leave of Absence for Military Service, Pension Right; Terms of Successor Appointees and 14 **Del.C.** §1327 Leave of Absence for Person in Military Service)

PROPOSED REGULATIONS

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 3113 (14 Del.C. §3113)
14 DE Admin. Code 917

PUBLIC NOTICE

Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)

917 Accelerated Academic Programs

A. Type of Regulatory Action Required

Reauthorization of Existing Regulation

B. Synopsis of Subject Matter of the Regulation

Pursuant to 14 Del.C. §3113, the Secretary of Education seeks the consent of the State Board of Education to reauthorize 14 DE Admin. Code 917 Accelerated Academic Programs. The Department has reviewed the regulation in order to comply with 29 Del.C. §10407 which requires regulations to be reviewed on a recurring bases every four years and concluded that the regulation should be reauthorized without any changes.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before July 5, 2019 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary, located at the address above.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is intended to help improve student achievement as measured against state achievement standards by providing the requirements for accelerated academic programs.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is intended to continue to help ensure all students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation does not address students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help that all student's legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated does not change because of the amended regulation.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation is consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected cost to implementing this amended regulation.

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/june2019/proposed/22 DE Reg 982RFA 06-01-19.pdf>

917 Accelerated Academic Programs

1.0 Definitions

The following words and terms, when used in this regulation, have the following meaning unless the context clearly indicates otherwise:

“Academic work” means work in the areas of writing, reading, science, math, or engineering, or work in other areas (including history, social studies and visual and/or performing arts) that specifically incorporates one of those academic areas.

“Accelerated academic work” shall have the same meaning as “advanced academic work.”

“Advanced academic work” means academic work that would meet the content standard dictated by 14 **DE Admin. Code** 501 or its successor at least one semester earlier than anticipated by the standard. For example, a course targeted at having students meet content standards in academic work by the middle of their school year which they otherwise would not be expected to meet until the end of their school year would consist of advanced academic work.

2.0 Applications for Accelerated Academic Program Grants

- 2.1 By August 1 of each calendar year, the Department of Education shall determine if the state has allocated funds for grants under this regulation and 14 **Del.C.** §3113. If such grants have been allocated, the Department shall ensure that applications for such grants are delivered by September 1 of the same calendar year to each public school in the state.
- 2.2 Applications for grants under this regulation shall be due by October 1 of each calendar year, and decisions regarding grants shall be made by November 1 of each calendar year.
- 2.3 All decisions regarding the awarding of grants shall be made according to the numeric scoring rubric outlined in Section 3.0 of this regulation, and the scoring sheets used to determine grantees shall be preserved and considered public information.
- 2.4 Grants under this regulation and 14 **Del.C.** §3113 shall be for a one-year period. Absent some affirmative showing by the Department as to why a grant awarded under this regulation should not be renewed, it will be renewed for a second year to a recipient that complies with the conditions of the grant. Grants under this regulation shall not be awarded for more than two years.
- 2.5 Only programs that offer educational services specifically targeted at students who are capable of performing advanced academic work may receive grants under this regulation and 14 **Del.C.** §3113. Proposed programs may include programming in areas that are not academic work as defined by this regulation provided that the stated purpose of the program and effect of its curriculum is improved student performance in academic work.
- 2.6 Only programs that propose a method for assessing the impact of the proposed program on participating students’ academic growth may receive grants under this regulation and 14 **Del.C.** §3113.
- 2.7 Proposed programs that do not meet the requirements of subsection 2.5 and 2.6 cannot receive grant funds and will not be scored under the rubric established by Section 3.0.
- 2.8 Grants under this regulation and 14 **Del.C.** §3113 are limited to new programs and existing programs whose funding sources are expiring. Grants shall not be awarded to supplant existing funds for current programs. Any proposal for an existing program to receive funds must specify the existing funding source for the program, specify the reason that the existing funding source is expiring, and explain why the proposed grant would not be supplanting existing funds.

3.0 Scoring of Applications

All applications for grants under this regulation shall receive a specific numerical score from the panel of persons assigned by the Department to rate the applications. Those programs receiving the top possible scores

shall receive grants to the extent that funds are available. Scoring shall be done on formal score sheets.

- 3.1 Quality of proposed curriculum (zero to 20 points). What is the proposed curriculum for the program, from what sources is the curriculum derived, and how likely is it to enable students to learn the advanced academic work that is the subject of the proposed program? A proposed program that is not based upon a reliable source and is not likely to enable students to learn the advanced academic work that is the subject of the proposed program should receive zero points under this measure. A proposed program that is based upon a reliable source but does not adequately explain how that curriculum will enable students to learn the advanced academic work that is the subject of the proposed program should receive five points under this measure. A proposed program that is based upon a reliable source and adequately explains how that curriculum will enable students to learn the advanced academic work that is the subject of the proposed program should receive fifteen points under this measure. The Department shall have the discretion to award up to five additional points for proposed curriculums that have exceptional features which the Department can articulate.
- 3.2 Qualifications of instructors (zero to 20 points). Who are the persons who will teach the proposed curriculum, what is their experience generally and specifically with respect to teaching material similar to the proposed curriculum, are there any objective criteria that qualify them as outstanding instructors? A proposed program that offers no specific information regarding the instructors who will teach students in the proposed program should receive zero points under this measure. A proposed program that demonstrates subject matter expertise among the teachers for the proposed program that is directly aligned with the subject matter of the program should receive ten points under this measure. A proposed program that demonstrates both subject matter expertise and additional indicia of high teacher quality, which may include licensures, certifications, recommendations, accreditations, or other equivalent criteria, should receive fifteen points under this measure. The Department shall have the discretion to award up to five additional points for proposed programs that will use instructors who demonstrate extraordinary credentials or qualifications which the Department can articulate.
- 3.3 Integration with existing school programs (zero to 8 points). How will this new program be integrated with the existing programming at the school, both to ensure that the program is logistically feasible and to ensure that participating students are able to participate in other school activities outside the program? A proposed program that does not demonstrate how it will be integrated with existing school programming should receive zero points under this measure. A proposed program that demonstrates that it is logistically coordinated with other activities occurring within the school where the program is sited should receive four points under this measure. A proposed program that demonstrates that its curriculum is integrated in a substantive way with other school activities which are available to participating students should receive eight points under this measure.
- 3.4 Sustainability (zero to 8 points). Has the applicant described how it will sustain the proposed program after the requested grant expires in one to two years, either by showing how the program can be sustained with existing state and local funds or by identifying the funding sources that will be used to sustain the program? A program that does not identify how it will be sustained should receive zero points under this measure. A program that provides information and/or commitments making it likely that the program can be sustained after expiration of the requested grant should receive four points under this measure. A program that provides information and/or commitments providing a high level of certainty that the program can be sustained after expiration of the requested grant should receive eight points under this measure.
- 3.5 Transportation issues (zero to 8 points). Is the program offered during the normal school day where bus transportation is available, and if not, how does the program propose to provide transportation to participating students? If the program is not offered during the normal school day and does not propose to provide transportation to participating students, the program should receive zero points under this measure. If the program is either (a) offered during the normal school day or (b) specifies how it will provide transportation for participating students, the program should receive eight points under this measure.
- 3.6 Incorporation of successful program designs (zero to 8 points). Does the proposed program incorporate elements of existing programs targeted at students capable of doing advanced academic work, or adequately explain why it has considered existing models and decided to use a different

model? If the proposed program does not incorporate elements of any existing programs and fails to indicate why it has examined existing programs targeted at students capable of doing advanced academic work and elected to choose a different design, the proposed program should receive zero points under this measure. If the proposed program does not incorporate elements of any existing programs but satisfactorily explains its decision, after examining existing programs, to not incorporate elements of those programs, the proposed program should receive four points under this measure. If the proposed program specifically incorporates elements of existing programs, it should receive eight points under this measure.

- 3.7 Efficiency of spending (zero to 6 points). Does the proposed program target the maximum possible percentage of its funds on activities that will directly impact students? Professional development and program assessment are considered activities that will directly impact students. If the proposed program does not address the degree to which the funds it requests will be dedicated to activities that directly impact students, the program should receive zero points under this measure. If the proposed program demonstrates that more than 85% of the requested funds will be dedicated to activities that directly impact students (which include professional development, purchase of books and supplies, and program assessment), the proposed program should receive three points under this measure. If the proposed program demonstrates that more than 95% of the requested funds will be dedicated to activities that directly impact students (which include professional development, purchase of books and supplies, and program assessment), the proposed program should receive six points under this measure.
- 3.8 Encouragement of participation by students from diverse backgrounds (zero to 8 points). Does the proposed program encourage students from diverse backgrounds, including students with disabilities, low-income students, African-American students, and ESL students, to participate in the program provided that they are capable of doing advanced academic work? To the extent that accommodations are needed for students with disabilities who are otherwise capable of doing advanced academic work, does the proposed program provide for such accommodations? A proposed program that does not specifically describe any efforts that will be made to encourage participation by students from diverse backgrounds should receive zero points under this measure. A proposed program that proposes credible steps that will be taken to encourage participation by students from diverse backgrounds should receive four points under this measure. A proposed program that proposes credible steps that will be taken to encourage participation by students from diverse backgrounds and demonstrates advance consideration of accommodating otherwise-qualified students with disabilities should receive eight points under this measure.
- 3.9 Identification of eligible students (zero to 8 points). Does the proposed program have a transparent, reliable, fair, and robust method to determine which students are eligible to participate? A proposed program that does not specify the means by which students will be determined to be eligible for the program should receive zero points under this measure. A proposed program that specifies a single, reliable method for determining eligibility for the proposed program, tied specifically to the proposed curriculum, should receive four points under this measure. A proposed program that demonstrates multiple reliable methods for determining eligibility for the proposed program, tied specifically to the proposed curriculum, should receive eight points under this measure.
- 3.10 Program evaluation (zero to 6 points). How reliable and accurate is the program evaluation component of the applicant's proposal? A program that proposes a single, reliable method for evaluating the success of the proposed program after students have completed the program should receive three points under this measure. A proposed program that proposes multiple reliable methods for evaluating the success of the proposed program after students have completed the program should receive six points under this measure.
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PROPOSED REGULATIONS

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122 (14 Del.C. §122)
14 DE Admin. Code 1001

PUBLIC NOTICE

Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)

1001 Participation in Extra Curricular Activities

A. Type of Regulatory Action Required

Reauthorization of Existing Regulation

B. Synopsis of Subject Matter of the Regulation

Pursuant to 14 Del.C. §122, the Secretary of Education intends to reauthorize 14 DE Admin. Code 1001 Participation in Extra Curricular Activities. The Department has reviewed the regulation in order to comply with 29 Del.C. §10407 which requires regulations to be reviewed on a recurring bases every four years and concluded that the regulation should be reauthorized without any changes.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before July 5, 2019 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, located at the address listed above.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not address improving student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is intended to continue to ensure all students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments do not address students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to ensure that all student's legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated does not change because of the amendment.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amendment is consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected cost to implementing this amended regulation.

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/june2019/proposed/22 DE Reg 986RFA 06-01-19.pdf>

1001 Participation in Extra Curricular Activities

1.0 Academic Eligibility Criteria

Local school districts and charter schools shall establish their own academic eligibility criteria for participation in all extra curricular activities except for interscholastic athletics. The academic eligibility criteria for interscholastic athletics is established in 14 **DE Admin. Code** 1009.2.6 DIAA Senior High School Interscholastic Athletics, and in 14 **DE Admin. Code** 1008.2.6 DIAA Junior High and Middle School Interscholastic Athletics.

Comment: In establishing and implementing academic eligibility criteria applicable to students with disabilities, districts are reminded that some flexibility may be contemplated by Federal guidelines. See 34 CFR Sec. 104.4.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 303(a) (14 **Del.C.** §§122(b) and 303(a))

14 **DE Admin. Code** 1007

PUBLIC NOTICE

Education Impact Analysis Pursuant To 14 Del.C. §122(d)

1007 DIAA Sportsmanship

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 **Del.C.** Sections 122(b) and 303(a), the Secretary of Education seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1007 DIAA Sportsmanship. The Delaware Interscholastic Athletic Association ("DIAA"), working in consultation and cooperation with the Department of Education, developed the amendments to 14 **DE Admin. Code** 1007. Subsection 1.2.1.1 is being amended to add constables who are appointed in accordance with 10 **Del.C.** Ch. 27.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before July 5, 2019 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOERegulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary, located at the address above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is related to interscholastic athletics and does not directly help to improve student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is related to interscholastic athletics and does not help to ensure that all students receive an equitable education.

3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The

amended regulation is intended, in part, to help ensure all students' health and safety are adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation helps to ensure that all students' legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation does not change authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated will be placed in the same entity.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies? The amended regulation is consistent with, and not an impediment to, the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? There is not a less burdensome method for addressing the purpose of the amended regulation.

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no expected cost to the state and to the local school boards of complying with the amended regulation.

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/june2019/proposed/22 DE Reg 987RFA 06-01-19.pdf>

1007 DIAA Sportsmanship

1.0 Definitions and Sportsmanship

(Break in Continuity Within Section)

1.2 Sportsmanship

1.2.1 Member Schools are required to conduct all of their athletic affairs with other schools in a spirit of good sportsmanship. Acts which are prima facie evidence of a failure to abide by this rule are those which are noted below and others of a similar nature which transgress the usually accepted code for good sportsmanship.

1.2.1.1 Failure to provide for proper control of spectators at a contest. When the number of spectators is expected to be large in relation to the seating capacity of the facility, uniformed ~~state~~ State, county, or local police or constables appointed in accordance with 10 Del.C. Ch. 27 shall be provided for crowd control. The host school is expected to take reasonable and proper steps to assure crowd control under any foreseeable conditions.

***Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:**

1007 DIAA Sportsmanship

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES

Statutory Authority: 29 Delaware Code, Section 7909A(e) (29 **Del.C.**, §7909A(e))

PUBLIC NOTICE

2103 Reportable Incident Management and Corrective Measures

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS)/Division of Developmental Disabilities Service (DDDS) is proposing to implement oversight and monitoring of reportable incidents pursuant to DHSS Policy Memorandum 46.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to James Dickinson, Division of Developmental Disabilities, Service Integrity and Enhancement, 1056 South Governor's Avenue, Suite 101, Dover DE 19947, E-Mail: james.dickinson@delaware.gov by July 1, 2019.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

SUMMARY OF PROPOSAL

The proposal creates regulations to ensure the health and safety of persons served in Home and Community-Based Services (HCBS) by the Division of Developmental Disabilities Services (DDDS) under its contracts with providers, consistent with Policy Memorandum 46 (PM46) of the Department of Health and Social Services (DHSS).

Under this policy, DDDS is responsible for oversight and monitoring of the prevention, discovery, investigation, and correction of Reportable Incidents and all other threats to the safety and health of DDDS service recipients.

Statutory Authority

Title 16 of the **Delaware Code**, Chapter 55, Subchapter 1, Section 5506
DHSS PM46
29 **Del.C.**, §7909A(e)

Background

PM46 was updated August 2016 and requires DDDS to establish rules, standards and processes for prevention, discovery, investigation and mitigation of Reportable Incidents: abuse, financial exploitation, medication diversion, mistreatment, neglect, unanticipated death, and significant injury.

