
Delaware Register of Regulations

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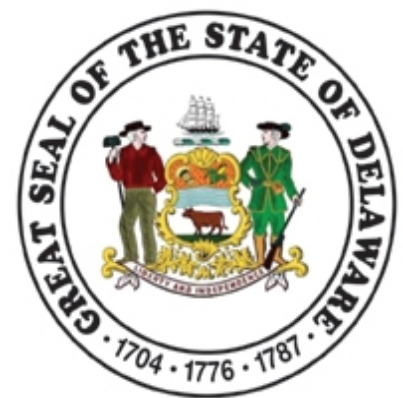
Volume 18 - Issue 5, Pages 331 - 405



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Proposed
Final

Calendar of Events &
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before October 15, 2014.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

16 **DE Reg.** 1227 - 1230 (06/01/13)

Refers to Volume 16, pages 1227 - 1130 of the *Delaware Register* issued on June 1, 2013.

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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.

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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
December 1	November 17	4:30 p.m.
January 1	December 15	4:30 p.m.
February 1	January 15	4:30 p.m.
March 1	February 16	4:30 p.m.
April 1	March 16	4:30 p.m.

DIVISION OF RESEARCH STAFF

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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 EDUCATION**OFFICE OF THE SECRETARY**Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))**14 DE Admin. Code 245****Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)****245 Michael C. Ferguson Achievement Awards Scholarship****A. Type of Regulatory Action Required**

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks to amend 14 **DE Admin. Code** 245 Michael C. Ferguson Achievement Award Scholarship. This regulation is being amended to clarify the subject areas and grade levels in which the scholarship can be given as based on the new state assessment system. The Department of Education wishes to remove the word "Scholarship" from the regulation to clarify that these are awards and not funds that need to be applied for as is done with scholarships. Also, while the statute uses the term "free and reduced lunch", the Department of Education is using "low-income" because of the changes in the federal school nutrition program, and which is in accordance with epilogue provisions of the FY 15 budget bill.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **December 5, 2014** 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 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 improve student achievement as measured against the new state assessment system which institutes more rigorous standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended

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

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

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

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

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

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

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

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

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

245 Michael C. Ferguson Achievement Awards ~~Scholarship~~ Program

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

1.0 Basis for Granting Scholarships

1.1 Subject to available funding, the Michael C. Ferguson Achievement Awards shall be made based on the student's score on the results of the annual spring summative administration of the state assessment. ~~The student's score that is used for federal Adequate Yearly Progress (AYP) shall be used to determine this award.~~ The ~~Scholarships~~ awards may be ~~awarded~~ given to a maximum of 300 eighth grade students in the content areas of ~~reading~~ English Language Arts and ~~Mathematics~~ Mathematics and to a maximum of 300 ~~tenth~~ eleventh grade students in the content areas of ~~reading~~ English Language Arts and ~~Mathematics~~ Mathematics.

1.2 The awards shall be provided to the highest scoring eighth and ~~tenth~~ eleventh grade students in the state in ~~reading~~ English Language Arts and ~~Mathematics~~ Mathematics as well as the highest scoring eighth and ~~tenth~~ eleventh grades students in the state in ~~reading~~ English Language Arts and ~~Mathematics~~ Mathematics who ~~participate in the free and reduced lunch program~~ are identified as low-income pursuant to the provisions below:

1.2.1 The highest scoring eighth and ~~tenth~~ eleventh grade students in the state in ~~reading~~ English Language Arts and in ~~Mathematics~~ Mathematics shall receive the ~~scholarships~~ awards.

1.2.1.1 The eighth grade awards may be given to a maximum of 150 students in the areas of ~~reading~~ English Language Arts and ~~Mathematics~~ Mathematics. The number of awards shall be as close to fifty percent (50%) in each area as possible. The unassigned awards shall be awarded in the priority order of ~~reading~~ English Language Arts then ~~Mathematics~~ Mathematics.

1.2.1.2 The ~~tenth~~ eleventh grade awards may be given to a maximum of 150 students in the areas of ~~reading~~ English Language Arts and ~~Mathematics~~ Mathematics. The number of awards shall be as close to fifty percent (50%) in each area as possible. The unassigned awards shall be allocated in the priority order of ~~reading~~ English Language Arts then ~~Mathematics~~ Mathematics.

PROPOSED REGULATIONS

1.2.2 The highest scoring eighth and ~~tenth~~ eleventh grade students in the state in ~~reading~~ English Language Arts and in ~~Mathematics~~, who ~~participate in the free and reduced lunch program~~ are identified as low-income and who are not already identified as one of the students in section 1.2 shall receive the ~~scholarships~~ awards.

1.2.2.1 The eighth grade awards may be given to a maximum of 150 students in the areas of ~~reading~~ English Language Arts and ~~Mathematics~~. The number of awards shall be as close to fifty percent (50%) in each area as possible. The unassigned awards shall be allocated in the priority order of ~~reading~~ English Language Arts then ~~Mathematics~~.

1.2.2.2 The ~~tenth~~ eleventh grade awards may be given to a maximum of 150 students in the areas of ~~reading~~ English Language Arts, ~~writing~~ and ~~Mathematics~~. The number of awards shall be as close to fifty in each area as possible. The unassigned awards shall be allocated in the priority order of ~~reading~~ English Language Arts then ~~Mathematics~~.

1.3 A Foreign Exchange student who is on a temporary visa is not eligible to receive the Michael C Ferguson Achievement Award ~~Scholarship~~.

2.0 Eligibility for More Than One Scholarship Award

Students may receive ~~a scholarship~~ an award in more than one content area and may also receive ~~scholarships~~ awards for their ~~8th~~ eighth and their ~~10th~~ eleventh grade scores. A student may receive an award no more than twice in one content area.

3.0 Use of Scholarship Awarded Funds

The Michael C. Ferguson ~~Scholarship~~ Achievement Award can only be used at a regionally or nationally accredited post secondary institution or at a Delaware or other state approved private business and trade school in the United States of America and its territories. The award cannot exceed direct educational costs.

