
Delaware Register of Regulations

Issue Date: MAY 1, 2017

Volume 20 - Issue 11, Pages 840 - 930

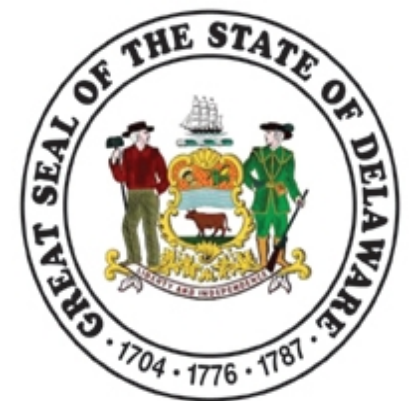


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Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before April 15, 2017.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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
June 1	May 15	4:30 p.m.
July 1	June 15	4:30 p.m.
August 1	July 17	4:30 p.m.
September 1	August 15	4:30 p.m.
October 1	September 15	4:30 p.m.

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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.).

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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 AGRICULTURE

HARNESS RACING COMMISSION

DELAWARE STANDARDBRED BREEDERS' FUND

Statutory Authority: 29 Delaware Code, Section 4815(b)(4)b.2 (29 **Del.C.** §4815(b)(4)b.2)
3 DE Admin. Code 502

PUBLIC NOTICE

502 Delaware Standardbred Breeders' Fund Regulations

The State of Delaware, Department of Agriculture's Standardbred Breeders' Fund ("the Fund") hereby gives notice of its intention to adopt an amended regulation pursuant to the General Assembly's delegation of authority to do so found at 29 **Del.C.** §4815(b)(4)b.2 and in compliance with Delaware's Administrative Procedures Act at 29 **Del.C.** §10115. The proposed amended regulation under 13.7 addresses the national horse shortage and is consistent with the DHRC regulation concerning qualifying requirements.

The Fund solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty days (30) after these proposed amended regulations are promulgated in the Delaware *Register of Regulations*. Any such submissions should be mailed or hand-delivered to Ms. Judy Davis-Wilson, Administrator, Delaware Standardbred Breeders' Fund Program whose address is State of Delaware, Department of Agriculture, 2320 South duPont Highway, Dover, Delaware 19901 by June 1, 2017.

***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/may2017/proposed/20 DE Reg 852RFA 05-01-17.pdf>

502 Delaware Standardbred Breeders' Fund Regulations (Break in Continuity of Sections)

13.0 Races

(Break in Continuity Within Section)

- 13.7 No horse is eligible to declare unless it has at least one charted satisfactory performance line within ~~30~~ 60 days of declaration and must meet the following qualifying standards:

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

502 Delaware Standardbred Breeders' Fund Regulations

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 106A

PUBLIC NOTICE

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

106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. This regulation is being amended to align with changes made during the second session of the 148th General Assembly by House Bill 399 as amended by House Amendment 1 and Senate Amendments 1 and 2, and by Senate Bill 199, as well as other process changes identified through implementation. These amendments include: 1) providing for equal weighting of the DPAS II components; 2) eliminating a required annual assessment; and 3) adding language related to new provisional license.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before June 7, 2017 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Register of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, Finance Office 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 is intended to continue to help student achievement as measured against state achievement standards through changes to the teacher evaluation process.

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 specifically 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 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 substantively 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/may2017/proposed/20 DE Reg 853RFA 05-01-17.pdf>

106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

1.0 Effective Date

The Teacher Appraisal Process, Delaware Performance Appraisal System (DPAS II) Revised shall be effective for all school districts and charter schools beginning with the ~~2015-2016~~ 2017-2018 school year, unless another teacher appraisal system has been approved by the Department pursuant to Chapter 12 of Title 14 of the Delaware Code.

2.0 Definitions

~~The following definitions shall be applied for purposes of this regulation:~~ In this regulation, the following words and terms shall have the following meaning unless the context clearly indicates otherwise:

~~"Announced Observation" means an observation form and conference with the by a Credentialed Observer, an observation by the Credentialed Observer at an agreed upon a date and time that has been previously arranged, using the associated formative conferences and reports, which may include the use of an observation form.~~ The observation shall be of sufficient length, at least thirty (30) minutes, to analyze the lesson and assess teacher performance.

"Board" means a local board of education or charter school board of directors.

"Credentialed Observer" means an individual, not always the supervisor of the teacher, who has successfully completed DPAS II credentialing in accordance with Section 10.0. Credentialed Observer denotes any individual who may conduct observations as part of a teacher's appraisal process. The term Credentialed Observer encompasses those administrators who are Evaluators.

(Break in Continuity Within Section)

~~"Group 1 Teacher" means any Novice Teacher or Experienced Teacher providing instruction in reading ELA and/or mathematics to a student enrolled in any grade three (3) through ten (10) four (4) through eight (8) as verified by the State's pupil accounting system.~~

"Improvement Plan" means the plan that a teacher and Evaluator mutually develop in accordance with Section 8.0.

"Non-Group 1 Teacher" means any Novice Teacher or Experienced Teacher that does not meet the definition of Group 1 Teacher as defined herein and explained in the Guide.

"Novice Teacher" means a teacher who holds a valid and current Provisional or Initial License issued pursuant to Chapter 12 of Title 14 of the **Delaware Code**.

(Break in Continuity Within Section)

"Student Achievement" means:

(Break in Continuity Within Section)

~~(c) For the 2014-15 school year only, student scores on the Smarter English Language Arts and Smarter Mathematics statewide assessments shall not be incorporated into any teacher's 2014-15 performance appraisal. This may be extended by the Department for the 2015-16 school year.~~

(Break in Continuity Within Section)

"Summative Evaluation" or "Evaluation" means the comprehensive, end-of-cycle appraisal and shall incorporate the results of the minimum required observations, any additional observations, and required component-level data. At the discretion of the Evaluator, it may also include additional Announced, Unannounced or Short observation data, beyond the required observation data, provided by other Credentialed Observers.

(Break in Continuity Within Section)

3.0 Appraisal Cycle

- 3.1 Experienced Teachers who have earned a rating of "Highly Effective" or "Effective" on their most recent Summative Evaluation shall receive a minimum of one (1) Announced or Unannounced Observation each year with a Summative Evaluation at least once every two (2) years. ~~The Student Improvement component for Highly Effective teachers shall be evaluated each year, regardless of whether or not a Summative Evaluation is conducted. If a Highly Effective teacher does not achieve a Satisfactory rating on the Student Improvement Component, the teacher shall receive a Summative Evaluation the following year, regardless of whether the teacher would otherwise be due for a Summative Evaluation pursuant to this section.~~
- 3.2 Experienced Teachers who have earned a rating of "Effective" and have earned "Satisfactory" ratings on at least four (4) of the components found in 5.0, including Student Improvement, on his or her most recent Summative Evaluation shall receive a minimum of one (1) Announced or Unannounced Observation each year with a Summative Evaluation at least once every two (2) years. ~~The Student Improvement component for Effective teachers shall be evaluated each year, regardless of whether or not a Summative Evaluation is conducted. If an Effective teacher does not achieve a Satisfactory rating on the Student Improvement Component, the teacher shall receive a Summative Evaluation the following year, regardless of whether the teacher would otherwise be due for a Summative Evaluation pursuant to this section.~~
- 3.32 Experienced Teachers who are not otherwise included in subsection 3.1 ~~or 3.2~~ shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one (1) year period. These teachers shall have an Improvement Plan which may require additional observations and other types of monitoring as outlined in the DPAS II Revised Guide for Teachers.
- 3.43 Novice Teachers shall receive a minimum of one (1) Announced Observation and two (2) Unannounced Observations with a Summative Evaluation every year. Novice teachers who have earned a rating of "Needs Improvement" or "Ineffective" on their most recent Summative Evaluation shall have an Improvement Plan which may require additional observations or other types of monitoring as outlined in the DPAS II Revised Guide for Teachers.
- 3.4 Novice Teachers who have earned a minimum of three (3) consecutive "Highly Effective" or "Effective" ratings on their most recent Summative Evaluations may receive a minimum of one (1) Announced or Unannounced Observation each year with a Summative Evaluation at least once every two (2) years.
- 3.5 Beginning in the 2017-2018 school year, all Teachers shall receive an annual appraisal subject to the following conditions:
- 3.5.1 ~~Experienced Teachers who have earned a rating of "Highly Effective" or "Effective" on their most recent Summative Evaluation shall receive a minimum of one (1) Announced or Unannounced Observation with a Summative Evaluation each year.~~
- 3.5.2 ~~Experienced Teachers who have received a rating of "Needs Improvement" or "Ineffective" on their most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation each year.~~

PROPOSED REGULATIONS

~~3.5.3 Novice Teachers shall receive a minimum of one (1) Announced Observation and two (2) Unannounced Observations with a Summative Evaluation each year.~~

4.0 DPAS II Guide for Teachers

(Break in Continuity Within Section)

4.2 The manual shall contain, at a minimum, the following:

4.2.1 Specific details about each of the five (5) components listed in subsection 5.1.

(Break in Continuity Within Section)

5.0 Appraisal Components and Appraisal Criteria

5.1 The following five (5) Appraisal Components, including any Appraisal Criteria specified for each, shall be the basis upon which the performance of a teacher shall be determined. In each academic year, for each of the first four (4) Appraisal Components, a school district or charter school may waive one (1) criterion identified as optional below. In addition, for the Professional Responsibilities Component (subsection 5.1.4), a school district or charter school may substitute a locally determined alternative Appraisal Component, which must be approved by the Department no later than the last day of July of each year. Final notification of any such waiver or substitution shall be provided to all teachers in a school district or charter school and the Department of Education by the last day in August of each year:

(Break in Continuity Within Section)

6.0 Summative Evaluation Ratings

6.1 Each of the ~~first four (4)~~ five (5) Appraisal Components (Component(s)) shall be equally weighted and assigned a rating of "Highly Effective," "Effective," "Needs Improvement" or "Ineffective" on the Summative Evaluation. The rating for the Student Improvement Component shall be assigned a rating of "Exceeds," "Satisfactory" or "Unsatisfactory" on the Summative Evaluation. The rating for each of the five (5) Appraisal Components shall reflect the standards as described in the DPAS II Revised Guide for Teachers.

6.1.1 ~~A "Highly Effective" or "Effective" rating for each of the first four Appraisal Components shall mean the teacher has no more than one unacceptable rating on the Appraisal Criteria specified in each of the components. Appraisal Criteria observed shall be rated on each observation conducted and Appraisal Criteria also shall be assigned an overall rating in a teacher's Summative Evaluation. Each Component rating shall be equal to an assigned point value. A "Highly Effective" Component rating shall earn four (4) points, an "Effective" Component rating shall earn three (3) points, a "Needs Improvement" Component rating shall earn two (2) points, and an "Ineffective" Component rating shall earn one (1) point. No partial points shall be awarded.~~

6.1.2 ~~A satisfactory rating for the Student Improvement component shall mean that the teacher has demonstrated acceptable performance by meeting the standards set by the Secretary pursuant to 5.1.5.1. Once all Component ratings are assigned, a Summative Evaluation rating is determined by the sum of all five (5) Components.~~

6.2 The Summative Evaluation rating shall also include one of four overall ratings: "Highly Effective", "Effective", "Needs Improvement", or "Ineffective".

6.2.1 ~~A "Highly Effective" Summative Evaluation rating shall mean that the teacher has earned an "Effective" or "Highly Effective" rating in the first four (4) Appraisal Components and an "Exceeds" rating in the Student Improvement Component a sum of 19 or 20 Component rating points.~~

6.2.2 ~~An "Effective" Summative Evaluation rating shall mean that the teacher has earned an "Effective" or "Highly Effective" rating in at least three (3) of the first four (4) Appraisal Components with zero (0) "Ineffective" ratings and a "Satisfactory" or "Exceeds" rating in the Student Improvement Component a sum of 14 to 18 Component rating points.~~

6.2.2.1 ~~"Effective" may also mean, in accordance with procedures outlined in the DPAS II Guide for Teachers, that the teacher has earned a "Highly Effective" rating in at least two (2) of~~

~~the first four (4) Appraisal Components with zero (0) "Ineffective" ratings and an "Unsatisfactory" rating in the Student Improvement Component.~~

6.2.3 A "Needs Improvement" Summative Evaluation rating shall mean that: the teacher has earned a sum of 9 to 13 Component rating points.

6.2.3.1 ~~The teacher has earned "Effective" or "Highly Effective" ratings in one (1) or two (2) of the first four (4) Appraisal Components with zero (0), one (1) or two (2) "Ineffective" ratings and a "Satisfactory" or "Exceeds" rating in the Student Improvement Component; or~~

6.2.3.2 ~~The teacher has earned "Effective" or "Highly Effective" ratings in three (3) or four (4) of the first four (4) Appraisal Components and an "Unsatisfactory" rating in the Student Improvement Component; or~~

6.2.3.3 ~~The teacher has earned three (3) "Effective" or "Highly Effective" and one (1) "Ineffective" rating on the first four Appraisal Components, and a "Satisfactory" or "Exceeds" rating in the Student Improvement Component.~~

6.2.4 An "Ineffective" Summative Evaluation rating shall mean that: the teacher has earned a sum of 5 to 8 Component rating points.

6.2.4.1 ~~The teacher has earned "Effective" or "Highly Effective" ratings in zero (0), one (1), or two (2) of the first four (4) Appraisal Components and an "Unsatisfactory" rating in the Student Improvement Component; or~~

6.2.4.2 ~~The teacher has earned "Effective" or "Highly Effective" ratings in zero (0) of the first four (4) Appraisal Components and "Satisfactory" or "Exceeds" rating in the Student Improvement Component; or~~

6.2.4.3 ~~The teacher has earned "Ineffective" ratings in three (3) or four (4) of the first four (4) Appraisal Components.~~

6.2.5 Experienced Teachers receiving a Summative Evaluation every two years in accordance with subsection 3.1 above shall earn an overall Student Improvement Component rating on the Summative Evaluation in accordance with the following chart:

<u>Year 1 or 2</u>	<u>Year 1 or 2</u>	<u>Rating</u>
<u>Exceeds</u>	<u>Exceeds</u>	<u>Highly Effective</u>
<u>Exceeds</u>	<u>Satisfactory</u>	<u>Effective</u>
<u>Exceeds</u>	<u>Unsatisfactory</u>	<u>Effective</u>
<u>Satisfactory</u>	<u>Satisfactory</u>	<u>Effective</u>
<u>Satisfactory</u>	<u>Unsatisfactory</u>	<u>Needs Improvement</u>
<u>Unsatisfactory</u>	<u>Unsatisfactory</u>	<u>Ineffective</u>

The first two columns above indicate the rating combinations earned in a two year Summative Evaluation cycle, regardless of the order in which they were earned.

6.2.56 If a teacher's overall Summative Evaluation rating is determined to be "Needs Improvement" for the third consecutive year, the teacher's rating shall be re-categorized as "Ineffective."

(Break in Continuity of Sections)

8.0 Improvement Plan

8.1 An Improvement Plan shall be developed for a teacher who receives an overall rating of "Needs Improvement" or "Ineffective" on the Summative Evaluation or a rating of "Needs Improvement" or "Ineffective" on any Appraisal Component in Section 5.0 on the Summative Evaluation regardless of the overall rating.

(Break in Continuity Within Section)

8.5 The Improvement Plan shall be developed cooperatively by the teacher and Evaluator. If the plan cannot be cooperatively developed, the Evaluator shall have the authority and responsibility to determine the plan as specified in subsections 8.1 and 8.2 above.

(Break in Continuity of Sections)

11.0 Evaluation of Process

The Department of Education shall conduct a biennial evaluation of the teacher appraisal process. The evaluation shall, at a minimum, include a survey of teachers and Evaluators and interviews with a sampling of teachers and Evaluators. Data from the evaluation and proposed changes to DPAS II Revised shall be presented to the State Board of Education for review on ~~an annual~~ a biennial basis.

12.0 DPAS II Monitoring

The Department of Education shall annually monitor implementation of DPAS II for teachers ~~and specialists~~.

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

106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 107A

PUBLIC NOTICE

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

107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. This regulation is being amended to align with changes made during the second session of the 148th General Assembly by House Bill 399 as amended by House Amendment 1 and Senate Amendments 1 and 2, and by Senate Bill 199, as well as other process changes identified through implementation. These amendments include: 1) providing for equal weighting of the DPAS II components; 2) eliminating required annual assessment; and 3) adding language related to new provisional license.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before June 7, 2017 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Register of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, Finance Office 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 is intended to continue to help student achievement as measured against state achievement standards through changes to the specialist evaluation process.

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 specifically 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 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 substantively 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/may2017/proposed/20 DE Reg 858RFA 05-01-17.pdf>

107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

1.0 Effective Date

The Specialist Appraisal Process, Delaware Performance Appraisal System (DPAS II) Revised shall be effective for all school districts and charter schools beginning with the ~~2015-2016~~ 2017-2018 school year, unless another specialist appraisal system has been approved by the Department pursuant to Chapter 12 of Title 14 of the Delaware Code.

2.0 Definitions

~~The following definitions shall be applied for purposes of this regulation: In this regulation, the following words and terms shall have the following meaning unless the context clearly indicates otherwise:~~

~~“Announced Observation” means the an observation form and conference with the by a Credentialed Observer, an observation by the Credentialed Observer at an agreed upon a date and time that has been previously arranged, using the associated formative conferences and reports, which may include the use of an observation form. The observation for the specialist may be a collection of data over a specified period of time, up to four (4) weeks, or it may be an observation shall be of sufficient length, at least thirty (30) minutes, to gather appropriate data analyze the lesson and assess specialist performance.~~

~~“Board” means a local board of education or a charter school board of directors.~~

~~“Credentialed Observer” means an individual, not always the supervisor of the specialist, who has successfully completed DPAS II credentialing in accordance with Section 10.0. Credentialed Observer denotes any individual who may conduct observations as part of a specialist’s appraisal process. The term Credentialed Observer encompasses those administrators who are Evaluators.~~

(Break in Continuity Within Section)

~~“Improvement Plan” means the plan that a specialist and Evaluator mutually develop in accordance with Section 8.0.~~

~~“Novice Specialist” means a specialist who holds a valid and current Provisional or Initial License issued pursuant to Chapter 12 of Title 14 of the *Delaware Code* or holds a valid and current license from his or her respective licensure body.~~

PROPOSED REGULATIONS

“**Satisfactory Evaluation**” shall be equivalent to the overall “Highly Effective” or “Effective” rating on the Summative Evaluation and shall be used to qualify for a continuing license.

(Break in Continuity Within Section)

“**Student Achievement**” means:

(Break in Continuity Within Section)

(e) ~~For the 2014-15 school year only, student scores on the Smarter English Language Arts and Smarter Mathematics statewide assessments shall not be incorporated into any specialist's 2014-15 performance appraisal. This may be extended by the Department for the 2015-16 school year.~~

(Break in Continuity Within Section)

“**Summative Evaluation**” or “**Evaluation**” means the comprehensive, end-of-cycle appraisal and shall incorporate the results of the minimum required observations and required component-level data. At the discretion of the Evaluator, it may also include additional Announced or Unannounced observation data, beyond the required observation data, provided by other Credentialed Observers.

“**Unannounced Observation**” means an observation by a Credentialed Observer at a date and time that has not been previously arranged, using the associated formative conferences and reports, and which may include the use of the observation form. The observation shall be of sufficient length, at least thirty (30) minutes, to gather appropriate data and assess specialist performance.

(Break in Continuity Within Section)

3.0 Appraisal Cycles

- 3.1 Experienced Specialists who have earned a rating of “Highly Effective” or “Effective” on their most recent Summative Evaluation shall receive a minimum of one (1) Announced or Unannounced Observation each year with a Summative Evaluation at least once every two (2) years. ~~The Student Improvement component for Highly Effective specialists shall be evaluated each year, regardless of whether or not a Summative Evaluation is conducted. If a Highly Effective specialist does not achieve a Satisfactory rating on the Student Improvement Component, the specialist shall receive a Summative Evaluation the following year, regardless of whether the specialist would otherwise be due for a Summative Evaluation pursuant to this section.~~
- 3.2 ~~Experienced Specialists who have earned a rating of Effective and have earned Satisfactory ratings on at least four (4) of the Appraisal Components found in 5.0, including Student Improvement, on his or her most recent Summative Evaluation shall receive a minimum of one (1) Announced or Unannounced Observation each year with a Summative Evaluation at least once every two (2) years. The Student Improvement component for Effective specialists shall be evaluated each year, regardless of whether or not a Summative Evaluation is conducted. If an Effective specialist does not achieve a Satisfactory rating on the Student Improvement Component, the specialist shall receive a Summative Evaluation the following year, regardless of whether the specialist would otherwise be due for a Summative Evaluation pursuant to this section.~~
- 3.32 Experienced Specialists who are not otherwise included in subsection 3.1 ~~or 3.2~~ shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative evaluation at the end of the one (1) year period. These specialists shall have an Improvement Plan which may require additional observations and other types of monitoring as outlined in the DPAS II Revised Guide for Specialists.
- 3.43 Novice Specialists shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one year period. Novice specialists who have earned a rating of Needs Improvement or Ineffective on their most recent Summative Evaluation shall have an Improvement Plan which may require additional observations or other types of monitoring as outlined in the *DPAS II Revised Guide for Specialists*.
- 3.4 Novice Specialists who have earned a minimum of three (3) consecutive “Highly Effective” or “Effective” ratings on their most recent Summative Evaluations may receive a minimum of one (1)

Announced or Unannounced Observation each year with a Summative Evaluation at least once every two (2) years.

- 3.5 Beginning in the 2017-2018 school year, all Specialists shall receive an Annual Appraisal subject to the following conditions:
- 3.5.1 Experienced Specialists who have earned a rating of "Highly Effective" or "Effective" on their most recent Summative Evaluation shall receive a minimum of one (1) Announced or Unannounced Observation with a Summative Evaluation each year.
 - 3.5.2 Experienced Specialists who have received a rating of "Needs Improvement" or "Ineffective" on their most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation each year.
 - 3.5.3 Novice Specialists shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation each year.

4.0 DPAS II Guide for Specialists

(Break in Continuity Within Section)

- 4.2 The manual shall contain, at a minimum, the following:
- 4.2.1 Specific details about each of the five (5) Appraisal Components listed in subsection 5.1.