Summary of Proposal

This regulation specifies incidents that must be reported to DDDS, the manner and timeliness within which they must be reported, and the actions DDDS and providers of DDDS services shall take regarding reportable incidents, including corrective measures that can be assessed for incidents caused by dereliction of duty by providers. This regulation also describes the process that DDDS shall use to promote the involvement of stakeholders in its quality improvement processes to reduce the total number of reportable incidents.

These regulations apply to DDDS and provider staff that provide direct HCBS services to DDDS service recipients, excluding; durable medical equipment suppliers; assistive technology providers; and home and vehicle modification services.

Fiscal Impact Statement

This proposed regulation is being implemented to clarify current DDDS practices and there is no projected fiscal impact.

***Please Note:**

(1) The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:

<http://regulations.delaware.gov/register/june2019/proposed/22 DE Reg 989RFA 06-01-19.pdf>

(2) Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:

2103 Reportable Incident Management and Corrective Measures

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 122(3)y. and z. (16 Del.C. §122(3)y. & z.)
16 DE Admin. Code 3335

PUBLIC NOTICE**3335 Office-Based Surgery**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 1, Section 122(3)y. and z., Delaware Health and Social Services (DHSS) / Division of Health Care Quality (DHCQ) is proposing regulations governing Office-Based Surgery.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same to, the Office of Health Facilities Licensing and Certification, Division of Health Care Quality, 261 Chapman Road, Suite 200, Newark, Delaware 19702, by email to Corinna.Getchell@Delaware.gov or by fax to 302-292-3931 by 4:30 p.m. on July 1, 2019. Please identify in the subject line: Regulations Governing Office-Based Surgery

The action concerning the determination of whether to adopt the proposed regulations will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services /Division of Health Care Quality is proposing regulations governing Office-Based Surgery.

Statutory Authority

16 Del.C. §122(3)(y and z)

Background

Previous legislation gave the Department of Health and Social Services the authority to promulgate regulations and require accreditation for "facilities that perform invasive medical procedures". The terminology and definition of an "invasive medical procedure" was frequently misinterpreted and caused a great deal of confusion amongst the medical community. More recent legislation revised the language to be consistent with nationally recognized terminology; therefore, the term "office-based surgery" replaced "invasive medical procedure". In addition, this legislation clarified the definition to ensure that all facilities that perform office-based surgery do so in a safe and sanitary environment.

Summary of Proposal*Summary of Proposed Changes*

The Division of Health Care Quality plans to publish the "proposed" amendments to the regulations governing Office-Based Surgery facilities and hold them out for public comment per Delaware law. The amendments update the regulatory language to be consistent with nationally recognized terminology; clarify definitions associated with

office-based surgery; and update general and accreditation organization requirements.

Public Notice

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services/Division of Health Care Quality gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on July 1, 2019.

Fiscal Impact

Not applicable

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/june2019/proposed/22 DE Reg 990RFA 06-01-19.pdf>

~~4408 Facilities that Perform Invasive Medical Procedures~~ 3335 Office-Based Surgery

1.0 Purpose

Delaware Department of Health and Social Services adopts these regulations pursuant to the authority vested by 16 **Del.C.** §122(3)(y and z). These regulations establish standards with respect to the safe and sanitary conditions, and require the accreditation of any facility that performs ~~invasive medical procedures in which the accepted standard of care requires anesthesia, major conduction anesthesia, or sedation~~ office-based surgery. These regulations also provide for the investigation of any patient or current facility employee complaints involving the unsafe and/or unsanitary conditions in such facilities.

2.0 Definitions

The following words and terms, when used in this regulation, should have the following meaning unless the context clearly indicates otherwise:

(Break in Continuity Within Section)

"**Anesthesia**" means anxiolysis, conscious sedation, deep sedation, major conduction anesthesia, minimal sedation, moderate sedation or general anesthesia and all anesthesia, including local anesthesia, used for surgical abortions. For ~~invasive medical procedures~~ office-based surgery other than surgical abortions, the following shall be excluded from the definition of anesthesia: (1) local anesthesia, (2) the administration of less than 50% nitrous oxide in oxygen with or without local anesthesia but with no other sedative or analgesic medications by any route, or (3) the administration of a single, oral sedative or analgesic medication ~~administration~~ in doses appropriate for the unsupervised treatment of insomnia, anxiety, or pain with or without local anesthesia.

(Break in Continuity Within Section)

"**Conscious Sedation**" means moderate ~~sedation~~ sedation.

(Break in Continuity Within Section)

"**Facility**" means a location at which any ~~invasive medical procedure~~ office-based surgery is performed, but ~~shall~~ does not include any hospital, as defined in 16 **Del.C.** §1001(2), or any freestanding birthing center, freestanding surgical center or freestanding emergency ~~center~~ department as such terms are defined in ~~defined in~~ 16 **Del.C.** §122(3)p.

(Break in Continuity Within Section)

~~"Invasive Medical Procedure" means any medical procedure, including dental and pediatric procedures, in which the accepted standard of care requires anesthesia, major conduction anesthesia or sedation.~~

"**Local Anesthesia**" means the injection of the skin or muscle, or application of an anesthetic drug to a specific area of the body, to prevent patients from feeling pain directly where the pain will occur during a medical, surgical or dental procedure. Local anesthesia can be divided into four groups: injectable,

PROPOSED REGULATIONS

topical, dental (non-injectable) and ophthalmic. ~~Local anesthesia does include infiltration block anesthesia but would not include procedures in which local anesthesia is injected into areas of the body other than skin or muscle (i.e. systemic sedation such as spinal, epidural, axillary, stellate ganglion block, regional blocks, supraclavicular, infraclavicular and intravenous regional anesthesia) where significant cardiovascular or respiratory complications may result.~~

(Break in Continuity Within Section)

"Musculoskeletal Injection" means a trigger point injection, lumbar puncture, or injection that targets a joint, including shoulder, hip, knee, elbow, hand, wrist, foot, ankle, and sacroiliac joint. Musculoskeletal injections do not include any other injection in which the spine is the target of the injection.

"Office-Based Surgery" means any medical procedure, including dental and podiatric procedures, which include any of the following: (1) Surgical abortions, (2) Procedures in which the facility utilizes anesthesia, major conduction anesthesia or sedation, (3) Procedures in which the spine (i.e. epidural, facet joint) is the target of an injection, or (4) Procedures in which the accepted standard of care requires anesthesia, major conduction anesthesia or sedation. Office-based surgery does not include musculoskeletal injections.

(Break in Continuity Within Section)

"Procedure" means ~~invasive medical procedure~~ office-based surgery.

(Break in Continuity Within Section)

"Time-out" means a pause in action conducted in the procedure room immediately before the procedure is to begin. The time-out (1) involves the entire operative team, including the patient, (2) uses active ~~communication~~ communication, and (3) includes correctly identifying: the patient, the procedure, and the site.

(Break in Continuity of Sections)

4.0 General Requirements

(Break in Continuity Within Section)

4.5 Facility procedures shall not:

- 4.5.1 Generally result in blood loss of more than ten percent of estimated blood volume in a patient with a normal hemoglobin; or
- 4.5.2 ~~Include major or prolonged intracranial, intrathoracic, abdominal or major joint replacement procedures;~~
- 4.5.3 ~~Directly involve major blood vessels; or~~
- 4.5.4 ~~5.2~~ Be generally emergent or life-threatening in nature.

(Break in Continuity Within Section)

4.11 A facility that chooses to stop performing ~~invasive medical procedures~~ office-based surgery and voluntarily surrenders accreditation must notify the Department in writing, 30 days prior to the voluntary surrender of accreditation or cessation of ~~invasive medical procedures~~ office-based surgery.

(Break in Continuity of Sections)

8.0 Disciplinary Actions

(Break in Continuity Within Section)

8.2 Disciplinary sanctions:

8.2.1 The Department may make and enforce such emergency orders as it deems necessary to protect the health and safety of the public.

(Break in Continuity Within Section)

8.2.1.2 If the Department determines during the course of any investigation or inspection that any facility poses a possible risk to the health or safety of any person, the Department may:

8.2.1.2.1 Issue of a letter of ~~reprimand~~ reprimand; and/or

8.2.1.2.2 Require the facility to complete a plan of correction.

8.3 Imposition of Disciplinary Action

8.3.1 The Department may issue an order to close the facility immediately.

8.3.1.1 An order to close may apply to the performance of ~~invasive medical procedures~~ office-based surgery.

9.0 Accreditation Requirements and Procedures

9.1 General requirements

9.1.1 All facilities must register with the Department at least 15 days prior to the first day of operation using a form created by the Department. It will include:

(Break in Continuity Within Section)

9.1.1.5 Acknowledgment that ~~invasive medical procedures are~~ office-based surgery is performed in the facility.

(Break in Continuity Within Section)

9.1.6 The accreditation organization shall report to the Department, at a minimum, all of the following regarding facilities the organization has accredited:

9.1.6.1 The findings of surveys:

9.1.6.2 The findings of complaint and incident investigations; and

9.1.6.3 Data for all facilities that perform office-based surgery.

(Break in Continuity Within Section)

9.4 Notice to patients

9.4.1 The facility shall notify each patient (or the patient's authorized representative) scheduled for an upcoming ~~invasive medical procedure~~ office-based surgery of an accreditation termination, or as directed under an order issued by the Department.

***Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:**

3335 Office-Based Surgery

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

OFFICE OF THE SECRETARY

Statutory Authority: 7 Delaware Code, Chapter 70 (7 Del.C. Ch. 70)
7 DE Admin. Code 101

REGISTER NOTICE SAN # 2017-17

101 Regulations Governing Delaware's Coastal Zone

1. TITLE OF THE REGULATIONS:

Regulations Governing Delaware's Coastal Zone

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

House Bill 190, the Coastal Zone Conversion Permit Act of 2017 (CZCPA), amended the Coastal Zone Act of 1971 and required DNREC to revise its Regulations Governing Delaware's Coastal Zone (7 DE Admin. Code 101). Prior to the passage of the CZCPA, all heavy industry and bulk product transfer activities not in operation on June 28, 1971 were prohibited in the coastal zone. The CZCPA allows for the permitting of these activities under

certain conditions. The proposed regulations specify these conditions in accordance with the CZCPA.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

This is required under 7 **Del.C.** Chapter 70. There is no sunset provision.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Del.C.** Chapter 70.

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

N/A

6. NOTICE OF PUBLIC COMMENT:

Public comments on the proposed regulations may be submitted to DNREC orally at the public hearing or in writing until close of business on July 9, 2019. The public hearing will be held jointly between the Department of Natural Resources and Environmental Control and the Coastal Zone Industrial Control Board at 6:00 P.M. on June 24, 2019 at the DNREC office located at:

391 Lukens Drive
New Castle, DE 19720

Written comments may be submitted via email to lisa.vest@delaware.gov (subject line: "CZCPA Regulation Comments") or via USPS at Lisa Vest, DNREC, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

Judy Jordan
Judith.jordan@delaware.gov
(302) 735-3480

***Please Note:**

(1) The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 **Del.C. Ch. 104**, is available at:

[http://regulations.delaware.gov/register/june2019/proposed/22 DE Reg 993RFA 06-01-19.pdf](http://regulations.delaware.gov/register/june2019/proposed/22%20DE%20Reg%20993RFA%2006-01-19.pdf)

(2) Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:

[101 Regulations Governing Delaware's Coastal Zone](#)

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

DIVISION OF STATE POLICE

1300 BOARD OF EXAMINERS OF PRIVATE INVESTIGATORS & PRIVATE SECURITY AGENCIES

Statutory Authority: 24 Delaware Code, Section 1305 (24 **Del.C.** §1305)

24 DE Admin. Code 1300

PUBLIC NOTICE

1300 Board of Examiners of Private Investigators & Private Security Agencies

Notice is hereby given that the Board of Examiners of Private Investigators and Private Security Agencies, in accordance with 24 **Del.C.** Ch. 13 proposes to amend the following adopted rules in 24 **DE Admin. Code 1300** Board of Examiners of Private Investigators and Private Security Agencies: Rule 8.0 Private Investigators. If you wish to view the complete Rule, contact Ms. Ashley N. Hughes at (302) 672-5337. Any persons wishing to present views may submit them in writing, by July 1, 2019, to Delaware State Police, Professional Licensing Section, P. O.

Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Monday, July 08, 2019, 10:00am, at the Tatnall Building, 150 Martin Luther King, Jr. Boulevard South, Room 112, Dover, DE.

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/june2019/proposed/22 DE Reg 994RFA 06-01-19.pdf>

1300 Board of Examiners of Private Investigators & Private Security Agencies (Break in Continuity of Sections)

8.0 Private Investigators

- 8.1 The identification card will bear the employer's name. Upon termination of employment, the identification card is no longer valid. If seeking employment with another licensed agency, the Private Investigator must be re-registered with the new employer and a new identification card will be issued as in the previous procedure.
- 8.1.1 If a Private Investigator is employed by more than one agency, the Private Investigator must register the other employer's name with the State Bureau of Identification (SBI). A new identification card will be issued for each new agency.
- 8.2 An approved Private Investigator may ~~only~~ be employed by ~~one licensed~~ any number of licensed private investigative agency at a time agencies on a concurrent basis. The Private Investigator will adhere to the rules governing multiple employments by the private investigative agencies they are employed by.

***Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:**

[1300 Board of Examiners of Private Investigators & Private Security Agencies](#)

DEPARTMENT OF TRANSPORTATION DELAWARE TRANSIT CORPORATION

Statutory Authority: 2 Delaware Code, Section 1922 and 21 Delaware Code, Section 302
(2 Del.C. §1922 & 21 Del.C. §302)
2 DE Admin. Code 2289

PUBLIC NOTICE

2289 Transportation Network Companies

Pursuant to the authority provided by 2 Del.C. §1922, the Delaware Department of Transportation (DeIDOT), adopted the Public Carrier Regulations.

The Department, through the Delaware Transit Corporation, Office of Public Carrier Regulation, seeks to adopt general revisions to its existing regulation, Public Carrier Regulations, to safeguard public safety through a regular review of Transportation Network Company engaged vehicles. These collective changes are promote public safety and serve, in part, to clarify the intent of the Department as enacted through these regulations.