4.0 Delaware Higher Education (Commission) Office Account and Notification Procedures

4.1 All scholarship awards shall be deposited in an account at the Delaware Higher Education Office in an interest bearing account. Interest earned or forfeited scholarships shall be utilized by the Department of Education's ~~and Delaware Higher Education Office~~ to offset administrative expenses associated with the program.

4.2 Funds deposited for ~~scholarships~~ awards through the Michael C. Ferguson Achievement Awards shall cease to be available to the recipient if the recipient does not attend a post secondary institution within five calendar years after graduating from high school. Provided further that a recipient may have one additional year of availability of the funds for each year the recipient serves as an active duty member of the military.

4.3 It is the responsibility of the parent or guardian to notify the Delaware Higher Education Office of any change of address during the ~~scholarship~~ award eligibility period. Students may receive their scholarship awards even if they are living in another state at the time they attend a post secondary institution.

4.4 The Department of Education shall annually announce the winners of Michael C. Ferguson ~~Scholarships~~ Awards.

4.5 The Delaware Higher Education Office shall send a "Request for Information" form to Michael C. Ferguson ~~Scholarship~~ Award recipients annually to update their account information.

4.5.31 Recipients may defer all or a portion of payment of Michael C. Ferguson ~~Scholarships~~ Awards beyond their first post secondary year, but must assume the responsibility to notify the Delaware Higher Education Office of their plans to claim the ~~Scholarship~~ Award, and may not extend payment beyond the five year limit.

4.5.42 The Delaware Higher Education Office shall send enrollment verification forms to institutions identified by recipients. When completed verification forms are received by the Delaware Higher Education Office, disbursement of ~~scholarship~~ award funds will be made to the institution.

~~4.5.2 If a student does not plan to attend a post secondary institution immediately after high school graduation, it is the parent or guardian's responsibility to provide timely notification to the Delaware Higher Education Office prior to enrollment in order to receive payment of the scholarship.~~

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 915

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

915 James H. Groves High School

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** 915 James H. Groves High School. This regulation is to clarify alignment to 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas with regard to the World Languages credit requirement and for other minor clarifications. This regulation also clarifies that the Groves In School Credit Program cannot occur during the school's regularly scheduled school day.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **December 5, 2014** 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 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 improve student achievement as measured against state achievement standards by clarifying the language with regard to the World Languages credit requirement for Adult Education.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is intended to continue to ensure all students receive an equitable education.

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

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

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

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

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

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

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

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

915 James H. Groves High School

1.0 Definitions

“Certificate of Educational Attainment (CEA3)” means that the holder of the certificate has passed the ~~Official GED Practice Test with a score of 2450 or better with no less than 470~~ designated assessments with the required scores in each sub test area and has written an approved Groves ~~approved~~ content area research paper,

“Department” means the Delaware Department of Education

“Groves Leadership Team” means an advisory group composed of the Groves Center administrators, the State Director of Adult Education, a representative from the Groves student association and a prison education teacher supervisor(s). The Associate Secretary, Adult Education and Work Force Development shall be an ex officio member of the leadership team.

“James H Groves Center” or **“Center(s)”** means the specific location in a school district, agency or organization where instruction is provided for the James H. Groves High School program.

“James H. Groves High School” or **“Groves”** means an adult high school established by the State of Delaware to provide the opportunity for adults and out of school youth to earn and obtain a high school diploma. The James H. Groves High School is a single school with multiple centers established and operated through a proposal application process. The James H. Groves High School is administered by the Delaware Department of Education.

“Sex Offender” means an offender convicted of offenses specified in 11 **Del.C.** §4121(a)(4).

2.0 Admission Criteria and Process

(Break in Continuity Within Section)

- 2.2 Out of school youth 16 to 17 years of age, who have officially withdrawn from a day school and who have not been expelled or have an expulsion pending shall enroll under a waiver process.
- 2.2.1 To apply for an age waiver, the prospective student ~~must shall~~ submit ~~a letter of request for admission to the State Director of Adult Education with the rationale for granting a waiver with a letter of recommendation from the high school of record~~ to the Groves Center administrator the following.
- 2.2.1.1 A letter of request for admission with the rationale for granting a waiver;
- 2.2.1.2 A letter of recommendation from the high school of record;
- 2.2.1.3 Proof of exit from high school; and
- 2.2.1.4 Proof of age.
- 2.2.2 The prospective student seeking the age waiver shall ~~also meet the admission process of all other enrollees~~ be subject to 2.1.1.
- 2.2.3 The decision regarding admission shall be made by the Center administrator.
- 2.2.4 The names of all students receiving an age waiver shall be forwarded within five (5) working days of approval by the Center administrator or designee to the Department’s Director of Adult and Prison Education Resources for reporting purposes.
- 2.3 High school students who are at least 16 years of age and enrolled for at least one credit in their high school of record may earn an unrestricted number of credits in the Groves In School Credit Program and still graduate from their high school of record.

(Break in Continuity Within Section)

- 2.3.4 Students in the Groves In School Credit program shall not receive instruction during the school’s regularly scheduled school day.
- 2.4 Individuals expelled or pending expulsion from a local school district or charter school shall not be enrolled in Groves High School during the period of expulsion or pending expulsion without a waiver

from the Department. Individuals who enroll without a waiver shall lose credits earned during the expulsion period.

- 2.4.1 An applicant for an expulsion or pending expulsion waiver shall meet the following requirements:
- 2.4.1.1 Be 16 or 17 years of age;
 - 2.4.1.2 Intend to graduate from the James H Groves High School;
 - 2.4.1.3 Be expelled or be pending expulsion for a nonviolent reason and not be a security threat;
 - 2.4.1.4 Submit a letter of recommendation signed by the principal or designee of their high school of record; ~~and~~
 - 2.4.1.5 Meet with the Department's Director of Adult and Prison Education Resources or designee to orally present his or her case for entry into Groves. The decision regarding admission shall be made by the Director or designee; and
 - 2.4.1.56 Meet the requirements in 2.1.1.