(Break in Continuity Within Section)

5.0 Appraisal Components and Appraisal Criteria

- 5.1 The following five (5) Appraisal Components, including any Appraisal Criteria specified for each, shall be the basis upon which the performance of a specialist shall be determined. In each academic year, for each of the first four (4) Appraisal Components, a school district or charter school may waive one (1) criterion identified as optional below. In addition, for the Professional Responsibilities Component (subsection 5.1.4), a school district or charter school may substitute a locally determined alternative Appraisal Component, which must be approved by the Department no later than the last day of July of each year. Final notification of any such waiver or substitution shall be provided to all specialists in a school district or charter school and the Department of Education by the last day in August of each year:

(Break in Continuity Within Section)

6.0 Summative Evaluation Ratings

- 6.1 Each of the ~~first four (4)~~ five (5) Appraisal Components (Component(s)) shall be equally weighted and assigned a rating of "Highly Effective," "Effective," "Needs Improvement" or "Ineffective" on the Summative Evaluation. The rating for the Student Improvement Component shall be assigned a rating of "Exceeds," "Satisfactory" or "Unsatisfactory" on the Summative Evaluation. The rating for each of the five (5) Appraisal Components shall reflect the standards as described in the DPAS II Revised Guides for Specialists.
- 6.1.1 ~~A "Highly Effective" or "Effective" rating for each of the first four Appraisal Components shall mean the specialist has no more than one unacceptable rating on the Appraisal Criteria specified in each of the components. Appraisal Criteria observed shall be rated on each observation conducted and Appraisal Criteria also shall be assigned an overall rating in a specialist's Summative Evaluation. Each Component rating shall be equal to an assigned point value. A "Highly Effective" Component rating shall earn four (4) points, an "Effective" Component rating shall earn three (3) points, a "Needs Improvement" Component rating shall earn two (2) points, and an "Ineffective" Component rating shall earn one (1) point. No partial points shall be awarded.~~
- 6.1.2 ~~A satisfactory rating for the Student Improvement Component shall mean that the specialist demonstrates acceptable performance by meeting the standards set by the Secretary pursuant to 5.1.5.4. Once all Component ratings are assigned, a Summative Evaluation rating is determined by the sum of all five (5) Components.~~

PROPOSED REGULATIONS

- 6.2 The Summative Evaluation rating shall also include one of four overall ratings: "Highly Effective", "Effective", "Needs Improvement" or "Ineffective".
- 6.2.1 A "Highly Effective" Summative Evaluation rating shall mean that the specialist has earned an "Effective" or "Highly Effective" rating in the first four (4) Appraisal Components and an Exceeds rating in the Student Improvement Component a sum of 19 or 20 Component rating points.
- 6.2.2 An "Effective" Summative Evaluation rating shall mean that the specialist has earned an "Effective" or "Highly Effective" rating in at least three (3) of the first four (4) Appraisal Components with zero (0) Ineffective ratings and a "Satisfactory" or "Exceeds" rating in the Student Improvement Component a sum of 14 to 18 Component rating points.
- 6.2.2.1 "Effective" may also mean, in accordance with procedures outlined in the DPAS II Guide for Specialists, that the specialist has earned a "Highly Effective" rating in two of the first (four) Appraisal Components with zero (0) "Ineffective" ratings and an "Unsatisfactory" rating in the Student Improvement Component.
- 6.2.3 A "Needs Improvement" Summative Evaluation rating shall mean that: the specialist has earned a sum of 9 to 13 Component rating points.
- 6.2.3.1 The specialist has earned "Effective" or "Highly Effective" ratings in one (1) or two (2) of the first four (4) Appraisal Components with zero (0), one (1) or two (2) "Ineffective" ratings and a "Satisfactory" or "Exceeds" rating in the Student Improvement Component; or
- 6.2.3.2 The specialist has earned "Effective" or "Highly Effective" ratings in three (3) or four (4) of the first four (4) Appraisal Components and an Unsatisfactory rating in the Student Improvement Component; or
- 6.2.3.3 The specialist has earned three "Effective" or "Highly Effective" ratings and one (1) "Ineffective" rating on the first four Appraisal Components and a "Satisfactory" or "Exceeds" rating in the Student Improvement Component.
- 6.2.4 An "Ineffective" Summative Evaluation rating shall mean that: the specialist has earned a sum of 5 to 8 Component rating points.
- 6.2.4.1 The specialist has earned "Effective" or "Highly Effective" ratings in zero (0), one (1), or two (2) of the first four (4) Appraisal Components and an "Unsatisfactory" rating in the Student Improvement Component; or
- 6.2.4.2 The specialist has earned "Effective" or "Highly Effective" ratings in zero (0) of the first four (4) Appraisal Components and "Satisfactory" or "Exceeds" rating in the Student Improvement Component; or
- 6.2.4.3 The specialist has earned Ineffective ratings in three (3) or four (4) of the first four (4) Appraisal Components
- 6.2.5 Experienced Specialists receiving a Summative Evaluation every two years in accordance with subsection 3.1 above shall earn an overall Student Improvement Component rating on the Summative Evaluation in accordance with the following chart:

<u>Year 1 or 2</u>	<u>Year 1 or 2</u>	<u>Rating</u>
<u>Exceeds</u>	<u>Exceeds</u>	<u>Highly Effective</u>
<u>Exceeds</u>	<u>Satisfactory</u>	<u>Effective</u>
<u>Exceeds</u>	<u>Unsatisfactory</u>	<u>Effective</u>
<u>Satisfactory</u>	<u>Satisfactory</u>	<u>Effective</u>
<u>Satisfactory</u>	<u>Unsatisfactory</u>	<u>Needs Improvement</u>
<u>Unsatisfactory</u>	<u>Unsatisfactory</u>	<u>Ineffective</u>

The first two columns above indicate the rating combinations earned in a two year Summative Evaluation cycle, regardless of the order in which they were earned.

- 6.2.56 If a specialist's overall Summative Evaluation rating is determined to be "Needs Improvement" for the third consecutive year, the rating shall be re-categorized as "Ineffective".

(Break in Continuity of Sections)

8.0 Improvement Plan

- 8.1 An Improvement Plan shall be developed for a specialist who receives an overall rating of "Needs Improvement" or "Ineffective" on the Summative Evaluation or a rating of "Needs Improvement" or "Ineffective" on any component in Section 5.0 on the Summative Evaluation regardless of the overall rating.

(Break in Continuity Within Section)

- 8.5 The Improvement Plan shall be developed cooperatively by the specialist and Evaluator. If the plan cannot be cooperatively developed, the Evaluator shall have the authority and responsibility to determine the plan as specified in subsections 8.1 and 8.2 above.

(Break in Continuity of Sections)

11.0 Evaluation of Process

The Department of Education shall conduct a biennial evaluation of the specialist appraisal process. The evaluation shall, at a minimum, include a survey of teachers, specialists and Evaluators and interviews with a sampling of teachers, specialists and Evaluators. Data from the evaluation and proposed changes to DPAS II Revised shall be presented to the State Board of Education for review on ~~an annual~~ a biennial basis.

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

107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 108A

PUBLIC NOTICE

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

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

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

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 align with changes made during the second session of the 148th General Assembly by House Bill 399 as amended by House Amendment 1 and Senate Amendments 1 and 2, and by Senate Bill 199, as well as other process changes identified through implementation. These amendments include: 1) providing for equal weighting of the DPAS II components; 2) eliminating a required annual assessment; and 3) adding language related to new provisional license.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before June 7, 2017 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Register of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, Finance Office 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 is intended to continue to help student achievement as measured against state achievement standards through changes to the administrator evaluation process.
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 specifically 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 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 substantively 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/may2017/proposed/20 DE Reg 863RFA 05-01-17.pdf>

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

1.0 Effective Date

- 1.1 This regulation shall be effective for all school districts and charter schools beginning with the ~~2015-16~~ 2017-2018 school year, unless another administrator appraisal system has been approved by the Department pursuant to Chapter 12 of Title 14 of the Delaware Code.

(Break in Continuity Within Section)

2.0 Definitions

~~The following definitions shall apply for purposes of this regulation:~~ In this regulation, the following words and terms shall have the following meaning unless the context clearly indicates otherwise:

(Break in Continuity Within Section)

"**Credentialed Evaluator**" means the individual, ~~usually~~ not always the supervisor of the administrator, who has successfully completed the foundational DPAS II training and credentialing assessment in accordance with Section 10.0. A superintendent or head of charter school shall be evaluated by members of the Board who shall also have successfully completed the DPAS II foundational training and credentialing assessment in accordance with Section 10.0. The Credentialed Evaluator may also be referred to as "Evaluator".

(Break in Continuity Within Section)

"**Improvement Plan**" means the plan that an administrator and evaluator mutually develop in accordance with Section 8.0.

(Break in Continuity Within Section)

"**Student Achievement**" means:

(Break in Continuity Within Section)

~~(c) For the 2014-15 school year only, student scores on the Smarter English Language Arts and Smarter Mathematics statewide assessments shall not be incorporated into any administrator's 2014-15 performance appraisal. This may be extended by the Department for the 2015-2016 school year.~~

(Break in Continuity Within Section)

"**Summative Evaluation**" or "**Evaluation**" means the final evaluation at the conclusion of the Annual Appraisal Cycle.

(Break in Continuity of Sections)

4.0 DPAS II Revised Guides for Administrators

(Break in Continuity Within Section)

4.1.1 The Guides shall contain at a minimum the following:

4.1.1.1 Specific details about each of the five (5) Appraisal Components pursuant to subsection 5.1, including the Appraisal Criteria within each Component that form the basis for ratings.

(Break in Continuity of Sections)

6.0 Summative Evaluation Ratings

6.1 Each of the ~~first four (4)~~ five (5) Appraisal Components shall be assigned a rating of Highly Effective, Effective, Needs Improvement or Ineffective on the Summative Evaluation. ~~The rating for the Student Improvement Component shall be assigned a rating of Exceeds, Satisfactory or Unsatisfactory on the Summative Evaluation.~~ The rating for each of the five (5) Appraisal Components shall reflect the standards as described in the DPAS II Revised Guides for Administrators.

6.1.1 ~~Ratings for each of the first four (4) Appraisal Components shall be informed by Criteria-level ratings, as described in the DPAS II Revised Guides for Administrators. Each Appraisal Criterion shall be assigned a rating of Highly Effective, Effective, Needs Improvement or Ineffective on the Summative Evaluation. Each Component rating shall be equal to an assigned point value. A "Highly Effective" Component rating shall earn four (4) points, an "Effective" Component rating shall earn three (3) points, a "Needs Improvement" Component rating shall earn two (2) points, and an "Ineffective" Component rating shall earn one (1) point. No partial points shall be awarded.~~

6.1.2 Once all Component ratings are assigned, a Summative Evaluation rating is determined by the sum of all five (5) Components.

6.2 The Summative Evaluation shall also include one of four overall ratings: "Highly Effective", "Effective", "Needs Improvement" or "Ineffective".

6.2.1 "**Highly Effective**" means that the administrator has earned an ~~Effective or Highly Effective~~ rating in the ~~first four (4) Appraisal Components and an Exceeds rating in the Student Improvement Component~~ a sum of 19 or 20 Component rating points.

6.2.2 "**Effective**" means that the administrator has earned an ~~Effective or Highly Effective~~ rating in ~~at least three (3) of the first four (4) Appraisal Components with zero (0) Ineffective ratings and a Satisfactory or Exceeds rating in the Student Improvement Component~~ a sum of 14 to 18 Component rating points.

6.2.3 "**Needs Improvement**" means that: the administrator has earned a sum of 9 to 13 Component rating points.

6.2.3.4 ~~The administrator has earned Effective or Highly Effective ratings in one (1) or two (2) of the first four (4) Appraisal Components with zero (0), one (1) or two (2) Ineffective ratings and a Satisfactory or Exceeds rating in the Student Improvement Component; or~~

PROPOSED REGULATIONS

- 6.2.3.2 The administrator has earned ~~Effective or Highly Effective~~ ratings in three (3) or four (4) of the first four (4) Appraisal Components and an ~~Unsatisfactory~~ rating in the Student Improvement Component; or
- 6.2.3.3 The administrator has earned three (3) ~~Effective or Highly Effective~~ and one (1) ~~Ineffective~~ rating on the first four Appraisal Components and a ~~Satisfactory or Exceeds~~ rating in the Student Improvement Component.
- 6.2.4 **"Ineffective"** means that: the administrator has earned a sum of 5 to 8 Component rating points.
- 6.2.4.1 The administrator has earned ~~Effective or Highly Effective~~ ratings in zero (0), one (1), or two (2) of the first four (4) Appraisal Components and an ~~Unsatisfactory~~ rating in the Student Improvement Component; or
- 6.2.4.2 The administrator has earned ~~Effective or Highly Effective~~ ratings in zero (0) of the first four (4) Appraisal Components and ~~Satisfactory or Exceeds~~ rating in the Student Improvement Component; or
- 6.2.4.3 The administrator has earned ~~Ineffective~~ ratings in three (3) or four (4) of the first four (4) Appraisal Components.

(Break in Continuity of Sections)

8.0 Improvement Plan

- 8.1 An Improvement Plan shall be developed for an administrator who receives an overall rating of "Needs Improvement" or "Ineffective" on the Summative Evaluation or a rating of Needs Improvement or Ineffective on any Appraisal Component in Section 5.0 on the Summative Evaluation regardless of the overall rating.

(Break in Continuity Within Section)

- 8.2 The Improvement Plan shall be developed cooperatively by the administrator and his or her Credentialed Evaluator. If the plan cannot be cooperatively developed, the administrator's Evaluator shall have the authority and responsibility to determine the plan as specified in subsection 8.1 above.

(Break in Continuity Within Section)

9.0 Challenge Process

- 9.1 An administrator may challenge any rating on the Summative Evaluation, either an Appraisal Component Rating or the Overall Rating, or an administrator may challenge unsatisfactory performance identified by his or her Credentialed Evaluator during the Annual Appraisal Cycle, pursuant to subsection 8.1.1. To initiate a challenge, an administrator shall submit additional information specific to the point of disagreement in writing within fifteen (15) working days of the date of administrator's receipt of the Summative Evaluation. Such written response shall become part of the appraisal record and shall be attached to the Summative Evaluation. All challenges together with the record shall be forwarded to the supervisor of the evaluator, if any.

(Break in Continuity Within Section)

10.0 Evaluator(s) Credentials

(Break in Continuity Within Section)

- 10.2 Evaluator credentials for the utilization of each of the DPAS II Revised Guides are earned upon successful completion of the credentialing assessment for the appropriate Guide. Evaluator credentials are valid for five years from the date of issue. Evaluators may seek to renew their credentials within 24 months prior to the expiration date. Credentialing assessment(s) for all Guides shall be established and implemented no later than August 1, 2017 2018.

(Break in Continuity of Sections)

13.0 Evaluation of Process

The Department of Education shall conduct ~~an annual~~ a biennial evaluation of the administrator appraisal

process. The evaluation shall, at a minimum, include a survey of administrators and interviews with a sampling of administrators. Data from the evaluation and proposed changes to DPAS II Revised shall be presented to the State Board of Education for review on ~~an annual~~ a biennial basis.

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

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

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))

PUBLIC NOTICE

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

613 Uniform Procedures for Processing Attorney General's Reports

A. Type of Regulatory Action Required

New Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to create 14 **DE Admin. Code** 613 Uniform Procedures for Processing Attorney General's Reports. This regulation is being created pursuant to 14 **Del.C.** §122(b)(26) to provide district and charter schools with uniform procedures for processing Attorney General's Reports.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before June 7, 2017 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Register of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, Finance Office 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 new regulation does not specifically address student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The new regulation is intended to help ensure all students receive an equitable education in a safe environment.

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The new regulation helps 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 new 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 new 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 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 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 new 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/may2017/proposed/20 DE Reg 867RFA 05-01-17.pdf>

613 Uniform Procedures for Processing Attorney General's Reports

1.0 Purpose

Pursuant to 14 **Del.C.** §122(b)(26), this regulation, which applies to all public school districts and charter schools, provides uniform procedures for processing Attorney General's Reports.

2.0 Terms and Definitions

In this regulation, the following terms and words shall have the following meaning unless the context clearly indicates otherwise:

"Administration" means administrative staff from a district, school, or charter school.

"Alternative Placement" means the removal of a student from his/her school on a temporary basis for a period of time as determined by the Alternative Placement Team and Assignment to an Alternative Program.

"Alternative Program" means a school discipline improvement program that provides Appropriate Educational Services that has been created for students whose behavior(s) is within the defined conduct under 14 **DE Admin. Code** 614. This includes any programs managed by a school district/charter or the Consortium Discipline Alternative Program.

"Appropriate Educational Services" means instruction and assessment provided by the district/charter and includes access to instructional materials, graded homework and communication with educators so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting a level of proficiency in that curriculum.

"Assignment to an Alternative Program" means student Assignment to an Alternative Program, including Consortium Discipline Alternative Program and any Alternative Program maintained by a district/charter school, until the student has fulfilled the requirements to return to the Regular School Program.

"Attorney General's Report (Electronic Notice of Charges)" or **"Report"** means the Department of Justice's report of: 1) an enrolled student's alleged criminal conduct, regardless of jurisdiction, which shows disregard for the health, safety and welfare of others, including, but not limited to acts of violence, weapons offenses, and drug offenses; 2) wanted persons enrolled in a school and; 3) missing persons enrolled in a school.

"Board of Education" means the Board of Education of a reorganized school district or the Board of Directors of a charter school.

"Consortium Discipline Alternative Program" means a school discipline improvement program which serves an organized consortium of school districts and/or charter schools as provided for in 14 **Del.C.** Ch. 16.

"Criminal History Record Information" or **"CHRI"** means a subset of CJI, set forth in 11 **Del.C.** §8602(2), that includes identifiable descriptions and notations of arrests, detentions, indictments, information or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision and release.

“Criminal Justice Information” or “CJI” means all Criminal Justice Information System data. The term includes: criminal history record information; biographic data; biometric data; identity history; person, organization, property, or Division of Motor Vehicles data; case or incident history; and other data necessary for authorized agencies to make hiring decisions, perform their mission, and enforce the laws of this State.

“Criminal Justice Information System” or “CJIS” means the computer hardware, software, and communication network which is managed, operated, and maintained by the DELJIS for the collection, warehousing, and timely dissemination of CJI to authorized agencies.

“Delaware Criminal Justice Information System” or “DELJIS” means the administrative body created within 11 **Del.C.** Ch. 86 that manages, operates, and maintains CJIS in the State of Delaware.

“Disciplinary Action” means the student identified for Short or Long-Term Suspension, Expulsion, or Alternative Placement who may be excluded from all school activities, including but not limited to, extracurricular sports/programs, field trips, and ceremonies; is not allowed on School Property unless placed in an Alternative Placement on School Property; and, if applicable, will have his driver's license suspended in accordance with 14 **Del.C.** §4130(e).

“District” means traditional reorganized school districts, vocational-technical school districts and charter schools.

“Expulsion” means Disciplinary Action approved by the Board of Education resulting in a student being removed from the Regular School Program for a duration not to exceed the total number of student days in a school year. A student expelled without Appropriate Educational Services shall be unenrolled from the district/charter during the term of the expulsion. Regardless of whether without or with services, including Alternative Placement, the expelled student is not eligible to enroll in any other Delaware public school during the period of the Expulsion and until any reasonable terms of the Expulsion are fulfilled.

“Grievance” means a formal complaint, filed per specific district/charter procedures, to school Administration regarding a student's rights or liberty interests having been denied or impaired. At a minimum, the procedures shall be similar to the Grievance Guidelines applicable to this regulation, as posted on the Department of Education website.

“Parent” means a biological or adoptive parent of a child; a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives and for whom a Relative Caregiver's School Authorization executed in compliance with 14 **Del.C.** §202(f)(1) is on file; an individual or entity who is otherwise legally responsible for the child's welfare; a surrogate parent who has been appointed in accordance with 14 **DE Admin. Code** 926.19; or a student who has reached the age of majority as defined in 1 **Del.C.** §701.

“Principal” means the building principal, or the equivalent of the building principal, of any district or charter school, or the principal's designee.

“Regular School Program” means student enrollment in a public school, not including specially assigned non-special education or student behavioral intervention programs within or outside the enrolled school, in which the student's classroom or course placement is based primarily on age, grade level and cognitive abilities as assigned by the school Administration or an IEP team and the student's participation in daily course instruction and activities within the assigned classroom or course.

“School Discipline Committee” means a school-level committee consisting of appropriate school personnel, similar to those identified in 14 **Del.C.** Ch. 16, which meets to decide on student Disciplinary Action recommendations made by the Principal.

“School Environment” means within or on School Property, and at school sponsored or supervised activities, including, for example, on school grounds, on school buses, at functions held on school grounds, at school sponsored extracurricular activities held on and off school grounds, on field trips and at functions held at the school in the evening.

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“School Property” means any building, structure, athletic field, sports stadium or real property that is owned, operated, leased or rented by any public school district or charter school including, but not limited to, any kindergarten, elementary, secondary, or vocational-technical school or charter school, or any motor vehicle owned, operated, leased, rented or subcontracted by any public school or charter school.

“Student Code of Conduct” means the district/charter school approved document which specifies the rights and responsibilities of students, defines conduct that disrupts/threatens a positive/safe School Environment, standardizes procedures for consequences and Disciplinary Action, and defines due process and Grievance procedures.

“Superintendent” means the chief school officer of any public school district or charter school, or the equivalent of a superintendent.

“Suspension, Long-term (Long-term Suspension)” means Disciplinary Action approved by the Superintendent upon recommendation of the Principal or District Alternative Placement Team resulting in the student being removed from the Regular School Program for eleven (11) consecutive school days or more and not to exceed the total number of school days in a school year. Student chooses to waive his right to a formalized due process hearing as outlined in Section 10.0 of 14 **DE Admin. Code** 616, maintains enrollment in the district/charter, and is provided Appropriate Educational Services during the term of the suspension, but is excluded from all school activities including, but not limited to, extracurricular sports/programs, field trips, and ceremonies. Student is not allowed on School Property when suspension is out-of-school. A Long-term Suspension requires initial due process procedures as outlined in Section 4.0 of 14 **DE Admin. Code** 616 and the student choosing to waive his right to a formalized due process hearing as outlined in Section 10.0 of 14 **DE Admin. Code** 616.

“Suspension, Short-term (Short-term Suspension)” means Disciplinary Action approved by the Principal or School Discipline Committee resulting in the student being removed from his Regular School Program for at least one (1) school day and not more than ten (10) consecutive school days. Student maintains enrollment in district/charter, but is excluded from all school activities including, but not limited to extracurricular sports/programs, field trips, and ceremonies. Student is not allowed on School Property when Short-term Suspension is out-of-school. A Short-term Suspension requires initial due process procedures as outlined in subsection 5.1 of 14 **DE Admin. Code** 616.

3.0 Uniform Processing Procedures

- 3.1 When a District receives an Attorney General's Report, the following uniform procedures shall be followed:
- 3.1.1 Only the Superintendent or designated District-level administrative professional employee (hereinafter “designee”) shall handle the processing of the Attorney General's Report. The designee shall be an employee at the District/administrative office level and shall not be a secretary or administrative assistant.
- 3.1.2 The Superintendent or designee shall review the Attorney General's Report, as soon as practicable thereafter and no later than three (3) school days, to determine if the listed charges warrant accessing the Criminal Justice Information System to obtain additional information. In the event of the absence of the Superintendent or designee, procedures shall be identified for the review of the Attorney General's Report within the allotted time frame.
- 3.1.2.1 If the Superintendent or designee determines that access to the Criminal Justice Information System is needed, that access will occur as soon as practicable thereafter and no later than three (3) school days of the determination.
- 3.1.2.2 On the basis of that review, the Superintendent or designee shall make a determination as to whether the student's alleged action(s) is a threat to the health, safety and welfare of others, in particular, staff and students within the School Environment and action needs to be taken.
- 3.1.3 The District may provide the Attorney's General Report and Criminal Justice Information to the school Principal if the District decides to take action. The school Principal shall use this information only for action planning purposes.

3.1.4 A hard copy of a student's Report or Criminal Justice Information shall not be maintained in any manner except for use as evidence in a student discipline hearing and manifestation determination meeting. Upon conclusion of the student disciplinary hearing and any appeal(s), the hard copy of the Report and Criminal Justice Information shall be destroyed. Notwithstanding the foregoing, the hard copy of the Report and Criminal Justice Information used at the manifestation determination meeting shall be maintained as part of the record of that meeting during the time for filing any dispute resolution proceedings under the Individuals with Disabilities Education Act (IDEA).

3.1.4.1 Any personally identifiable information relating to a victim listed in a Report or the Criminal Justice Information used for a disciplinary hearing or manifestation determination shall be redacted. For the purposes of this regulation, personally identifiable information includes name, date of birth, age, sex, race, home address, school, workplace, driver license number, and vehicle registration number. If the victim and alleged offender attend the same school, that information may be shared with the Principal of the school for safety planning purposes.

4.0 District Action in Response to Attorney General's Report

4.1 The decision to act upon the information provided in the Attorney General's Report and Criminal Justice Information shall be the sole discretion of the District in accordance with the District's policies and procedures including the Student Code of Conduct. Such action may include, but is not limited to, student and/or Parent conference, counseling, safety planning and Disciplinary Action.

4.1.1 If the victim listed in the Criminal Justice Information attends the same school as the Report's alleged offender, the victim and victim's Parent shall be notified regarding any safety planning actions decided upon by the District. The District shall make reasonable efforts to include the victim and victim's Parent in the safety planning process.

4.1.2 If a District policy allows for Disciplinary Action to be taken in response to a student Attorney General's Report, the District Student Code of Conduct shall include a statement that clearly gives notice that all off-campus, non-school activity conduct which shows disregard for the health, safety and welfare of others, including, but not limited to acts of violence, weapons offenses, and drug offenses, may subject a student to Disciplinary Action as indicated in the District's Student Code of Conduct.

4.1.2.1 Any Disciplinary Action taken by the District in response to an Attorney General's Report that results in a Short-Term or Long-Term Suspension, Alternative Placement, or Expulsion of a student shall be in accordance with the requirements of 14 **DE Admin. Code** 614 and 616.