Public Comment Period

DeIDOT will take written comments on these proposed general revisions to Regulation 2289 of Title 2, Delaware Administrative Code, from June 1, 2019 through July 1, 2019. The public may submit their comments to:

Bruce R. Demeter, Chief Performance Officer

(Bruce.Demeter@state.de.us) or in writing to his attention,

Delaware Transit Corporation
Office of Performance Management
119 Lower Beech Street
Wilmington, DE 19805

***Please Note:**

(1) The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:

<http://regulations.delaware.gov/register/june2019/proposed/22 DE Reg 995RFA 06-01-19.pdf>

(2) Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:

[2289 Transportation Network Companies](#)

Symbol Key

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. **Bracketed Bold language** indicates text added at the time the final order was issued. ~~**Bracketed bold stricken through**~~ indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the **Register of Regulations**. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the **Register of Regulations**, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

DEPARTMENT OF AGRICULTURE FOOD PRODUCTS INSPECTION

Statutory Authority: 3 Delaware Code, Section 101(1), (3) and (6) (3 **Del.C.** §101(1), (3) & (6))

ORDER

302 Produce Safety Regulations

Date May 15, 2019

The Department of Agriculture ("Department") issues this Order to take effect ten (10) days after the publication of this Order in the Delaware *Register of Regulations*:

1. Pursuant to its statutory authority (3 **Del.C.** §101(1), (3) and (6)), the Department proposed for adoption Rules and Regulations for Produce Safety at 3 **DE Admin. Code** 302. The purpose of the amended regulations is to establish the procedures for farm registration, produce inspection, on-farm produce and environmental sampling, and addressing non-compliance of regulated farms under the federal Food Safety Modernization Act. Title 21 of the CFR Part 112 of the Code of Federal Regulations. Other regulations issued by the Department of Agriculture are not affected by this Order.

2. A copy of the proposed regulations was published in the September 1, 2018 edition of the Delaware *Register of Regulations* and has been available for inspection in the office of the Department at 2320 South DuPont Highway, Dover, Delaware 19901 during regular office hours.

3. The Department did not receive any written comments on the proposed regulations during the 30 day period following publication of the proposed regulations on September 1, 2018.

4. THEREFORE, IT IS ORDERED, that the proposed regulations are adopted and shall become effective June 11, 2019, after publication of the final regulation in the June 1, 2019 edition of the Delaware *Register of Regulations*.

Department of Agriculture
Secretary Michael T. Scuse

302 Produce Safety Regulations**1.0 Authority**

These regulations related to the federal Food Safety Modernization Act's Produce Safety Rule are promulgated pursuant to the authority provided in 3 Del.C. § 101 (1), (3), and (6).

2.0 Purpose

The Department of Agriculture has enforcement responsibility for the Produce Safety Rule of the Food Safety Modernization Act (FSMA), Title 21, Part 112 of the Code of Federal Regulations. The purpose of these proposed regulations is to establish the procedures for farm registration, produce inspection, on-farm produce and environmental sampling, and addressing non-compliance of regulated farms as currently appear in the FSMA and as the FSMA may be amended from time to time.

3.0 Registration

- 3.1 In order to determine the farms subject to the Food Safety Modernization Act Produce Safety Rule, the Department of Agriculture will require that all farms within Delaware that grow produce register with the Department of Agriculture.
- 3.2 The registration form, available from the Department of Agriculture, shall include at a minimum the following required fields:
 - 3.2.1 Name
 - 3.2.2 Address
 - 3.2.3 Farm Location(s)
 - 3.2.4 Telephone number and email address of owner/producer
 - 3.2.5 Approximate average annual income from produce sales
 - 3.2.6 Description of all produce grown
 - 3.2.7 Seasonal Growing Period
- 3.3 The registration form may include additional fields as determined by the Department of Agriculture.
- 3.4 Forms will be provided by the Department of Agriculture and must be returned to the Department of Agriculture upon completion. The Department of Agriculture may provide the registration forms in electronic format. Other timely information may also be sent to the registrants.

4.0 Inspections

- 4.1 Department of Agriculture personnel are authorized, at any time, to enter any farm or facility that grows, harvests, packs or holds produce for human consumption to:
 - 4.1.1 Inspect the farm or facility to determine whether the rules promulgated under these regulations are being violated.
 - 4.1.2 Request to review and copy the farm or facility's records pursuant to the federal regulations on recordkeeping.
 - 4.1.3 Secure and test samples as needed to verify compliance.
- 4.2 Inspection Results will be given in an Inspectional Report form.

5.0 Product Retention and Condemnation

- 5.1 In the event that the Department of Agriculture discovers produce that is contaminated, unfit for consumption, or otherwise in violation of these regulations, the Department of Agriculture is authorized at all times to seize, take possession of, condemn, destroy, or require the destruction of any covered produce that the Department of Agriculture believes to be in violation of 21 C.F.R Part 112. Enforcement actions may continue to be imposed until corrective actions are taken by the owner/producer in violation.

- 5.2 If objectionable conditions are found, the Inspector (working under federal authority) is obligated to report the findings to the Food and Drug Administration (FDA) and work in collaboration with FDA to control/rectify the situation.

6.0 Program Termination

These regulations shall remain in effect for the duration of the federal Food Safety Modernization Act's Produce Safety Rule. If the federal Produce Safety Rule is abolished, then the Department of Agriculture may also abolish these regulations.

7.0 Violations and Hearing Procedures

- 7.1 Failure to comply with this chapter shall result in the assessment of a civil penalty.
- 7.2 No civil penalty shall be imposed until an administrative hearing is held before the Secretary of Agriculture or the Secretary's designee. No civil penalty shall be assessed unless the person charged shall have been given notice and opportunity for a hearing on such charge in accordance with Chapter 101 of Title 29 of the Delaware Code. The Secretary or the Secretary's designee shall mail a written decision to the alleged violator within 30 days after the conclusion of the administrative hearing. Failure to comply with the 30-day period shall have no effect on the Secretary's or designee's decision.
- 7.3 The person(s) charged with a violation of these regulations will be notified in writing of the date and time of the aforementioned administrative hearing. The aforementioned person(s) shall have the right to appear in person, to be represented by counsel and to provide witnesses in his or her behalf.
- 7.4 The Secretary or the Secretary's designee, for the purposes of investigation of a possible violation of these regulations and for its hearings, may issue subpoenas, compel the attendance of witnesses, administer oaths, take testimony and compel the production of documents. In case any person summoned to testify or to produce any relevant or material evidence refuses to do so without reasonable cause, the Department of Agriculture may compel compliance with the subpoena by filing a motion to compel in Superior Court which shall have jurisdiction over this matter.
- 7.4.1 The Department of Agriculture shall preserve a record of the proceedings and a transcript may be purchased by any interested person.

8.0 Appeal

A person who feels aggrieved by the Department of Agriculture as a result of the administrative hearing held under the authority of this chapter may file an appeal, within 30 days, with the Superior Court. Written notice of such appeal, together with the grounds therefor, shall be served upon the Secretary of the Department of Agriculture.

9.0 Civil Penalties

- 9.1 Any person who interferes with the Department of Agriculture in the enforcement of this chapter, as determined in an administrative hearing, shall be assessed a civil penalty of no less than \$1,000 nor more than \$5,000 on each count.
- 9.2 Any person who is not a Department of Agriculture employee or its authorized representative who removes markings placed by the Department of Agriculture for the purpose of identification is interfering with the Department of Agriculture's enforcement of these regulations, as determined in an administrative hearing, and shall be assessed a civil penalty of no less than \$1,000 nor more than \$5,000 on each count.
- 9.3 Any person(s) who willfully or knowingly ships contaminated produce, as determined in an administrative hearing, shall be assessed a civil penalty of no less than \$1,000 nor more than \$5,000 on each count.
- 9.4 Any person(s) who refuses to comply with these regulations shall be assessed a civil penalty of no less than \$1,000 nor more than \$5,000 for each violation.
- 9.5 The payment of penalties assessed under this chapter may be made on a payment schedule approved by the Secretary or the Secretary's designee.

FINAL REGULATIONS

THOROUGHBRED RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 10103(c) (3 **Del.C.** §10103(c))
3 **DE Admin. Code** 1001

ORDER

1001 Thoroughbred Racing Rules and Regulations

Date: May 15, 2019

The Thoroughbred Racing Commission ("Commission") issues this Order to take effect ten (10) days after the publication of this Order in the Delaware *Register of Regulations*:

1. Pursuant to its statutory authority (3 **Del.C.** §10103(c)), the Commission approved nonsubstantive changes in existing regulations to alter style or form or to correct technical errors pursuant to 29 **Del.C.** §10113(b)(4) to the Thoroughbred Racing Rules and Regulations to replace the word "whip" with the words "riding crop" in all instances that the word whip appears in the Rules (§1.0 Definition of Equipment, §2.5.1.11.2, §8.11.4, §10.9.1, §10.9.2, §10.9.3, §12.15, §14.18, §14.18.1, and §14.18.2). Other regulations issued by the Thoroughbred Racing Commission are not affected by this Order.

2. THEREFORE, IT IS ORDERED, that the nonsubstantive changes in existing regulations are adopted and shall become effective June 11, 2019, after publication of the final order in the Delaware *Register of Regulations*.

Approved by unanimous vote of the Thoroughbred Racing Commission on March 20, 2019.

John Wayne, Executive Director

1001 Thoroughbred Racing Rules and Regulations

1.0 Definitions and Interpretations

In the context of these Rules of Racing, the following words and phrases shall be construed as having the following special meanings:

(Break in Continuity Within Section)

"Equipment": Accouterments, other than ordinary saddle, girth, pad, saddle cloth, and bridle carried by a horse, including ~~whip~~ riding crop, blinkers, tongue strap, muzzle, hood, noseband, bit, shadow roll, martingale, breast plate, bandages, boots, and racing plates or shoes.

2.0 Permits, Registrations and Authorizations

(Break in Continuity Within Section)

2.5 Grounds for Refusal, Suspension, or Revocation of a Permit, etc.:

2.5.1 The Commission in its discretion, may refuse to register or to issue an authorization or permit to an applicant, or may suspend or revoke a registration, permit, or authorization previously issued, or order disciplinary measures, on the following grounds:

(Break in Continuity Within Section)

2.5.1.11 Possession on Licensee's grounds, without written permission therefore from the Commission, the Licensee, or the Stewards, of:

2.5.1.11.1 Firearms;

2.5.1.11.2 Battery, or buzzer, or electrical device, or other appliance other than an ordinary ~~whip~~ riding crop which could be used to alter the speed of a horse in a race or workout;

(Break in Continuity of Sections)

8.0 Jockeys and Apprentice Jockeys

(Break in Continuity Within Section)

8.11 Weighing Out:

(Break in Continuity Within Section)

- 8.11.4 ~~Whip Riding crop~~, blinkers, number cloth, bridle and rider's safety helmet and rider's safety vest shall not be included in a rider's weight.

(Break in Continuity of Sections)

10.0 Horses

(Break in Continuity Within Section)

10.9 Equipment:

- 10.9.1 ~~Whips Riding crops~~ or blinkers must be used consistently on a horse or not at all. Permission to change any equipment used on a horse in its last previous start must be obtained from the Stewards. A horse's tongue may be tied down for a race with a clean bandage or gauze. A horse's bridle may weigh no more than two pounds. War bridles are prohibited. No horse may race in ordinary training shoes. Bar shoes may be used for racing only with the permission of the Stewards.
- 10.9.2 Use on a horse either in a race or workout of any goading device, chain, electrical or mechanical device or appliance, other than the ordinary ~~whip riding crop~~, which could be used to alter the speed of such horse is prohibited, except that spurs may be used in jumping races and, with the permission of the Stewards, during workouts.
- 10.9.3 No ~~whip riding crop~~ shall be used that weighs more than one pound or is longer than 30 inches with one popper; no stingers or projections extending through the hole of a popper or any metal part on a ~~whip riding crop~~ shall be permitted.

(Break in Continuity of Sections)

12.0 Weights

(Break in Continuity Within Section)

- 12.15 Computation of Jockey's Weight: A Jockey's weight shall include his clothing, boots, goggles, saddle and its attachment, or any other equipment except ~~whip riding crop~~, bridle, bit or reins, safety helmet, blinkers or number cloth.

(Break in Continuity of Sections)

14.0 Running of the Race

(Break in Continuity Within Section)

14.18 Use of ~~Whips Riding crops~~, Other Means of Altering Performance:

- 14.18.1 ~~Whips Riding crops~~ are to be used uniformly and the Stewards shall take cognizance of unusual use or non-use of a ~~whip riding crop~~ by a Jockey. No appliance, electrical or mechanical, other than the ordinary ~~whip riding crop~~, shall be used to affect the speed of a horse in a race or workout. No sponge or other object may be used to interfere with the respiratory system of a horse. Use or non-use of ordinary racing equipment shall be consistent and any change thereof must be approved by the Stewards.
- 14.18.2 Indiscriminate, excessive, abusive or brutal use of an ordinary ~~whip riding crop~~ on a horse, as determined by the Stewards in their sole discretion, is prohibited.

***Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:**

1001 Thoroughbred Racing Rules and Regulations

FINAL REGULATIONS

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 1270 (14 **Del.C.** §1270)
14 **DE Admin. Code** 108A

REGULATORY IMPLEMENTING ORDER

108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §1270, the Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. This regulation is being amended to reflect changes in the appraisal system to align evaluation criterion with the Professional Standards of Educational Leaders (PSEL), adopted by Delaware in 2016.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on April 1, 2019, in the form hereto attached as *Exhibit "A"*. Comments were received from the Delaware Performance Appraisal System Advisory Board and the Delaware Academy for School Leadership, both in support of the proposed changes to the regulation. Both organizations have worked collaboratively with the Department of Education in order to improve the system for Delaware educators.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised in order to reflect changes in the appraisal system to align evaluation criterion with the Professional Standards of Educational Leaders (PSEL), adopted by Delaware in 2016.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on May 16, 2019. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 16th day of May 2019.
Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 16th day of May 2019

State Board of Education

Whitney Townsend Sweeney, President

Audrey J. Noble, Ph.D., Vice President

Candace Fifer

Vincent Lofink

Nina Lou Bunting

Wali W. Rushdan, II

***Please note that no changes were made to the regulation as originally proposed and published in the April 2019 issue of the *Register* at page 816 (22 DE Reg. 816). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Chapter 89 (14 Del.C. Ch. 89)
14 DE Admin. Code 235

REGULATORY IMPLEMENTING ORDER

235 Teacher of the Year Award

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. Chapter 89, the Secretary of Education intends to amend 14 DE Admin. Code 235 Teacher of the Year Award. This regulation is being amended to clarify the conditions under which these awards will be given, to clarify how Teacher of the Year Award funds may be used by the award recipient, and to comply with the Delaware Administrative Code Style Manual.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on April 1, 2019, in the form hereto attached as *Exhibit "A"*. No comments were received for this regulation. However, the Department did make minor grammatical clarifications to the regulation.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 235 Teacher of the Year Award in order to clarify the conditions under which these awards will be given, to clarify how Teacher of the Year Award funds may be used by the award recipient, and to comply with the Delaware Administrative Code Style Manual.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 235 Teacher of the Year Award. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 235 Teacher of the Year Award attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 235 Teacher of the Year Award hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 DE Admin. Code 235 Teacher of the Year Award amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 DE Admin. Code 235 Teacher of the Year Award in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on May 15, 2019. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

IT IS SO ORDERED the 15th day of May 2019.

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 15th day of May 2019

235 Teacher of the Year Award

~~This program shall be administered in accordance with 14 **Del.C.** Ch. 89, and the following rules and regulations:~~

1.0 Purpose

Pursuant to 14 **Del.C.** Ch. 89, this regulation provides guidance to Delaware public schools, districts and charter schools regarding the qualifications and nomination of candidates for Teacher of the Year.

2.0 Definitions

The words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“**Department**” means the Delaware Department of Education.