2.5 An adult 18 years of age and older who is a registered Sex Offender and who resides in the State of Delaware or is a resident of another state and is currently employed in Delaware and has been continuously employed in Delaware for a minimum of six months prior to enrollment shall:

- 2.5.1 Present a letter to the Groves Center administrator from a licensed counselor, psychologist or physician including a summary of past behavior and a statement that the individual does not pose a safety threat to students or staff. The letter shall be dated within two months prior to enrollment in the Groves Center.
- 2.5.2 An adult 18 years of age and older who is a registered Sex Offender may be enrolled in the Diploma-At-A-Distance without the letter described in 2.5.1.
- 2.5.3 The names of all students that are registered Sex Offenders and enrolled in the James H. Groves Adult High School shall be reported to the State Director within five (5) working days.

3.0 Acceptable Methods for Offering Units of Credit and Granting Units of Credit for the James H. Groves High School Diploma

- 3.1 The Groves School is authorized to offer credit for the following methods or any combination of the following methods of accruing credit that were used prior to enrollment as well as while enrolled in the Groves program:

(Break in Continuity Within Section)

- 3.1.15 The Certificate of Educational Attainment (CEA3) that may provides up to 10 units of credit toward graduation.

4.0 Attendance, Grading and Graduation Criteria

(Break in Continuity Within Section)

- 4.4 Groves High School students shall be eligible to receive a State of Delaware diploma when they have met the State graduation requirements, pursuant to 14 DE Admin. Code 505 High School Graduation Requirements and Diplomas, in effect at the time of their graduation, except as noted below. (See 14 DE Admin. Code 505.2, 3.1 or 5.0). ~~The single exception is physical education which is waived in lieu of another credit.~~

- 4.4.1 Physical education is waived in lieu of another credit.
- 4.4.2 Students who were or would have been a first time 9th grader in the 2011-2012 school year or after shall be subject to 505.3.0 or 505.4.0, whichever is applicable.
- 4.4.3 Students who were or would have been a first time 9th grader in the 2010-2011 school year or prior shall be subject to 505.2.0.
- 4.4.14 All course content shall be based on the State Content Standards. Notwithstanding the above, students enrolled in the James H. Groves High School ~~must~~ shall successfully complete and receive credit for a minimum of one Groves course in order to receive a State of Delaware diploma.

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

915 James H. Groves High School

PROFESSIONAL STANDARDS BOARD

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

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

1512 Issuance and Renewal of Advanced License

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1512 Issuance and Renewal of Advanced License. Upon review, the Board has amended a few sections of the regulation for clarity and accuracy, and to meet current formatting.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Tuesday, December 2, 2014 to Mr. Chris Kenton, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

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 and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, 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 certification, 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 will preserve the necessary 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 will 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 collaboration with the Department of Education, and with the consent 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 will 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.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 **Del.C.** requires that we promulgate this regulation.

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

1512 Issuance and Renewal of Advanced License
(Break in Continuity of Sections)

3.0 Advanced License

(Break in Continuity Within Section)

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.

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

5.0 Renewal of Advanced License

(Break in Continuity Within Section)

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.

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

1512 Issuance and Renewal of Advanced License

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1513

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

1513 Denial of Licenses

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1513 Denial of Licenses. This regulation sets forth the criteria for the denial of Delaware educator licensure, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation for clarity and accuracy, and to meet current formatting.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Tuesday, December 2, 2014 to Mr. Chris Kenton, Executive Director, Delaware Professional Standards Board, The

Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

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 and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, 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 certification, 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 will preserve the necessary 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 will 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 collaboration with the Department of Education, and with the consent 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 will 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.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 **Del.C.** requires that we promulgate this regulation.

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

1513 Denial of Licenses

1.0 Content

This regulation shall apply to the denial of an Initial License, Continuing License or Advanced License for educators pursuant to 14 **Del.C.** §§1210, 1211, 1212, 1213, 1214, and 1217; ~~and to the denial of a Standard or Emergency Certificate pursuant to 14 **Del.C.** §§1220 and 1221.~~

(Break in Continuity of Sections)

5.0 Right to Hearing, Burden of Proof, and Procedures

(Break in Continuity Within Section)

5.3 An applicant who is denied an Initial, Continuing, or Advanced License ~~or a Standard or Emergency Certificate~~ may appeal the decision, and is entitled to a full and fair hearing before the Standards Board.

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

1513 Denial of Licenses

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1514

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

1514 Revocation, Limitation, or Suspension of Licenses

A. TYPE OF REGULATORY ACTION REQUESTED

Reauthorization of Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to reauthorize regulation 14 **DE Admin. Code** 1514 Revocation of Licenses and Certificates. This regulation sets forth the criteria for the suspension, limitation and revocation of Delaware educator licenses, pursuant to 14 **Del.C.** §1220(a). It is necessary to reauthorize this regulation due to the regulation being out of its five year review cycle.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Tuesday, December 2, 2014 to Mr. Chris Kenton, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation addresses educator certification, 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 regulation will preserve the necessary 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 regulation will 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 collaboration with the Department of Education, and with the consent 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 regulation will 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.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 **Del.C.** requires that we promulgate this regulation.

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

***Please note that no changes have been made to the regulation. It is being reauthorized pursuant to the provisions of 14 Del.C. §122(e). Therefore, the regulation is not being published here. A copy of the regulation is available at:**

1514 Revocation, Limitation, or Suspension of Licenses

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1572

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

1572 Teacher of Students Who Are Gifted and Talented

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1572 Teacher of Students Who Are Gifted and Talented. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation in order to update and clarify some of the definitions, requirements and to align title as this certification is required in programs that are identified as specific to students who have been identified as gifted or talented through assessments and other criteria set forth by local school districts or other programs specifically identified by the Department as programs for students who are gifted or talented.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Tuesday, December 2, 2014 to Chris Kenton, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all educators employed to teach students meet high standards and have acquired the prescribed general knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, 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 certification, 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 will preserve the necessary 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 will 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 collaboration with the Department of Education, and with the consent 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 will 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.

9. Is there a less burdensome method for addressing the purpose of the amended regulation 1503? 14 **Del.C.** requires that we promulgate this regulation.