5.0 Students with Disabilities

5.1 Nothing in this regulation shall alter a District's school's duties under the Individual with Disabilities Act (IDEA) or 14 **DE Admin. Code** 922 through 929. Nothing in this regulation shall prevent a district/charter school from providing supportive instruction to children with disabilities in a manner consistent with the Individuals with Disabilities Education Act (IDEA) and Delaware Department of Education regulations.

5.2 Nothing in this regulation shall alter a District's duties under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act to students who are qualified individuals with disabilities. Nothing in this regulation shall prevent a district/charter school from providing supportive instruction to such students.

6.0 Implementation

If any portion of this regulation is in conflict with any Memorandum of Understanding or Agreement in existence, the Memorandum of Understanding or Agreement shall control.

PROPOSED REGULATIONS

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1507

PUBLIC NOTICE

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

1507 Alternative Routes to Teacher Licensure and Certification Program

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, acting in consultation and cooperation with the Department of Education, seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1507 Alternative Routes to Teacher Licensure and Certification Program. This regulation concerns the requirements for the alternative routes to teacher licensure and certification program pursuant to 14 **Del.C.** §§1260 - 1264. It is necessary to amend this regulation to replace the terms "PRAXIS II" with "*Praxis* Subject Assessments" and "candidate" with "teacher" throughout the regulation; amend the definition of "Examination of General Knowledge" to be consistent with the proposed changes to 14 **DE Admin. Code** 1510 Issuance of Initial License; add a definition of "Critical Curricular Area" to section 2.0; amend section 3.0 to be consistent with the requirements of 14 **Del.C.** §§1210 & 1210A and 14 **DE Admin. Code** 1506 Emergency Certificate; amend section 4.0 to be consistent with the requirements of 14 **Del.C.** §1261; strike section 6.0 due to the proposed addition of subsection 4.4; clarify sections 7.0 and 8.0, which concern recommending approval or disapproval of a teacher for licensure and certification; amend section 9.0 to be consistent with the requirements of 14 **Del.C.** §1263; and replace "Standards Board and the State Board" with "Secretary" in section 10.0 to be consistent with 14 **Del.C.** §1261(d).

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before May 31, 2017 to Mr. Chris Kenton, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Register of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Professional Standards Board's Office, 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 does not address 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 does not address an equitable education.
3. Will the amended regulation help to ensure 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 does not address students' legal rights.
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 amended regulation does not change the decision making authority and accountability for addressing the subject to be regulated.
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 this 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 implementing the 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/may2017/proposed/20 DE Reg 872RFA 05-01-17.pdf>

1507 Alternative Routes to Teacher Licensure and Certification Program

1.0 Content

This regulation shall apply to the Alternative Routes for Teacher Licensure and Certification Program, pursuant to 14 Del.C. §§1260 through 1264.

2.0 Definitions

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

“Coherent Major” means a major in an area appropriate to the instructional field.

“Critical Curricular Area” means an area identified based on supply and demand information obtained from local school districts and from state and national sources and approved by the State Board pursuant to 14 DE Admin. Code 240. A Critical Curricular Area is also known as a critical need area.

“Department” means the Delaware Department of Education.

“Educator” means a person licensed and certified by the State under Chapter 12 of 14 Del.C. Ch. 12 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board and approved by the State Board. For purposes of 14 Del.C. Chapter Ch.12, the term 'educator' does not include substitute teachers.

“Emergency Certificate” means a temporary credential issued pursuant to 14 DE Admin. Code 1506 Emergency Certificate.

“Examination of Content Knowledge” means a standardized State test of subject matter knowledge which measures knowledge in a specific content area, such as PRAXIS™ II Praxis Subject Assessments.

“Examination of General Knowledge” means a standardized test which measures, or a combination of standardized tests which measure, general knowledge and essential skills in reading, writing, and mathematics, or quantitative and verbal skills, including reading and writing, such as PRAXIS™ I, which for the purposes of this regulation, means the State Basic Skills Test adopted pursuant to 14 Del.C. Ch. 12 and as provided in Section 19.0 of 14 DE Admin. Code 1510. For the purpose of this regulation, “Examination of General Knowledge” means the State Basic Skills Test.

“Initial License” means the first license issued to an educator that allows an educator to work in a position requiring a license in a Delaware public school a credential which authorizes the holder to engage in the practice for which the license is issued.

“Major or Its Equivalent” means no fewer than thirty (30) credit hours in a content area.

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

“Standard Certificate” means a credential issued to verify 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.

PROPOSED REGULATIONS

"Standards Board" means the Professional Standards Board established pursuant to 14 Del.C. §1201.

"State Board" means the State Board of Education of the State pursuant to 14 Del.C. §104.

"Teacher Residency Program" means a teacher preparation program meeting the minimum criteria of this regulation and approved pursuant to this regulation and any Department regulation. Such a program is typically sponsored by a regionally accredited college or university in partnership with one or more State Education Agencies and/or an established Organization/Foundation, where the participant is paired with a mentor and veteran teacher in a classroom for ~~their~~ his or her initial school year experience.

"Teach For America" means the nationally established program consisting of recent college graduates and professionals of all academic majors and career interests who commit to a minimum of two (2) consecutive years of classroom teaching in either a low-income urban or rural public school.

3.0 Alternative Routes to Teacher Licensure and Certification

- 3.1 Qualified ~~Candidates~~ teachers meeting all conditions ~~of~~ and seeking participation in an Alternative Routes to Teacher Licensure and Certification program shall be issued a Provisional License conditioned upon their acceptance and continued enrollment in the program. Such Provisional License is valid for 1 year unless revoked. If the requirements of the Provisional License are met, an Initial License, of no more than three (3) years duration which is valid for 3 years unless revoked, shall be issued conditioned on continued enrollment and participation in an Alternative Routes for Teacher Licensure and Certification Program ~~and an Emergency Certificate or certificates of no more than three years duration. The Department shall issue an Emergency Certificate or Certificates, valid for one school year, to qualified candidates in accordance with 14 DE Admin. Code 1506.~~
- 3.2 ~~Candidates~~ Teachers shall meet the following minimum qualifications:
- 3.2.1 Successfully completed one of the following education requirements:
- 3.2.1.1 Hold a bachelor's degree from a regionally accredited college or university in a coherent major, or its equivalent as determined by the Department in conjunction with the alternative routes to teacher licensure and certification program, which shall be no less than thirty (30) credit hours in the instructional field they will teach; or
- 3.2.1.2 Hold a Bachelor's Degree from a regionally accredited college or university in any content area and are enrolled in the Teach For America program and have completed all pre-service requirements for such program; or
- 3.2.1.3 Hold a Bachelor's Degree from a regionally accredited college or university in any content area and are enrolled in an approved teacher residency program and have completed all pre-service requirements for such program; and
- 3.3 Pass an approved examination of general knowledge, ~~such as PRAXIS™ I, or provide an acceptable alternative to the PRAXIS™ I test scores~~, as set forth in 14 DE Admin. Code 1510, within the period of time from the date of hire to the end of the next consecutive fiscal year; and
- 3.4 Obtain acceptance into ~~an~~ a Department-approved alternative routes to licensure and certification program.
- 3.4.1 Notwithstanding any other provisions to the contrary, ~~candidates~~ teachers enrolled in the Teach For America program shall not be limited to teaching in areas identified as critical curricular areas.
- 3.4.2 Notwithstanding any other provisions to the contrary, ~~candidates~~ teachers enrolled in an approved teacher residency program shall not be limited to teaching in areas identified as critical curricular areas; and
- 3.5 Demonstrate the prescribed knowledge and skills for a particular content area by completing the following:
- 3.5.1 Pass an examination of content knowledge, such as ~~PRAXIS™ II~~ Praxis Subject Assessments, in the instructional field they desire to teach, if applicable and available, within the period of time from the date of hire to the end of the next consecutive fiscal year.

- 3.5.2 Notwithstanding any other provisions to the contrary, ~~candidates~~ teachers enrolled in the Teach For America program shall, where applicable and available, have achieved a passing score on an examination of content knowledge, such as ~~PRAXIS™ II~~ Praxis Subject Assessments, for the area in which such ~~candidate~~ teacher will be teaching, prior to taking full responsibility for teaching a classroom; or
- 3.5.3 Notwithstanding any other provisions to the contrary, ~~candidates~~ teachers enrolled in a teacher residency program shall, where applicable and available, have achieved a passing score on an examination of content knowledge, such as ~~PRAXIS™ II~~ Praxis Subject Assessments, for the area in which such ~~candidate~~ teacher will be teaching, prior to taking full responsibility for teaching a classroom; and
- 3.6 Obtain an acceptable health clearance and an acceptable criminal background check clearance; and
- 3.7 Obtain a teaching position by one of the following:
 - 3.7.1 Obtain and accept an offer of employment in a position that requires licensure and certification; or
 - 3.7.2 In the case of a teacher residency program, obtain and accept an offer for a position that if paid would require licensure and certification.

4.0 Components of the Program

- 4.1 An Alternative Routes for Teacher Licensure and Certification Program shall may be approved by the Secretary of Education and ~~meet if the program meets~~ the following minimum criteria:
- 4.2 Incorporate one of the following prerequisite options:
 - 4.2.1 A ~~summer institute~~ seminar or practicum of no less than one hundred and twenty (120) instructional (clock) hours ~~completed by the candidate prior to the beginning of his/her teaching assignment which takes place prior to the time at which the teacher participating in the program takes full responsibility for a classroom.~~ This includes an orientation to the policies, organization and curriculum of the employing school district or charter school, instructional strategies and classroom management, and child or adolescent development; or
 - 4.2.1.1 ~~Candidates employed too late to participate in the summer institute will complete the practicum experience and seminars on teaching during the first school year and will participate in the summer institute following their first year of teaching; or~~
 - 4.2.2 A teacher entering a Delaware public school through the Teach For America program shall complete the two hundred (200) hours of pre-service training provided by Teach for America; or
 - 4.2.3 A teacher entering a Delaware public school through a teacher residency program shall complete a minimum of one hundred and twenty (120) hours of pre-service training provided by the approved teacher residency program; and
- 4.3 ~~Require a one-year, full-time practicum experience which includes a period of intensive on-the-job mentoring and supervision beginning the first day in which the candidate assumes full responsibility for a classroom and continuing for a period of thirty (30) weeks~~ period of intensive on-the-job supervision beginning the first day on which the teacher participating in the program assumes full responsibility for a classroom and continuing for a period of at least 10 weeks.
 - 4.3.1 During the period of intensive on-the-job supervision, the teacher shall participate in the state-approved mentoring program.
 - 4.3.2 At the end of the period of intensive on-the-job supervision, the teacher shall be observed and formally evaluated by certified evaluators using DPAS II or a state-approved alternative educator evaluation system. The teacher shall receive a formal written progress report from the certified evaluators.
- 4.4 Require an additional period of continued supervision and evaluation for a period of no less than 20 weeks.
 - 4.4.1 During the period of continued supervision, the teacher shall:
 - 4.4.1.1 participate in the state-approved mentoring program; and
 - 4.4.1.2 be provided opportunities to observe the teaching of experienced colleagues; and

PROPOSED REGULATIONS

4.4.1.3 ~~be observed formally and evaluated by school administration at least twice using DPAS II or a state-approved alternative educator evaluation system.~~

4.4.1.3.1 ~~No more than 2 months shall pass without a formal observation.~~

~~4.4.5~~ ~~Require seminars on teaching that provide Alternative Routes to Licensure and Certification teachers with~~ Provide approximately 200 instructional ~~(clock) hours~~ clock hours of formal instruction or equivalent professional development during the first year of their teaching assignment and during an intensive seminar the following summer the time periods specified in subsections 4.2, 4.3, and 4.4 of this regulation. Content shall include curriculum, student development and learning at all levels, and the classroom and the school, as required in 14 **Del.C.** §1261.

~~4.54.6~~ Receive any required approvals under the Department's regulation 14 **DE Admin. Code** 290 Approval of Educator Preparation Programs.

5.0 Mentoring Support

Mentoring support shall be carried out in accordance with 14 **DE Admin. Code** 1503. No mentor shall participate in any way in decisions which might have a bearing on the licensure, certification or employment of teachers participating in an Alternative Routes for Teacher Licensure and Certification Program.

6.0 ~~Supervision and Evaluation~~

~~Teachers enrolled in an Alternative Routes for Teacher Licensure and Certification Program shall be observed and formally evaluated by a certified evaluator using the state approved evaluation system at least once during the first ten (10) weeks in the classroom, and a minimum of two (2) additional times within the next twenty (20) weeks. Evaluations shall be no more than two (2) months apart.~~

7.06.0 Recommendation for Licensure and Certification

6.1 Upon completion of an Alternative Routes for Teacher Licensure and Certification Program, the certified evaluator shall prepare a summative evaluation report for the teacher participating in the Program.

6.1.1 The evaluation report shall include a recommendation as to whether or not ~~a license shall~~ the appropriate license and standard certificate or certificates should be issued.

6.1.2 The evaluation report and license recommendation shall be submitted directly to the Department.

6.1.3 A copy of the evaluation report and license recommendation ~~should~~ shall be issued to the candidate teacher twenty (20) days before submission to the Department.

8.07.0 ~~Issuance of License Recommendation of "Approved"~~

If the evaluation report recommends ~~approval of the candidate for licensure~~ that the appropriate license and standard certificate or certificates be issued, provided the ~~candidate teacher~~ candidate teacher is otherwise qualified, the Department shall issue an Initial License valid for the balance of the three (3) year term, if the ~~participant teacher~~ candidate teacher has completed the Program in less than three (3) years, or a Continuing License, if the three (3) year term of the Initial License has expired, and shall issue the appropriate Standard Certificate or Certificates.

~~Candidates who receive a recommendation of 'disapproved' shall not be issued an Initial License and Standard Certificate by the Department, and may not continue in an Alternative Routes for Licensure and Certification Program.~~

9.08.0 Recommendation of "Disapproved"

8.1 Teachers who receive a recommendation of "disapproved" shall not be issued the appropriate license and standard certificate or certificates and may not continue in an Alternative Routes for Teacher Licensure and Certification Program.

8.1.1 ~~Candidates who receive a recommendation of "disapproved"~~ The teacher may petition the Department for approval of additional opportunities to participate in an Alternative Routes for Teacher Licensure and Certification Program.

8.1.2 Within fifteen (15) days of receipt of the evaluation report and the certification recommendation, a ~~candidate teacher~~ disagreeing with the recommendation may submit to the ~~evaluator~~ certified evaluators written materials documenting the reasons that the ~~candidate teacher~~ believes a license should be awarded. The ~~evaluator~~ certified evaluators shall forward all documentation submitted by the ~~candidate teacher~~, along with the evaluation report and recommendation concerning licensure and certification to the ~~Secretary of Education~~ Department. The Secretary or his or her designee shall review the evaluation report, the licensure and certification recommendation, and any documentation supplied by the ~~candidate teacher~~ and make a determination with respect to licensure and certification.

40-09.0 Right to a Hearing

A teacher participating in an Alternative Routes for Teacher Licensure and Certification Program who is denied a license and certificate or additional opportunities to participate in the Alternative Routes for Teacher Licensure and Certification Program may appeal the Secretary's or Secretary's designee's decision, and is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with the Standard Board's Hearing Procedures and Rules.

41-010.0 Program Evaluation

Those responsible for Alternative Routes to Certification Programs approved by the ~~Standards Board and the State Board~~ Secretary shall develop a program evaluation process. The focus of the program evaluation shall be to demonstrate the degree to which teachers who complete the program are effective in the classroom.

42-011.0 Approval of Alternative Routes Programs

The Secretary may approve for implementation Alternative Routes to Teacher Licensure and Certification Programs, provided the programs meet the minimum criteria set forth in this regulation and in any applicable laws.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1510

PUBLIC NOTICE

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

1510 Issuance of Initial License

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, acting in consultation and cooperation with the Department of Education, seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1510 Initial License. This regulation concerns the requirements for licensure of educational personnel pursuant to 14 **Del.C.** Ch. 12 and is being amended due to changes to 14 **Del.C.** Ch. 12. The proposed amendments to the regulation were first published on January 1, 2017. Several comments were received and reviewed. Substantive changes have been proposed, including adding a definition of "Content Area" and "Teaching Experience" and striking "other employing authority" from the definition of "Date of Hire" in Section 2.0; striking "the Department" from subsections 3.2.3, 4.3.3, 8.1, and 8.2 to clarify that content-readiness examinations are specified by the Professional Standards Board and State Board of Education; striking subsection 7.1.4; striking "other employing authority" from subsection 14.1.1; striking "Scholastic Aptitude Test" from Section 19.0 to be consistent with the current terminology employed by the College Board; adding Section 21.0; and clarifying that the Department will recognize an Initial License

issued before the effective date of this regulation in Section 22.0. As a result of these substantive changes, the regulation is being re-published.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before May 31, 2017 to Mr. Chris Kenton, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Register of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Professional Standards Board's Office, 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 will help to improve student achievement by establishing requirements for the issuance of a provisional license and an initial license for educators.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards.

3. Will the amended regulation help to ensure all student's health and safety are adequately protected? The amended regulation addresses educator licensure, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator licensure, not students' legal rights.

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 rests with the Professional Standards Board, in cooperation and consultation with the Department of Education, and with the approval of the State Board of Education.

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, and in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies.

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 this 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 implementing this amended regulation.

***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/may2017/proposed/20 DE Reg 877RFA 05-01-17.pdf>

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

1510 Issuance of Initial License

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WATER

GROUND WATER DISCHARGES SECTION

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C. Ch. 60)
7 DE Admin. Code 7102

REGISTER NOTICE SAN #2012-21

7102 Regulations Governing Underground Injection Control

1. TITLE OF THE REGULATION:

State of Delaware Regulations Governing Underground Injection Control.

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

The purpose of the proposed revisions is to bring the regulations into compliance with current federal requirements, as determined by the United States Environmental Protection Agency (EPA). The EPA issued the *Revisions to the Underground Injection Control (UIC) Regulations for Class V Injection Wells*, effective April 2000 and December 2011. With this, the State of Delaware Regulations Governing Underground Injection Control is to be amended. The revised State regulations will also expand the existing regulations to include additional requirements for multiple water management activities.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

Title 7, Delaware Code, Chapter 60, Environmental Control

5. LIST OF OTHER REGULATIONS THAT MAY BE IMPACTED OR AFFECTED BY THE PROPOSAL:

State of Delaware Regulations Governing the Construction and Use of Wells.

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to State of Delaware Regulations Governing Underground Injection Control will be open May 1, 2017. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on May 25, 2017 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

Katharyn Potter	Phone: (302) 739-9948
Delaware DNREC	Fax: (302) 739-7764
Ground Water Discharges Section	Email: katharyn.potter@state.de.us
89 Kings Highway	
Dover, DE 19901	

***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/may2017/proposed/20 DE Reg 879RFA 05-01-17.pdf>

PROPOSED REGULATIONS

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

7102 Regulations Governing Underground Injection Control

DIVISION OF WATERSHED STEWARDSHIP

Statutory Authority: 7 Delaware Code, Section 6010 (7 **Del.C.** §6010)
7 DE Admin. Code 7401

REGISTER NOTICE
SAN # 2016-15

7401 Surface Water Quality Standards

1. TITLE OF THE REGULATIONS:

7401 Surface Water Quality Standards

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

The DNREC-Watershed Assessment and Management Branch has revised the proposed amendments to Delaware Administrative Code 7401: Surface Water Quality Standards following a thorough review. The proposed amendments to the Water Quality Standards Regulations were published in the January 1, 2017 Delaware *Register of Regulations*. These revisions to the proposed amendments address sections that linked to incorrect sections in the regulation and Department. The revisions also include amendments by DNREC resulting from written comments during the initial public comment period which ended February 23, 2017.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

N/A

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Del.C.** §6010

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

Regulations Governing the Control of Water Pollution

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 7 **DE Admin. Code** 7401: Surface Water Quality Standards will be re-opened May 1, 2017 for a 45-day public comment period ending June 15, 2017. Individuals may submit written comments regarding the revisions to the proposed amendments via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042.

7. PREPARED BY:

David Wolanski David.Wolanski@state.de.us (302)-739-9939

Delaware's most recent Water Quality Standards Regulations were promulgated 10/01/2014. Under the Federal Beaches Environmental Assessment and Coastal Health (BEACH) Act, states are required to update their water quality criteria to meet updated federal Environmental Protection Agency guidance for bacterial water quality. Secretary David Small approved Start Action Notice 2016-15 on 12/13/2016 to update Delaware Water Quality Standards Section 4.5.7.1. The proposed updates were published in the Delaware *Register* on January 1, 2017. A public hearing on the proposed updates was held February 23, 2017 in the DNREC Auditorium. Comments submitted by Evelyn MacKnight of US EPA Region 3 regarding the updates suggested several revisions the Department concurred with. Staff also proposed fixing two technical issues in the 10/01/2014 regulation. The proposed regulations and updated proposed regulations are shown in the sections that follow.

Interested parties shall submit comments in writing on the amendments by June 15, 2017. Written statements

and comments should be addressed to Lisa.Vest@state.de.us or by USPS to:

Lisa Vest
 DNREC - Hearing Officer
 DNREC, 89 Kings Highway, Dover, DE 19901

Original Proposed Language as shown in the January 1, 2017 Register notice:

4.5.7 Bacterial Water Quality Criteria

4.5.7.1 Primary and Secondary Contact Recreation Waters:

The following criteria shall apply:

Waterbody Type	Single-Sample Value (Enterococcus Colonies/100ml)	Geometric Mean (Enterococcus Colonies/100ml)
Primary Contact Recreation Fresh Waters	185	100
Primary Contact Recreation Marine Waters	104	35
Secondary Contact Recreation Fresh Waters	925	500
Secondary Contact Recreation Marine Waters	520	175
<u>Atlantic Ocean Waters from Cape Henlopen to the Delaware/Maryland State Line</u>	<u>The statistical threshold value of weekly samples collected over a 30 day period shall not exceed 130 in more than 10 percent of the samples collected.</u>	<u>The Geometric Mean of weekly samples collected over a 30 day period shall not exceed 35.</u>

The purpose of these criteria is to provide the Department with a basis to assess water quality trends and pollution control needs with regard to primary and secondary contact recreation in waters of the State and to meet Federal Beaches Environmental Assessment and Coastal Health (BEACH) Act Requirements. The criteria apply to enterococcus bacteria determined by the Department to be of non-wildlife origin based on best scientific judgment using available information. Swimming in waters affected by runoff during runoff periods may present an elevated risk of gastrointestinal illness and is not recommended.

Updated Proposed Regulations:

(in section 2.0)

"Public Water Supply" means any waters of the State designated as public water supply in Section 40 3

(in section 3j)

(j) Parts of these waters are APPROVED shellfish harvesting areas. Information on areas where shellfish may be taken should be obtained from the Shellfish & Recreational Waters Branch, Watershed Assessment Section,

PROPOSED REGULATIONS

Division of ~~Water Resources~~ Watershed Stewardship, Department of Natural Resources and Environmental Control.

4.5.7 Bacterial Water Quality Criteria

4.5.7.1 Primary and Secondary Contact Recreation Waters:

The following criteria shall apply:

Waterbody Type	Single-Sample Value (Enterococcus Colonies/100ml)	Geometric Mean (Enterococcus Colonies/100ml)	<u>Statistical Threshold Value</u>
Primary Contact Recreation Fresh Waters	185	100	
Primary Contact Recreation Marine Waters	104	35	
Secondary Contact Recreation Fresh Waters	925	500	
Secondary Contact Recreation Marine Waters	520	175	
<u>Marine Coastal Recreation Waters from the Delaware Bay to the Maryland State Line</u>		<u>The Geometric Mean of samples collected over a 30 day period shall not exceed 35.</u>	<u>The statistical threshold value of samples collected over a 30 day period shall not exceed 130 in more than 10 percent of the samples collected.</u>

The purpose of these criteria is to provide the Department with a basis to assess water quality trends and pollution control needs with regard to primary and secondary contact recreation in waters of the State and to meet Federal Beaches Environmental Assessment and Coastal Health (BEACH) Act Requirements. The criteria apply to enterococcus bacteria determined by the Department to be of non-wildlife origin based on best scientific judgment using available information. Swimming in waters affected by runoff during runoff periods may present an elevated risk of gastrointestinal illness and is not recommended.