“**Standard Certificate**” means a credential issued to certify that an educator has the prescribed knowledge, skill or education to practice in a particular area, teach a particular subject, or teach a category of students.

“**Teacher of the Year Award**” means recognition and a monetary award given by either ~~their~~ **a teacher’s** employing school, district or charter school, or the Department of Education as a way to reward outstanding teachers in the state.

“**Teacher of the Year Award Fund**” means a \$5000 set aside fund within the budget of the Department to be used for the statewide Teacher of the Year Award recipient’s exclusive assignment and disbursement.

4.03.0 Qualifications for a local Teacher of the Year Award

3.1 To be considered for the local Teacher of the Year ~~award~~ Award a person shall:

4.13.1.1 Have taught, continuously or intermittently, for an accumulative period of three years or more in a Delaware public school previous to the date of such person's ~~nomination~~: nomination;

4.23.1.2 Have been formally ~~nominated~~: nominated;

4.33.1.3 Be actively teaching in ~~their~~ **the nominating** district or charter school in ~~this state~~ Delaware at the time of ~~their~~ **the** nomination.

4.4 ~~Continue to actively teach in the nominating district or charter school for the duration of the school year of their nomination.~~

4.4.1 ~~If the nominee chooses to leave the district or charter school during the selection period the district or charter school shall submit another nominee.~~

4.53.1.4 Meet all the requirements for a Standard Certificate for the position held and hold a valid and current license, as approved by the Professional Standards Board, the Department of Education and the State Board of Education.

2.04.0 Nominations Nomination Procedure for state Teacher of the Year Award

- 4.1 The following procedure shall apply in preparing nominations in accordance with the requirements of the Act for identifying and nominating candidates for the state Teacher of the Year:
- 2.14.1.1 The Department of Education shall meet annually with the district coordinators of the Teacher of the Year Program appropriate district personnel and the representative for the charter schools for the purpose of providing ~~[them with]~~ detailed instructions and proper forms for the presentation nomination of nominees. Each district is invited to nominate one teacher employed by the district and the charter schools are invited to select one nominee to represent all of the charter schools candidates for the state Teacher of the Year Award.
- 4.1.2 Each district is invited to nominate one teacher employed by the district who has been chosen as a Teacher of the Year from amongst one of its school buildings.
- 4.1.3 Charter schools are invited to select one teacher to represent all of the charter schools.
- 2.1.14.1.4 Nominees for the state Teacher of the Year Award shall be skillful and dedicated teachers, teachers who teach a grade prekindergarten through grade 12. Administrative personnel such as principals and guidance counselors are not eligible to be considered for State Teacher of the Year. Nominees for State Teacher of the Year who are not actively engaged in teaching in a public school at the time at which observations are made pursuant to Section 2.2 below shall be disqualified.
- 4.1.5 Nominees for State Teacher of the Year Award who are not actively engaged in teaching in a public school at the time at which observations are made pursuant to Section 5.0 below shall be disqualified.
- 4.1.6 Administrative personnel such as principals and school counselors are not eligible to be considered for the State Teacher of the Year Award.

5.0 Requirements for state Teacher of the Year Award nominees

- 2.2 Nominees shall submit a portfolio describing themselves and setting forth their positions on educational issues. Format will be based on issues in a Department-approved format that is also consistent with the National Teacher of the Year program.

6.0 Evaluation and Selection of the state Teacher of the Year Award Recipient

- 6.1 The following procedure shall occur to evaluate and select the state Teacher of the Year award recipient from amongst all nominated candidates:
- 2.36.1.1 Following the submission of the portfolios, selected Department of Education staff members and selected former state and local district Teachers of the Year shall be assigned in pairs to read the portfolios of two nominees and observe those nominees in the classroom based on the criteria stipulated in the Teacher of the Year Program Guide that is updated each year.
- 6.1.2 Another group of Department of Education Staff staff members shall be assigned to read all of the portfolios and rate them based on forms found in the Teacher of the Year Program Guide. Based on the numerical ratings from both the portfolio readers and from the observations, three nominees shall be identified as finalists for consideration by a panel of judges.
- 2.46.1.3 The panel of judges shall include: the current State Teacher of the Year; the President of the State Parent Teacher Association; the President of the Future Educators Association; a member of the State Board of Education; a representative of the Chamber of Commerce; the President of the Delaware State Education Association; and the Chair of the Professional Standards Board or, if necessary, their designees.
- 2.56.1.4 The judges shall recommend one person for the Secretary of Education to declare as the State Teacher of the Year.
- 6.1.5 The final selection of the state Teacher of the Year Award recipient is made solely at the discretion of the Secretary of Education and the Secretary's decision shall be final.

7.0 Funding and Use of Funds

- 7.1 The Teacher of the Year Award Fund, in the amount of \$5,000, shall be set aside within the budget of the Department to be used for the statewide Teacher of the Year Award Recipient's exclusive assignment and disbursement.
- 7.1.1 The Teacher of the Year Award Funds, shall not be used for the personal benefit of the award recipient, but shall be used solely to accomplish educational purposes or objectives for students; however that in the use of such funds for educational purposes, the recipient may be an indirect or incidental beneficiary as teacher of the benefited pupils.
- 7.1.1.1 In the event all funds for an Award recipient have not been completely expended by the time a subsequent award is granted, the remainder of the former recipient's award shall not revert, but shall remain set aside in the name of the former recipient such time as it is totally expended or the recipient dies or leaves the state.
- 7.1.2 In order to withdraw funds, the Recipient shall present to the superintendent of the local school district in which the recipient is employed a plan for utilization of the award in order to avoid wasteful duplication of materials or violation of school district policy.
- 7.1.3 Possible use of funds includes, but is not limited to:
- 7.1.3.1 Purchase of non-consumable materials and supplies (library books, audio/visual equipment, computer equipment, etc.);
- 7.1.3.2 Purchase of otherwise consumable materials that are used in the production of a student designed item (artist's paper, canvas, instruments, wood, etc.);
- 7.1.3.3 Payment for student travel (museum, theatres, historic sites, etc.);
- 7.1.3.4 Employment of performers or consultants (musical group, author, poet or historian; or
- 7.1.3.5 Reimbursements to the recipient, not to exceed \$500, for personal expenses.
- 7.1.4 Materials, equipment or other items purchased with such funds shall be the property of the Delaware public school district in which the recipient is employed at the time of expenditure.
- 7.1.5 Invoices, purchase orders or personal reimbursement forms related to withdrawals from the Teacher of the Year Award Fund shall be retained by the local school district and shall be available for inspection as public records and subject to regular audit by the State Auditor of Accounts.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(e) and 3460 (14 **Del.C.** §§122(e) & 3460)
14 **DE Admin. Code** 245

REGULATORY IMPLEMENTING ORDER**245 Michael C. Ferguson Achievement Awards Scholarship****I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

Pursuant to 14 **Del.C.** §122(e) and Chapter 34 §3460, the Secretary of Education intends to amend 14 **DE Admin. Code** 245 Michael C. Ferguson Achievement Awards Scholarship. This regulation is being amended to clarify the conditions under which these awards will be given and to align with changes made to the state's accountability system pursuant to the Elementary and Secondary Education Act of 1965 as reauthorized as the Every Student Succeeds Act (ESSA).

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on April 1, 2019, in the form hereto attached as *Exhibit "A"*. No comments were received for this regulation.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 245 Michael C. Ferguson

Achievement Awards Scholarship in order to clarify the conditions under which these awards will be given and to align with changes made to the state's accountability system pursuant to the Elementary and Secondary Education Act of 1965 as reauthorized as the Every Student Succeeds Act (ESSA).

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 245 Michael C. Ferguson Achievement Awards Scholarship. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 245 Michael C. Ferguson Achievement Awards Scholarship attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 245 Michael C. Ferguson Achievement Awards Scholarship hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 245 Michael C. Ferguson Achievement Awards Scholarship amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 245 Michael C. Ferguson Achievement Awards Scholarship in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on May 15, 2019. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 15th day of May 2019.

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 15th day of May 2019

245 Michael C. Ferguson Achievement Awards Scholarship

1.0 Purpose

The Michael C. Ferguson Achievement Awards Scholarship Program, included in the Educational Accountability Act of 1998, recognizes students who demonstrate superior performance on the state assessments pursuant to 14 **Del.C.** §153 (c).

2.0 Definitions

The words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"Award" means a scholarship under the Michael C. Ferguson Achievement Awards program, to be used at a post-secondary institution of higher education as specified in 14 **Del.C.** §153(c).

"Delaware Higher Education Office" or "DHEO" is the Department of Education's office which administers specific programs related to higher education, including, but not limited to, scholarship and loan programs.

"Department" means Delaware Department of Education.

"Direct Educational Expenses" means tuition, room and board, mandatory fees, books and supplies.

“Institution of Higher Education” means a college, university or other post-secondary institution authorized to offer programs and degrees or to confer degrees. For the purpose of this regulation, “post-secondary institutions” and “Institutions of Higher Education” shall have the same meaning.

4.03.0 Basis for Granting Scholarships Awards

- 4.13.1 Subject to available funding, the Michael C. Ferguson Achievement Awards shall be made based on the student’s score on the ~~results of the annual spring summative administration of the state assessment~~ summative assessments in English language arts and mathematics. The student’s score that is used for ~~federal Adequate Yearly Progress (AYP) to determine proficiency in the state accountability system~~ shall be used to determine this award. The ~~Scholarships awards~~ may be awarded to a maximum of 300 eighth grade students in the content areas of reading and mathematics and to a maximum of 300 ~~tenth eleventh~~ eleventh grade students in the content areas of reading and mathematics. The high school award year is subject to change based on the year the state high school summative assessment is offered to students.
- 4.23.2 The awards shall be provided to the highest scoring eighth and ~~tenth eleventh~~ eleventh grade students in the state in reading and mathematics as well as the highest scoring eighth and ~~tenth eleventh~~ eleventh grades students in the state in reading and mathematics who participate in the free and reduced lunch program pursuant to the provisions below:
- 4.2.13.2.1 The highest scoring eighth and ~~tenth eleventh~~ eleventh grade students in the state in reading and mathematics shall receive the ~~scholarships awards~~.
- 4.2.1.13.2.1.1 The eighth grade awards may be given to a maximum of 150 students in the combined areas of reading and mathematics. The number of awards shall be as close to fifty percent (50%) in each area as possible. The unassigned awards shall be awarded in the priority order of highest reading score then highest mathematics score.
- 4.2.1.23.2.1.2 The ~~tenth eleventh~~ eleventh grade awards may be given to a maximum of 150 students in the combined areas of reading and mathematics. The number of awards shall be as close to fifty percent (50%) in each area as possible. The unassigned awards shall be allocated in the priority order of highest reading score then highest mathematics score.
- 4.2.23.2.2 The highest scoring eighth and ~~tenth eleventh~~ eleventh grade students in the state in reading and mathematics, who participate in the free and reduced lunch program and who are not already identified as one of the students in ~~section 4.2 subsection 3.2~~ shall receive the ~~scholarships awards~~.
- 4.2.2.13.2.2.1 The eighth grade awards may be given to a maximum of 150 students in the combined areas of reading and mathematics. The number of awards shall be as close to fifty percent (50%) in each area as possible. The unassigned awards shall be allocated in the priority order of highest reading score then highest mathematics score.
- 4.2.2.23.2.2.2 The ~~tenth eleventh~~ eleventh grade awards may be given to a maximum of 150 students in the combined areas of reading, writing and mathematics. The number of awards shall be as close to fifty percent (50%) in each area as possible. The unassigned awards shall be allocated in the priority order of highest reading score then highest mathematics score.
- 4.33.3 A Foreign Exchange student who is on a temporary visa is not eligible to receive the Michael C Ferguson Achievement Award ~~Scholarship~~.

2.04.0 Eligibility for More Than One Scholarship Award

Students may ~~who receive a scholarship an award in more than one content area and may also receive scholarships for their 8th and their 10th grade scores~~ eighth grade will also be eligible for the award in eleventh grade.

3.05.0 Use of Scholarship Award Funds

The Michael C. Ferguson ~~Scholarship Achievement Award~~ can only be used at a regionally or nationally accredited ~~post secondary institution~~ Institution of Higher Education or at a Delaware or other ~~state approved~~ state-

~~approved~~ private business and trade school in the United States of America and its territories. The award cannot exceed ~~direct educational costs~~ Direct Educational Expenses.

4-06.0 Higher Education (Commission) Office Account and Notification Procedures

- 4.16.1 All ~~scholarship~~ awards shall be deposited in an account at the Delaware Higher Education Office in an interest bearing account. Interest earned or forfeited scholarships shall be utilized by the Department of Education and ~~Delaware Higher Education Office~~ DHEO to offset administrative expenses associated with the program.
- 4.26.2 Funds deposited for ~~scholarships~~ awards through the Michael C. Ferguson Achievement Awards shall cease to be available to the recipient if the recipient does not attend ~~a post secondary institution~~ an Institution of Higher Education within five calendar years after graduating from high school. Provided further that a recipient may have one additional year of availability of the funds for each year the recipient serves as an active duty member of the military.
- 4.36.3 It is the responsibility of the ~~parent or guardian to notify the Delaware Higher Education Office of any change of address during the scholarship eligibility period.~~ Students may receive their scholarship awards even if they are living in another state at the time they attend a post secondary institution DHEO to publish, on its website, instructions for receiving the award funds and notify high schools of the award winners. Students who move out of state during the Award eligibility period are responsible for monitoring instructions posted online by the DHEO.
- 4.46.4 ~~The~~ When funding permits the awards to be given, the Department of Education shall annually announce the winners of Michael C. Ferguson Scholarships Awards.
- 4.56.5 ~~The Delaware Higher Education Office shall send a "Request for Information" form to Michael C. Ferguson Scholarship recipients annually to update their account information~~ Students have up to five years after high school graduation to request the award fund, unless they meet the active duty exemption listed in subsection 6.2 above.
- 4.5.16.5.1 ~~The Delaware Higher Education Office~~ Awarded students will contact the DHEO when they are ready to request the award funds be sent to their Institution of Higher Education. The DHEO shall ~~send enrollment verification forms to institutions~~ request enrollment verification from the Institution of Higher Education identified by recipients. When completed verification forms are received by the ~~Delaware Higher Education Office~~ DHEO, disbursement of ~~scholarship~~ award funds will be made to the ~~institution~~ Institution of Higher Education.
- 4.5.26.5.2 If a student does not plan to attend a post secondary institution immediately after high school graduation, it is the parent or guardian's responsibility to provide timely notification to the Delaware Higher Education Office prior to enrollment in order to receive payment of the ~~scholarship~~ Awarded funds will be distributed directly to the Institution of Higher Education and can be used for any Direct Educational Expenses.
- 4.5.3 Recipients may defer all or a portion of payment of Michael C. Ferguson Scholarships beyond their first post secondary year, but must assume the responsibility to notify the Delaware Higher Education Office of their plans to claim the Scholarship, and may not extend payment beyond the five year limit.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(e) (14 Del.C. §122(e))
14 DE Admin. Code 247

REGULATORY IMPLEMENTING ORDER

247 Delaware Post Secondary Internship Program at The Washington Center (TWC) for Internships and Academic Seminars

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §122(e), the Secretary of Education intends to amend 14 **DE Admin. Code** 247 Delaware Post Secondary Internship Program at The Washington Center (TWC) for Internships and Academic Seminars. This regulation is being amended to clarify the conditions under which these awards will be given.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on April 1, 2019, in the form hereto attached as *Exhibit "A"*. No comments were received for this regulation.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 247 Delaware Post Secondary Internship Program at The Washington Center (TWC) for Internships and Academic Seminars in order to clarify the conditions under which these awards will be given.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 247 Delaware Post Secondary Internship Program at The Washington Center (TWC) for Internships and Academic Seminars. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 247 Delaware Post Secondary Internship Program at The Washington Center (TWC) for Internships and Academic Seminars attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 247 Delaware Post Secondary Internship Program at The Washington Center (TWC) for Internships and Academic Seminars hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 247 Delaware Post Secondary Internship Program at The Washington Center (TWC) for Internships and Academic Seminars amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 247 Delaware Post Secondary Internship Program at The Washington Center (TWC) for Internships and Academic Seminars in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on May 15, 2019. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 15th day of May 2019.