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

1572 Teacher of Students Who Are Gifted ~~and~~ or Talented

1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Teacher of Students Who Are Gifted ~~and~~ or Talented (Category). This certification is required in programs that are identified as specific to students who have been identified as gifted ~~and~~ or talented through assessments and other criteria set forth by local school districts or other programs specifically identified by the Department as programs for students who are gifted or talented.
- 1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

- ~~2.1~~ The definitions set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Teacher of Students Who Are Gifted ~~and~~ or Talented to an educator who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and
- 3.1.2 Has met the requirements as set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto; and
- 3.1.3 Holds a Standard Certificate in a subject (content), grade level, or area; and
- ~~3.1.34~~ Has satisfied the additional requirements in this regulation.

4.0 Additional Requirements

PROPOSED REGULATIONS

- 4.1 ~~If an examination of content knowledge such as Praxis II is not applicable and available, in the area the Standard Certificate is requested, an educator must also meet the following~~ An educator shall also have satisfied one of the following additional education requirements:
- 4.1.2 ~~If the educator is applying for a first Standard Certificate pursuant to 14 DE Admin. Code 1505 Standard Certificate 3.1.5.1 the required 15 credits or their equivalent in professional development required in 14 DE Admin. Code 1505 Standard Certificate 3.1.5.1 that must be satisfactorily completed for this standard certificate must at a minimum include the following areas;~~
- 4.1.1 Holding a bachelor's, master's, or doctoral degree from a regionally accredited college or university with a major or its equivalent in gifted or talented education, teaching gifted students, or special education with a gifted or talented endorsement or specialization, from a National Council for the Accreditation of Teacher Education (NCATE) or the Council for the Accreditation of Educator Preparation (CAEP) specialty organization recognized educator preparation program or from a state approved educator preparation program where the state approval body employed the appropriate standards; or
- 4.1.2 Completion of a minimum of fifteen (15) credits or their equivalent in professional development as approved by the Department, with a focus in special education for gifted or talented students or students who are gifted or talented in the following content areas:
- 4.1.2.1 Foundations of Giftedness, including Cultural and Socioeconomic Equity (3 credits);
- 4.1.2.2 Curriculum Design and Instructional Strategies for Gifted Students (3 credits);
- 4.1.2.3 Psychology of Gifted Students (3 credits); and
- 4.1.2.4 Creative and Critical Thinking Skills (3 credits);
- 4.1.2.5 Practicum or Internship (3 credits).
- 4.1.3 ~~If the educator is applying for a second Standard Certificate pursuant to 14 DE Admin. Code 1505 Standard Certificate 3.1.5, the satisfactory completion of fifteen (15) credits or their equivalent in professional development in the areas of:~~
- 4.1.3.1 Foundations of Giftedness, including Cultural and Socioeconomic Equity (3 credits);
- 4.1.3.2 Curriculum Design and Instructional Strategies for Gifted Students (3 credits);
- 4.1.3.3 Psychology of Gifted Students (3 credits); and
- 4.1.3.4 ~~Creative and Critical Thinking Skills (3 credits).~~

5.0 Past Certification Recognized

The Department shall recognize a Standard Certificate Teacher of Students who are Gifted and Talented previously issued by the Department. A teacher holding a Standard Certificate Teacher of Students who are Gifted and Talented shall be considered certified to instruct the particular category of students specified herein as required by this regulation.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)(w) (16 Del.C. §122(3)(w))
16 DE Admin. Code 4451

PUBLIC NOTICE

4451 Body Art Establishments

On November 1, 2014, the Department of Health and Social Services, Division of Public Health, Health Systems Protection, plans to publish proposed regulations which amend the State of Delaware Regulations Governing Body Art Establishments and hold them out for public comment per Delaware law.

The regulation has been revised to include:

- Establishment of an annual inspection requirement.
- Establishment of a requirement that if operations are discontinued longer than sixty (60) days, or per order of the Division of Public Health, the permit holder shall obtain approval from the Division before resuming operations.

NOTICE OF PUBLIC HEARING

The Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services, will hold a public hearing to discuss proposed amendments to the Delaware Regulations Governing Body Art Establishments.

The public hearing will be held on November 25, 2014 at 10:00 a.m. in the First Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Copies of the proposed regulation are available for review in the November 1, 2014 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Health Systems Protection Section at 302-744-4705.

Anyone wishing to present his or her oral comments at this hearing should contact Ms. Deborah Harvey at (302) 744-4700 by November 25, 2014. Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulation as a supplement to or in lieu of oral testimony should submit such comments by Wednesday, December 10, 2014 to:

Deborah Harvey
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: Deborah.Harvey@state.de.us
Phone: (302) 744-4700

4451 Body Art Establishments

1.0 General Provisions

- 1.1 Preamble. The Secretary of Delaware Health and Social Services adopts these Regulations pursuant to the authority vested in the Secretary by 16 **Del.C.** §122. These Regulations establish standards for the sanitary operation of body art establishments. For the purpose of these Regulations, the term "body art establishment" includes "tattoo parlor" and "body piercing establishment," as defined in 16 **Del.C.** §122(3)(w). These Regulations provide a system of permitting and inspection of body art establishments and procedures for enforcement.

~~These Regulations are adopted on November 1, 2011 and have an effective date of November 11, 2011.~~

(Break in Continuity of Sections)

4.0 Inspections

- 4.1 Inspections and Right of Access

- 4.1.1 The Division shall have the right of access to inspect a body art establishment to determine compliance with these Regulations upon occurrence of any of the following conditions:

(Break in Continuity Within Section)

- 4.1.1.4 The Division shall inspect a body art establishment at least once every twelve (12) months.

(Break in Continuity of Sections)

7.0 Compliance Procedures

(Break in Continuity Within Section)

7.2 Grounds for Administrative Action

(Break in Continuity Within Section)

7.2.2 Imminent Health Hazard

(Break in Continuity Within Section)

7.2.2.5 If operations are discontinued longer than sixty (60) days, or per order of the Division, the permit holder shall obtain approval from the Division before resuming operations.