***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/may2017/proposed/20 DE Reg 880RFA 05-01-17.pdf>

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

7401 Surface Water Quality Standards

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
1799 GENETIC COUNSELOR ADVISORY COUNCIL

Statutory Authority: 24 Delaware Code, Section 1799I(c) (24 Del.C. §1799I(c))
24 DE Admin. Code 1799

PUBLIC NOTICE

1799 Genetic Counselor Advisory Council

Pursuant to 24 Del.C. §1799I(c), the Genetic Counselor Advisory Council (“the Council”) of the Delaware Board of Medical Licensure and Discipline has proposed revisions to its rules and regulations. A new Section 7.0 is added to set forth standards for the use of telehealth in the practice of genetic counseling.

A public hearing will be held on June 2, 2017 at 3:30 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Genetic Counselor Advisory Council, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Council at the above address. Pursuant to 29 Del.C. §10118(a), the final date to receive written comments will be June 19, 2017, which is 17 days following the public hearing. The Council will deliberate on the proposed revisions at its next regularly scheduled meeting.

***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/may2017/proposed/20 DE Reg 883RFA 05-01-17.pdf>

1799 Genetic Counselor Advisory Council
(Break in Continuity of Sections)

7.0 Telehealth

- 7.1 For the purpose of this Section, “telehealth” means the practice of genetic counseling by distance communication technology such as but not necessarily limited to telephone, Internet-based communications, and videoconferencing.
- 7.2 In order to practice telehealth one must hold a current, valid license as a genetic counselor issued by the Board.
- 7.3 Licensees shall understand that this Section does not provide licensees with authority to practice telehealth in service to clients domiciled in any jurisdiction other than Delaware, and licensees bear responsibility for complying with laws, rules, and/or policies for the practice of telehealth set forth by other jurisdictional boards.
- 7.4 Licensees practicing telehealth shall comply with this Section and with requirements in state and federal statutes relevant to the practice of genetic counseling.
- 7.5 Licensees shall establish and maintain current competence in the professional practice of telehealth through continuing education, consultation, or other procedures, in conformance with prevailing standards of scientific and professional knowledge. Licensees shall establish and maintain competence in the appropriate use of the information technologies utilized in the practice of telehealth.
- 7.6 Licensees shall recognize that telehealth is not appropriate for all genetic indications and clients, and decisions regarding the appropriate use of telehealth shall be made on a case-by-case basis. Licensees practicing telehealth shall be aware of additional risks incurred when practicing genetic counseling through the use of distance communication technologies and take special care to conduct their professional practice in a manner that protects the welfare of the client and ensures that the client’s welfare is paramount. Licensees practicing telehealth shall:
- 7.6.1 Conduct a risk-benefit analysis:

PROPOSED REGULATIONS

- 7.6.1.1 To ensure that the genetic counseling indication is consistent with the use of telehealth to the client's benefit; and
- 7.6.1.2 To determine whether the client has sufficient knowledge and skills in the use of the technology involved in rendering the service or can use a personal aid or assistive device to benefit from the service.
- 7.6.2 Not provide telehealth services to any person or persons when the outcome of the analysis required in subsections 7.6.1.1 and 7.6.1.2 is inconsistent with the delivery of telehealth services, whether related to clinical or technological issues.
- 7.6.3 Upon initial and subsequent contacts with the client, make reasonable efforts to verify the identity of the client.
- 7.6.4 Obtain alternative means of contacting the client.
- 7.6.5 Provide to the client alternative means of contacting the licensee;
- 7.6.6 Whenever feasible, use secure communications with clients and obtain and document consent for the use of non-secure communications.
- 7.6.7 Prior to providing telehealth services, obtain the written informed consent of the client, in language that is likely to be understood and consistent with accepted professional and legal requirements, relative to:
 - 7.6.7.1 The limitations and innovative nature of using distance technology in the provision of genetic counseling;
 - 7.6.7.2 Potential risks to confidentiality of information due to the use of distance technology;
 - 7.6.7.3 Potential risks of sudden and unpredictable disruption of telehealth services and how an alternative means of re-establishing electronic or other connection will be used under such circumstances;
 - 7.6.7.4 When and how the licensee will respond to routine electronic messages;
 - 7.6.7.5 Under what circumstances the licensee and client will use alternative means of communications under emergency circumstances;
 - 7.6.7.6 Who else may have access to communications between the client and the licensee;
 - 7.6.7.7 Specific methods for ensuring that a client's electronic communications are directed only to the licensee or supervisee; and
 - 7.6.7.8 How the licensee stores electronic communications exchanged with the client.
- 7.6.8 Ensure that confidential communications stored electronically cannot be recovered and/or accessed by unauthorized persons when the licensee disposes of electronic equipment and data.
- 7.7 In the context of a face-to-face professional relationship, the following are exempt from this Section:
 - 7.7.1 Electronic communication used specific to appointment scheduling, billing, and/or the establishment of benefits and eligibility for services; and,
 - 7.7.2 Telephone or other electronic communications made for the purpose of ensuring client welfare in accord with reasonable professional judgment.

78.0 Crimes Substantially Related to the Practice of Genetic Counseling

Pursuant to 24 Del.C. §1799P(a)(6) the crimes determined by the Board to be substantially related to the practice of medicine are also determined to be substantially related to the practice of genetic counseling and may result in the denial of a license and/or disciplinary action against a licensee.

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

1799 Genetic Counselor Advisory Council

**DIVISION OF PROFESSIONAL REGULATION
2930 COUNCIL ON REAL ESTATE APPRAISERS**

Statutory Authority: 24 Delaware Code, Section 4006(a)(1) (24 **Del.C.** §4006(a)(1))
24 **DE Admin. Code** 2930

PUBLIC NOTICE**2930 Council on Real Estate Appraisers**

Pursuant to 24 **Del.C.** §4006(a)(1), the Delaware Council on Real Estate Appraisers has proposed revisions to its rules and regulations. The rules pertaining to continuing education, temporary permits and crimes substantially related to the practice of real estate appraising are proposed to be amended. A public hearing will be held on June 20, 2017 at 9:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Council on Real Estate Appraisal, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board, c/o Jennifer Witte, at the above address by July 5, 2017, in accordance with 29 **Del.C.** §10118(a).

***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/may2017/proposed/20 DE Reg 885RFA 05-01-17.pdf](http://regulations.delaware.gov/register/may2017/proposed/20%20DE%20Reg%20885RFA%2005-01-17.pdf)

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

2930 Council on Real Estate Appraisers

**DIVISION OF PROFESSIONAL REGULATION
3700 BOARD OF SPEECH/LANGUAGE PATHOLOGISTS, AUDIOLOGISTS AND HEARING AID
DISPENSERS**

Statutory Authority: 24 Delaware Code, Section 3706(a)(1) (24 **Del.C.** §3706(a)(1))
24 **DE Admin. Code** 3700

PUBLIC NOTICE**3700 Board of Examiners of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers**

Pursuant to 24 **Del.C.** §3706(a)(1), the Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers ("Board") proposes revisions to its rules and regulations.

On October 1, 2015, proposed revisions to the rules and regulations were published in the Delaware *Register of Regulations*, Vol. 19, Issue 4. Specifically, the Board's proposed amendments struck the current Section 9.2.1.4, which addresses practice by telecommunications, and added a new Section 10.0, pertaining to telepractice. The new Section 10.0 sets forth standards and requirements in order to allow licensees to engage in telepractice while protecting the public.

A public hearing was held on November 17, 2015. The Board deliberated on January 19, 2016, and based on those deliberations, made substantive revisions to the proposed rules and regulations, which were published in the August 1, 2016 *Register of Regulations*, Volume 20, Issue 2. A second public hearing took place on February 21, 2017 at 2:00 p.m., and the Board deliberated on March 21, 2017. Once again, the Board made substantive changes to the proposed rules and regulations. Therefore, the Board strikes the rules and regulations as proposed in the August 1, 2016 *Register of Regulations* and proposes revised rules and regulations attached hereto as

Exhibit A.

A public hearing has been scheduled for June 20, 2017 at 2:00 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be July 5, 2017, which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its next regularly scheduled meeting, at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to the public comment.

Nature of the Proceedings

A public hearing was held before the Board on February 21, 2017 in the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public were invited to offer comments on the proposed amendments to the rules and regulations. Members of the public were also invited to submit written comments. In accordance with 29 **Del.C.** §10118(a), the written public comment period was held open until March 8, 2017, which was 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on March 21, 2017.

Summary of the Evidence

At the February 21, 2017 hearing, the following exhibits were made part of the record:

Exhibit 1: *News Journal* Affidavit of Publication.

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

Exhibit 3: Written comments from Leia Heckman, President of the Delaware Speech Language Hearing Association, objecting to subsection 10.2.1.2, outlining that the client shall be located within the borders of the State of Delaware during the telepractice treatment session. Ms. Heckman requested a change to the language to reflect the client's legal status as a Delaware resident in order to ensure continuity of care.

Exhibit 4: October 5, 2016 letter from Allison Wils of ERISA Industry Committee. Ms. Wils stated that ERIC is a national association that advocates for large employers on health, retirement and compensation public policies. Ms. Wils noted the benefits of telepractice, including flexibility and accessibility. Ms. Wils requested that the Board strike the proposed requirement that initial evaluations be performed face to face and not through telepractice in favor of permitting licensees to exercise their professional judgment. Ms. Wils also asked that the Board strike the requirement that a patient be located within the boundaries of Delaware during treatment.

Exhibit 5: November 29, 2016 letter from the Federal Trade Commission. The FTC objected to the provision requiring that initial evaluations be performed face to face. The FTC noted the benefits of telepractice in Delaware in terms of increasing competition and access to speech and hearing services and commented that certain health services are unevenly distributed throughout the state, in particular, audiology services. The FTC stated that telepractice can be used for the diagnostic evaluation of infants who failed a newborn hearing screening test at the birth hospital. This use of telepractice could enhance quality of care and yield benefits for children with hearing loss. The FTC noted that the proposed regulations hold licensees to in-person standards of care and, with the exception of the initial evaluation, entrusts the decision whether to use telepractice to the professional judgment of the licensee. The FTC continued that the proposed restriction on telepractice could discourage the use of telepractice and noted that of the 19 states and District of Columbia with laws, regulations or policies on speech/language pathology or audiology telepractice, only three require an in-person initial evaluation. Finally, the FTC noted that Delaware's Board of Occupational Therapy Practice declined to include an initial in-person evaluation requirement.

Exhibit 6: February 21, 2017 comments to the Board, from Kathryn Tullis, PhD, Delaware Division of Public Health. Dr. Tullis noted the need for infant hearing screening and stated that often families cannot receive the required screening by three months of age due to issues related to access, particularly in Kent and Sussex counties. Dr. Tullis requested that the Board permit audiological testing on infants via telepractice.

Exhibit 7: February 21, 2017 comments from Yell Inverso, AudD, PhD, CCC-A, of Nemours/A.I. duPont

Hospital for Children. Dr. Inverso expressed concern with proposed Section 10.2.4.2 stating that initial evaluations must be performed face to face. She continued that because audiologists primarily provide diagnostic services, most evaluations are initial evaluations that may not result in the need to see the patient for further visits. Dr. Inverso stated that initial evaluations are critical, particularly for newborn infants who either did not receive a newborn hearing screening at birth or who failed the newborn screening. Further testing is needed, which is provided at only one location in Kent and Sussex counties. Families are required to travel 2-3 hours to New Castle County for the necessary screening, a trip that may not be feasible given lack of transportation or lost wages with the result of infants lost to follow up. Dr. Inverso further stated that consequences are serious for these infants in terms of potential hearing loss. She concluded that the quality of this screening is comparable to a face to face visit.

Exhibit 8: February 21, 2017 comments from J. Heather Northam, MA, CCC-SLP addressing the shortage of speech and language pathologists in Delaware. She stated that providing services by telehealth provides an excellent method for addressing shortages by “extending the geographic reach” of licensed professionals. Ms. Northam objected to inclusion of the requirement that initial evaluations be performed face to face, stating that in some situations telehealth is not appropriate. However, licensed professionals can exercise professional judgment in deciding whether either initial evaluations or subsequent care can be provided by telehealth.

In addition, testimony was presented, as follows:

Jacqueline Truluck, Director of Clinical Education at the new Graduate Program at the University of Delaware, stated that she has been embracing telehealth for her students. She understands the need to follow the Board’s licensing law. However, access is important. Telehealth is not a lesser service. She noted that Regulation 10.2.2.1 pertaining to informed consent mentions “risks and limitations.” There are benefits to telehealth too. She is training her students to be professionals who can think critically.

Mike Kurliand from Nemours noted that in terms of payment, telehealth is not treated any differently. Clinical care can be provided through telehealth at the same level. Professionals should have the decision making power with respect to the use of telehealth.

Findings and Conclusions

The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board’s rules and regulations.

Pursuant to 24 **Del.C.** §3706(a)(1), the Board has statutory authority to promulgate rules and regulations. The proposed changes seek to establish standards for the delivery of services by telepractice for the professions regulated by the Board.

During deliberations, the Board considered the testimony of witnesses and the documents marked as exhibits. The Board addressed the concerns presented through this evidence. The Board discussed the objection to proposed Section 10.2.1, which requires that the licensee shall have an active Delaware license, and during telepractice treatment, the client shall be located within the borders of the State of Delaware. Certain individuals offering public comment expressed reservations with respect to continuity of care and limiting access to needed services.

As previously stated in the Public Notice published in the August 1, 2016, *Register of Regulations*, Volume 20, Issue 2, the Board declines to amend Section 10.2.1. Care occurs where the client is physically located. A licensee who is licensed in Delaware only would be engaging in unlicensed practice if permitted to treat a client who has left Delaware and is located in another state. The Board would have no jurisdiction with respect to care provided in another state. Section 10.2.1 serves the interests of public protection by ensuring that clients located in Delaware receive care from practitioners properly licensed by the Board.

The Board also addressed the public comments regarding Section 10.2.4.2, which requires that first time evaluations be done in a face to face setting. The Board weighed the benefits and disadvantages of this requirement. On the benefits side, the practitioner may have enhanced ability to evaluate and make a treatment determination in a face to face setting. There was also discussion to the effect that an access to care problem does not mean that the Board should lessen treatment standards. However, on balance, the Board determined that the decision to use telepractice for an initial evaluation should be left to the professional judgment of the practitioner, as is the case for all further evaluations or treatment sessions. Telepractice will not be appropriate for all service recipients and individuals always have the option of declining to participate in telepractice. However, as highlighted by the members of the public presenting written comment, telepractice can result in making critical care available to underserved areas in Delaware, in particular, care related to infant hearing screening. Further, as noted by the

FTC, provision of services by telepractice has a broader impact in increasing competition and access to services. The Board, in their review of the proposed regulations, as published August 1, 2016, decided to strike “only after an initial face to face evaluation,” at the end of subsection 10.2.4.1, and subsection 10.2.4.2 in its entirety.

***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/may2017/proposed/20 DE Reg 885aRFA 05-01-17.pdf>

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

[3700 Board of Examiners of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers](#)

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 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

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, the Commission proposed for adoption revisions to the Commission's Regulations to amend rule 14 to add new rules 14.19.1 relating to multiple disqualifications and 14.20 relating to dead heats and rule 15 to add new rule 15.22 relating to the adoption by reference of the ARCI Veterinary Practices Rule, rule 15.23 relating to the adoption by reference of the ARCI Prohibited Practices Rule and rule 15.24 relating to the adoption by reference of the ARCI Out of Competition Testing Rule and to delete the reference to stanozolol in rule 15.17.1.1. Other regulations issued by the Thoroughbred Racing Commission are not affected by this Order.

2. A copy of the proposed regulations was published in the March 1, 2017 edition of the Delaware *Register of Regulations* and have been available for inspection in the office of the Commission at 777 Delaware Park Boulevard, Wilmington, Delaware 19804 during regular office hours.

3. The Commission did not receive any written comments on the proposed regulations during the 30 day period following publication of the proposed regulations on March 1, 2017.

4. THEREFORE, IT IS ORDERED, that the proposed regulations are adopted and shall become effective May 11, 2017, after publication of the final regulation in the Delaware *Register of Regulations*.

***Please note that no changes were made to the regulation as originally proposed and published in the March 2017 issue of the *Register* at page 681 (20 DE Reg. 681). Therefore, the final regulation is not being**

republished. A copy of the final regulation is available at:

1001 Thoroughbred Racing Rules and Regulations

THOROUGHBRED RACING COMMISSION

Statutory Authority: 29 Delaware Code, Section 4815(b)(4)c. (29 **Del.C.** §4815(b)(4)c.)
3 **DE Admin. Code** 1002

ORDER

1002 Delaware Jockeys' Health and Welfare Benefit Board Regulations

The Delaware Jockey's Health and Welfare Benefit Board ("Board") 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, the Board proposed for adoption revisions to the Board's Regulations to amend existing Rule 2.1.1, Rule 2.1.2.1, Rule 2.1.2.2 and Rule 2.2 and to add new Rule 2.1.1.3 and Rule 2.4. Other regulations issued by the Board are not affected by this Order.

2. A copy of the proposed regulations was published in the March 1, 2017 edition of the Delaware *Register of Regulations* and have been available for inspection in the office of the Board at 777 Delaware Park Boulevard, Wilmington, Delaware 19804 during regular office hours.

3. The Board received written comments on the proposed regulations during the 30 day period following publication of the proposed regulations on March 1, 2017. The Board considered the written comments received during its public meeting on April 13, 2017. The written comments requested the Board to reconsider the proposal to increase the number of years a jockey must ride in order to qualify for retired jockey benefits from seven to ten years. The Board considered the request and decided to adhere to the proposed ten year requirement for retired jockey coverage based on several factors including concerns for the long term solvency of the fund and a jockey's ability to meet the revised requirement by choosing to ride in Delaware rather than in another state.

4. The Board also considered a comment received during its public meeting on April 13, 2017 that existing rules 2.1.1.1 and 2.1.1.2 were rendered meaningless by the change to 100 mounts in rule 2.1.1. The Board determined that this comment was correct and approved the deletion of existing rules 2.1.1.1 and 2.1.1.2 as nonsubstantive changes in existing regulations to alter style or form or to correct technical errors in accordance with 29 **Del.C.** §10113(b)(4).

5. THEREFORE, IT IS ORDERED, that the proposed regulations are adopted and shall become effective May 11, 2017, after publication of the final regulation in the Delaware *Register of Regulations*.

1002 Delaware Jockeys' Health and Welfare Benefit Board Regulations

1.0 Introduction

- 1.1 These regulations are authorized pursuant to 3 **Del.C.** §10171 and 29 **Del.C.** §~~4815(b)(3)~~4815(b)(4)c. which established a Delaware Jockeys' Health and Welfare Benefit Board (hereinafter "the Board") and Delaware Jockeys' Health and Welfare Benefit Fund (hereinafter "the Fund").
- 1.2 The Delaware Jockeys' Health and Welfare Benefit Board shall consist of 1 member of the Delaware Thoroughbred Racing Commission, 1 member from the licensed agent under Chapter 1010 of **Title 3** or Chapter 4 of **Title 28**, 1 member of the Delaware Horsemen's Association, 1 representative from the organization that represents the majority of the jockeys who are licensed and ride regularly in Delaware, and 2 jockeys who are licensed and ride regularly in Delaware. The Chairman of the Thoroughbred Racing Commission shall serve as an *ex officio* member, and vote on matters in the event of a tie vote on any issue. All members shall be appointed by the Thoroughbred Racing Commission, and shall serve a two year term.
- 1.3 The Board shall elect a Chairperson from among the appointed members of the Board. The Chairperson shall serve a two year term and may serve consecutive terms. The Chairperson shall be the presiding officer at all meetings of the Board.

- 1.4 The Board shall administer the Fund pursuant to these regulations and other reasonable criteria for benefit eligibility.
- 1.5 A special fund of the State has been established and will be known as the "Delaware Jockeys' Health and Welfare Benefit Fund." The Fund shall consist of the proceeds transferred from the licensed video lottery agent and the purse account pursuant to 29 Del.C. ~~§4815(b)(3)~~ 4815(b)(4)c. The proceeds transferred to the Fund will be maintained in an account established in the Department of Agriculture.
- 1.6 The Fund will be invested by the State Treasurer consistent with the investment policies established by the Cash Management Policy Board. All income earned by the Fund will be reinvested in the Delaware Jockeys' Health and Welfare Benefit Fund.
- 1.7 The Board shall use the Fund to provide for jockeys who regularly ride in Delaware, health benefits for active, disabled and retired jockeys. The Board may also expend usual and customary expenses for administrative purposes from the Fund.
- 1.8 The Thoroughbred Racing Commission's Administrator of Racing will provide administrative support to the Board and keep minutes of all the meetings of the Board and preserve all records of the Board. The Board's Office will be considered as part of the Office of the Thoroughbred Racing Commission.
- 1.9 The Board can propose to amend these regulations by an affirmative vote of the majority of the Board.

2.0 Eligibility Criteria for Health Coverage

- 2.1 The Board will pay from the Fund for health coverage for active jockeys who regularly ride in Delaware, eligible retired jockeys, and disabled Delaware jockeys.
 - 2.1.1 An Active Delaware Jockey, who regularly rides in Delaware, is eligible for health insurance coverage under the fund, if the jockey had ~~fifty (50)~~ one hundred (100) mounts in a Delaware Park season at Delaware Park; and
 - ~~2.1.1.1 If the jockey's Delaware Park mounts are less than 100 in a Delaware Park season, then 50% or more of that jockey's total mounts during the regular Delaware Park season must be at Delaware Park.~~
 - ~~2.1.1.2 If the jockey's Delaware Park mounts are 100 or more in a Delaware Park season, the jockey is eligible for health insurance coverage, regardless of the amount of total mounts at other tracks.]~~
 - ~~2.1.1.3~~ 2.1.1.1] An Active Delaware Jockey who did not ride the qualifying number of mounts during a Delaware Park season due to circumstances beyond the control of the jockey may petition the Delaware Jockey's Health and Welfare Benefit Board for eligibility. The Delaware Jockey's Health and Welfare Benefit Board shall review the petition, and if in the discretion of the Board the circumstances warrant, may grant eligibility.
 - 2.1.2 A Retired Delaware Jockey is eligible for health insurance coverage under the Fund if:
 - 2.1.2.1 The Jockey was receiving health insurance coverage as a retired jockey provided by the Delaware ~~Thoroughbred Racing Commission's~~ Jockey's Health and Welfare Benefit Board health insurance plan with the Jockey's Guild on January 1, ~~2006~~ December 31, 2016; or
 - 2.1.2.2 The Jockey rode a minimum of 100 mounts at Delaware Park during the regular Delaware Park season for at least ~~seven~~ ten years.
 - 2.1.2.3 The Jockey is not licensed as a jockey in any racing jurisdiction.
 - 2.1.3 A disabled Delaware Jockey's spouse and dependents qualify for health benefits if the disabled jockey meets all of the following requirements:
 - 2.1.3.1 The jockey was an active participant in the Delaware Jockeys' Health and Welfare Fund benefit program at the time of the on-track accident that resulted in total and permanent disability; and
 - 2.1.3.2 Be deemed permanently disabled by Social Security and qualify for Medicare as a result of an injury sustained during the regular Delaware Park season on the premises of Delaware Park, and arising in the course of his/her participation as a licensed jockey.

- 2.2 ~~An active jockey, a retired jockey and/or the an eligible disabled jockey's family who meets the eligibility requirements of either an active Delaware jockey, a retired Delaware jockey, or a disabled Delaware jockey's family will be entitled to health coverage for one year beginning on the first day of the month after it can be determined calendar year following the year the eligibility requirements has have been met, and continuing until December 31st of the next calendar year.~~
- 2.3 The Board will pay from the Fund for health coverage for the dependents of active jockeys who regularly ride in Delaware, eligible retired jockeys, and disabled Delaware jockeys.
- 2.3.1 Eligibility for coverage for dependents will be determined by the company providing the insurance coverage.
- 2.4 The Fund shall provide benefits secondary to Medicare or Medicaid for any member or an enrolled dependent of a member, who is eligible for Medicare or Medicaid health benefits.

DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 932

REGULATORY IMPLEMENTING ORDER

932 Military-Connected Youth

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 932 Military-Connected Youth. This regulation is being amended to expand and clarify the meaning of "Recently Retired" to include those individuals identified as disabled veterans and those killed in action. Specifically, this amendment is in response to inquiries received from those completing the form during the first year of implementation.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on March 1, 2017, in the form hereto attached as *Exhibit "A"*. No comments were received. The Department did clarify a technical error in the Delaware Code citation in Section 1.0 of the regulation.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 932 Military-Connected Youth in order to expand and clarify the meaning of "Recently Retired" to include those individuals identified as disabled veterans and those killed in action. Specifically, this amendment is in response to inquiries received from those completing the form during the first year of implementation.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 932 Military-Connected Youth. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 932 Military-Connected Youth attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 932 Military-Connected Youth 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** 932 Military-Connected Youth amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 932 Military-Connected Youth 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 April 20, 2017.

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 20th day of April 2017.

Department of Education

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

Approved this 20th day of April 2017

State Board of Education

Teri Quinn Gray, Ph.D., President

Nina Lou Bunting, Vice President

G. Patrick Heffernan

Barbara B. Rutt (absent)

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

932 Military-Connected Youth

1.0 Purpose

This regulation outlines the process for districts and charter schools to annually identify enrolled students who are "military-connected youth." This regulation is established pursuant to 14 **Del.C. [~~Ch. 4,~~] §122(b)(28)**.

2.0 Definitions

"Military-Connected Youth" means any student having an immediate family member, including a parent, step-parent, sibling or any other person residing in the same household, who is on active duty, serving in the reserve component, or recently retired from a branch of the United States armed forces. Such branches consist of United States Army, United States Air Force, United States Marine Corps, United States Navy, National Guard, United States Coast Guard, National Oceanic and Atmospheric Administration or the United States Public Health Service.

"Recently Retired" for the purposes of this regulation, means having left military service within 18 months prior to September 30 of the current school year; identified as a disabled veteran; or killed in action.

3.0 Data Collection and Access

- 3.1 Each district and charter school shall include a military-connected identifier as part of its annual enrollment process and student information update.
- 3.2 Each district and charter school shall identify which school personnel have access to the military-connected identifier.

4.0 Use Exemptions

- 4.1 The identification of a military-connected youth shall not be used for purposes of determining school achievement, growth or performance.
 - 4.2 The identification of a military-connected youth is not a public record under Delaware's Freedom of Information Act or any other law, and shall not be made public by any person, except as permitted under the provisions of the Family Educational Rights and Privacy Act of 1974.
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OFFICE OF THE SECRETARY

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

REGULATORY IMPLEMENTING ORDER

1203 Scholarship Incentive Program (ScIP)

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to create 14 **DE Admin. Code** 1203 Scholarship Incentive Program (ScIP). This regulation is being created to provide eligibility criteria for the ScIP and to delineate the process for applying for ScIP scholarships, pursuant to 14 **Del.C.** §3411.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on March 1, 2017, in the form hereto attached as *Exhibit "A"*. Comments were received from the State Council for Persons with Disabilities (SCPD), the Governor's Advisory Council for Exceptional Citizens (GACEC), and Mr. Joseph Farris suggesting that: (1) the definition of full-time student be reconsidered as less than 12 credits may be the maximum that is appropriate for some students given various disabilities. The Department clarified the definition; (2) Section 4.1 should not be numbered as such, per the Delaware Administrative Code Drafting and Style Manual. The Department conferred with the Registrar of Regulation to confirm that the section is numbered correctly as it consists of an introductory portion followed by a list which is allowed per the Manual; (3) the regulation omitted statutory authorization to approve scholarships to be used in institutions outside Delaware that have scholarship reciprocity agreements with the state. The Department notes that currently there are no scholarship reciprocity agreements in place. However, Sections 4.1.2.2 and 4.1.2.3 outline how degree programs outside of Delaware would be considered; (4) clarity be given around information in a table found on the Delaware Higher Education Office's (DHEO) website regarding how the scholarship will be awarded in terms of need and merit. The Department notes the table is no longer being used and will be removed from the website to avoid confusion. Section 5.2 clearly outlines how the DHEO will determine the applicant's financial and academic need. Additionally, Mr. Farris commented that the eligibility requirements for graduate or professional degree programs are not inclusive of in-state colleges or universities similar to the undergraduate eligibility. The Department notes that the language in 4.1.2.3 aligns with 14 **Del.C.** §3413(3)(a-c). Also further clarification was requested for the term "in the best interest of the state" as it relates to the type of degree pursued and eligibility for an award of the ScIP. The Department believes that the term "Critical Need Area" as defined in the regulation addresses this concern.

II. Findings of Facts

The Secretary finds that it is appropriate to create 14 **DE Admin. Code** 1203 Scholarship Incentive Program (ScIP) in order to provide eligibility criteria for the ScIP and to delineate the process for applying for ScIP scholarships, pursuant to 14 **Del.C.** §3411.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to create 14 **DE Admin. Code** 1203 Scholarship Incentive Program (ScIP). Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 1203 Scholarship Incentive Program (ScIP) attached hereto as *Exhibit "B"* is hereby created. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1203 Scholarship Incentive Program (ScIP) 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** 1203 Scholarship Incentive Program (ScIP) created hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 1203 Scholarship Incentive Program (ScIP) 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 April 20, 2017. 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 20th day of April 2017.

Department of Education

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

Approved this 20th day of April 2017

1203 Scholarship Incentive Program (SciP)

1.0 Purpose

The purpose of this regulation is to provide eligibility criteria and to delineate the application process for the Scholarship Incentive Program (SciP), pursuant to 14 **Del.C.** §3411.

2.0 Definitions

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

"Academic Record" means the applicant's unofficial transcript from high school, college, or graduate school for the most recent academic year.

"Critical Need Area" means classifications where there is a shortage of persons for employment in a particular field. These classifications are posted annually on the Delaware Higher Education Office (DHEO) website and are based on federal and state reporting.

"Delaware Higher Education Office (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.

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

"Expected Family Contribution (EFC)" means a number that is calculated using the financial information an applicant provides on his or her Free Application for Federal Student Aid (FAFSA) to determine an applicant's eligibility for federal student aid.

"Free Application for Federal Student Aid (FAFSA)" means the data supplied in connection with the federal government's application for federal financial aid which DHEO uses to determine an applicant's eligibility for a SciP scholarship.

"Full-Time Student" means ~~[an undergraduate student enrolled in 12 or more college credit hours or a graduate student enrolled in 9 or more credit hours]~~ a student enrolled in a minimum of college credit hours as required by the student's college or university for full-time status. Generally, for an undergraduate program, this is a minimum of 12 credit hours per term and for a graduate program, a minimum of 9 credit hours.]

"Grade Point Average (GPA)" means the number representing the average value of the accumulated final grades earned in courses over time.

"Graduate Student" means a full-time student enrolled in a post-baccalaureate program.

"Regionally Accredited Institution" means an institution of higher education accredited by one of the following regional accreditation organizations: Accrediting Commission for Community and Junior Colleges (ACCJC), Higher Learning Commission (HLC), Middle States Commission on Higher Education (MSCHE), New England Association of Schools and Colleges (NEASC-CIHE), Southern Association of Colleges and Schools Commission on Colleges (SACSCOC), or WASC Senior College and University Commission (WSCUC).

"Resident of the State" means an applicant who meets the definition of residency as defined in 14 **Del.C.** §3402(f).

"Semester" means a half-year term in a school or college, typically lasting 15 to 18 weeks.

"Student Account Access Site" means the webpage on the DHEO's website where students can access scholarship opportunities.

"Undergraduate Student" means a full-time student at a regionally accredited college or university who has not yet earned a bachelor's or equivalent degree.

3.0 Application Acceptance and Submission Period

- 3.1 The application acceptance and submission period for the ScIP scholarship shall be posted on the DHEO's website by December 1 each calendar year.
- 3.1.1 Applications shall not be accepted outside of the posted application acceptance period under any circumstances.
- 3.1.2 Incomplete applications shall not be accepted or processed.
- 3.2 In order for an application to be considered complete, an applicant must:
- 3.2.1 Complete the FAFSA for the school year in which the scholarship is sought by the state deadline for Delaware that is posted online at FAFSA.ed.gov.
- 3.2.2 Submit the applicant's Academic Record to DHEO by mail, fax, or email by the last date of the application acceptance period.
- 3.2.2.1 Notwithstanding subsection 3.2.2 of this regulation, and unless notified otherwise by DHEO, an applicant who is currently enrolled as a senior in a Delaware public or charter school is not required to submit his or her Academic Record to DHEO by mail, fax, or email.
- 3.2.3 Submit the applicant's major and the name of the regionally accredited college or university in which the applicant will be enrolled for the school year in which the scholarship is sought through the Student Account Access Site by the last date of the application acceptance period.
- 3.2.3.1 Applicants may update their enrollment information on the Student Account Access Site through the last date of the application acceptance period.
- 3.2.3.2 A first time applicant must establish an account and provide his or her valid email address and permanent mailing address before being permitted to submit the information required in subsection 3.2.3 of this regulation.

4.0 Eligibility

- 4.1 Applicants must meet the following requirements to be eligible for the ScIP:
- 4.1.1 Be a Resident of the State; and
- 4.1.2 Be a Full-Time Student enrolled in:
- 4.1.2.1 an undergraduate degree program at a regionally accredited college or university in Delaware; or
- 4.1.2.2 an undergraduate degree program at a regionally accredited college or university outside of Delaware that is not offered by a publicly assisted college or university in Delaware; or
- 4.1.2.3 a graduate or professional education degree program at a regionally accredited college or university outside of Delaware that is not offered by a publicly assisted college or university in Delaware and in pursuit of a degree that is deemed in the best interest of the State.
- 4.1.2.3.1 For the purpose of subsection 4.1.2.3 of this regulation, an applicant who is in pursuit of a degree in either a Critical Need Area or for an occupation or industry in which there is a labor shortage as determined by DHEO based on current Delaware Department of Labor projections is in pursuit of a degree that is deemed in the best interest of the State.

5.0 Awards

- 5.1 DHEO determines the number and amount of scholarships to be awarded annually. The number and amount of awards each year will vary and is based on and subject to DHEO receiving funds appropriated for the ScIP.
- 5.1.1 If DHEO receives funds appropriated for the ScIP, DHEO may allocate up to 80% of the total amount of funds received for awards for eligible Undergraduate Students and up to 20% of the total amount of funds received for awards for eligible Graduate Students provided that DHEO receives applications from both Undergraduate and Graduate Students in a given year.

- 5.2 DHEO shall award scholarships on the basis of financial need and academic merit.
- 5.2.1 To determine an applicant's financial need, DHEO will consider:
- 5.2.1.1 the applicant's EFC;
- 5.2.1.2 the expense of attending the college or university in which the applicant is enrolled; and
- 5.2.1.3 the applicant's eligibility for Pell grants and other federal, state, or private grant assistance.
- 5.2.2 To determine an applicant's academic merit, DHEO will consider the applicant's GPA.
- 5.2.2.1 For an applicant who is currently enrolled in high school, the applicant must have an unweighted, cumulative GPA of 2.5 or higher.
- 5.2.2.2 For an applicant who is currently enrolled as an Undergraduate Student or Graduate Student, the applicant must have a cumulative GPA of 2.5 or higher.
- 5.2.2.3 Notwithstanding subsection 5.2.2 of this regulation, for an applicant who is currently enrolled as a Graduate Student in a degree program in which pass or fail grading is the only option and a GPA is not calculated, the applicant must have passing grades in his or her courses from the previous school year.
- 5.3 An award shall be used for, and not in excess of, Direct Educational Expenses.
- 5.4 An award shall not be renewable. Students must submit a new application each school year.
- 5.5 No student may receive more than 5 annual scholarships for either undergraduate or graduate study.

6.0 Award Payment

- 6.1 DHEO shall contact a recipient's college or university to verify the recipient's academic, financial, and enrollment status each Semester prior to the scholarship funds being disbursed.
- 6.2 All payments shall be disbursed directly to the eligible recipient's college or university only.
- 6.3 If a recipient withdraws from school or otherwise does not qualify for full payment at the end of the add/drop period for a semester, DHEO will apply the refund policy set forth in 14 **Del.C.** §3402(k).

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1512

REGULATORY IMPLEMENTING ORDER

1512 Issuance and Renewal of Advanced License

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in consultation and cooperation with the Department of Education, seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** §1512 Issuance and Renewal of Advanced License. The Professional Standards Board proposed to: change the definition of "Exigent Circumstances" under section 2.0 to be consistent with how the term is defined in other regulations that pertain to educator licenses; strike the definitions of "Maintenance of Proficiency" and "National Board Certified Teacher" because the terms do not appear in other sections of the regulation; change sections 3.0 and 4.0 to be consistent with the requirements of 14 **Del.C.** §1213; amend section 6.0 to clarify the requirements for extensions for exigent circumstances; and amend section 7.0 to clarify leave of absence requirements.

Notice of the proposed regulation was published in the *Register of Regulations* on March 1, 2017 in the form attached hereto as Exhibit "A." Persons who wished to present their views regarding the proposed regulation were invited to do so in writing by March 31, 2017. The Professional Standards Board did not receive any written comments.

On April 6, 2017, the Professional Standards Board considered the changes that were published. The Professional Standards Board discussed enclosing the existing number "10" in parentheses and adding the word "ten" in subsections 3.1 and 5.1. The Professional Standards Board's Chairperson determined the changes were

non-substantive. The Professional Standards Board voted to propose for adoption by the Department of Education 14 **DE Admin. Code** §1512 Issuance and Renewal of Advanced License with the non-substantive changes reflected in Exhibit "A" subject to the State Board of Education's approval.

II. Findings of Fact

The Professional Standards Board finds that it is appropriate to amend 14 **DE Admin. Code** §1512 Issuance and Renewal of Advanced License to change the definition of "Exigent Circumstances" under section 2.0 to be consistent with how the term is defined in other regulations that pertain to educator licenses; strike the definitions of "Maintenance of Proficiency" and "National Board Certified Teacher" because the terms do not appear in other sections of the regulation; change sections 3.0 and 4.0 to be consistent with the requirements of 14 **Del.C.** §1213; amend section 6.0 to clarify the requirements for extensions for exigent circumstances; and amend section 7.0 to clarify leave of absence requirements.

The Professional Standards Board believes that the proposed regulation serves to improve the quality of instruction for Delaware's children and that the amendments are designed to improve the quality of the Delaware educator workforce and to improve student performance.

III. Decision to Amend the Regulation

For the foregoing reasons, the Professional Standards Board concludes that it is appropriate to amend 14 **DE Admin. Code** §1512 Issuance and Renewal of Advanced License.

Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), the regulation attached hereto as Exhibit "A" is hereby approved.

IV. Text and Citation

The text of 14 **DE Admin. Code** §1512 Issuance and Renewal of Advanced License amended shall be in the form attached hereto as Exhibit "A" and said regulation shall be cited as 14 **DE Admin. Code** §1512 Issuance and Renewal of Advanced License in the *Administrative Code*.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Professional Standards Board pursuant to 14 **Del.C.** §§1203 and 1205(b) on April 6, 2017 and by the State Board of Education on April 20, 2017. The effective date of this Order will be ten (10) days from the date the Order is published in its final form in the *Register of Regulations*.

IT IS SO ORDERED the 20th day of April, 2017.

Department of Education

Susan Bunting, Ed.D., Secretary of Education

Approved this 20th day of April, 2017 by the State Board of Education.

Teri Quinn Gray, Ph.D., President

G. Patrick Heffernan

Nina Lou Bunting, Vice President

Barbara B. Rutt (not present)

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

1512 Issuance and Renewal of Advanced License

1.0 Content

This regulation shall apply to the issuance and renewal of an Advanced License for educators, pursuant to 14 **Del.C.** §1213 and §1214.

2.0 Definitions

The following 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.

"**Educator**" means a person licensed and certified by the State under 14 ~~Del.C. Chapter Ch.~~ 12, to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board and approved by the State Board. ~~For purposes of 14 Del.C. Chapter 12, t~~The term 'educator' does not include substitute teachers.

~~"Exigent Circumstances" The expiration of an educator's license before the end of the school year shall be considered an exigent circumstance, however the educator's license may only be extended to the end of that current school year~~ means unanticipated circumstances or circumstances beyond the educator's control, including, but not limited to, expiration of a license during the school year, serious illness of the educator or a member of his or her immediate family, activation to active military duty, and other serious emergencies which necessitate the educator's temporarily leaving active service.

"**Immorality**" means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of his or her unfitness or otherwise.

~~"Maintenance of Proficiency" means evidence of valid renewal of National Board for Professional Teaching Standards certification.~~

~~"National Board Certified Teacher" means an educator who holds National Board for Professional Teaching Standards certification.~~

"**National Board Certification**" means certification of an educator by the National Board for Professional Teaching Standards.

"**Standards Board**" means the Professional Standards Board established pursuant to 14 ~~Del.C. Chapter 12 §1201.~~

"**State**" means State of Delaware.

3.0 **Advanced License**

- 3.1 In accordance with 14 ~~Del.C. §1213,~~ the Department, upon application and receipt of the list of successful candidates provided annually by the National Board for Professional Teaching Standards, shall issue an Advanced License to any educator who receives National Board for Professional Teaching Standards certification. An Advanced License is valid for up to **[40 ten (10)]** years unless extended pursuant to 14 ~~Del.C. §1216~~ or revoked for cause, as defined in 14 ~~Del.C. §1218.~~
- 3.2 ~~The Department shall issue, upon application, an Advanced License to an educator licensed in another jurisdiction who provides verification of receipt of National Board certification. The term of the Advanced License shall be the same as the balance of the term of the educator's National Board for Professional Teaching Standards certification.~~
- 3.3 ~~The Department shall not act on an application for licensure if the applicant is under official investigation by any state or local authority with the power to issue educator licenses or certifications, where the alleged conduct involves allegations of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials, until the applicant provides evidence of the investigation's resolution. The Department may issue, upon application, an Advanced License to an educator licensed in another jurisdiction who provides verification of receipt of National Board certification.~~
- 3.4 ~~The term of the advanced license shall be the same as the balance of the term of the educator's National Board for Professional Teaching Standards certification. The Department shall not act on an application for licensure if the applicant is under official investigation by any state or local authority with the power to issue educator licenses or certifications, where the alleged conduct involves allegations of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials, until the applicant provides evidence of the investigation's resolution.~~

4.0 **RESERVED (For Equivalent Program See 14 Del.C. §1213)**

5.0 Renewal of Advanced License

- 5.1 In accordance with 14 **Del.C.** §1214, upon application, the Department shall renew an Advanced License, valid for up to an additional ~~[40 ten (10)]~~ years, to an educator who has maintained proficiency through the National Board for Professional Teaching Standards. Proficiency for National Board certification shall be deemed to have been maintained if the educator provides evidence of valid renewal of National Board for Professional Teaching Standards certification.
- 5.2 ~~The Department shall renew an Advanced License upon receipt of a list of successful Delaware candidates for renewal provided annually by the National Board for Professional Teaching Standards. The term of the renewed advanced license shall be the same as the balance of the term of the educator's National Board for Professional Teaching Standards certification.~~
- 5.3 ~~An applicant who elects not to renew with the National Board for Professional Teaching standards or who fails to meet the recertification requirements set forth by the National Board shall be issued a Continuing License. The Department shall renew an Advanced License upon application and receipt of a list of successful Delaware candidates for renewal provided annually by the National Board for Professional Teaching Standards.~~
- 5.4 ~~The term of the renewed advanced license shall be the same as the balance of the term of the educator's National Board for Professional Teaching Standards certification. An applicant who elects not to renew with the National Board for Professional Teaching standards or who fails to meet the recertification requirements set forth by the National Board shall be issued a Continuing License.~~

6.0 Extension for Exigent Circumstances

- 6.1 The Department may extend an Advanced License for a period not to exceed one (1) year, upon the license holder's showing of exigent circumstances warranting the necessity of such extension.
- 6.1.1 A license holder whose Advanced License expires during the school year may have the Advanced License extended until the last day of the fiscal year upon a request from the district superintendent or charter school administrator. This extension shall be considered an exigent circumstance and shall not exceed one (1) year in length.

7.0 Leave of Absence

- 7.1 ~~An~~ At the discretion of the hiring district or charter school, an educator may take a leave of absence of up to three years with no effect upon the validity or expiration of the Advanced License. The date of expiration of the Advanced License will be extended commensurate with the length of the leave of absence.
- 7.2 The Department may require that the educator provide documentation sufficient to establish the leave of absence.
- 7.3 An educator's Advanced License shall not be automatically extended under this section and the burden is on the educator to submit an extension request with sufficient documentation to the Department and to establish the leave of absence.

8.0 Criminal Conviction History

An applicant shall disclose his or her criminal conviction history upon application for an Advanced License, the renewal of an Advanced License, or upon the issuance of a Continuing License pursuant to ~~subsection 5-2~~ 5.4. Failure to disclose a criminal conviction history is grounds for denial or revocation of an ~~advanced license~~ Advanced License or a Continuing License and criminal prosecution as specified in 14 **Del.C.** §1219.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 3220

ORDER

3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants

NATURE OF THE PROCEEDINGS:

The Department of Health and Social Services (“Department”) / Division of Long Term Care Residents Protection (DLTCRP) initiated proceedings to establish Regulation **3220 Training and Qualifications for Certified Nursing Assistants**.

The Department’s proceedings to establish the regulation was initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 16 Delaware Code Section 1124 and 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in March 01, 2017 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2017, at which time the Department would receive information, factual evidence and public comment to the said proposed regulations.

SUMMARY OF FINAL AMENDMENT

The proposal establishes Regulation 3220 Training and Qualifications for Certified Nursing Assistants. The proposed change will establish the regulation as required by 16 **Del.C.** §3007A.

Statutory Authority

29 *Del.C.* Chap. 79, “Department of Health and Social Services.”

16 *Del.C* §3220, “Training and Qualifications for Certified Nursing Assistants.”

Background

DLCTRP is revising these regulations pursuant to 16 *Del.C* §3220.

Summary of Final Amendment

The proposal establishes regulation which detail the Department of Health and Social Services’ authority to promulgate rules and regulations related to the Training and Qualifications for Certified Nursing Assistants. The comments we received did not result in substantive revisions to the published proposed regulation. Therefore, we are publishing these regulations as final.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

The Governor’s Advisory Council for Exceptional Citizens (“GACEC”), and the State Council for Persons with Disabilities (SCPD) submitted comments and suggestions. DLTCRP has considered each comment and responds as follows:

Comment: 1. In §2.3.10, there appears to be an extraneous comma after the “CNA.”

Response: The DLTCRP disagrees; the comma is appropriate.

Comment 2: In Appendix A, Psychosocial Needs Module. Competencies Section, 6th bullet, there is a reference to “self?care”.

Response: DLTCRP agrees. Revised as recommended.

Comment 3: In Appendix A, Physical Needs Module, Competencies Section, 15th bullet from the end, there is

a reference to “self?help”.

Response: Revised as recommended.

Comment 4: The qualifications of trainers may benefit from enhancement. An RN with only 2 years of overall experience and 1 year of clinical experience (§3.2.1) and supplemental personnel (e.g. occupational, physical or speech therapist) with only 1 year of experience (§3.6.1) are authorized to serve as CNA training program instructors. These are relatively weak credentials to teach a wide array of skills to CNA trainees. While a nurse with 1 year of clinical experience in an NSF may have been exposed to many types of needs, a nurse with more years of experience would generally have greater exposure to a variety of patients and treatment modalities.

Response: The DLTCRP disagrees; the requirements/qualifications are adequate.

Comment 5: § 3.10 lists minimum equipment to be available for training. It would benefit from some additions. Appendix A, Psychosocial Skills Module, Competencies Section, includes the following skill: “Recognize and utilize augmentative communication devices and methods of nonverbal communication.” Likewise, Appendix A, Physical Needs Module, Competencies Section, includes the following skill: “Demonstrate use of assistive devices.” It would therefore make sense to include a typical AAC device in the list of minimum equipment in §3.10.

Response: The DLTCRP disagrees; the lists of equipment required include equipment that is regularly used by CNAs. Facilities must take responsibility for teaching CNAs how to use specialized instruments for residents with special needs and it becomes included in the resident-centered care plan.