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 15th day of May 2019

247 Delaware Post Secondary Internship Program at The Washington Center (TWC) for Internships and Academic Seminars

1.0 Purpose

The Washington Center (TWC) for Internships and Academic Seminars is an independent, nonprofit educational organization founded in 1975. Its mission is to utilize the resources of the nation's ~~capital~~ capital to provide participatory learning experiences in order to enhance students' academic, civic and professional development. The Washington Center (TWC) seeks to promote future leadership for public, private and nonprofit

sectors of our society. The purpose of this regulation is to define the terms and the procedures used for the operation of this internship program.

4-02.0 Definitions:

"**Department**" means the Delaware Department of ~~Education~~ Education.

~~"Financial Aid Package" means the identification of all of the costs to the student to participate in the internship program and all sources of funding to meet those costs. Funding sources may include scholarships, grants, tuition waivers, loans, family contributions and contributions from the Student Intern.~~

"**Grant**" means funds that are applied against a student's cost of attending The Washington Center (TWC) for Internships and Academic Seminars program. These funds do not have to be reimbursed by the Student Intern.

"**Institution of Higher Education**" or "**Institution**" means one of the eligible colleges or universities including, Delaware State University, University of Delaware, Wesley College, Wilmington University, Goldey-Beacom College, Delaware Technical Community College or Delaware College of Art and Design.

"**Student Intern(s)**" means a matriculated student at a Delaware State University or the University of Delaware Institution of Higher Education who has been selected by his or her respective University Institution to participate in The Washington Center (TWC) for Internships and Academic Seminars program and is placed in a full time internship for one semester at The Washington Center (TWC) for Internships and Academic Seminars.

"**University**" means ~~the two universities participating in The Washington Center (TWC) for Internships and Academic Seminars program, Delaware State University and the University of Delaware.~~

2-03.0 Division of Funds

Funds appropriated to the Department for the Washington Center (TWC) for Internships and Academic Seminars shall be divided evenly ~~between Delaware State University and the University of Delaware for the purpose of providing Grants to Student Interns at The Washington Center (TWC) for Internships and Academic Seminars across a maximum of ten students per year. The maximum Grant for a Student Intern shall be a one-time grant of \$5,000 per student for one semester, provided further that grant amounts per student may change based on the appropriation made by the General Assembly to fund this program not exceed the maximum cost of program participation and housing for one semester. Grant amounts per student may change based on the appropriation made by the General Assembly to fund this program.~~

3-04.0 Each University Institution of Higher Education shall be responsible for the following:

- ~~3-14.1~~ Identifying ~~a University~~ an Institution of Higher Education liaison to The Washington Center (TWC) for Internships and Academic Seminars;
- ~~3-24.2~~ Establishing a selection process for the applicants;
- ~~3-34.3~~ Identifying all sources of financial aid for the Student Interns; and
- ~~3-44.4~~ Arranging for each Student Intern to receive between 12 and 16 credits for a successful term spent at the Washington Center (TWC) for Internships and Academic Seminars.

4-05.0 Submission of Financial Aid Packages Student Applications

- ~~5.1~~ Each ~~University~~ Institution of Higher Education shall submit ~~Financial Aid Packages for up to eight (8) applicants listed in priority order to the Department's Student Assistance Program in accordance with timelines established by The Washington Center (TWC); provided further that the number of applicants may change based on the appropriation made by the General Assembly to fund this program~~ student applications, which include financial aid packages. The Washington Center shall award the one-time grant equitably to student applicants based on their financial need. Financial need shall be determined based on available institutional aid and access to local housing in proximity to the internship.

- 4.1 ~~The Department's Student Assistance Program staff shall review the Financial Aid Packages and forward the approved Financial Aid Packages to the appropriate University for their selection of the four Student Interns. The number of Student Interns that may be selected to participate in this internship shall be based on 2.0 and 4.0 of this regulation.~~
- 4.25.2 ~~If either University selects fewer than their allotted number of Student Interns for the program, the unused funds at that University shall be made available to the other University in order to provide for additional internships. In the event there are more applications than the maximum ten allowed, the Washington Center shall prioritize students enrolled at Delaware State University and University of Delaware.~~

5.06.0 Annual Reports Required

The Washington Center (TWC) for Internships and Academic Seminars shall provide annual reports to the Delaware Department of Education on the Student Intern program. Reports will be required in advance of payment.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

HEALTH PROMOTION AND DISEASE PREVENTION

Statutory Authority: 16 Delaware Code, Sections 122(3)a. and 707

(16 **Del.C.** §§122(3)a. & 707)

16 **DE Admin. Code** 4202

ORDER

4202 Control of Communicable and Other Disease Conditions

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Control of Communicable and Other Disease Conditions. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, subsections 122(3)(a) and 707.

On March 1, 2019 (Volume 22, Issue 9), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by April 5, 2019, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

No written comments were received during the public comment period.

FINDINGS OF FACT:

No changes were made to the regulations since publication as proposed. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Control of Communicable and Other Disease Conditions is adopted and shall become effective June 11, 2019, after publication of the final regulation in the Delaware *Register of Regulations*.

5/13/19
Date

Dr. Kara Odom Walker
Secretary

*Please note that no changes were made to the regulation as originally proposed and published in the March 2019 issue of the *Register* at page 733 (22 DE Reg. 733). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

4202 Control of Communicable and Other Disease Conditions

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 9055

ORDER

Food Supplement Program

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Social Services initiated proceedings to amend Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, to define household income. The Department’s proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the March 2019 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 1, 2019 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after June 11, 2019 Delaware Health and Social Services/Division of Social Services proposes to amend section 9055 of the Division of Social Service Manual.

Statutory Authority

7 CFR 273.9 (b)

Background

The policy has been amended to more clearly define household income and income reporting requirements for the Food Supplement Program.

Purpose

This policy defines household income for the Food Supplement Program.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on April 1, 2019.

Fiscal Impact Statement

This is an existing policy that defines a program component. There is no fiscal impact associated with this policy.

Summary of Comments Received with Agency Response and Explanation of Changes

The following summarized comment was received:

Comment: One commenter endorsed the proposed changes to the Division of Social Services Manual regarding the Food Supplement Program, specifically, to define household income.

Agency Response: DSS appreciates the endorsement.

DSS is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given by:

- Governor’s Advisory Council for Exceptional Citizens

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the March 2019 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, to define household income, is adopted and shall be final effective June 11, 2019.

5/22/19

Date of Signature

Kara Odom Walker, MD, MPH, MSHS, Secretary,
DHSS

FINAL

POLICY – AMENDMENT

Delaware Department of Health and Social Services
Division of Social Services
Policy and Program Development Unit

9055 ~~Definition of Defining Household Income~~

~~[273.9(b)]~~

~~Household income means all income from whatever source, excluding only the exceptions listed at DSSM 9058 and DSSM 9059.~~

7 CFR 273.9 (b)

DSS must consider household income when determining food benefit eligibility.

- 1. Household income means the combined income of all members of a food benefit household from all sources, excluding only the exceptions listed in DSSM 9058 and DSSM 9059.**
- 2. DSS requires applicants and participants of the Food Supplement Program to report household income from all sources, including both earned and unearned income.**

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)
16 DE Admin. Code 11003

ORDER

Purchase of Care - Determination of Homeless

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend Division of Social Services Manual (DSSM) regarding Purchase of Care, specifically, to define homeless. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the March 2019 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 4, 2019 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after June 11, 2019 Delaware Health and Social Services/Division of Social Services proposes to amend section 11003.7.2 of the Division of Social Service Manual regarding Purchase of Care, specifically, to define homeless.

Statutory Authority

45 CFR 98.41
42 USC 11434a (2)
42 USC 11302 (a)

Background

The reauthorized Child Care and Development Block Grant Act requires lead agencies to adopt the homeless definition established by the McKinney-Vento Act to ensure consistency in identifying children that meet the criteria. The adoption of this policy will also be in alignment with Head Start and other education programs that are bound by the McKinney-Vento Act. The revised policy specifically details the homeless definition and the eligibility criteria for families who are determined homeless.

Delaware Health and Social Services/Division of Social Services will revise current policy regarding homeless families as required by the reauthorized Child Care and Development Block Grant Act.

Purpose

To establish a homeless policy that adopts the definition from section 725 of Subtitle VII-B of the McKinney-Vento Act.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on April 4, 2019.

Fiscal Impact Statement

The policy amendment will have no fiscal impact since the purpose is to revise the requirements of the program. The policy amendment does not require any additional staff, system changes, agency costs, etc.

Summary of Comments Received with Agency Response and Explanation of Changes

No comments were received during the public comment period.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the March 2019 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) is proposing to amend the Division of Social Services Manual (DSSM) regarding Purchase of Care, specifically, to define homeless, is adopted and shall be final effective June 11, 2019.

5/14/19

Date of Signature

Kara Odom Walker, MD, MPH, MSHS, Secretary, DHSS

FINAL

POLICY – AMENDMENT

Delaware Department of Health and Social Services
 Division of Social Services
 Policy and Program Development Unit

11003.7.2 ~~Income Eligible/Homeless~~ Determining Child Care for Homeless Families

~~Parent/caretakers who are homeless and whose incomes are at or below 200 percent of the federal poverty level can receive income eligible services exclusive of meeting any other need requirement. DSS defines homeless as:~~

~~A. families living in a shelter or receiving emergency assistance to live in a temporary arrangement (an example of a temporary arrangement are those families receiving assistance to live in a local motel); or~~

~~B. families without a fixed address or not living in a permanent dwelling (examples of families without a fixed address are families living in cars or tents, excluding families who live with other families).~~

~~DSS will provide child care services to homeless families for up to three months or until the family is able to obtain suitable living arrangements. Once families have obtained suitable living arrangements, child care services can only continue if families have another need for service, such as the family needs child care in order to work.~~

45 CFR 98.41, 42 USC 11434a (2), 42 USC 11302 (a)

Families who apply for Purchase of Care and meet the definition of “homeless” will receive presumptive child care services for 90 days, regardless of whether documentation is provided at the time of application.

1. This policy references The McKinney-Vento Homeless Assistance Act definition of “homeless” which means individuals who lack a fixed, regular, and adequate nighttime residence, and includes individuals who are:

- Living in the housing of others due to loss of housing, economic hardship, or a similar reason;
- Living in a motel, hotel, trailer park, or camping ground due to lack of alternative adequate accommodations;
- Living in an emergency or transitional shelter;
- Living primarily at a public or private place not designed or ordinarily used as a regular sleeping accommodation for human beings;
- Living in a car, park, public space, abandoned building, substandard housing, bus or train station, or similar setting;
- Abandoned in a hospital; and
- Migrant children who have joined a parent or the spouse of a parent within the past 36 months and who are living in any of the above situations.

2. Families who make a personal choice to reside in the housing of others are not considered homeless.

3. Families who are homeless will qualify for child care services when:

- The family is determined homeless based on the definition in this policy;
- The family's income is at or below 185% of the Federal Poverty Level; and
- The parent or caretaker is seeking employment or housing.

-
4. Child care providers are required to allow children who are determined homeless and children in foster care to begin receiving child care services once they are determined eligible for child care subsidy, regardless of whether documentation has been provided, including immunization records.
-

DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 and 535 (18 Del.C. §§311 & 535)
18 DE Admin. Code 904

ORDER

904 Privacy of Consumer Financial and Health Information

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

In the March 1, 2019 edition of the *Register of Regulations* at 22 DE Reg. 754, the Commissioner of the Delaware Department of Insurance (Commissioner) published a notice of intent to amend existing Regulation 904, and solicited written comments from the public for thirty (30) days as mandated by the Administrative Procedures Act at 29 Del.C. §10118(a).

As discussed in the introductory paragraphs of the proposal notice, the Federal Gramm-Leach Bliley Act (GLBA) requires financial institutions to send to their customers a privacy policy notice: 1) when initially contracting with them, and 2) annually thereafter. As a result, consumers receive a large number of repetitive notices in paper format through the U.S. Postal Service.

Promulgated on December 4, 2015, the "Fixing America's Surface Transportation Act" (the FAST Act) amended the GLBA's annual privacy policy notice requirement to make privacy notice requirements clearer and easier to understand.

The National Association of Insurance Commissioners (NAIC) responded with amendments to NAIC Model Regulation 672, adopted at the Fall 2016 annual meeting, which:

- Eliminate the requirement for financial institutions to provide annual privacy notices if certain conditions are met;
- Sunset the safe harbor of compliance with the privacy notice content requirements for the existing sample privacy notice clauses in Appendix A by July 1, 2019; and
- Create a new safe harbor of compliance with the privacy notice content requirement by replacing the existing sample privacy notice clauses with the federal model privacy form, to be codified in Appendix B.

The Department's Regulation 904, Privacy of Consumer Financial and Health Information, is a codification of NAIC Model Regulation 672. The proposed amendments to Regulation 904:

- Incorporate the amendments to NAIC Model Regulation 672 described above; and
- Correct codification style errors and erroneous cross references throughout Regulation 904.

In addition to publishing the proposal in the *Register of Regulations*, the Department also published the proposal on its website. The Department did not hold a public hearing on the proposed amendments.

The Department received two timely-submitted sets and two untimely-submitted sets of public comments on the proposal, all of which are supportive of the proposed amendments. Additionally, one timely commenter requested that the Department add the definition of "health information" that appears in NAIC Model Regulation 672, and requested that the word "producer" be substituted for "broker" in subsections 1.3.3.1 and 1.3.3.4 of the regulation as proposed to be amended.