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

4451 Body Art Establishments

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

Delaware's Temporary Assistance for Needy Families (TANF) State Plan Renewal

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) is proposing to renew Delaware's eligibility status for the Temporary Assistance for Needy Families (TANF) program provided for in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), (P.L. 104-193).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy & Program Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by 4:30 p.m. on December 15, 2014. A draft copy of the Delaware TANF State Plan has been prepared which reflects amendments as well as basic improvements to the various descriptions of programs and services. This document may be viewed and downloaded from the Internet at the Division of Social Services' website at <http://www.dhss.delaware.gov/dhss/dss/>. Requests for electronic or paper copies of the draft TANF State Plan may be sent to Janneen Boyce at the above address or emailed to janneen.boyce@state.de.us.

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

NOTICE OF FORTY-FIVE-DAY COMMENT PERIOD FOR DRAFT TANF STATE PLAN

This notice is given to provide information of public interest with respect to Delaware's eligibility status for the Temporary Assistance for Needy Families (TANF) Program, specifically, *the TANF State Plan*. The TANF State Plan describes the manner in which the State administers Delaware's TANF Program, and sets forth the eligibility requirements for TANF-funded programs and services.

Statutory Authority

- Title IV-A of the Social Security Act, Section 402, *Eligible States; State Plan*
- 42 United States Code, Section 602(a), *Eligible States; State Plan*

Title of Notice

Delaware Temporary Assistance for Needy Families (TANF) State Plan

Background

The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (Public Law 104-193) provides funding to states through the Temporary Assistance for Needy Families (TANF) block grant. Section 402 of the Social Security Act requires that States periodically submit to the Secretary of the United States Department of Health and Human Services a TANF state plan to maintain or renew their status as an "eligible State". In general, the State plan describes the eligibility rules, the populations served, the programs offered, and the State maintenance of effort spending. States also provide certifications that they will maintain other services such as child support enforcement and foster care services. Delaware's TANF State plan is due on December 31, 2014.

Delaware Health and Social Services/Division of Social Services administers the Temporary Assistance for Needy Families block grant program. The TANF program is delivered through a collaborative partnership among Delaware's Department of Health and Social Services (DHSS), Department of Labor (DOL), and the Delaware Economic Development Office (DEDO). The Delaware Transit Corporation (DTC) is also a planning partner.

Summary of Notice of Comment Period for Draft TANF State Plan

In order to continue to receive Federal funding, Delaware must file for renewal of the Temporary Assistance for Needy Families (TANF) block grant with the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) by December 31, 2014. The State Plan outlines the provisions under which the State will administer the TANF program. The period of this renewal is from October 1, 2014 through December 31, 2016.

Prior to the submission of the plan, 42 United States Code Section 602(a) requires states to provide at least forty-five (45) days for the public to review and comment on the proposed plan and the design of services. The forty-five (45) comment period begins on the date this notice is published in the *Delaware Register of Regulations*. Written comments received within the comment period will be reviewed and considered for any subsequent revision of the TANF State Plan.

Developed in accordance with the requirements of PRWORA, the updated State Plan incorporates changes identified through a collaborative process that included development of proposed regulation, distribution of the draft regulation to Delaware stakeholders and the public, review and incorporation of appropriate comments in the plan, and the ongoing review of the TANF program.

A link to the draft TANF State Plan may be accessed at the following Division of Social Services website:

<http://www.dhss.delaware.gov/dhss/dss/>

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

[Delaware's Temporary Assistance for Needy Families \(TANF\) State Plan Renewal](#)

DEPARTMENT OF INSURANCE

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 and 915; 29 Delaware Code, Chapter 101
(18 Del.C. §§311 and 915; 29 Del.C. Ch. 101)

PUBLIC NOTICE

1003 Credit for Reinsurance

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed amended Department of Insurance Regulation 1003 relating to Credit for Reinsurance [Formerly Regulation 79]. The docket number for this proposed AMENDED regulation is 2427.

The proposed amended regulation supports the Credit for Reinsurance Act (18 Del.C. §§910-916) and makes

two changes for national accreditation purposes (see 8.2.4.8 and 8.2.7.4). The Delaware Code authority for the change is 18 **Del.C.** §311 and §915; and 29 **Del.C.** Ch. 101.

The Department of Insurance does not plan to hold a public hearing on the proposed amended regulation. The proposed amended regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at:

www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Monday, December 1, 2014. Any such requests should be directed to:

Regulatory Specialist Rhonda West
 Delaware Department of Insurance
 841 Silver Lake Boulevard
 Dover, DE 19904
 Phone: (302) 674-7379
 Fax: (302) 739-5566
 Email: rhonda.west@state.de.us

1003 Credit for Reinsurance (Break in Continuity of Sections)

8.0 Credit for Reinsurance—Certified Reinsurers

(Break in Continuity Within Section)

8.2 Certification Procedure.

(Break in Continuity Within Section)

8.2.4 Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, the following:

(Break in Continuity Within Section)

8.2.4.8 For certified reinsurers not domiciled in the U.S., audited financial statements (audited U.S. GAAP basis if available, audited IFRS basis statements ~~or other audited statements filed with the reinsurer's domestic supervisory authority in a jurisdiction recognized by the Commissioner as a qualified jurisdiction pursuant to Subsection 8.3 of this Section~~ are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the Commissioner, audited IFRS statements with reconciliation ~~of equity and net income~~ to U.S. GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the non-U.S. jurisdiction supervisor). Upon the initial application for certification, the Commissioner will consider audited financial statements for the last three (3) years filed with its non-U.S. jurisdiction supervisor;

(Break in Continuity Within Section)

8.2.7 The certified reinsurer must agree to meet applicable information filing requirements as determined by the Commissioner, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers which are not otherwise public information subject to disclosure shall be exempted from disclosure under 29 **Del.C.**, Ch. 100, and shall be withheld from public disclosure. The applicable information filing requirements are, as follows:

(Break in Continuity Within Section)

8.2.7.4 Annually, audited financial statements (audited U.S. GAAP basis if available, audited IFRS basis statements ~~or other audited statements filed with the reinsurer's domestic supervisory authority in a jurisdiction recognized by the Commissioner as a qualified jurisdiction pursuant to Subsection 8.3 of this Section~~ are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the Commissioner, audited IFRS statements with reconciliation of ~~equity and net income~~ to U.S. GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor). Upon the initial certification, audited financial statements for the last three (3) years filed with the certified reinsurer's supervisor;

(Break in Continuity of Sections)

16.0 Effective Date

This regulation shall become effective on the ~~45~~¹³~~th~~ day of ~~August~~January, 20135.