Comment 6: Appendix A, Physical Needs Module, Competencies Section, includes the following recital: “Assist the resident/patient with ambulation aids, including, but not limited to cane, quad-cane, walker, crutches, wheelchair and transfer aids, such as a mechanical lift.” These forms of AT are included in §3.10 with the exception of the mechanical lift. DMMA may wish to consider adding a mechanical lift to the list of minimum equipment.

Response: The DLTCRP disagrees; mechanical lift is listed at 3.10.19.

Comment 7: Appendix A, Physical Needs Module, Competencies Section, includes the following recitals: “Assist the resident /patient with oral hygiene, including prosthetic devices” and “Administer oral hygiene for the unconscious resident/patient.” In contrast, §3.10 omits all oral hygiene devices, including water flossers, electric toothbrushes, and ultrasonic denture cleaners.

Response: The DLTCRP disagrees; minimum oral hygiene needs are addressed at 3.10.17.

Comment 8: Appendix A, Physical Needs Module, Competencies Section, includes the following recital: “Accurately measure and record with a variety of commonly used devices; blood pressure, height and weight, and temperature, pulse, respiration. Section 3.10 would benefit from the addition of a pulse oximeter.

Response: The DLTCRP disagrees; pulse oximetry is used by nurses not CNAs,-therefore, it is not included in the list of devises.

Comment 9: Per Section 2.3.7, CNAs are exempt from fulfilling recertification requirements if on active military duty in a “theater of hostilities.” This may be unduly narrow and could be expanded to cover active duty military not in a “theater of hostilities.” Furthermore, granting such individuals only 30 days to complete 24 hours of community education post deployment is seemingly too short a timeframe.

Response: The DLTCRP disagrees as the timeframe is directly in line with requirements with nurse license renewal when a nurse is on active military duty.

Comment 10: Section 3.3.2 requires instructors to have “experience teaching adults in a group classroom/ clinical setting.” There are two concerns with this provision. First, experience teaching in a classroom versus a clinical setting should not be treated as interchangeable. Second, the Division may wish to adopt a more precise experience standard than the “open ended” provision in (§3.3.2)

Response: The DLTCRP disagrees. This requirement was developed by a group of nurse educators and determined appropriate for teaching CNAs.

Comment 11: §4.3.1 could be clarified to note that it only applies to CNAs who have previously worked in a facility. Otherwise, the 80 hour orientation requirement in §4.1.1 would apparently apply.

Response: The DLTCRP disagrees. Temporary agency staff are not facility employees and may never be assigned or choose to work at a facility after only one shift.

Comment 12: §5.3.6 could be improved by clarifying an individual's option to be represented by an attorney of the individual's choice.

Response: Revised as recommended.

Decision and Effective Date

The Division of Long Term Care Residents Protection finds that the rules and regulations shall be adopted with the changes as final in the form proposed. These changes will become effective ten days following publication of this Final Order in the Delaware *Register of Regulations*.

IT IS SO ORDERED this 12th day of April 2017 by the Delaware Department of Health and Social Services.

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

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

3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Elderly and Disabled Waiver Provider Policy Manual

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Elderly and Disabled Waiver Provider Policy Manual regarding Patient Pay Calculations, *specifically, as it relates to Home and Community-Based Services Settings*. 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 February 2017 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 3, 2017 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Elderly and Disabled Waiver Provider Policy Manual, *specifically, as it relates to Home and Community-Based Services Settings*.

Statutory Authority

- 42 CFR §441.530; *Home and Community-Based Settings*
- 42 CFR §441, Subpart G; *Home and Community-Based Services, Waiver Requirements*
- §1915(c) of the Social Security Act; *Home and Community-Based Services*

Background

The Centers for Medicare and Medicaid Services (CMS) published regulations in the Federal Register on January 16, 2014, effective March 17, 2014, which changed the definition of Home and Community-Based Services (HCBS) settings. Delaware's 1115 Demonstration refers to the 1915(c) authority for HCBS services; therefore, the state must comply with these regulatory changes. The final rule provides for a five-year transition process that will allow states to implement this rule in a manner that supports continuity of services for Medicaid recipients and minimizes disruptions in service during implementation. Additionally, the HCBS Final Rule defines the qualities that must be present in all HCBS settings. It also provides expanded and more detailed guidance regarding the provision of HCBS, in particular the right for HCBS recipients to have the ability to exercise personal choice in all aspects of their care. In order to ensure compliance with all requirements of the HCBS Final Rule, DMMA has incorporated these requirements into our Long Term Care Community Services (LTCCS) Provider Policy. All states are required to be fully compliant with all of the requirements of the CMS HCBS Final Rule by March 17, 2019.

Summary of Proposal*Purpose*

The purpose of this proposed rule is to revise Delaware's Elderly and Disabled Waiver Provider Policy Manual to include all of the mandatory provisions of the Centers for Medicare & Medicaid Services (CMS) Home and Community Based Services (HCBS) Final Rule.

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 Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the revision of the Elderly and Disabled Waiver Provider Policy Manual. Comments must be received by 4:30 p.m. on March 3, 2017.

Provider Manuals Update

Also, there may be additional provider manuals that will require small updates as a result of these changes. The applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. DMAP provider manuals and official notices are available on the Delaware Medical Assistance Provider Portal website: <https://medicaid.dhss.delaware.gov/provider>

Fiscal Impact

No fiscal impact is projected as this regulation is only updating the language in Delaware's Elderly and Disabled Waiver Provider Policy Manual to reflect current practices.

Summary of Comments Received with Agency Response and Explanation of Changes

The State Council for Persons with Disabilities (SCPD) and the Governor's Advisory Council for Exceptional Citizens (GACEC) offered the following summarized observations:

The primary impetus for the revisions is to promote conformity with the CMS HCBS settings rule. Overall, the initiative mirrors CMS standards and provides helpful, affirmative guidance to MCOs and providers.

First, DMMA provided an early draft of the revised policy to the DLP in December, 2015 which prompted the DLP to share 3 pages of recommendations in January, 2016. The current draft reflects approximately nine (9) amendments based on the recommendations.

Agency Response: DMMA is grateful for the suggestions provided by the DLP in January, 2016. We thank the Council for noticing that we adopted many of the suggestions made by the DLP in this final draft of the revised manual.

Second, the Elderly and Disabled Waiver no longer exists. It was merged into the DSHP+ program in 2012. See, e.g., attached excerpt from DMMA May 18, 2011 overview. See also §1.0, deleting reference to E&D waiver. The title to the Provider Manual should therefore be revised. Consistent with §1.0, the following title could be considered: “Long Term Care Community Services (LTCCS) Provider Policy Manual” or “Long Term Care Community Services/Diamond State Health Plan Plus Provider Policy Manual”.

Agency Response: DMMA did revise the title of this manual along with its content. The correct title of the revised manual is the Long Term Care Community Services (LTCCS) Provider Policy Manual.

Third, §2.2.1 does not match the formatting in the balance of the section and is merely a non-directive statement. Consider the following substitute:

2.2.1. The LTCCS setting must be integrated and support full access of LTCCS recipients to the greater community, including:...

Agency Response: DMMA appreciates the Council’s suggestion. However, we intentionally used the exact wording from 42 CFR §441.530(a)(1)(i) in order to demonstrate our intent to comply fully with all requirements outlined in the federal regulation to CMS. §2.2 Requirements for LTCCS Provider Settings provides the context for the language contained in §2.2.1.

Fourth, §§2.2.6 and 2.2.7 recite that recipients “should” have the freedom and support to control their own schedules... and be able to have visitors of their choosing at any time. This is not co-terminus with the federal regulation, 42 C.F.R. 441.530, which recites that states “must” make available a list of supports, including the following:

Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.

Individuals are able to have visitors of their choosing at any time.

For consistency with §§2.2.2-2.2.5, DMMA may wish to use the term “must” rather than “should”, i.e., “individuals must have the freedom” and “individuals must be able to have visitors...”.

Agency Response: DMMA agrees with this important distinction in terminology in §§2.2.6-2.2.7. We will revise the identified sections in accordance with the Council’s recommendations as follows:

2.2.6 Recipients ~~should~~ must have the freedom and support to control their own schedules and activities, and have access to food at any time.

2.2.7 Recipients ~~should~~ must be able to have visitors of their choosing at any time.

Fifth, §3.1.5 requires providers to provide DHSS with access to participant records. DMMA may wish to consider adding a provision addressing access by DHSS authorized representatives to provider-owned or leased settings (e.g. day habilitation; adult day services) in which covered services are provided. This is a DHSS statutory right for licensed residential LTC facilities. See Title 16 Del.C. §1105(a)(5), 1107 and 1134(d)(11). However, day programs are not covered by the residential LTC statutes so DHSS may wish to include the right in the policy manual.

Agency Response: DMMA appreciates the Council’s suggestion; however, no changes have been made to the provider manual.

Sixth, DMMA should correct the grammar in §3.3.2.6. The section recites that the person centered planning process is required to include nine (9) listed features. All of the items in the list begin with a verb. Subsection 3.3.2.6 is inconsistent. See Delaware Legislative Drafting Manual, Rule 27, published at <http://legis.delaware.gov/docs/default-source/Publications/legislative-drafting-manual.pdf?sfvrsn=4>

Agency Response: DMMA agrees with the Council’s findings. The final regulation will be revised as follows:

3.3.2.6 Precludes providers of HCBS for the recipient, or those who have an interest in or are employed by a provider of HCBS for the recipient, from providing case management or developing the person-centered service plan.

Seventh, in §3.4.2, DMMA should consider replacing “authority” with “authorities” since there may be more

than 1 entity to which critical incidents must be reported. For example, the DHSS PM 46 policy, §V.K.2 (Rev. 8/16) contemplates covered entities reporting to both the police and DHSS for conduct amounting to a crime. There is also overlapping jurisdiction between the Ombudsman (§3.4.2.2.2) and DLTCRP (§3.4.2.2.3).

Agency Response: DMMA agrees with the Council's suggested revision. The final regulation will be revised as follows:

3.4.2 All parties have the responsibility to report critical incidents in accordance with State laws, rules, regulations and agency policy memorandums to the appropriate investigative authorities immediately upon discovery.

Eighth, §§3.4.2.2.3 and 3.4.2.2.4 merit review. I understand that licensing of acute and outpatient health care was switched when the DPH OHFLC was placed under the DLTCRP effective July 1, 2016. See <http://www.dhss.delaware.gov/dhss/dltdcrp/>

Agency Response: DMMA thanks the Council for this comment. The final regulation will be revised as follows:

3.4.2.2.3 Division of Long Term Care and Residents Protection (DLTCRP) for recipients receiving services in a long term care facility and there is an incident of abuse, neglect, or mistreatment, and/or financial exploitation. DLTCRP is also the designated agency to regulate acute and outpatient health care facilities/agencies and to receive Critical Incidents occurring in these facilities involving abuse, neglect or harassment; hospital, hospice seclusion and restraint deaths. Reports of suspected abuse, neglect, and exploitation of recipients who are children residing in pediatric nursing facilities must also be reported to DLTCRP.

3.4.2.2.4 Office of Health Facilities Licensing and Certification (OHFLC) is the designated agency to regulate acute and outpatient health care facilities/agencies and receives Critical Incidents occurring in these facilities involving abuse, neglect or harassment; hospital, hospice seclusion and restraint deaths.

Ninth, DMMA may wish to add a reference to the requirement of critical incident reporting concerning patients of psychiatric hospitals and residential centers to the Protection & Advocacy agency pursuant to 16 **Del.C.** §5162. See also DHSS PM 46 policy, §V.K.2 (Rev. 8/16).

Agency Response: DMMA thanks the Council for this suggestion. We feel that the content of 3.4.2 provides the regulatory framework to cover critical incident reporting for LTCCS providers in accordance with all State laws, rules, regulations, etc.

Tenth, §6.2, entitled "Available Services", omits some services included in the MCO contract, including minor home modifications, home-delivered meals, transition services, and nutritional supplements. Each of these services enhance community-based living as much as the listed personal emergency response system. DMMA should consider adding the omitted services.

Agency Response: DMMA appreciates the Council's suggestion; however, no changes have been made to the provider manual.

Eleventh, §6.2.1 and 6.2.2 contain specific references to additional services for individuals with brain injuries in the contexts of adult day services and attendant services:

Members with an acquired brain injury (ABI) or traumatic brain injury (TBI) will receive additional prompting and/or intervention as needed, and as indicated in the person-centered service plan.

Agency Response: DMMA thanks the Council for this observation. This language is consistent with requirements on person-centered planning detailed elsewhere in this policy manual and extensively in our MCO contract.

Councils endorse the proposed regulation.

Agency Response: DMMA thanks the Council for its endorsement of the proposed regulation.

Thank you again for your review and feedback related to the proposed revisions to the Long Term Care

Community Services (LTCCS) Provider Policy Manual. DMMA is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the February 2017 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Elderly and Disabled Waiver Provider Policy Manual, specifically, *as it relates to Home and Community-Based Services Settings*, is adopted and shall be final effective May 11, 2017.

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

DMMA FINAL ORDER APA 17-016 REVISION

(Break in Continuity of Sections)

2.0 ~~Program/Contractual Responsibilities~~ Qualities of LTCCS Provider Settings

(Break in Continuity Within Section)

2.2 ~~Division of Services for Aging & Adults with Physical Disabilities (DSAAPD) Responsibilities~~ Requirements for LTCCS Provider Settings

(Break in Continuity Within Section)

2.2.6 Recipients ~~[should]~~ **must** have the freedom and support to control their own schedules and activities, and have access to food at any time.

2.2.7 Recipients ~~[should]~~ **must** be able to have visitors of their choosing at any time.

2.3 ~~Responsibilities of Both Parties~~ Requirements Specific to Provider-Owned or Controlled Residential Settings

(Break in Continuity Within Section)

3.0 ~~Program Eligibility Criteria~~ Contractual Responsibilities

(Break in Continuity Within Section)

3.3 MCO Responsibilities

3.3.1 Contracted MCOs agree to abide by all terms and conditions set forth in their contract with DMMA.

3.3.2 In accordance with 42 CFR §441.301(c)(1), the MCO is required to utilize a person-centered planning process for all LTCCS recipients. The LTCCS recipient will lead the person-centered planning process, where possible, with the LTCCS recipient's representative having a participatory role, as needed and as defined by the recipient. The person-centered planning process:

(Break in Continuity Within Section)

3.3.2.6 ~~[Providers of HCBS for the recipient, or those who have an interest in or are employed by a provider of HCBS for the recipient must not provide case management or develop the person-centered service plan. Precludes providers of HCBS for the recipient, or those who have an interest in or are employed by a provider of HCBS for the recipient, from providing case management or developing the person-centered service plan.]~~

(Break in Continuity Within Section)

3.4 Responsibilities of All Parties

3.4.1 Formal communication concerning the contract, program activities, treatment methods, and reports, etc. will be made via written correspondence between DMMA, the MCO and the LTCCS provider.

3.4.2 All parties have the responsibility to report critical incidents in accordance with State laws, rules, regulations and agency policy memorandums to the appropriate investigative **authority**

FINAL REGULATIONS

authorities] immediately upon discovery. Reporting responsibilities include the requirement to contact 9-1-1 in emergency or potentially life-threatening situations involving HCBS recipients and to report crimes committed against HCBS recipients.

(Break in Continuity Within Section)

3.4.2.2 Critical incidents will be reported to the appropriate agency in accordance with the following:

(Break in Continuity Within Section)

3.4.2.2.3 Division of Long Term Care and Residents Protection (DLTCRP) for recipients receiving services in a long term care facility and there is an incident of abuse, neglect, or mistreatment, and/or financial exploitation. [DLTCRP is also the designated agency to regulate acute and outpatient health care facilities/agencies and to receive Critical Incidents occurring in these facilities involving abuse, neglect or harassment; hospital, hospice seclusion and restraint deaths.] Reports of suspected abuse, neglect, and exploitation of recipients who are children residing in pediatric nursing facilities must also be reported to DLTCRP.

3.4.2.2.4 ~~Office of Health Facilities Licensing and Certification (OHFLC) is the designated agency to regulate acute and outpatient health care facilities/agencies and receives Critical Incidents occurring in these facilities involving abuse, neglect or harassment; hospital, hospice seclusion and restraint deaths.~~

~~3.4.2.2.5~~ The Division of Family Services (DFS): is the designated agency to receive, investigate, and respond to Critical Incidents of abuse or neglect of children living in the community.

*Please note that no additional changes were made to the regulation as originally proposed and published in the February 2017 issue of the *Register* at page 612 (20 DE Reg. 612). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

Elderly and Disabled Waiver Provider Policy Manual

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

ORDER

Medicaid Eligibility- Out-of-State Former Foster Youth

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance initiated proceedings to amend the Title XIX Medicaid State Plan and Delaware Social Services Manual (DSSM), specifically, to extend Medicaid Coverage for Out-of-State Former Foster Youth. 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 1, 2017 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2017 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan and Delaware

Social Services Manual (DSSM), specifically, *to extend Medicaid Coverage for Out-of-State Former Foster Youth*.

Statutory Authority

- Patient Protection and Affordable Care Act (Pub. L. No. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152)), together known as the *Affordable Care Act*
- §1902(a)(10)(ii)(XX) of the Social Security Act; *Optional eligibility group*
- §42 CFR 435.218; *Individuals with MAGI-based income above 133 percent FPL*
- §1115 of the Social Security Act; *Demonstration Projects*

Background

Title IV-E foster care youth have been a mandatory Medicaid eligibility category since the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96-272). On March 23, 2010, the Affordable Care Act (ACA) was signed into law, making a number of changes to Medicaid eligibility effective, January 1, 2014. The ACA includes many provisions designed to expand and streamline Medicaid eligibility, such as the option to extend coverage to a new adult group of non-disabled, non-elderly citizens with income under 133 percent of the Federal Poverty Level (FPL). Additionally, to further the overall goal of the ACA to expand health coverage, it included a new provision to allow youth to maintain coverage under their parents' or guardians' health insurance plan until age 26 (to the extent that such plan extends coverage to dependents). Section 2004 of the ACA added a new mandatory Medicaid eligibility group at section 1902(a)(10)(A)(i)(IX) of the Act to provide a parallel opportunity for former foster care youth to obtain Medicaid coverage until age 26 from the state responsible for the individual's foster care.

On January 22, 2013, the Center for Medicaid Services (CMS) issued a notice of proposed rulemaking that proposed to implement the former foster care eligibility group in regulations at 42 CFR 435.150. As part of that provision, CMS proposed to provide states the option to cover youth who were in foster care under the responsibility of another state, and enrolled in Medicaid, upon turning 18 or "aging out" of foster care in the other state. On November 21, 2016, CMS published the final rule clarifying that the Department of Health and Human Services (HHS) had determined that the state option to cover youth who were in foster care under the responsibility of another state was not available under section 1902(a)(10)(A)(i)(IX) of the Act. That section provides that, to be eligible under this group, an individual must have been "in foster care under the responsibility of the state" and to have been "enrolled in the state plan under this title or under a waiver of the plan while in such foster care [.]". Because the provision requires coverage specifically for youth in foster care under the responsibility of "the state"—not "a" or "any" state—CMS does not believe the provision provides states with the option to cover youth who were not under the responsibility of the state while in foster care under the former foster care eligibility group.

However, states can provide coverage to former foster care youth who were in Medicaid and foster care in a different state with income up to 133 percent of the federal poverty level (FPL) under the new adult group identified in the ACA. Additionally, states can use 1115 demonstration authority to provide coverage for former foster care youth who were in foster care under the responsibility of other states and have income higher than 133 percent of the FPL. States that provide coverage under the new adult group have the option of covering former foster care youth with MAGI-based income above 133 percent of the FPL, under the eligibility group described in section 1902(a)(10)(ii)(XX) of the Act and implementing regulations at 42 CFR 435.218 (the "XX" group). States would receive their standard Federal Medical Assistance Percentage (FMAP) for coverage of the "XX" group.

Summary of Proposal

Delaware currently provides coverage to former foster youth that have aged out of Delaware's foster care system. This proposed regulation will allow DMMA to extend coverage to former foster care children who had been enrolled in Medicaid and in foster care under the responsibility of another state at the time they "aged out" of the foster care system.

Purpose

If implemented as proposed, this regulation will accomplish the following, effective May 21, 2017:

- Make changes to the Medicaid State Plan, Modified Adjusted Gross Income (MAGI)-Based Eligibility Groups, form S33 and S50, to include individuals who were in foster care and enrolled in Medicaid in any state at the time they turned 18 or aged out of the foster care system.

- Add a provision to DSSM 15550 – Former Foster Children Group to include individuals who were in foster care and enrolled in Medicaid in any state at the time they turned 18 or aged out of the foster care system.

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 Medicaid and Medical Assistance (DMMA) 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 March 31, 2017.

Centers for Medicare and Medicaid Services Review and Approval

The provisions of this state plan amendment (SPA) relating to coverage and payment methodology for services are subject to approval by the Centers for Medicare and Medicaid Services (CMS). The draft SPA page(s) may undergo further revisions before and after submittal to CMS based upon public comment and/or CMS feedback. The final version may be subject to significant change.

Provider Manuals Update

Also, upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. DMAP provider manuals and official notices are available on the DMAP website: <http://www.dmap.state.de.us/home/index.html>

Fiscal Impact Statement

In state fiscal year 2016 there were approximately 150 former foster youth that aged out of Delaware's foster care system that were eligible for Medicaid under the ACA. Extending this rule to former foster youth from other states would most likely result in very few new clients and therefore won't have a significant fiscal impact.

Summary of Comments Received with Agency Response and Explanation of Changes

The State Council for Persons with Disabilities (SCPD) and Governor's Advisory Council for Exceptional Citizens (GACEC) offered the following summarized observations:

A disproportionate number of foster care youth have disabilities and transition to adulthood is often difficult. The availability of Medicaid to this constituency would be a significant support and is similar to the option of youth who remain on their parent's private health insurance through age 26.

The SCPD and the GACEC endorse the regulation.

Agency Response: DMMA appreciates the endorsement.

DMMA is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the March 2017 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XIX Medicaid State Plan and Delaware Social Services Manual (DSSM), specifically, to extend Medicaid Coverage for Out-of-State Former Foster Youth, is adopted and shall be final effective May 21, 2017.

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

**DMMA FINAL ORDER #17-017a
REVISION**

[Eligibility Groups- Mandatory Coverage: Former Foster Care Children](http://regulations.delaware.gov/register/may2017/final/DMMA-17-017a)
(<http://regulations.delaware.gov/register/may2017/final/DMMA-17-017a>)

**DMMA FINAL ORDER #17-017b
REVISION**

[Eligibility Groups- Options for Coverage: Individuals above 133% FPL](http://regulations.delaware.gov/register/may2017/final/DMMA-17-017b)
(<http://regulations.delaware.gov/register/may2017/final/DMMA-17-017b>)

**DMMA FINAL ORDER #17-017c
REVISION**

15550 Former Foster Children Group

This section describes the eligibility requirements for the Former Foster Children Group. This group is established through the enactment of the Affordable Care Act of 2010. Coverage under this group is effective January 1, 2014.

15550.1 Former Foster Children Group General Eligibility Requirements

An individual must meet the general eligibility requirements in Section 14000.

15550.2 Technical Eligibility

An individual must:

- a) 15550.2.1 be age 18 or older and under age 26; and
- b) 15550.2.2 have been in foster care under the responsibility of the Delaware Department of Services for Children, Youth, and Their Families (DSCYF) and enrolled in Delaware Medicaid upon attaining age 18 or older (up to age 21); or
- 15550.2.3 Have been in foster care and on Medicaid in any state at the time they turned 18 or aged out of the foster care system; and
- e) 15550.2.4 not be eligible under the following mandatory groups – Parent/Caretaker Relative, Transitional, Prospective, Pregnant Women, Children, and Supplemental Security Income (SSI).

15550.3 Financial Eligibility

There is no income or resource test for this group.

**DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
1400 BOARD OF ELECTRICAL EXAMINERS**

Statutory Authority: 24 Delaware Code, Section 1406(a)(1) (24 **Del.C.** §1406(a)(1))
24 **DE Admin. Code** 1400

ORDER

1400 Board of Electrical Examiners

On February 1, 2017 the Delaware Board of Electrical Examiners published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 20, Issue 8. The notice indicated that written comments would be accepted by the Board, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers,

a public hearing was held on March 1, 2017 at a regularly scheduled meeting of the Board of Electrical Examiners to receive verbal comments regarding the Board's proposed amendments to its regulations. The rules pertaining to crimes substantially related to the practice of electrical services are proposed to be amended.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

At the time of the deliberations, the Board considered the following documents:

Board Exhibit 1- Affidavit of publication of the public hearing notice in the *News Journal*; and

Board Exhibit 2- Affidavit of publication of the public hearing notice in the *Delaware State News*.