II. FINDINGS OF FACTS

1. Regulation 904, Privacy of Consumer Financial and Health Information, should be adopted with the proposed amendments.

2. The Department met the public notice requirements of the Administrative Procedures Act.
3. The Department declines to make the suggested revision to incorporate the definition of "health Information." The Department did not adopt Article V of the Model Regulation in 2003, and the term is not used in the substantive portion of the Department's Regulation 904. Additionally, since the Department did not adopt Article V of the Model Regulation, the substance of the regulation does not address the regulation of nonpublic personal health information. It is therefore a technical error to have proposed to add the phrase "and to all nonpublic personal health information" at new subsection 1.3.1, and the Department is therefore deleting this phrase on adoption as a technical correction not requiring further public comment pursuant to 29 **Del.C.** §10113(b)(4).
4. Subsections 1.3.3.1 and 1.3.3.4 are verbatim recodifications of existing subsections 1.4.1.14.2.1 and 1.4.1.14.2.4. Additionally, "insurance agent," "broker," and "consultant" are used interchangeably in Title 18 under the Licensing Statute promulgated in Chapter 17. The suggested edit is therefore not necessary as it does not change the substance of the regulation. However, the Department agrees that substituting "producer" for "broker" at subsection 1.3.3.4 would make the provision more technically correct, since it is the producer who has binding authority for an insurance company, as discussed in that subparagraph. Accordingly, on adoption, the Department will substitute "producer" for "broker" in subsection 1.3.3.4 as a technical correction not requiring further public comment pursuant to 29 **Del.C.** §10113(b)(4).

III. DECISION TO ADOPT THE AMENDMENTS TO REGULATION 904 WITH NON-SUBSTANTIVE CHANGES MADE ON ADOPTION

For the foregoing reasons, the Commissioner concludes that it is appropriate to adopt the proposed amendments to 18 **DE Admin. Code** 904 with the non-substantive changes as discussed in the above Findings of Fact, for the reasons set forth above and in the proposal.

IV. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Commissioner pursuant to 18 **Del.C.** §§311 and 535, and 29 **Del.C.** Chapter 101 on the date indicated below. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED.

The 16th day of April, 2019.

Trinidad Navarro
Commissioner
Delaware Department of Insurance

904 Privacy of Consumer Financial and Health Information [~~Formerly Regulation 84~~]

1.0 General Provisions

(Break in Continuity Within Section)

1.3 Applicability

~~1.3.1 Nonpublic~~ 1.3.1 This regulation applies to nonpublic personal financial information about individuals who obtain or are claimants or beneficiaries of products or services primarily for personal, family or household purposes from licensees ~~[and to all nonpublic personal health information]~~. This regulation does not apply to information about companies or about individuals who obtain products or services for business, commercial or agricultural purposes.

(Break in Continuity Within Section)

1.3.3 Examples of employee, agent or other representative of a principal include:

(Break in Continuity Within Section)

1.3.3.4 An insurance ~~broker~~ producer] that has binding authority for an insurer; or

*Please note that no additional changes were made to the regulation as originally proposed and published in the March 2019 issue of the *Register* at page 754 (22 DE Reg. 754). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

904 Privacy of Consumer Financial and Health Information

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311, 24 Delaware Code, Section 716(c) and 29 Delaware Code, Section §10113 (18 **Del.C.** §311, 24 **Del.C.** §716(c) & 29 **Del.C.** §10113)

ORDER

1318 Compensation for Chiropractic Services

Regulation 1318, Compensation for Chiropractic Services, prohibits insurance carriers and third party administrators who are regulated by the Department from including in any health insurance policy terms and conditions that unreasonably discriminate against access to chiropractic care or services. It also prohibits compensation of doctors of chiropractic that is unreasonable or discriminatory.

In the context of comments received on the Department's proposed new Regulation 1321, the Commissioner acknowledged that the term "certificate," as used in subsections 5.1 and 5.2 of that regulation, could imply extraterritoriality for that regulation, and that the underlying 24 **Del.C.** §2621 does not give the Commissioner extraterritorial jurisdiction (see adoption order published elsewhere in this edition of the *Register of Regulations*). Similarly, subsection 5.1 of Regulation 1318 would benefit from a similar clarification in that underlying 24 **Del.C.** §716 does not give the Commissioner extraterritorial jurisdiction. Accordingly, the Commissioner is clarifying that 18 **DE Admin. Code** 1318 § 5.1 applies only to certificates issued under Delaware policies or contracts.

This amendment is exempt from the requirement of public notice and comment because it is a non-substantive change in existing regulations to correct technical errors, pursuant to 29 **Del.C.** §10113(b)(4).

This order shall be effective 10 days after publication in the *Register of Regulations*.

IT IS SO ORDERED.

This 13th day of May, 2019

Trinidad Navarro
Commissioner
Delaware Department of Insurance

1318 Compensation for Chiropractic Services

1.0 Authority

This regulation is adopted pursuant to 18 **Del.C.** §§102, 311 and 329 and 24 **Del.C.** §716 and promulgated in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101.

2.0 Purpose

The purpose of this regulation is to implement 24 **Del.C.** §716.

3.0 Scope

- 3.1 This regulation shall apply to all carriers and to all third party administrators as defined herein.
- 3.2 This regulation shall not apply to personal injury protection automobile insurance that is required under 21 **Del.C.** Ch. 21.

4.0 Definitions

The following words and terms, when used in this regulation, should have the following meaning unless the context clearly indicates otherwise:

"Administrator" or **"third party administrator"** or **"TPA"** means **"Administrator"** or **"third party administrator"** or **"TPA"** as those terms are defined at 18 **DE Admin. Code** 1406-2.1.

"Carrier" means any entity that provides health insurance in this State. For the purposes of this regulation, carrier includes a health insurance company, health service corporation, health maintenance organization and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation. "Carrier" also includes any third-party administrator or other entity that adjusts, administers or settles claims in connection with health benefit plans.

"Chiropractic" means **"Chiropractic"** as defined in 24 **Del.C.** §701 and in 24 **DE Admin. Code** 700.

"Chiropractic care or services" means those practices that a licensed doctor of chiropractic is licensed to provide pursuant to 24 **Del.C.** Ch. 7 and 24 **DE Admin. Code** 700.

"Commissioner" means the Commissioner of the Delaware Department of Insurance.

"Doctor of chiropractic" means a person who is licensed to administer chiropractic care or services pursuant to 24 **Del.C.** Ch. 7 and 24 **DE Admin. Code** 700.

"Medically necessary" means the providing of health care services or products that a prudent physician would provide to a patient for the purpose of diagnosing or treating an illness, injury, disease or its symptoms in a manner that is:

- A. In accordance with generally accepted standards of medical practice;
- B. Consistent with the symptoms or treatment of the condition; and
- C. Not solely for anyone's convenience.

"Physician" means, for purposes of this regulation, anyone who is licensed as a physician pursuant to 24 **Del.C.** Ch. 17 or as a doctor of chiropractic pursuant to 24 **Del.C.** Ch. 7.

5.0 Unreasonable and Discriminatory Access to Chiropractic Care or Services Prohibited

5.1 No carrier shall include in any insurance ~~policy~~, policy or contract delivered or issued for delivery in Delaware or in any certificate issued under such a policy or contract any provision that unreasonably discriminates against access to chiropractic care or services, including but not limited to:

- 5.1.1 A cost containment or managed care provision that denies or restricts access to chiropractic care or services in a manner that is more restrictive than a cost containment or managed care provision placed on a provider who is not licensed as a doctor of chiropractic but who is otherwise licensed to perform the same or substantially similar service, for the treatment of a patient with a condition that is within the scope of chiropractic practice;
- 5.1.2 A provision that classifies chiropractic care or services as "maintenance care" or "not medically necessary," solely for the purpose of denying access to chiropractic care or services;
- 5.1.3 A provision that requires a patient to pay a higher copay or deductible when being treated by a doctor of chiropractic than that patient would otherwise be required to pay for the same or substantially similar care or services had that care or services been rendered by a provider who is not licensed as a doctor of chiropractic but who is otherwise licensed to render that or a substantially similar care or service;
- 5.1.4 A provision that requires a patient to pay a copayment or coinsurance that is more than 25 percent of the fee due or to be paid to a doctor of chiropractic for chiropractic care or services;
- 5.1.5 A provision that contains a utilization or compensation restriction or practice for a doctor of chiropractic that is more restrictive than a utilization or compensation restriction or practice placed on a provider who is not licensed as a doctor of chiropractic but who is otherwise licensed to perform the same or substantially similar care or service for the treatment of patients with conditions within the scope of chiropractic care or services, including but not limited to:
 - 5.1.5.1 Unreasonable or discriminatory restrictions on the number of compensated visits per condition, or per episode, year, or other period; or

5.1.5.2 Unreasonable or discriminatory precertification requirements and allowances for initial or subsequent visits, or for the determination of medical necessity; or

5.1.6 Including a provision that would unreasonably deny coverage for a chiropractic technique, method or diagnostic procedure if that chiropractic technique, method or diagnostic procedure is taught by a Chiropractic College or University accredited by the Council on Chiropractic Education (CCE), or has been approved by the Delaware Board of Chiropractic.

6.0 Unreasonable and Discriminatory Compensation Prohibited

6.1 No carrier or TPA shall discriminate against or unreasonably deny a doctor of chiropractic compensation for a chiropractic service rendered by that doctor of chiropractic if the carrier would otherwise compensate a provider who is not licensed as a doctor of chiropractic but who is otherwise licensed to perform that same or substantially similar service.

6.2 Every carrier or TPA shall utilize nondiscriminatory cost containment and managed care payment strategies to provide payment for chiropractic care or services, regardless of whether the care or services were delivered by a licensed doctor of chiropractic or by a provider who is not licensed as a doctor of chiropractic but who is otherwise licensed to perform the same or substantially similar service.

7.0 Reasonable and Nondiscriminatory Provisions

Nothing in this regulation shall prohibit a carrier or a TPA from implementing reasonable and nondiscriminatory cost containment or managed care provisions as permitted by 24 **Del.C.** §716(b).

8.0 Waiver not permitted

The provisions of this regulation may not be waived, voided, or nullified by contract.

9.0 Causes of Action

This regulation shall not create a private cause of action for any person or entity other than the Commissioner against a carrier or its representative based upon a violation of 24 **Del.C.** §716 or any provision of this regulation.

10.0 Effective Date

This regulation shall become effective on January 1, 2019.

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311 and 24 Delaware Code, Section 2621
(18 **Del.C.** §311 & 24 **Del.C.** §2621)

REGULATORY IMPLEMENTING ORDER

1321 Compensation for Physical Therapy Services

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

In the March 1, 2019 edition of the *Delaware Register of Regulations* at 22 **DE Reg.** 756 (March 1, 2019), the Commissioner of the Delaware Department of Insurance (Commissioner) published a proposal which included a notice of intent to codify proposed new Regulation 1321 relating to Compensation for Physical Therapy Services. The proposed new regulation would prohibit insurance carriers from including in any health insurance policy terms and conditions that unreasonably discriminate against the payment for physical therapy care or services, or that place numerical limits on physical therapy visits for the treatment of back pain. The proposed new regulation would also codify a mechanism by which the Department of Insurance (the Department) may enforce these prohibitions.

The Department received comments from four commenters, copies of which are on file with the Department. The Department did not hold a public hearing on the proposal.

One commenter wrote in support of the regulation as proposed.

One commenter suggested that adding the word “certificate” at proposed new subsections 5.1 and 5.2 indicates extraterritoriality for this regulation, which exceeds the Department’s statutory authority. The commenter goes on to explain that extraterritoriality would make this regulation apply to certificates issued to residents of Delaware but stemming from policies that were not issued in Delaware. The commenter also opines that the underlying statute at 24 **Del.C.** §2621 only applies to policies or group contracts that are issued in Delaware, and by extension, to only certificates that stem from those policies or contracts.

One commenter pointed out that 24 **Del.C.** Ch. 26 does not contain a definition of “physical therapy” as cross-referenced in the proposed definition of “physical therapy.” The commenter also posed a question regarding whether subsection 5.1.2 is meant to prohibit a blanket classification of *all* physical therapy services as maintenance care and/or not medically necessary and thus not subject to reimbursement.

Two commenters noted that, as proposed, the effective date would apply retroactively to policies issued before the effective date of the regulation, and one suggested an effective date of on or after July 1, 2019.

Another commenter questioned whether this regulation applies to physical therapy care provided under a workers compensation policy, arguing in favor of applying the regulation to care provided under a workers compensation policy.

II. FINDINGS OF FACTS

1. The Commissioner finds that it is appropriate to adopt 18 **DE Admin. Code** 1321 as proposed in the March 1, 2019 *Register of Regulations*, for the reasons set forth in the proposal.

2. While the Commissioner acknowledges that the term “certificate,” as used in proposed new subsections 5.1 and 5.2, could imply extraterritoriality for this regulation, there are instances where Delaware policies are issued with underlying Delaware certificates. The Commissioner also acknowledges that 24 **Del.C.** §2621 does not give the Commissioner extraterritorial jurisdiction and, therefore, on adoption, the term will be clarified to apply only to certificates issued under Delaware policies or contracts, to more closely conform the regulation to its underlying statute.

3. The Commissioner finds that it is more accurate to define “Physical therapy” to more precisely mean “the practice of physical therapy” as defined in 24 **Del.C.** §2602.” This is a non-substantive change in existing regulations to correct technical errors, pursuant to 29 **Del.C.** § 10113(b)(4).

4. The Commissioner further clarifies that subsection 5.1.2 is indeed meant to prohibit a blanket classification of *all* physical therapy services as maintenance care and/or not medically necessary and thus not subject to reimbursement.

5. Regarding the regulation’s effective date, the Commissioner notes that the effective date of Del. S.B. 225/S.A. 1/S.A.2, 149th Gen. Assem. §2621 (2018) was March 9, 2019, and both carriers and providers were on notice that its provisions were in effect as of that date by operation of the statute. The Commissioner expects all carrier’s policies issued on or after March 9, 2019 to be in compliance with 24 **Del.C.** §2621, notwithstanding the effective date of this regulation. That notwithstanding, 29 **Del.C.** § 10118 and 29 **DE Admin. Code** 101-5.1 state that the effective date of a regulation shall be ten (10) days from the date an adoption order is published in the *Delaware Register of Regulations*. Accordingly, the Commissioner adopts that date as the effective date of this regulation.

6. The Commissioner further clarifies that the language utilized in the statute appears to limit its applicability to health insurance contracts (“For purposes of disability insurance, standard health and accident, sickness and all other such insurance plans”). This limited applicability is supported by the Department’s definition of “carrier” in the regulations. Moreover, workers’ compensation coverage is not “health insurance.” Rather, it is a type of casualty insurance as set forth in Chapter 9 of the Insurance Code. Therefore, applying the requirements of 24 **Del.C.** §2621 to workers’ compensation plans would appear to exceed the scope of the plain language in those sections.

III. DECISION TO ADOPT THE NEW REGULATION

For the foregoing reasons, the Commissioner concludes that it is appropriate to adopt 18 **DE Admin. Code** 1321 as proposed, with amendments that conform the regulation to its underlying statutory authority as described in the findings of fact of this order and with non-substantive changes in existing regulations to correct technical errors, pursuant to 29 **Del.C.** §10113(b)(4).

IV. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Commissioner pursuant to 18 **Del.C.** §311 and the amendments to 24 **Del.C.** Ch. 26, which added new section 2621 entitled "Physical therapists eligible for compensation from insurance." See Del. S.B. 225/S.A. 1/S.A.2, 149th Gen. Assem. §2621 (2018), with an effective date of March 9, 2019.