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

1003 Credit for Reinsurance

**DEPARTMENT OF LABOR
DIVISION OF INDUSTRIAL AFFAIRS
Office of Workers' Compensation**

Statutory Authority: 19 Delaware Code, Section 2322B(19 **Del.C.** §§2322B)
19 **DE Admin. Code** 1341

PUBLIC NOTICE

1341 Workers' Compensation Regulations

The Secretary of Labor, in accordance with 19 **Del.C.** §2322B, has proposed revisions to the rules and regulations relating to the Delaware Workers' Compensation Health Care Payment System (HCPS). These proposals substantially revise the fee schedule instructions and guidelines.

A public meeting will be held before the Workers' Compensation Oversight Panel ("Panel") at 4:00 p.m. on November 24, 2014, in the Department of Labor Fox Valley Annex, 4425 N. Market Street, Wilmington, Delaware 19802, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules may obtain a copy from Donna Forrest, Medical Component Manager, Office of Workers' Compensation, Division of Industrial Affairs, Department of Labor, 4425 N. Market Street, Wilmington, Delaware, 19802. Persons wishing to submit written comments may forward them to the Panel at the above address. The final date to receive written comments will be 20 days after the public meeting.

The Panel will consider making a recommendation to the Secretary at the regularly scheduled meeting following the public meeting.

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

1341 Workers' Compensation Regulations

PROPOSED REGULATIONS

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 4106(a)(1) (24 **Del.C.** §4106(a)(1))
24 **DE Admin. Code** 4100

PUBLIC NOTICE

4100 Board of Home Inspectors

The Delaware Board of Home Inspectors, pursuant to 24 **Del.C.** §4106(a)(1), proposes to amend its rules and regulations. The proposed regulation changes decrease the number of supervised inspections a trainee inspector must complete prior to being eligible for full licensure and decreases the number of inspections an experience applicant must complete to be eligible for licensure. The changes are being proposed in light of a recent statutory change that decreased the number of inspections endorsement candidates are required to complete to be eligible for licensure. The changes also eliminate INTERNACHI membership as a qualification for licensure as an experience applicant as the Board believes that INTERNACHI membership is not as strong an indicator of an applicant's qualifications as ASHI and NAHI membership.

The Board will hold a public hearing on the proposed regulation change on December 9, 2014 at 9:00 a.m., Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Amanda McAtee, Administrative Specialist of the Delaware Board of Home Inspectors, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until December 24, 2014 pursuant to 29 **Del.C.** §10118(a).

4100 Board of Home Inspectors (*Break in Continuity of Sections*)

4.0 Licensure Requirements

(*Break in Continuity Within Section*)

4.5 For non-trainee/experience applicants at least one of the following:

(*Break in Continuity Within Section*)

4.5.2 A log documenting no fewer than ~~250~~ 75 home inspections, and evidence that the applicant is a member of the American Society of Home Inspectors ("ASHI"), the National Association of Home Inspectors ("NAHI") ~~or the International Association of Certified Home Inspectors ("INTERNACHI")~~. The Board may request copies of sample home inspection reports to verify experience.

(*Break in Continuity of Sections*)

10.0 Responsibilities of registered home inspector trainee

10.1 The trainee shall complete at least ~~425~~ 75 home inspections under the active oversight of a licensed home inspector(s).

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

4100 Board of Home Inspectors

**EXECUTIVE DEPARTMENT
OFFICE OF MANAGEMENT AND BUDGET
OFFICE OF STATE PLANNING COORDINATION**

Statutory Authority: 22 Delaware Code, Section 1903 (22 **Del.C.** §1903)

PUBLIC NOTICE

Regulations Governing the Administration and Review of Applications for Designation as Downtown Development Districts

SUMMARY OF PROPOSED ACTION

Pursuant to its authority under the Downtown Development Districts Act, 22 **Del.C.** §1901 *et seq.* the Office of State Planning Coordination proposes these Regulations to establish procedures relating to the administration and review of Applications for designation as Downtown Development Districts.

NOTICE OF PUBLIC COMMENT PERIOD

Interested persons may submit written comments to Connie Holland, AICP, via email at connie.holland@state.de.us or via U.S. Mail at the Office of State Planning, 122 Martin Luther King Blvd. South, 3rd Floor, Dover, DE 19901. The public comment period will close on November 30, 2014.

Regulations Governing the Administration and Review of Applications for Designation as Downtown Development Districts

1.0 Authority

These regulations are authorized pursuant to 22 **Del.C.** §1903.

2.0 Background and Purpose

2.1 On June 5, 2014, Governor Markell signed Senate Bill 191, the Downtown Development Districts Act. The purposes of the Act are:

2.1.1 To spur private capital investment in commercial business districts and surrounding neighborhoods;

2.1.2 To stimulate job growth and improve the commercial vitality of such districts and neighborhoods;

2.1.3 To help build a stable community of long-term residents in such districts and neighborhoods by improving housing opportunities for persons of all incomes and backgrounds; increasing homeownership rates; building a diverse array of successful businesses; and reducing the number of vacant houses; and

2.1.4 To help strengthen neighborhoods, while harnessing the attraction that vibrant downtowns hold for talented young people, innovative small businesses, and residents from all walks of life.

2.2 Under the Act, the Office of State Planning is responsible for administering the application process. The purpose of these Regulations is to establish procedures relating to the administration and review of Applications for Designation as Downtown Development Districts.

3.0 Definitions

“Act” means the Downtown Development Districts Act, 22 **Del.C.** §1901 *et seq.*

“Agency Liaison” means the person designated by the Secretary or Director of a Reviewing Agency to fulfill the Reviewing Agency’s obligations under §6.0 hereunder.

PROPOSED REGULATIONS

“Applicant” means any municipality or unincorporated area (as such terms are defined in the Act) filing an Application.

“Application” means the Application for Designation as a Downtown Development District promulgated by the Office in accordance with the Act.

“Central Business District” means an area around the downtown portion of a city or town that allows for higher intensity residential uses as well as commercial, office, personal services, governmental, and similar uses intended to serve the community and surrounding areas of the city or town.