There was no verbal testimony presented at the public hearing on March 1, 2017. No written comments were received by the Board.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Board during the written public comment periods, or at the public hearing.
3. Pursuant to 24 **Del.C.** §1406(a)(1) the Board has the statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. Having received no public comments, the Board finds no reason not to amend the regulations as proposed.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, pursuant to 24 **Del.C.** §1406(a)(1) and for the reasons set forth above, the Board does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth in the *Delaware Register of Regulations* on February 1, 2017. The effective date of this Order is ten days from the date of its publication in the *Delaware Register of Regulations*, pursuant to 29 **Del.C.** §10118(g).

The new regulations are attached hereto as Exhibit A.

SO ORDERED this 5th day of April, 2017.

DELAWARE BOARD OF ELECTRICAL EXAMINERS

James Howard, Sr.

Robert MacLennan

Nathan Schreppler

Thomas Hartley

Timothy Johns (absent)

Richard Millar (absent)

Michael Travers

Kevin Urso

David Hollen

*Please note that no changes were made to the regulation as originally proposed and published in the February 2017 issue of the *Register* at page 621 (20 DE Reg. 621). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1400 Board of Electrical Examiners

DIVISION OF PROFESSIONAL REGULATION
EXAMINING BOARD OF PHYSICAL THERAPISTS AND ATHLETIC TRAINERS
Statutory Authority: 24 Delaware Code, Section 2604(a)(1) (24 **Del.C.** §2604(a)(1))
24 **DE Admin. Code** 2600

ORDER

2600 Examining Board of Physical Therapists and Athletic Trainers

After due notice in the Delaware *Register of Regulations* and two Delaware newspapers, a public hearing was held on January 24, 2017 at a scheduled meeting of the Delaware Examining Board of Physical Therapists and Athletic Trainers ("Board") to receive comments regarding the Board's proposed revisions to its rules and regulations.

The Board proposed revisions to Section 9.0 to clarify that foreign-educated applicants must demonstrate that their education is substantially equivalent to the current first professional degree in the United States. Section 11.0, pertaining to licensure reactivation and reinstatement, is amended to add requirements for ethics, continuing education and current CPR certification. Individuals seeking reinstatement will also be required to undergo a criminal background check.

Section 15.0, regarding advanced training requirements, has been revised. Currently, in many athletic venues, there is a shortage of on-the-field coverage by athletic trainers. To address this shortage, subsection 15.3 provides for three categories of physical therapists which may provide on-the-field coverage: a physical therapist with Sports Physical Therapy Specialist ("SCS") certification; a physical therapist pursuing SCS certification through a residency program; or a physical therapist pursuing SCS certification through supervised hours. Subsection 15.3 includes supervision and training requirements to ensure that on-the-field coverage is provided by qualified health care professionals. Specifically, physical therapists pursuing SCS certification must receive direct supervision for at least the first 100 hours of on-the-field care and indirect supervision thereafter. Physical therapists pursuing SCS certification through supervised hours, must be directly supervised at all times.

Finally, Section 17.0 has been amended to delete a number of crimes which the Board determined are not substantially related to the practice of physical therapy and athletic training. Certain other substantially related crimes are added pursuant to changes to the criminal code pertaining to crimes against children and changes to the Uniform Controlled Substances Act.

The proposed changes to the rules and regulations were published in the *Register of Regulations*, Volume 20, Issue 7, on January 1, 2017. Notice of the January 24, 2017 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 February 8, 2017, 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on March 15, 2017.

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: Undated letter from Tara Manal from the University of Delaware.

Board Exhibit 4: February 2, 2017 letter from Denise Fandel of the Board of Certification.

Board Exhibit 5: February 8, 2017 letter from Scott Sailor of the National Athletic Trainers Association.

Board Exhibit 6: February 8, 2017 letter from Tara Manal of the University of Delaware.

Board Exhibit 7: March 15, 2017 letter from Angela Shuman of the American Physical Therapy Association.

In addition, at the January 24, 2017 hearing, Dr. Cara Gomez testified in support of the proposed subsection 15.3. Dr. Gomez commented that the 100 hours of supervision was prudent and reasonable. She noted that sideline care is different and involves all different conditions and multiple athletes with the need for rapid decisions. She concluded that she approved of the words and intent.

Findings of Fact and Conclusions

Pursuant to 24 Del.C. §2604(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.

In deliberating on the proposed revisions and the submitted comments, the Board first considered Exhibit 3, a letter from Tara Manal from the University of Delaware, suggesting that the Board expand the list of collision sports in subsection 15.3.1.2. The Board concludes that it did not intend to create a finite list of sports with respect to on-the-field care and inadvertently omitted the phrase "sports such as..." The Board therefore makes a non-substantive revision to subsection 15.3.1.2 as reflected in Exhibit A. In addition, Ms. Manal noted that the American Board of Physical Therapy Specialties renders specialization certification, not the American Physical Therapy Association. The Board agrees to correct that non-substantive error in subsection 15.3.1.1, as reflected in Exhibit A.

The Board next considered Exhibit 4, a February 2, 2017 letter from Denise Fandel of the Board of Certification requesting amendment to Sections 7.0, 8.0 and 10.0 of the regulations with respect to the references to her organization. She explained that the regulations reflect an incorrect acronym. The Board agrees to make those non-substantive changes as reflected in Exhibit A.

Ms. Mandel also requested that the Board amend section 15.0 to require that physical therapists pursuing sports physical therapy certification through a residency program be subject to direct supervision at all times as is proposed for physical therapists pursuing certification through supervised hours. The Board declines to adopt this suggested change on the basis that a residency program has a formal curriculum and competency standards which is not the case for physical therapists pursuing certification through supervised hours. There are sufficient protections in place to permit physical therapists pursuing certification through a residency program to practice without direct supervision after 100 hours.

The Board next considered Exhibit 5, a February 28, 2017 letter from Scott Sailor of the National Athletic Trainers' Association. Mr. Sailor expressed the same concerns as those expressed by Ms. Fandel as to supervision of physical therapists pursuing certification through residency. The Board declines to amend the regulations as requested by Mr. Sailor on the basis discussed herein.

The Board next considered Exhibit 6, a February 8, 2017 letter from Tara Manal of the University of Delaware concerning subsection 9.1.1, pertaining to foreign educated physical therapist applicants. Ms. Manal had questions regarding which coursework evaluation tool would be used for review of applications from individuals educated outside of the United States. Ms. Manal posited a scenario where an individual received a physical therapy degree outside of the United States in 1990, was licensed in Texas in 1994 and is now moving to Delaware. As written, subsection 9.1.1 does not indicate whether the individual would need to meet current standards for a physical therapy license in Delaware, or the standards applicable in 1990 or 1994. The Board agrees that subsection 9.1.1 requires further review and discussion and determines that the proposed revisions will not be adopted at this time.

The Board next considered Exhibit 7, a letter from Angela Shuman of the American Physical Therapy Association stating that no other state requires certification or additional training for physical therapists to provide care to injured athletes outside of a clinical setting. The Board disagrees with Ms. Shuman and finds that the proposed regulation changes imposing advanced training will provide needed protections for the public.

The Board, therefore, adopts the amendments to the regulations as proposed, with the exception of the proposed revisions to subsection 9.1.1, which are not accepted, and with the non-substantive changes noted herein as set forth in Exhibit A.

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 order as Exhibit A.

IT IS SO ORDERED this 28th day of March 2017 by the Delaware Examining Board of Physical Therapists and

Athletic Trainers.

Jeffrey Schneider, Professional Member,
Chairperson (absent)
Samuel Sullivan, Professional Member,
Vice Chairperson
Robert Price, Professional Member, Secretary
Julia Knowles, Professional Member
Angela Smith, Professional Member

Amy Blansfield, Professional Member
Kimberly Lewis, Professional Member
Prameela Kaza, Public Member
Andrea Godfrey, Public Member
Monique Johns, Public Member

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

2600 Examining Board of Physical Therapists and Athletic Trainers

DIVISION OF PROFESSIONAL REGULATION

2700 BOARD OF REGISTRATION FOR PROFESSIONAL LAND SURVEYORS

Statutory Authority: 24 Delaware Code, Section 2706(a)(1) (24 Del.C. §2706(a)(1))
24 DE Admin. Code 2700

ORDER

2700 Board of Registration for Professional Land Surveyors

On January 1, 2017 the Delaware Board of Professional Land Surveyors published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 20, Issue 7. The notice indicated that written comments would be accepted by the Board, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on February 16, 2017 at a regularly scheduled meeting of the Board of Professional Land Surveyors to receive verbal comments regarding the Board's proposed amendments to its regulations.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

At the time of the deliberations, the Board considered the following documents:

Board Exhibit 1- Affidavit of publication of the public hearing notice in the *News Journal*; and

Board Exhibit 2- Affidavit of publication of the public hearing notice in the *Delaware State News*.

There was no verbal testimony presented at the public hearing on February 16, 2017. No written comments were received by the Board.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Board during the written public comment periods, or at the public hearing.
3. Pursuant to 24 **Del.C.** §2706(a)(1) the Board has the statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. Having received no public comments, the Board finds no reason not to amend the regulations as proposed.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, pursuant to 24 **Del.C.** §2706(a)(1) and for the reasons set forth above, the Board does

hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth in the Delaware *Register of Regulations* on January 1, 2017. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 **Del.C.** §10118(g).

The new regulations are attached hereto as Exhibit A.

SO ORDERED this 16th day of March, 2017.

DELAWARE BOARD OF PROFESSIONAL LAND SURVEYORS

James Bielicki, Jr., PLS

Franco R. Bellafante, PLS

Charles Adams, Jr., PLS

Lakiyah Chambers (absent)

Kelly Katz, PLS

Carla Cassell-Carter

***Please note that no changes were made to the regulation as originally proposed and published in the January 2017 issue of the *Register* at page 536 (20 DE Reg. 536). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

2700 Board of Registration for Professional Land Surveyors

DIVISION OF PROFESSIONAL REGULATION

5100 BOARD OF COSMETOLOGY AND BARBERING

Statutory Authority: 24 Delaware Code, Section 5106(a)(1) (24 **Del.C.** §5106(a)(1))
24 **DE Admin. Code** 5100

ORDER

5100 Board of Cosmetology and Barbering

After due notice in the Delaware *Register of Regulations* and two Delaware newspapers, a public hearing was held on February 27, 2017 at a scheduled meeting of the Delaware Board of Cosmetology and Barbering ("Board") to receive comments regarding the Board's proposed revisions to its rules and regulations.

The proposed revisions amend the requirements for temporary permits and apprenticeship licenses. Curricula is added for apprenticeships, for both cosmetologists and barbers, for the 3,000-hour program and the 1,500-hour merged program as set forth in 24 **Del.C.** §§5107(a)(3)(c) and (f). Finally, the new Section 18.0 is amended to delete crimes not substantially related to the practice of the professions regulated by the Board thereby removing unnecessary barriers to licensure.

The proposed changes to the rules and regulations were published in the *Register of Regulations*, Volume 20, Issue 8, on February 1, 2017. Notice of the February 27, 2017 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 March 14, 2017, 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on March 27, 2017.

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.

There was no public comment presented in the form of testimony at the February 27, 2017 hearing. Further, no written comment was submitted either before the hearing or during the 15 day period following the hearing.

Findings of Fact and Conclusions

Pursuant to 24 **Del.C.** §5106(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. There was no verbal testimony or written comment submitted. In these circumstances, the Board finds no reason to amend 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 proposed. 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 order as Exhibit A.

IT IS SO ORDERED this 27th day of March 2017 by the Delaware Board of Cosmetology and Barbering.

Derrick Reed, Professional Member, President

Gina Marsilli, Professional Member, Vice President

Kathy Sherwin, Public Member, Secretary

Hillary Reid, Professional Member (absent)

Gregory Myers, Professional Member

Tien Le, Professional Member

Domonique Vicks, Professional Member

Linda Wilson, Professional Member (absent)

Victor Kennedy, Public Member

Sherry Wilkins, Public Member (absent)

***Please note that no changes were made to the regulation as originally proposed and published in the February 2017 issue of the *Register* at page 624 (20 DE Reg. 624). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

5100 Board of Cosmetology and Barbering

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL****DIVISION OF WASTE AND HAZARDOUS SUBSTANCES
SOLID AND HAZARDOUS WASTE MANAGEMENT SECTION**

Statutory Authority: 7 Delaware Code, Chapter 63 (7 Del.C. Ch. 63)

NOTICE**1370 Regulations Governing the Location of Hazardous Waste Storage, Treatment, and Disposal Facilities**

***Please note that the following regulation was adopted prior to the effective date of the current Administrative Procedures Act. The following is presented for informational purposes only.**

Background: The Regulations Governing the Location of Hazardous Waste Storage, Treatment, and Disposal Facilities were adopted August 1, 1991, by Secretary's Order #91-HW-13, and subsequently amended October 22, 1996, by Secretary's Order #96-A-0022. The regulations were developed with public input through the use of an advisory committee and a series of public workshops, as well as Public Hearings held on September 19, 1989 for the development of the regulation and on June 19, 1996 for the amendment. Legal advertisements were placed to announce the adoption of the regulation and placed again to announce the approval of the amendments. For unknown reasons the regulation and subsequent amendments were never incorporated into the Administrative Code during the period of transition in the latter part of the 1990s to the current APA system. Therefore, this notice serves to announce that the Regulations Governing the Location of Hazardous Waste Storage, Treatment, and Disposal Facilities will be added to Title 7 of the Administrative Code. Currently there are no hazardous waste management facilities in Delaware.

1370 Regulations Governing the Location of Hazardous Waste Storage, Treatment, and Disposal Facilities

August 1, 1991

Amended October 22, 1996

1.0 Scope and Applicability

Pursuant to 7 Del.C. Ch. 63 Sections 6303(a)(4) and 6305(a)(15), the Department is authorized to develop and promulgate criteria and regulations governing the location of hazardous waste management facilities. This regulation is based on the premise that facilities should be located in areas which minimize the consequences of an unintentional release on public health, safety, welfare, and the environment. The purpose of the location criteria, therefore, is to provide an additional margin of safety beyond the protection already afforded by the design, operational, and monitoring requirements for hazardous waste management facilities contained in the Delaware Regulations Governing Hazardous Waste. The approval of location does not relieve the applicant from compliance with all other applicable federal, state, or local rules and regulations. Except as provided for in Section 6.0 of this regulation, all hazardous waste treatment, storage, or disposal facilities must receive location approval from the Secretary prior to issuance of a hazardous waste permit or written approval for a new unit, or prior to the alteration of an existing unit such that the alterations would require a major modification or a Class 3 modification per Delaware Regulations Governing Hazardous Waste, Sections 122.41 and 122.42.

2.0 Definitions

"**Aquifer**" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs.

"**Board**" means the Environmental Appeals Board.

"**Boiler**" means a device which meets the definition of boiler in Section 260.10 of the Delaware Regulations Governing Hazardous Waste.

"Carbonate Bedrock Areas" means those areas in the Piedmont Province where the first bedrock stratum encountered below the land surface is limestone or dolomite.

"Carbonate Bedrock Drainage Areas" means the surface of the land in the Piedmont Province draining to the subcrop of limestone or dolomite rock.

"Cautionary Criteria" means standards which identify the preferred location of a hazardous waste management facility or unit in relation to onsite and nearby social, environmental, or geographic characteristics.

"Critical Habitat for Rare and Endangered Species" means areas in public or private ownership which the Secretary has determined to provide sole or significant support to populations of rare or endangered plant or animal species.

"Department" means the Department of Natural Resources and Environmental Control.

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

"Drinking Water Well" means any well which is used to supply potable water.

"Emergency Response Facility" means fire control and emergency medical services.

"Erosion and Mass Movement" means the relative degree to which the site will be vulnerable to the forces of erosion, landslide, soil creep, or any other mass movements which might breach or carry wastes away from a facility.

"Exclusionary Criteria" means standards which identify environmental, geographic or physical characteristics of lands where hazardous waste management facilities or units are prohibited.

"Existing Hazardous Waste Management Facility" means a facility which has satisfied the requirements of 7 Del.C. Ch. 6307 and the regulations promulgated pursuant to this section on or before the effective date of this regulation.

"Facility" or **"Hazardous Waste Management Facility"** means all contiguous land, and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).

"Flood Hazard Areas" means those land areas adjacent to open coast, coastal sounds, estuaries, lakes, rivers, and streams which are prone to flooding from storms of a specified annual probability of occurrence. Two such flood hazard areas are used herein:

"The 100-year Flood Hazard Area" means the land area inundated by a flood which has a 1% annual probability of occurrence as contained on the flood insurance rate maps published by the Federal Emergency Management Agency.

"The 500-year Flood Hazard Area" means the land area inundated by a flood which has a 0.2% annual probability of occurrence.

"Freshwater Wetlands" are those wetlands defined in accordance with the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands" (January 1989, or as amended). They include those non tidal freshwater wetlands and those freshwater tidal wetlands not mapped under Delaware's Wetlands Act of 1973, (Title 7 Del.C. Ch. 66).

"Hazardous Waste" means a hazardous waste as defined in Section 261.3 of the Delaware Regulations Governing Hazardous Waste.

"Industrial Furnace" is defined in accordance with the definition of industrial furnace in Section 260.10 of the Delaware Regulations Governing Hazardous Waste.

"Immobile Resident Population" means individuals residing in public or private institutions such as prisons, hospitals, nursing homes, and mental health care facilities and who cannot be easily evacuated in case of an emergency.

"Inground Tank" means a device meeting the definition of "tank" whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

"Land Placement Facility" means any facility involving the placement of hazardous waste into or onto the land and which is designed and operated to contain waste in a manner that prevents the migration of pollutants from the site. Such facilities include but are not limited to:

- Landfills;
- Land farms/land treatment;
- Land burial following solidification or encapsulation;
- Above ground perpetual storage;
- Waste piles;
- Surface impoundments; and
- Onground, inground, and underground tanks.

"Onground Tank" means a device meeting the definition of "tank" and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

"Public Water Supply System" means a water supply system, approved by the Division of Public Health, which provides water to the public for potable or domestic purposes through a piped system directly to the user's free flowing outlet.

"Public Water Supply Watershed" means the land area draining to a river, lake, or stream used as a public water supply.

"Secretary" means the Secretary of the Department of Natural Resources and Environmental Control or his duly authorized designee.

"Seismic Risk Zone" means all lands within five miles of an epicenter of an earthquake of a Modified Mercalli VII or greater intensity.

"Significant Environmental Lands" means state parks, state wildlife areas, state forests, national wildlife refuges, or state nature preserves, or privately owned nature preserves dedicated under the Natural Areas Preservation Systems Act (7 Del.C. Ch. 73), lands protected under the Conservation and Preservation Easements Act (7 Del.C. Ch. 69), and lands on the National Register of Historic Places.

"Storage" for the purpose of this regulation means a unit designed to hold hazardous waste where the owner or operator has a permit or written approval or desires to obtain a permit or written approval in accordance with the requirements of Sections 6306(g) and 6307 of 7 Del.C. Ch. 63, and the regulations promulgated pursuant to these sections.

"Subcropping Aquifers and Aquifer Recharge Areas" means those areas where the major pre quaternary coastal plain aquifers outcrop or subcrop beneath surficial sediments and receive or could receive significant recharge by natural or induced ground water flow. These include areas where sands of the Potomac and Maqothy formations; sands of the Rancocas Group: the Cheswold, Frederica, Manokin and Pocomoke aquifers; and some finer grained aquifers through which substantial leakage may be induced by pumping.

"Tank" means a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

"Transmissivity" means the rate at which water of the prevailing kinematic viscosity is transmitted through a unit width of an aquifer under a unit hydraulic gradient. It equals the hydraulic conductivity multiplied by the aquifer thickness.

"Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such wastes, or so as to recover energy or material resources from the waste, or so as to render such waste non hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

"Unconfined Aquifer" means an aquifer in which there are no confining beds between the zone of saturation and the ground surface.

"Underground Tank" means a device meeting the definition of "tank" whose entire surface area is totally below the surface of and covered by the ground.

"Unit" means a contiguous area of land on or in which hazardous waste is actually proposed to be placed, stored, or treated, or the largest area in which there is a significant likelihood of mixing hazardous waste constituents in the same area. Examples of units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system, and a container storage area.

"**Wellhead Protection Areas**" means the surface area designated by the Department which surrounds a drinking water well or well field supplying a public water system within which contaminants, if released to the environment, are likely to move toward and reach such well or well field.

"**Wetlands**" means those lands above the mean low water elevation including any bank, marsh, swamp, meadow, flat, or other lowland subject to tidal action in the state along the Delaware Bay and Delaware River, Indian River Bay, Rehoboth Bay, Little and Big Assawoman Bays, the coastal inland waterways, or along any inlet, estuary, or tributary waterway or any portion thereof, including those areas which are now, or in this century have been, connected to tidal waters, whose surface is at or below an elevation of two feet above local mean high water, and upon which may grow or is capable of growing any but not necessarily all of the plants, listed in Del.C. Title 7, Chapter 66.

3.0 Location Criteria for Land Emplacement Facilities

3.1 Exclusionary Criteria

3.1.1 Land emplacement units shall be prohibited in the following:

- 3.1.1.1 The 100-year flood hazard area;
- 3.1.1.2 Wetlands;
- 3.1.1.3 Freshwater wetlands;
- 3.1.1.4 Carbonate bedrock areas;
- 3.1.1.5 Carbonate bedrock drainage areas;
- 3.1.1.6 Public water supply watersheds upstream from the points of withdrawal;
- 3.1.1.7 Subcropping aquifers and aquifer recharge areas;
- 3.1.1.8 Significant environmental lands;
- 3.1.1.9 Areas where the transmissivity of the unconfined aquifer is greater than 10,000 ft²/day;
- 3.1.1.10 Areas where groundwater under natural conditions could come into contact with the waste;
- 3.1.1.11 Wellhead protection areas;
- 3.1.1.12 Areas within 500 feet of a fault that has experienced movement within the last 35,000 years (capable fault).

3.1.2 The Department shall deny an application for location approval without further review if the Department determines the proposed unit is located in an excluded area.

3.2 Cautionary Criteria

3.2.1 The location of land emplacement units below shall be considered acceptable.

- 3.2.1.1 **Seismic Risk.** A proposed unit within a seismic risk zone shall be designed in accordance with recognized seismic design standards such as API 650 Appendix E.
- 3.2.1.2 **Erosion and Mass Movement.** Units should be located where the natural site characteristics and geomorphic processes will have minimal long term effect on the unit, i.e., avoiding highly dissected uplands or interfluves, deeply incised swales, and headwardly eroding streams.
- 3.2.1.3 **Depth to Consolidated Bedrock.** At least ten feet of unconsolidated and unsaturated material should lie between the bottommost part of the unit and bedrock.
- 3.2.1.4 **Proximity to Surface Water.** The location of a proposed unit shall provide that monitoring and frequency of sampling detect the presence of contaminants, and initiation of appropriate remedial action before degradation of surface water quality.
- 3.2.1.5 **Groundwater Use.** Units should be located at least .25-mile from, and not hydraulically upgradient of, any drinking water wells where no effective hydrogeologic barrier to flow exists.
- 3.2.1.6 **Proximity to Population.** Sites should be selected such that proposed land emplacement units are more than 1,500 feet from a residential dwelling.
- 3.2.1.7 **Proximity to Immobile Resident Populations.** Units handling toxic, explosive, reactive, or flammable and combustible wastes, and which are regulated by the Extremely Hazardous Substances Risk Management Act (7 Del.C. Ch. 77), and Delaware Regulations for the Management of Extremely Hazardous Substances, should be more than one mile from an

immobile resident population. This criterion is not applicable to units handling other types of hazardous waste.