This Order shall be effective on the date signed. The effective date of the Regulation shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*, pursuant to 29 **Del.C.** §10118 and 29 **DE Admin. Code** 101-5.1.

IT IS SO ORDERED.

The 13th day of May, 2019.

Trinidad Navarro
Commissioner
Delaware Department of Insurance

1321 Compensation for Physical Therapy Services

1.0 Authority

This regulation is adopted pursuant to 18 **Del.C.** §311 and 24 **Del.C.** §2621 and promulgated in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101.

2.0 Purpose

The purpose of this regulation is to implement 24 **Del.C.** §2621.

3.0 Scope

- 3.1 This regulation shall apply to all carriers and to all third party administrators as defined herein.
- 3.2 This regulation shall not apply to personal injury protection automobile insurance that is required under 21 **Del.C.** Ch. 21.

4.0 Definitions

The following words and terms, when used in this regulation, should have the following meaning unless the context clearly indicates otherwise:

"Administrator" or "third party administrator" or "TPA" means "Administrator" or "third party administrator" or "TPA" as those terms are defined at 18 **DE Admin. Code** 1406-2.1.

"Carrier" means any entity that provides health insurance in this State. For the purposes of this regulation, carrier includes a health insurance company, health service corporation, health maintenance organization and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation. "Carrier" also includes any third-party administrator or other entity that adjusts, administers or settles claims in connection with health benefit plans.

"Commissioner" means the Commissioner of the Delaware Department of Insurance.

"Medically necessary" means the providing of health care services or products that a prudent physician would provide to a patient for the purpose of diagnosing or treating an illness, injury, disease or its symptoms in a manner that is:

- A. In accordance with generally accepted standards of medical practice;
- B. Consistent with the symptoms or treatment of the condition; and
- C. Not solely for anyone's convenience.

"Physical Therapist" means a person who is licensed to administer physical therapy care or services pursuant to 24 **Del.C.** Ch. 26 and 24 **DE Admin. Code** 2600.

"Physical therapy" means "[practice of] physical therapy" as defined in ~~[24 DE Admin. Code 2600~~ 24 Del.C. §2602].

"Physical therapy care or services" means those practices that a licensed Physical Therapist is licensed to provide pursuant to 24 Del.C. Ch. 26 and 24 DE Admin. Code 2600.

5.0 Unreasonable and Discriminatory Access to Physical Therapy Care or Services Prohibited

- 5.1 No carrier shall include in any insurance ~~[policy,~~ policy or] contract ~~[delivered or issued for delivery in Delaware] or [in any] certificate [issued under such a policy or contract] any provision that unreasonably discriminates against access to physical therapy care or services, including but not limited to:~~
- 5.1.1 A cost containment or managed care provision that denies or restricts access to physical therapy care or services in a manner that is more restrictive than a cost containment or managed care provision placed on a provider who is not licensed as a physical therapist but who is otherwise licensed to perform the same or substantially similar service, for the treatment of a patient with a condition that is within the scope of physical therapy practice;
 - 5.1.2 A provision that classifies physical therapy care or services as "maintenance care" or "not medically necessary," solely for the purpose of denying access to physical therapy care or services;
 - 5.1.3 A provision that requires a patient to pay a higher copay or deductible when being treated by a physical therapist than that patient would otherwise be require to pay for the same or substantially similar care or services had that care or services been rendered by a provider who is not licensed as a physical therapist but who is otherwise licensed to render that or a substantially similar care or service;
 - 5.1.4 A provision that requires a patient to pay a copayment or coinsurance that is more than 25 percent of the fee due or to be paid to a physical therapist for physical therapy care or services;
 - 5.1.5 A provision that contains a utilization or compensation restriction or practice for a physical therapist that is more restrictive than a utilization or compensation restriction or practice placed on a provider who is not licensed as a physical therapist but who is otherwise licensed to perform the same or substantially similar care or service for the treatment of patients with conditions within the scope of physical therapy care or services, including but not limited to:
 - 5.1.5.1 Unreasonable or discriminatory restrictions on the number of compensated visits per condition, or per episode, year, or other period; or
 - 5.1.5.2 Unreasonable or discriminatory precertification requirements and allowances for initial or subsequent visits, or for the determination of medical necessity; or
 - 5.1.6 Including a provision that would unreasonably deny coverage for a physical therapy technique, method or diagnostic procedure if that physical therapy technique, method or diagnostic procedure is taught by an educational program described in 24 Del.C. §2606(a)(1), or has been approved by the Delaware Examining Board of Physical Therapists and Athletic Trainers.
- 5.2 No carrier shall include in any insurance ~~[policy,~~ policy or] contract ~~[delivered or issued for delivery in Delaware] or [in any] certificate [issued under such a policy or contract] any provision that places any annual or lifetime numerical limits on physical therapy visits for the treatment of back pain.~~

6.0 Unreasonable and Discriminatory Compensation Prohibited

- 6.1 No carrier or TPA shall discriminate against or unreasonably deny a physical therapist compensation for a physical therapy service rendered by that physical therapist if the carrier would otherwise compensate a provider who is not licensed as a physical therapist but who is otherwise licensed to perform that same or substantially similar service.
- 6.2 Every carrier or TPA shall utilize nondiscriminatory cost containment and managed care payment strategies to provide payment for physical therapy care or services, regardless of whether the care or

services were delivered by a licensed physical therapist or by a provider who is not licensed as a physical therapist but who is otherwise licensed to perform the same or substantially similar service.

7.0 Reasonable and Nondiscriminatory Provisions

Nothing in this regulation shall prohibit a carrier or a TPA from implementing reasonable and nondiscriminatory cost containment or managed care provisions as permitted by 24 Del.C. §2621(b).

8.0 Waiver not permitted

The provisions of this regulation may not be waived, voided, or nullified by contract.

9.0 Causes of Action

This regulation shall not create a private cause of action for any person or entity other than the Commissioner against a carrier or its representative based upon a violation of 24 Del.C. §2621 or any provision of this regulation.

10.0 Effective Date

This regulation shall be effective ~~for all policies issued on or renewed on or after the effective date of 24 Del.C. §2621~~ 10 days after the date of publication of the notice of adoption in the *Register of Regulations*].

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311, 3343 and 3571U, and 81 Del. Laws, c. 406, Section 4) (18 Del.C. §§311, 3343 and 3571U & 81 Del. Laws, c. 406, §4)

REGULATORY IMPLEMENTING ORDER

1410 Reporting Medical Management Protocols for Insurance Coverage for Serious Mental Illness and Drug And Alcohol Dependency

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

In the April 1, 2019 edition of the *Register of Regulations* at 22 DE Reg. 843, the Commissioner of the Delaware Department of Insurance (Commissioner) published a notice of intent to codify proposed new Regulation 1410, and solicited written comments from the public for thirty (30) days as mandated by the Administrative Procedures Act at 29 Del.C. §10118(a). The Delaware Code authority for the new regulation is 18 Del.C. §§ 311, 3343 and 3571U and Del. S.B. 230/Del. S.A. 1, 149th Gen. Assem. §4 (2018).

As discussed in the introductory paragraphs of the proposal, Sections 3343 and 3578 of the Delaware Insurance Code, 18 Del.C. §§3343 and 3578, govern insurance coverage for serious mental illness, including drug and alcohol dependency disorders under individual and group and blanket health insurance plans, respectively. Senate Bill No. 230 as amended by Senate Amendment No. 1 (SB 230/SA1) now requires insurance carriers to submit a report to the Delaware Health Information Network, Inc., in conjunction with the Delaware Department of Insurance (the Department) on or before July 1, 2019, and “every year thereafter in which the carrier makes significant changes to how it designs and applies its medical management protocols.” See Del. S.B. 230/Del. S.A. 1, 149th Gen. Assem. §1 (2018).

On December 19, 2018, the Market Conduct Examination Standards (D) Working Group of the National Association of Insurance Commissioners (NAIC) adopted revisions to its model *Market Regulation Handbook* that include a general guidance document addressing mental health parity review. The revisions include a series of questions to be posed to health insurance carriers by insurance department examiners, and a regulator data collection tool for mental health parity analysis.

The Department proposed to satisfy the SB230/SA1 requirement for regulations by codifying the NAIC model state market conduct compliance tools for MHPAEA as new 18 DE Admin. Code 1410, entitled “Reporting Medical Management Protocols for Insurance Coverage for Serious Mental Illness and Drug and Alcohol Dependency.”

The Department received comments from two commenters, copies of which are on file with the Department.

The Department did not hold a public hearing on the proposal.

II. FINDINGS OF FACTS

1. Proposed new 18 **DE Admin. Code** 1410, Reporting Medical Management Protocols for Insurance Coverage for Serious Mental Illness and Drug and Alcohol Dependency, implements the requirements of SB 230/SA1.
2. The Department met the public notice requirements of the Administrative Procedures Act.
3. The Commissioner finds that it is appropriate to adopt 18 **DE Admin. Code** 1410 as proposed in the April 1, 2019 *Register of Regulations*, for the reasons set forth above and in the proposal,

III. DECISION TO ADOPT THE NEW REGULATION

For the foregoing reasons, the Commissioner concludes that it is appropriate to adopt 18 **DE Admin. Code** 1410, as discussed in the above Findings of Fact for the reasons set forth above and in the proposal.

IV. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Commissioner pursuant to 18 **Del.C.** §§311, 3343 and 3571U and Del. S.B. 230/Del. S.A. 1, 149th Gen. Assem. § 4 (2018) on the date indicated below. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*. The effective date of the Regulation shall be as stated in the text of the Regulation.

IT IS SO ORDERED.

The 15th day of May, 2019.

Trinidad Navarro
Commissioner
Delaware Department of Insurance

1410 Reporting Medical Management Protocols for Insurance Coverage for Serious Mental Illness and Drug And Alcohol Dependency
(Break in Continuity of Sections)

9.0 Effective Date

This regulation shall be effective on ~~[[insert date that is 10 days after the date of the publication of the order adopting this regulation as a final regulation]~~ June 11, 2019].

*Please note that no additional changes were made to the regulation as originally proposed and published in the April 2019 issue of the *Register* at page 843 (22 DE Reg. 843). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

1410 Reporting Medical Management Protocols for Insurance Coverage for Serious Mental Illness

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 and 3403 (18 **Del.C.** §§311 & 3403)
18 **DE Admin. Code** 1501

ORDER

1501 Medicare Supplement Insurance Minimum Standards

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

In the April 1, 2019 edition of the *Register of Regulations* at 22 **DE Reg.** 846, the Commissioner of the Delaware Department of Insurance (Commissioner) published a notice of intent to amend existing Regulation 1501, and solicited written comments from the public for thirty (30) days as mandated by the Administrative

Procedures Act at 29 **Del.C.** 10118(a).

As discussed in the introductory paragraphs of the proposal, Regulation 1501 sets forth the minimum standards for Medicare Supplement Insurance in Delaware. It implements Chapter 34 of Title 18, Medicare Supplement Insurance Minimum Standards. The purpose of the proposed amendments was to update Regulation 1501 to incorporate changes made to the National Association of Insurance Commissioners (NAIC) Medigap Model Regulation that were made in response to the passage of the Federal Medicare Access and CHIP Reauthorization Act (MACRA). The NAIC Medigap Model Regulation is now the federal minimum standard. States are required to timely adopt the changes necessary to implement MACRA to be effective January 1, 2020.

In addition to publishing the proposal in the *Register of Regulations*, the Department also published the proposal on its website at <https://insurance.delaware.gov/information/proposedregs/>. The Department did not hold a public hearing on the proposal.

The Department received one public comment in support of the proposal. The Department received an additional public comment suggesting that the Department make the following non-substantive, technical amendments on adoption to fully comport the regulatory text with the text of the NAIC model regulation:

Page 32: In reference to the Benefit Chart of Medicare Supplement Plans Sold on or after January 1, 2020, the column heading for Plan C and F indicates "Medicare first eligible before 2020." We recommend the language used in the NAIC Model, which reads "Medicare first eligible before 2020 only."

Page 41: In reference to "Plan D Medicare (Part A) - for the service, "Hospitalization," the benefit listed under the column heading, "Plan Pays," corresponding to *9^{1st} day and after: While using 60 lifetime reserve days*, states "\$[534] a day \$0." It appears that the "\$0" was added in error and recommend its removal.

Page 43 - 47: In several areas under "Plan F or High Deductible Plan F," and "Plan G or High Deductible Plan G," under columns, "Medicare Pays" and "[After you Pay \$[2000] Deductible,**] Plan Pays," updated bracketed dollar amounts have been added. However, the bracketed amounts have not been updated throughout all plans on the benefit tables. We would suggest that all bracketed amounts reflect those in the NAIC Model.

Page 46 - 51: The outline of coverage for plan "G" is duplicated as "Plan G" and "Plan G or High Deductible Plan G" within the draft regulation. We recommend that the duplicate "Plan G" outline be removed.

Page 52: In reference to Plan K Medicare (Part A) - for the service, Skilled Nursing Facility Care**, under column headings, "Plan Pays" and "You Pay," the parenthetical, "(50% of Part A Coinsurance)" is missing from the benefits corresponding to *21st thru 100th day*, after "Up to \$[66.75] a day."

Page 53: In reference to Plan K Medicare (Part B) - for the service "Blood," under the "You Pay" column, corresponding to the benefit *First 3 pints*, a diamond (◇) signifying the amounts that count toward the annual limit was removed. We recommend that the diamond be added back.

Page 55: In reference to Plan L Medicare (Part A) - for the service, Skilled Nursing Facility Care, under column headings, "Plan Pays" and "You Pay," the parenthetical, "(75% of Part A Coinsurance)" is missing from the benefit corresponding to *21st thru 100th day*, after "Up to \$[100.13] a day."

Page 55: In reference to Plan L Medicare (Part B), the introductory paragraph should be preceded by one asterisk rather than the four shown "(****)."

Page 56: In reference to Plan L Medicare (Part B) - for the service "Medical Expenses," under the "Medicare Pays" column, the percentage of the benefit corresponding to *Preventive Benefits for Medicare covered services* reads; "75%." The benefit should be 80%, as shown in the NAIC Model.

Page 56: In reference to Plan L Medicare (Part B) - for the service "Blood," under the "You Pay" column, corresponding to the benefit *Next \$[135] of Medicare Approved Amounts*, the diamond (◇) signifying the amounts that count toward the annual limit was removed from the end of the benefit amount, "\$[135] (Part B deductible)." We recommend that the diamond be added back.

II. FINDINGS OF FACTS

1. Regulation 1501, Medicare Supplement Insurance Minimum Standards, should be amended as proposed.
2. The Department met the public notice requirements of the Administrative Procedures Act.
3. The Department received one public comment on the proposal, which was supportive.
4. The amendments suggested by the second commenter should be made on adoption because they are technical and non-substantive in nature, and are therefore exempt from further public notice and comment

pursuant to 29 **Del.C.** §10113(b)(4) (non-substantive change in existing regulations to correct technical errors).

III. DECISION TO ADOPT PROPOSED AMENDMENTS TO REGULATION 1501

For the foregoing reasons, the Commissioner concludes that it is appropriate to adopt the amendments to 18 **DE Admin. Code** 1501 as proposed with non-substantive, technical amendments discussed in the above Findings of Fact for the reasons set forth above and in the proposal to repeal.