“CCSPI” or “Committee” means the Cabinet Committee on State Planning Issues established pursuant to the Delaware Planning Act, 29 Del.C. §9101 et seq.

“DDD,” “District,” or “Downtown Development District” means an area within a municipality or unincorporated area designated as a Downtown Development District in accordance with the Act.

“District Plan” means the strategic plan or other detailed description of the overall strategy for the development of a proposed district submitted by the municipality or unincorporated area as part of its Application.

“Downtown” means that portion of a city, town, or unincorporated area that traditionally comprises its downtown or central business district, as determined by such city, town, or unincorporated area in accordance with guidelines promulgated by the Office.

“Local Incentives” means the incentives offered by an Applicant as part of its Application that address local economic and community conditions, and that will help achieve the purposes set forth in the Act.

“Office” or “OSPC” means the Office of State Planning Coordination.

“Reviewing Agency” means any State Agency assigned by the Office to review and provide comments regarding an Application or any portion thereof.

“Staff Report” means any report prepared by the Office, with assistance from Reviewing Agencies, to aid the Committee in determining which Applications to recommend to the Governor for District designation.

4.0 Responsibilities of Office of State Planning Coordination

In accordance with the Act, the Office:

- 4.1 Shall develop the Application and other supporting materials and information, with input from other state agencies as appropriate;
- 4.2 Shall solicit Applications, at the request of the Governor, from municipalities and unincorporated areas to have areas designated as Downtown Development Districts;
- 4.3 Shall provide assistance to potential Applicants and other stakeholders in connection with the Application process;
- 4.4 Shall evaluate completed Applications and present recommendations to the Committee in accordance with §7.0 below; and
- 4.5 Shall perform such tasks assume such other responsibilities as may arise from time to time in connection with the administration and review of Applications.

5.0 Content of Applications

- 5.1 In accordance with §1903(c) of the Act, the Application shall include but not be limited to the following elements:
 - 5.1.1 Need and Impact
 - 5.1.1.1 The Application must require the Applicant to describe the need for the incentives that will be available in the proposed District, and to describe the potential positive impacts that are likely to accrue due to District designation.
 - 5.1.1.2 Whenever possible, the Application should require the Applicant to demonstrate need and impact through the use of U.S. Census data or other objective information.

5.1.1.3 The Applicant shall be permitted to submit as part of its Application any additional information it deems relevant to demonstrate the need for and potential impact of the proposed District designation.

5.1.2 District Plan

5.1.2.1 The Application must require the Applicant to submit a detailed description of the overall strategy for the development of the proposed District, with such maps, descriptions, and other information as the Office may require.

5.1.2.2 At minimum, the Application:

5.1.2.2.1 Must require each District Plan to describe the key actions and strategies that will be used to guide growth and revitalization efforts in the proposed District;

5.1.2.2.2 Must require each Applicant to demonstrate that the District Plan is consistent with its certified Comprehensive Plan, the *Strategies for State Policies and Spending*, and any other applicable local planning documents or studies;

5.1.2.2.3 Must require each Applicant to include its Central Business District in its District Plan; and

5.1.2.2.4 Must provide that the proposed District shall be contiguous.

5.1.2.3 In addition, the Application must state that Districts shall be subject to maximum acreage requirements as determined by the Office. For the initial round of Applications, Districts shall be subject to the following area limitations, based on the most recent U.S. Census data:

5.1.2.3.1 No more than 85 acres in area for jurisdictions having a population of less than 9,000 persons; and

5.1.2.3.2 No more than 170 acres for jurisdictions having a population between 9,000 and 30,000 persons; and

5.1.2.3.3 No more than 225 acres for jurisdictions having a population greater than 30,000 persons.

5.1.3 Local Incentives

5.1.3.1 The Application must require the Applicant to propose Local Incentives that will help achieve the purposes set forth in the Act, as set forth in §2.1 above. These incentives must address local economic and community conditions, and may include but not be limited to reductions in fees or taxes, permit process and licensing reform, special zoning districts, and exemptions from local ordinances.

5.1.3.2 Upon designation as a District the Applicant shall be required to implement the proposed Local Incentives for the duration of the District designation.

5.1.4 Resolution

5.1.4.1 The Application shall require the Applicant to provide a resolution adopted by its governing body stating that the governing body supports the Application and will adhere to the District Plan and the Local Incentives for the duration of the District designation.

5.1.4.2 Upon the written approval of the Office, the Applicant may provide a resolution adopted by its governing body that deviates from the requirements of §5.1.4.1. In no event, however, shall the requirement to provide a resolution be waived.

5.2 In addition to the above, the Office may include such other provisions and adopt such other requirements in connection with the Application process as may be necessary or desirable in connection with the consideration of Applications, or any of them.

6.0 Initial Review by Office; Comments from Reviewing Agencies

6.1 Immediately following the Application deadline, the Office will conduct an initial review to determine the completeness of each Application and, if necessary, to request and receive additional clarifying information.

PROPOSED REGULATIONS

- 6.2 If the Office determines that a Reviewing Agency has expertise relevant to the consideration of any Application, the Office may forward the Application or any portion thereof to the Reviewing Agency for review and comment.
- 6.3 Each Reviewing Agency will designate an Agency Liaison to serve as the Office's point of contact during the Application process. The Agency Liaison will ensure that the Reviewing Agency reviews and provides comments on the Application in accordance with the deadlines established by the Office. Reviewing Agencies are advised that the Office may request responses on an expedited basis.
- 6.4 Comments by Reviewing Agencies shall address:
- 6.4.1 The principal strengths of the Application from the Reviewing Agency's perspective, including those considerations set forth in §8.0 that are within the Reviewing Agency's area of expertise;
- 6.4.2 The principal weaknesses of the Application from the Reviewing Agency's perspective, including those considerations set forth in §8.0 that are within the Reviewing Agency's area of expertise; and
- 6.4.3 Such other information as the Reviewing Agency shall determine is relevant to its consideration of the Application and the District Plan and Local Incentives contained therein.