- 3.2.1.8 Proximity to Existing Waste Management Units or Industrial Facilities Handling Hazardous Materials. Proposed units should be located near existing waste management units or industrial facilities handling hazardous materials only if the potential environmental effects can be distinguished from those of existing units, and if the wastes are not incompatible or dangerous if inadvertently combined in the environment.
- 3.2.1.9 Emergency Response Facilities. Sites should be selected where emergency response time is adequate for the types of wastes handled.
- 3.2.1.10 Critical Habitat for Rare and Endangered Species. Units should not be located on lands providing habitat for species listed by the Federal government under the Endangered Species Act, unless adequate mitigation is provided.
- 3.2.1.11 Proximity to Significant Environmental Lands. Units should be located more than one half mile from such lands.
- 3.2.1.12 Proximity to Flood Hazard Area. Sites should be outside of the 500-year floodplain.
- 3.2.2 If a proposed facility site does not satisfy each criterion in subsection 3.2.1, the applicant shall submit additional information and justification allowing the Department to assess what effect failure to satisfy the criterion has upon the acceptability of the facility site.
- 3.2.3 The Department shall provide notice to municipal officials and other interested persons in order to solicit additional information regarding potential effects of a failure to meet any of these criteria at the proposed facility site. The Department shall determine whether the proposed design, construction, and operational aspects of the facility mitigate adverse effects which would otherwise be associated with failure to satisfy the criteria.
- 3.2.4 After evaluating each criterion individually, the Department shall evaluate the facility's overall compliance with these cautionary criteria and shall identify risks that have not been eliminated through mitigative measures. If risks to public health, safety, welfare, and the environment remain, which, in the judgment of the Department, render the proposed site unacceptable for a hazardous waste management facility, the Department may include conditions in the approval which eliminate or reduce the identified risks or may deny site approval altogether.

4.0 Location Criteria for Non Land Emplacement Storage, Treatment and Disposal Facilities

4.1 Exclusionary Criteria

- 4.1.1 Non land emplacement storage, treatment, and disposal units shall be prohibited in the following:
 - 4.1.1.1 The 100 year flood hazard area;
 - 4.1.1.2 Wetlands;
 - 4.1.1.3 Freshwater wetlands;
 - 4.1.1.4 Carbonate bedrock areas;
 - 4.1.1.5 Carbonate bedrock drainage areas;
 - 4.1.1.6 Public water supply watersheds upstream from reservoirs;
 - 4.1.1.7 Significant environmental lands;
 - 4.1.1.8 Areas within 500 feet of a fault that has experienced movement within the last 35,000 years (capable fault);
 - 4.1.1.9 Wellhead protection areas.
- 4.1.2 The Department shall deny a permit application without further review if the Department determines the proposed unit is located in an excluded area.

4.2 Cautionary Criteria

- 4.2.1 The location of non land emplacement storage, treatment, and disposal units meeting the criteria listed below shall be considered acceptable.
 - 4.2.1.1 Seismic Risk. A proposed unit within a seismic risk zone shall be designed in accordance with recognized seismic design standards such as API 650 Appendix E.
 - 4.2.1.2 Depth to Groundwater. If, under natural conditions, groundwater may encroach upon any subsurface unit, then that groundwater shall be kept below the bottom of the facility by means of properly designed drainage.

- 4.2.1.3 Depth to Consolidated Bedrock. At least ten feet of unconsolidated and unsaturated material should lie between the bottommost part of the unit and bedrock.
- 4.2.1.4 Groundwater Use. Units should be located at least .25 mile from, and not hydraulically upgradient of, any drinking water wells where no effective hydrogeologic barrier to flow exists.
- 4.2.1.5 Proximity to Population. Sites should be selected such that storage and treatment units are more than 1,500 feet from a residential dwelling.
- 4.2.1.6 Proximity to Immobile Resident Populations. Units handling toxic, explosive, reactive, or flammable and combustible substances or which are regulated by the Extremely Hazardous Substances Risk Management Act (7 **Del.C.** Ch. 77) and Delaware Regulations for the Management of Extremely Hazardous Substances should be more than one mile from an immobile resident population. This criterion is not applicable to units handling other types of wastes.
- 4.2.1.7 Proximity to Existing Waste Management Units or Industrial Facilities Handling Hazardous Materials. Proposed units may be located near existing waste management units or industrial facilities handling hazardous materials only if the potential environmental effects can be distinguished from those of existing units, and if the wastes are not incompatible or dangerous if inadvertently combined in the environment.
- 4.2.1.8 Emergency Response Facilities. Sites should be selected where emergency response time is adequate for the types of wastes handled.
- 4.2.1.9 Critical Habitat for Rare and Endangered Species. Units should not be located on lands providing habitat for species listed by the Federal government under the Endangered Species Act, unless adequate mitigation is provided.
- 4.2.1.10 Proximity to Significant Environmental Lands. Units should be located more than 1,500 feet from such lands.
- 4.2.1.11 Subcropping Aquifers and Aquifer Recharge Areas. Units should not be located in areas where major pre quaternary coastal plain aquifers outcrop or subcrop beneath surficial sediments and receive or could receive significant recharge by natural or induced ground water flow. These include areas where sands of the Potomac and Maqothy formations; sands of the Rancocas Group: the Cheswold, Frederica, Manokin, and Pocomoke aquifers; and some finer grained aquifers through which substantial leakage may be induced by pumping.
- 4.2.2 If a proposed facility site does not satisfy each criterion in subsection 4.2.1, the applicant shall submit additional information and justification for the facility's inability to meet each criterion so as to allow the Department to assess what effect, if any, failure to satisfy the criterion has upon the acceptability of the facility site.
- 4.2.3 The Department shall provide notice to municipal officials and other interested persons in order to solicit additional information regarding potential effects of a failure to meet any of these criteria at the proposed facility site. The Department may undertake additional investigations and after consideration of relevant information, shall determine whether the proposed design, construction, and operation of the facility will successfully mitigate adverse effects which would otherwise be associated with failure to satisfy the criteria.
- 4.2.4 After evaluating each criteria individually, the Department shall evaluate the facility's overall compliance with these cautionary criteria and shall identify risks that have not been eliminated through mitigative measures. If risks to public health, safety, welfare, and the environment remain, which, in the judgment of the Department, render the proposed facility site unacceptable for a hazardous waste management facility, the Department may include conditions in the approval which eliminate or reduce the identified risks or may deny site approval altogether.

5.0 Site Suitability Report

- 5.1 Land Emplacement Facilities and Non Land Emplacement Treatment, Storage and Disposal Facilities. A detailed geologic, hydrogeologic, and environmental study shall be performed for any site proposed. The submitted study must be signed by the owner/operator of the site and by an independent

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registered professional engineer. Documentation supporting the independent registered professional engineer's certification must be furnished to the Secretary upon request. At a minimum, the following information shall be presented in the form of a report describing the site in detail, and evaluating the onsite data obtained:

- 5.1.1 Topography
 - 5.1.1.1 A detailed topographic map of the site, at scale of no greater than 1:2,400, and contour interval of no greater than two feet.
- 5.1.2 Geology
 - 5.1.2.1 A comprehensive subsurface geological investigation including soil and bedrock borings to the bedrock aquifer in the Piedmont, and into the uppermost major confined aquifer in the Coastal Plain.
 - 5.1.2.2 A structural geological map showing the surface geological formation and all faults, fractures, bedding attitudes, fold axes, cleavage, or foliation directions within 1,500 feet of the site boundaries.
 - 5.1.2.3 Geological cross sections showing the subsurface geology beneath the site.
 - 5.1.2.4 Assessment of the stability of the site related to geological processes such as erosion, mass movement, earthquakes and landslides.
 - 5.1.2.5 A map showing the 100- and 500-year floodplains, if any, on the site.
- 5.1.3 Hydrogeology
 - 5.1.3.1 A detailed hydrogeological investigation using a series of wells sufficient to define groundwater flow, both vertical and horizontal, and all groundwater systems hydraulically connected to the site.
 - 5.1.3.2 Identification of all points of discharge for groundwater leaving the site.
 - 5.1.3.3 Calculation of groundwater flow rates and volumes, and vertical groundwater leakage rates and volumes in all flow systems hydraulically connected to the site.
 - 5.1.3.4 An assessment of regional hydrogeology as it relates to potential off site effects of a facility.
 - 5.1.3.5 A water budget using long term meteorological data to determine recharge, discharge, and evapotranspiration rates to obtain maximum, average, and minimum seasonal variations.
 - 5.1.3.6 Assessment of any secondary permeability (joints, fractures, cleavages), weathering, or depositional features which can affect rates and directions of groundwater flow under existing or stressed (pumping, reduced groundwater recharge, groundwater mounding) conditions.
- 5.1.4 Water Quality
 - 5.1.4.1 Assessment of existing groundwater quality in all groundwater flow systems hydraulically connected to the site.
 - 5.1.4.2 Assessment of existing water quality in all surface waters receiving groundwater discharge or runoff from the site.
 - 5.1.4.3 Identification of all groundwater use within 1,500 feet, all uses downgradient and an assessment of potential effects of the site use on existing and future groundwater use.
 - 5.1.4.4 Assessment of all downstream uses in surface waters receiving groundwater discharge or runoff from the site, and the potential effects on those waters.
- 5.1.5 Soil Properties
 - 5.1.5.1 Quantitative assessment of the capabilities of the earth materials to attenuate or renovate any contamination which might emanate from any land farming facility.
 - 5.1.5.2 Assessment of the compatibility of the site soil chemistry with any artificial liner or containment structure.
 - 5.1.5.3 Assessment of soil stability during seismic events if the site is in an area of seismic risk.
- 5.1.6 Cultural
 - 5.1.6.1 Assessment of existing and projected population densities and land use activities within a minimum of one mile radius of the site.
 - 5.1.6.2 Assessment of the effects of the facility on any cultural or historic resources on or adjacent to the site.
 - 5.1.6.3 Assessment of the proximity to airports and other land uses which require a buffer by statute or policy.

- 5.1.6.4 Assessment of effects of the proposed facility on nearby property values.
- 5.1.7 Transportation and Emergency Response Plans
 - 5.1.7.1 Assessment of transportation facilities and access to the site particularly with regard to the traffic volume, road capacity, road hazards, alternate routes, the potential for accidents, and proposed remedies.
 - 5.1.7.2 Description of existing or proposed emergency response needs and capabilities and, if appropriate, emergency evacuation plans.
- 5.1.8 Biological
 - 5.1.8.1 Assessment of the extent and location of any critical wildlife habitat on or adjacent to the site.
 - 5.1.8.2 Assessment of the effects on downstream shellfish beds or any nearby coastal or freshwater wetlands, if any.
 - 5.1.8.3 Assessment of the effects on rare, threatened, or endangered species.
 - 5.1.8.4 Assessment of the effects on significant environmental lands.
- 5.2 Reduction in Scope of Site Suitability Report
 - 5.2.1 An applicant may petition the Department to reduce the scope of the site suitability report outlined in subsection 5.1. This petition must accompany any reduced site suitability submittal, and shall clearly set forth the rationale for any omission of information described under subsection 5.1.
 - 5.2.2 The petition shall be subject to review by the Department and the citizens advisory committee established pursuant to Section 11.0. If agreement on the scope of the site suitability report cannot be reached among the parties, the Department shall make the final determination.
 - 5.2.3 All modifications to the scope of the site suitability report approved by the Department shall be subject to the hearing and appeal procedures set forth in Sections 9.0 and 10.0.
- 5.3 The analysis and assessment contained in the site suitability report must demonstrate that all exclusionary criteria have been met without exception.
- 5.4 The Department recognizes that it is unlikely that any site can meet all of the cautionary criteria. These criteria are to be used as guidelines to the applicant. Cautionary criteria are intended to provide a sense of the preferable conditions for a site. However, site conditions not meeting these criteria will be given special consideration in the review process. In such cases, the applicant must demonstrate that positive site conditions and the proposed facility design and operation will offset the negative implications of the cautionary criteria which are not met. The Department's review shall be based on analyses of all of the pertinent cautionary criteria. The Department may impose design and operational requirements which are necessary to mitigate possible adverse effects on human health, safety, welfare, and the environment which may result from not meeting the cautionary criteria.

6.0 Exemptions

- 6.1 The following units shall be exempt from these regulations.
 - 6.1.1 On site reclamation units where the principle activity at the facility is not the management of wastes.
 - 6.1.2 Industrial boilers and furnaces that burn hazardous waste fuels for energy recovery.
 - 6.1.3 Units authorized in accordance with Sections 122.60 and 122.61 of the Delaware Regulations Governing Hazardous Waste concerning facilities that have permits by rule and/or approval to operate under an emergency administrative order.
 - 6.1.4 Units subject to Class Three (3) Modifications at existing facilities that upgrade pollution control equipment for the purpose of reducing emissions. This exemption only applies to changes found in DRGHW Section 122.42, Appendix I, Item L., entitled "Incinerators, Boilers, and Industrial Furnaces", pertaining to:
 - 6.1.4.1 a substantial change in the design of any component used to reduce HCl/Cl₂, metals or particulates from the combustion gases, or
 - 6.1.4.2 an upgrade of the pollution control equipment that increases the units capability to meet the regulatory performance standards.
- 6.2 Existing hazardous waste units that do not require a major modification or a Class 3 modification per Delaware Regulations Governing Hazardous Waste Sections 122.41 and 122.42 shall be exempt from these regulations. For modified units requiring location approval, the public participation requirements

of Sections 7.0 and 9.0 may be implemented jointly with the public participation requirements of the DRGHW.

7.0 Procedures

- 7.1 The process is initiated when an applicant submits a notice of intent to seek location approval. The notice shall identify the site for which location approval will be sought and the types of units which the applicant intends to locate. In addition, the applicant shall, if appropriate, notify the Department of the intent to seek a reduction in scope of the site suitability report in accordance with subsection 5.2.
- 7.2 Upon determination that the notice of intent is complete, the Secretary shall, within 30 days, initiate the community participation requirements of Section 11.0 and provide the applicant a project decision schedule. The schedule shall specify target dates by which the Secretary intends to:
 - 7.2.1 Submit a request for nomination for the citizens advisory committee.
 - 7.2.2 Appoint a citizens advisory committee and chairperson.
- 7.3 Upon receipt of the a site suitability report, the Secretary shall, within 30 days of determination that the report is complete, notify the applicant and forward the report to the chairperson of the citizens advisor committee. The notice to the applicant shall also include a project decision schedule. The schedule shall specify target dates by which the Secretary intends to:
 - 7.3.1 Complete review of the site suitability report;
 - 7.3.2 Furnish the local government a non-biding feasibility determination in accordance with subsection 8.3;
 - 7.3.3 Advertise receipt of the application and provide opportunity for public comment in accordance with the requirements of Section 9.0; and
 - 7.3.4 Make a final location determination.

8.0 Local Government Land Use Approval

- 8.1 The Department shall not issue a location approval for any new or expanded hazardous waste management facility until the local governing body having land use planning and zoning authority certifies in writing to the Department that the applicant complies with local land use plans and zoning regulations.
- 8.2 An applicant who requires a change to a land use plan, a change of zoning, a conditional use or special exemption permit, or a zoning variance to legally carry out the proposed activity shall submit the site suitability report to both the Department and the appropriate local authorities simultaneously.
- 8.3 In accordance with Section 7.0, the Department shall prepare a non-binding preliminary feasibility review and submit it to the local land use authorities for their consideration.

9.0 Public Notice and Hearings

- 9.1 The Secretary shall advertise the receipt of the application in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State. The advertisement shall include:
 - 9.1.1 the fact that the site suitability report has been received,
 - 9.1.2 a brief description of the nature of the site suitability report and the Petition for Reduction in Scope if applicable, and
 - 9.1.3 the place at which a copy of the petition or report may be inspected.
- 9.2 The Secretary shall hold a public hearing if he receives a meritorious request for a hearing within a reasonable time as stated in the advertisement. The reasonable time stated shall be 15 days, unless federal law requires a longer time, in which case a longer time shall be stated. A public hearing may also be held if the Secretary deems it to be in the best interest of the State to do so. Notice of a public hearing shall be sent by mail to any person who has requested such notification from the Department. A public hearing request shall be deemed meritorious if it exhibits a familiarity with the petition or report and a reasoned statement of the permit's probable effects.
- 9.3 Hearings held pursuant to this regulation shall be conducted as follows:

- 9.3.1 Not less than 20 days notice shall be published in a newspaper of general circulation in the county in which the activity is to occur, and in a daily newspaper of general circulation throughout the State.
- 9.3.2 Such notification shall include:
- 9.3.2.1 a brief description of the subject of the hearing;
 - 9.3.2.2 time, date, and place of hearing; and
 - 9.3.2.3 time and place where copies of material may be obtained.
- 9.3.3 The parties may appear personally or by counsel at the hearing and produce any competent evidence on their behalf. The Secretary or the Board or its duly authorized designee may administer oaths, examine witnesses, and issue, in the name of the Department or the Board, notices of hearings or subpoena requiring the testimony of witness and production of books, records, or other documents relevant to any matter involved in such hearing. In case of refusal to obey a notice of hearing or subpoena under this Section, the Superior Court in the county in which the hearing is held shall have jurisdiction upon application of the Secretary or the Chairman of the Board, to issue an order requiring such person to appear and testify or produce evidence as the case may require.
- 9.3.4. A record from which a verbatim transcript can be prepared shall be made of all hearings, and shall, along with the exhibits and other documents introduced by the Secretary or other party, constitute the record. The expense of preparing any transcript shall be borne by the person requesting it. The Secretary or the Board or a duly authorized designee shall make findings of fact based on the record. The Secretary or the Board shall then enter an Order approving or denying the proposed Hazardous Waste Storage, Treatment or Disposal Facility location. The Secretary shall promptly give written notice to the persons affected by such Order.
- 9.3.5 The applicant is required to reimburse the Department for all costs associated with the administration of a public hearing held in accordance with the requirements of subsection 9.3.

10.0 Appeals

Any person whose interest is substantially affected by any action of the Secretary may appeal the action in accordance with the requirements of 7 **Del.C.** Sections 6313(a) and (b).

11.0 Community Participation

- 11.1 Findings and Purpose. The Department finds that local community participation is important in locating proposed hazardous waste management facilities and reviewing the proposed design, construction, operation, and closure of such facilities. The Department shall appoint a citizens advisory committee in accordance with subsection 11.2 for each proposed facility. The purpose of the committee is to provide a forum for citizen comments, questions, and concerns about the site(s) and facility and to promote discussions between the community and the person interested in siting a facility.
- 11.2 The Secretary shall appoint a committee composed of residents living near to, or along transportation routes to, the proposed facility location. Appointments shall include nominees submitted by the local government body(ies) with land use jurisdiction. The Secretary shall appoint the chairperson of the committee.
- 11.3 The committee shall prepare a written report summarizing local citizen concerns and the manner in which the company is addressing these concerns. The report shall be evaluated by the Department and the local government during the consideration of the proposed facility.
- 11.4 When issuing a location approval pursuant to these regulations, or when issuing a storage, treatment, or disposal permit pursuant to the Delaware Regulations Governing Hazardous Waste, the Department may impose additional requirements to protect the public health, safety, welfare, and the environment.

12.0 Severability

Should any section, paragraph or other part of these regulations be declared invalid for any reason, the remainder shall not be affected.

DEPARTMENT OF AGRICULTURE
HARNESS RACING COMMISSION
DELAWARE STANDARDBRED BREEDERS' FUND
PUBLIC NOTICE

502 Delaware Standardbred Breeders' Fund Regulations

The State of Delaware, Department of Agriculture's Standardbred Breeders' Fund ("the Fund") hereby gives notice of its intention to adopt an amended regulation pursuant to the General Assembly's delegation of authority to do so found at 29 **Del.C.** §4815(b)(4)b.2. and in compliance with Delaware's Administrative Procedures Act at 29 **Del.C.** §10115. The proposed amended regulation under 13.7 addresses the national horse shortage and is consistent with the DHRC regulation concerning qualifying requirements.

The Fund solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty days (30) after these proposed amended regulations are promulgated in the Delaware *Register of Regulations*. Any such submissions should be mailed or hand-delivered to Ms. Judy Davis-Wilson, Administrator, Delaware Standardbred Breeders' Fund Program whose address is State of Delaware, Department of Agriculture, 2320 South duPont Highway, Dover, Delaware 19901 by June 1, 2017.

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, May 18, 2017 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF WATER
GROUND WATER DISCHARGES SECTION
PUBLIC NOTICE

7102 Regulations Governing Underground Injection Control

The purpose of the proposed revisions is to bring the regulations into compliance with current federal requirements, as determined by the United States Environmental Protection Agency (EPA). The EPA issued the *Revisions to the Underground Injection Control (UIC) Regulations for Class V Injection Wells*, effective April 2000 and December 2011. With this, the State of Delaware **Regulations Governing Underground Injection Control** is to be amended. The revised State regulations will also expand the existing regulations to include additional requirements for multiple water management activities.

The hearing record on the proposed changes to State of Delaware **Regulations Governing Underground Injection Control** will be open May 1, 2017. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on May 25, 2017 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

DIVISION OF WATERSHED STEWARDSHIP
REGISTER NOTICE
7401 Surface Water Quality Standards

The DNREC-Watershed Assessment and Management Branch has revised the proposed amendments to

Delaware Administrative Code 7401: Surface Water Quality Standards following a thorough review. The proposed amendments to the Water Quality Standards Regulations were published in the January 1, 2017 Delaware *Register of Regulations*. These revisions to the proposed amendments address sections that linked to incorrect sections in the regulation and Department. The revisions also include amendments by DNREC resulting from written comments during the initial public comment period which ended February 23, 2017.

The hearing record on the proposed changes to 7 **DE Admin. Code** 7401: Surface Water Quality Standards will be re-opened May 1, 2017 for a 45-day public comment period ending June 15, 2017. Individuals may submit written comments regarding the revisions to the proposed amendments via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
1799 GENETIC COUNSELOR ADVISORY COUNCIL
PUBLIC NOTICE

Pursuant to 24 **Del.C.** § 1799I(c), the Genetic Counselor Advisory Council (“the Council”) of the Delaware Board of Medical Licensure and Discipline has proposed revisions to its rules and regulations. A new Section 7.0 is added to set forth standards for the use of telehealth in the practice of genetic counseling.

A public hearing will be held on June 2, 2017 at 3:30 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Genetic Counselor Advisory Council, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Council at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be June 19, 2017, which is 17 days following the public hearing. The Council will deliberate on the proposed revisions at its next regularly scheduled meeting.

DIVISION OF PROFESSIONAL REGULATION
2930 COUNCIL ON REAL ESTATE APPRAISERS
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §4006(a)(1), the Delaware Council on Real Estate Appraisers has proposed revisions to its rules and regulations. The rules pertaining to continuing education, temporary permits and crimes substantially related to the practice of real estate appraising are proposed to be amended. A public hearing will be held on June 20, 2017 at 9:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Council on Real Estate Appraisal, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board, c/o Jennifer Witte, at the above address by July 5, 2017, in accordance with 29 **Del.C.** §10118(a).

DIVISION OF PROFESSIONAL REGULATION
3700 BOARD OF SPEECH/LANGUAGE PATHOLOGISTS, AUDIOLOGISTS AND HEARING AID
DISPENSERS
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §3706(a)(1), the Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers (“Board”) proposes revisions to its rules and regulations.

On October 1, 2015, proposed revisions to the rules and regulations were published in the Delaware *Register of Regulations*, Vol. 19, Issue 4. Specifically, the Board’s proposed amendments struck the current Section 9.2.1.4,

which addresses practice by telecommunications, and added a new Section 10.0, pertaining to telepractice. The new Section 10.0 sets forth standards and requirements in order to allow licensees to engage in telepractice while protecting the public.

A public hearing was held on November 17, 2015. The Board deliberated on January 19, 2016, and based on those deliberations, made substantive revisions to the proposed rules and regulations, which were published in the August 1, 2016 *Register of Regulations*, Volume 20, Issue 2. A second public hearing took place on February 21, 2017 at 2:00 p.m., and the Board deliberated on March 21, 2017. Once again, the Board made substantive changes to the proposed rules and regulations. Therefore, the Board strikes the rules and regulations as proposed in the August 1, 2016 *Register of Regulations* and proposes revised rules and regulations attached hereto as Exhibit A.

A public hearing has been scheduled for June 20, 2017 at 2:00 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be July 5, 2017, which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its next regularly scheduled meeting, at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to the public comment.