IV. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Commissioner pursuant to 18 **Del.C.** §§311 and 3403 on the date indicated below. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED.

The 15th day of May, 2019.

Trinidad Navarro
Commissioner
Delaware Department of Insurance

***Please Note: Due to the size of the final regulation, it is not being published here. A copy of the regulation is available at:**

1501 Medicare Supplement Insurance Minimum Standards

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

3900 BOARD OF CLINICAL SOCIAL WORK EXAMINERS

Statutory Authority: 24 Delaware Code, Section 3906(a)(1) (24 **Del.C.** §3906(a)(1))
24 **DE Admin. Code** 3900

ORDER

3900 Board of Clinical Social Work Examiners

After due notice in the *Delaware Register of Regulations* and two Delaware newspapers, a public hearing was held on March 25, 2019 at a regularly scheduled meeting of the Delaware Board of Clinical Social Work Examiners ("Board") to receive comments regarding the Board's proposed revisions to its rules and regulations.

The Board has proposed extensive revisions to implement amendments to the Board's licensing law, Chapter 39 of Title 24 of the Delaware Code, which will go into effect on June 11, 2019. Specifically, the proposed amendments implement multi-tier licensure, including the requirements for licensure by grandfathering and for continuing education. Requirements are added for licensees providing supervision and the requirements for licensure as a clinical social worker are clarified in the interests of professional competence.

The proposed changes to the rules and regulations were published in the *Register of Regulations*, Volume 22, Issue 9, on March 1, 2019. In addition, notice of the March 25, 2019 hearing was published in the *News Journal* (Exhibit 1) and the *Delaware State News*. Exhibit 2. Pursuant to 29 **Del.C.** §10118(a), the date to receive final written comments was April 9, 2019, 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on April 15, 2019.

Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

Board Exhibit 1: *News Journal* Affidavit of Publication.

Board Exhibit 2: *Delaware State News* Affidavit of Publication.

Board Exhibit 3: March 8, 2019 email and letter from Alexis Lelito.

Board Exhibit 4: March 7, 2019 email from Susan Woodward.

Board Exhibit 5: March 28, 2019 email from Norwood Coleman.

In addition, Mr. Norwood Coleman offered comments at the March 25, 2019 hearing. Mr. Coleman stated that the regulations have a lack of structure and direction and definition, specifically with respect to supervision, documentation of supervision, expectations of supervisors and specifications of qualifications of supervisors. Also, the regulations do not include specification of continuing education at multiple tier levels. Mr. Coleman expressed concern regarding public protection and quality of care.

Findings of Fact and Conclusions

Pursuant to 24 **Del.C.** §3906(a)(1), the Board has the statutory authority to promulgate rules and regulations.

The public was given notice and an opportunity to provide the Board with comments in writing and by testimony on the proposed amendments to the Board's rules and regulations. During deliberations, the Board considered all comments presented by the public.

The Board first addressed Board Exhibit 3, a March 8, 2019 letter from Alexis Lelito, LCSW. Ms. Lelito expressed concern that the "new proposed regulations state that ANY degree that relates to social work in some way can now be considered for a license in social work, at the discretion of the Board." (emphasis in original). Ms. Lelito's comment is in reference to proposed Section 6.0, which pertains to licensure pursuant to grandfathering, as set forth in the revised statute at 24 **Del.C.** §3907B. It should be noted that the language of the proposed regulation states that "a degree in human services, social and behavioral sciences, psychology, sociology, or other related degree that the Board accepts" may be considered in an application for grandfathering. Subsection 6.3.2.2. In addition, the Board noted that the topic of grandfathering, as addressed in the revised statute, was discussed at great length as part of the legislative drafting process. That discussion involved "give and take" with stakeholders in order to move forward with multi-tier licensure. The Board also observed that other states that have implemented new licensure tiers have allowed for forms of grandfathering. Section 6.0 implements the requirements in the new Section 3907B and does not add anything of substance that isn't already in the revised law. The Board declines to revise the regulations based on Ms. Lelito's comments.

In Board Exhibit 4, Susan Woodward, LCSW, offered comments regarding the Board's telehealth regulations, specifically, subsection 10.2.2, which states that, during a telehealth session, the client must be located within the borders of the State of Delaware. As a threshold matter, Section 10.0 was not the subject of the pending regulation revisions and therefore isn't appropriately addressed in the context of current deliberations. The Board did note that telehealth is an evolving issue in the profession and that it would continue to stay abreast of the topic. The Board determines that further revisions to the pending proposal are not warranted based on Ms. Woodward's comments.

The Board next addressed Board Exhibit 5, written comments from Norwood Coleman, LCSW. In paragraph 1, Mr. Coleman stated that the proposed regulations lacked clarity with respect to clinical supervision, specifically with respect to "structure, scope, guidelines, limitations, qualifications of, minimum standards and expectations" in the context of a multi-tier system. The Board noted that clinical experience is addressed in proposed Section 3.0 and, in particular, the requirements for supervisors are set forth in detail in subsection 3.2. In short, Mr. Coleman's concerns and questions are addressed in the proposed regulations. In paragraph 2, Mr. Coleman commented that the implementation of grandfathering did not take into account graduating social work students who do not have two years of experience, which is required by Section 6.0 and 24 **Del.C.** §3907B. Licensure by grandfathering, which applies to baccalaureate and master's levels only, includes an experience requirement, and an individual with a social work degree, who could not meet that experience requirement, would need to apply by examination in order to obtain a license. The regulations implement the requirements set forth in Section 3907B. The Board does not have discretion to modify regulations to the extent that they will conflict with the revised law. 24 **Del.C.** §3906(a)(1). The Board finds that Mr. Coleman's comments do not require amendment to the proposed regulations.

Finally, the Board addressed Mr. Coleman's testimony. Mr. Coleman expressed concerns with the proposed regulations with respect to supervision, documentation of supervision, expectations of supervisors and specifications of qualifications of supervisors. Mr. Coleman also commented that the regulations do not include

specification of continuing education at multiple tier levels. The requirements for supervision are included in proposed subsection 3.2. The Board also noted that the applications for licensure, with instructions and documentation requirements, will further detail supervisor requirements. As to continuing education requirements for the tier levels, those requirements are set forth in proposed Section 7.0. The Board finds that Mr. Coleman's testimony does not warrant revisions to the proposed regulations.

The Board, having considered all public comments, adopts the amendments to the rules and regulations as proposed.

Decision and Effective Date

The Board finds that the rules and regulations shall be adopted as final in the form set forth in Exhibit A attached hereto. These changes will become effective ten days following publication of this Final Order in the Delaware *Register of Regulations*.

Text and Citation

The exact text of the rules and regulations, as amended, is attached to this Final Order as Exhibit A.

IT IS SO ORDERED this 13th day of May, 2019 by the Delaware Board of Clinical Social Work Examiners.

Fran Franklin, PhD, LCSW, Professional Member
President

Kyla Gleockler, Public Member

Precious Benson, Public Member, Vice President
(absent)

Linda Brittingham, LCSW, Professional Member

Dajoun Sewell, Public Member, Secretary

Daphne Warner, LCSW, Professional Member

John Mucha, LCSW, Professional Member

***Please note that no changes were made to the regulation as originally proposed and published in the March 2019 issue of the *Register* at page 759 (22 DE Reg. 759). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

3900 Board of Clinical Social Work Examiners

DEPARTMENT OF TRANSPORTATION

DELAWARE TRANSIT CORPORATION

Statutory Authority: 21 Delaware Code, Section 302 (21 Del.C. §302)
2 DE Admin. Code 2287

REGULATORY IMPLEMENTING ORDER

2287 Public Carrier Regulations

1. Summary of the Evidence and Information Submitted

The Department of Transportation, Office of Public Carrier, sought to amend the regulations governing the operation of Public Carriers.

Notice for public comment was properly noticed in the October 1, 2018 Delaware *Register of Regulations* (22 DE Reg. 287 (10/01/18)).

The Department received no comments regarding the proposed regulation revisions.

2. Findings of Fact

The Secretary finds that it is appropriate to amend the Public Carrier regulations as described herein.

3. Decision to Amend Regulations

For the foregoing reasons, the Secretary concludes that it is appropriate to amend the Public Carrier regulations as described herein.

4. Text and Citation

The text of 2 DE Admin. Code 2287 shall be in the form attached as Exhibit "A."

5. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date of this Order is published in the Delaware *Register of Regulations*.

IT IS SO ORDERED THIS 30th DAY OF May 2019.

Jennifer L. Cohan
Secretary
Department of Transportation

*Please note that no changes were made to the regulation as originally proposed and published in the October 2018 issue of the *Register* at page 287 (22 DE Reg. 287). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

2287 Public Carrier Regulations

GENERAL NOTICES

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WATERSHED STEWARDSHIP

Statutory Authority: 7 Delaware Code, Section 4006(i) (7 **Del.C.** §4006(i))
7 **DE Admin. Code** 5101

REGISTER NOTICE

Revised Regulatory Guidance Documents Supporting Regulation 5101 Sediment and Stormwater Regulations

The Department of Natural Resources and Environmental Control (DNREC) Division of Watershed Stewardship Sediment and Stormwater Program has released revised regulatory guidance documents for public review. These documents support **Regulation No. 5101 Sediment and Stormwater Regulations**, as set forth at 7 **Del.C.** §4006(h) and (i). The regulatory guidance documents include the following:

- Application Form – Non-Residential Construction with Less Than 1.0 Acre Disturbed
- Step 3: Sediment and Stormwater Plan Review Checklist
- Step 2/3: Sediment and Stormwater Plan Review Checklist

The DNREC Sediment and Stormwater Program hereby provides notice of these regulatory guidance documents, pursuant to 7 **Del.C.** §4006(i), which incorporates the provisions of 7 **Del.C.** §6004. A public hearing will NOT be held unless the Secretary receives a meritorious request for a hearing within 15 days of date of this notice, ending June 15, 2019. A request for a public hearing shall be in writing and show familiarity with the regulatory guidance document and provide a reasoned statement of the regulatory guidance document's probable impact.

These documents may be reviewed at the following link: <http://www.dnrec.delaware.gov/swc/Pages/SedimentStormwater.aspx>

For appointments to review the regulatory guidance documents, please contact Elaine Webb, DNREC Sediment and Stormwater Program, 89 Kings Highway, Dover, DE 19901, (302) 739-9921, or email elaine.webb@delaware.gov.

PREPARED BY:

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DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, June 20, 2019 at the Townsend Building, Dover, DE.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES**PUBLIC NOTICE****2103 Reportable Incident Management and Corrective Measures**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS)/Division of Developmental Disabilities Service (DDDS) is proposing to implement oversight and monitoring of reportable incidents pursuant to DHSS Policy Memorandum 46.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to James Dickinson, Division of Developmental Disabilities, Service Integrity and Enhancement, 1056 South Governor's Avenue, Suite 101, Dover DE 19947, E-Mail: james.dickinson@delaware.gov by July 1, 2019.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

DIVISION OF HEALTH CARE QUALITY
PUBLIC NOTICE**3335 Office-Based Surgery**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 1, Section 122(3)y. and z., Delaware Health and Social Services (DHSS) / Division of Health Care Quality (DHCQ) is proposing regulations governing Office-Based Surgery.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same to, the Office of Health Facilities Licensing and Certification, Division of Health Care Quality, 261 Chapman Road, Suite 200, Newark, Delaware 19702, by email to Corinna.Getchell@Delaware.gov or by fax to 302-292-3931 by 4:30 p.m. on July 1, 2019. Please identify in the subject line: Regulations Governing Office-Based Surgery

The action concerning the determination of whether to adopt the proposed regulations will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

The Division of Health Care Quality plans to publish the "proposed" amendments to the regulations governing Office-Based Surgery facilities and hold them out for public comment per Delaware law. The amendments update the regulatory language to be consistent with nationally recognized terminology; clarify definitions associated with office-based surgery; and update general and accreditation organization requirements.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**OFFICE OF THE SECRETARY****PUBLIC NOTICE****101 Regulations Governing Delaware's Coastal Zone**

House Bill 190, the Coastal Zone Conversion Permit Act of 2017 (CZCPA), amended the Coastal Zone Act of 1971 and required DNREC to revise its Regulations Governing Delaware's Coastal Zone (7 **DE Admin. Code** 101). Prior to the passage of the CZCPA, all heavy industry and bulk product transfer activities not in operation on June 28, 1971 were prohibited in the coastal zone. The CZCPA allows for the permitting of these activities under certain conditions. The proposed regulations specify these conditions in accordance with the CZCPA.

Public comments on the proposed regulations may be submitted to DNREC orally at the public hearing or in writing until close of business on July 9, 2019. The public hearing will be held jointly between the Department of Natural Resources and Environmental Control and the Coastal Zone Industrial Control Board at 6:00 P.M. on June 24, 2019 at the DNREC office located at:

391 Lukens Drive
New Castle, DE 19720

Written comments may be submitted via email to lisa.vest@delaware.gov (subject line: "CZCPA Regulation Comments") or via USPS at Lisa Vest, DNREC, 89 Kings Highway, Dover, DE 19901.

DEPARTMENT OF SAFETY AND HOMELAND SECURITY**DIVISION OF STATE POLICE****1300 BOARD OF EXAMINERS OF PRIVATE INVESTIGATORS & PRIVATE SECURITY AGENCIES****PUBLIC NOTICE**

Notice is hereby given that the Board of Examiners of Private Investigators and Private Security Agencies, in accordance with 24 **Del.C.** Ch. 13 proposes to amend the following adopted rules in 24 **DE Admin. Code** 1300 Board of Examiners of Private Investigators and Private Security Agencies: Rule 8.0 Private Investigators. If you wish to view the complete Rule, contact Ms. Ashley N. Hughes at (302) 672-5337. Any persons wishing to present views may submit them in writing, by July 1, 2019, to Delaware State Police, Professional Licensing Section, P. O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Monday, July 08, 2019, 10:00am, at the Tatnall Building, 150 Martin Luther King, Jr. Boulevard South, Room 112, Dover, DE.

DEPARTMENT OF TRANSPORTATION**DELAWARE TRANSIT CORPORATION****PUBLIC NOTICE****2289 Transportation Network Companies**

Pursuant to the authority provided by 2 **Del.C.** §1922, the Delaware Department of Transportation (DelDOT), adopted the Transportation Network Companies regulation.

The Department, through the Delaware Transit Corporation, Office of Public Carrier Regulation, seeks to adopt general revisions to its existing regulation, Transportation Network Companies, to safeguard public safety through a regular review of Transportation Network Company engaged vehicles. These collective changes are promote public safety and serve, in part, to clarify the intent of the Department as enacted through these regulations.

DelDOT will take written comments on these proposed general revisions to Regulation 2289 of Title 2, Delaware Administrative Code, from June 1, 2019 through July 1, 2019. The public may submit their comments to:

Bruce R. Demeter, Chief Performance Officer

(Bruce.Demeter@state.de.us) or in writing to his attention,

Delaware Transit Corporation

Office of Performance Management
119 Lower Beech Street
Wilmington, DE 19805