7.0 Staff Reports and Recommendations—Procedure

- 7.1 Following a review of each Application and comments from Reviewing Agencies, the Office will prepare a Staff Report to assist the Committee in fulfilling its obligations under §9.0 below.
- 7.2 The Office will summarize or incorporate in the body of each Staff Report those comments from Reviewing Agencies that the Office determines are relevant to its review of the underlying Application. In addition, the Office may attach *verbatim* the comments of the Reviewing Agency as an exhibit to such Staff Report.
- 7.3 Upon completion of all Staff Reports, the Office will determine which Applications, in its opinion, have the greatest potential for accomplishing the purposes of the Act, as set forth more fully in §2.1 above.
- 7.3.1 In distinguishing among competing Applications, the Office will evaluate Applications in accordance with the considerations set forth in §8.0 of these Regulations.
- 7.3.2 For the initial round of District designations, the Office will make separate recommendations pursuant to §7.3 for each county.
- 7.4 The Office will present each Staff Report, as well as its recommendations pursuant to §7.3 above, at the next meeting of the Committee. Copies of all Staff Reports, recommendations, and other relevant materials will be provided to members of the Committee at least ten (10) days prior to the date of such meeting.

8.0 Evaluation of Applications

- 8.1 General Principles
- 8.1.1 It is understood that Applicants will be given significant flexibility and authority to create a District Plan and propose Local Incentives that best meet the needs of their communities. As a result, each Application will be different, and the evaluation of each Application will require qualitative judgments as well as quantitative factors.
- 8.1.2 Notwithstanding the above, a substantive framework is necessary to assist the Office and Reviewing Agencies in determining which Applications have the greatest potential for accomplishing the purposes of the Act in accordance with §2.1 above, and to distinguish among competing Applications. To that end, Applications will be reviewed in accordance with the considerations set forth in this section.
- 8.1.3 Nothing in this section shall be construed to prohibit the establishment or consideration of such other matters as may be necessary or desirable in connection with the consideration of any Application.
- 8.2 Need and Impact – Need and impact factors will account for 50 percent of the consideration given to each Application. Evaluation of need and impact may include but shall not be limited to the following:

- 8.2.1 Economic considerations, including median income, poverty rate, and percentage of low- and moderate-income residents or households;
 - 8.2.2 Considerations relating to housing and community conditions, including the number or percentage of vacant or abandoned properties, homeownership and rental rates, median home value, and average or median age of dwelling units or structures;
 - 8.2.3 Other considerations as set forth in the Application pursuant to §5.1.1.2, which may include but shall not be limited to considerations relating to population, crime, and education levels; and
 - 8.2.4 The Applicant's description of the potential positive impacts that are likely to result from District designation.
- 8.3 District Plan – The District Plan will account for 30 percent of the consideration given to each Application. Evaluation of each District Plan may include but shall not be limited to the extent to which:
- 8.3.1 The District Plan is consistent with sound planning principles, including the extent to which:
 - 8.3.1.1 The size and shape of the proposed District make sense from an urban planning and revitalization perspective;
 - 8.3.1.2 The District Plan clearly and specifically identifies the types of projects and uses intended to be promoted—and discouraged—within the proposed District, for purposes of administering the DDD Grant Program and otherwise;
 - 8.3.1.3 The District Plan is consistent with the Applicant's certified Comprehensive Plan, the *Strategies for State Policies and Spending*, and any other applicable planning documents or studies;
 - 8.3.1.4 The District Plan is well-coordinated, with clear lines of authority among local government agencies, members of the community, for- and non-profit organizations, and other stakeholders;
 - 8.3.1.5 The District Plan complements and is consistent with existing revitalization efforts, including (if applicable) any historic districts or business improvement districts; and
 - 8.3.1.6 The District Plan promotes energy-efficient and environmentally sensitive development, and addresses the potential effects of flooding and sea level rise as applicable;
 - 8.3.2 The District Plan is likely to leverage significant private funding, including whether District designation is likely to assist or result in specific projects moving forward within the first six (6) to twelve (12) months of District designation;
 - 8.3.3 District designation is likely to benefit a wide variety of stakeholders, including investors and other businesses (large and small, non-profit and for-profit), homeowners, and other stakeholders;
 - 8.3.4 The District Plan evidences input from, and the support of, such stakeholders;
 - 8.3.5 The extent to which the proposed District concentrates benefits in as small an area as possible, which may but shall not be required to includes prioritization, phasing, and/or timing of redevelopment activities as appropriate to maximize the effectiveness of District incentives;
 - 8.3.6 The key actions and strategies proposed in the District Plan are realistic in light of existing economic and other conditions;
 - 8.3.7 The District Plan encourages accountability by establishing clear lines of responsibility for the applicant to meet its District obligations; and
 - 8.3.8 The District Plan evidences a strong and sustained commitment of the Applicant to ensure the long-term success of the District, to the extent it is so designated.
- 8.4 Local Incentives – The Local Incentives shall account for 20 percent of the consideration given to each Application. Evaluation hereunder may include but shall not be limited to the extent to which the proposed Local Incentives:
- 8.4.1 Are coordinated with and integrated into the District Plan, *i.e.*, they support the specific initiatives contained in or contemplated by such Plan;
 - 8.4.2 Are likely to leverage significant private funding;
 - 8.4.3 Are meaningful and substantial, thereby demonstrating the Applicant's commitment to the success of the proposed District;

PROPOSED REGULATIONS

- 8.4.4 Are likely to benefit a wide variety of stakeholders, including those stakeholders described in §8.3.3 above;
- 8.4.5 Promote energy-efficient and environmentally sensitive development, and address the potential effects of flooding and sea level rise as applicable;
- 8.4.6 Are user-friendly, easy to understand, and to the extent possible, cut or minimize red tape;
- 8.4.7 Clearly and specifically describe which person(s) are responsible for ensuring that the Local Incentives are available throughout the life of the District; and
- 8.4.8 Are measurable with respect to determining the success or failure of such Local Incentives in accomplishing the purposes of the Act, as set forth more fully in §2.1 above.

9.0 Committee Review of Applications

- 9.1 At a reasonable time following the close of the Application period, a meeting of the Committee will be convened to consider, discuss, and evaluate the Applications.
- 9.2 At such meeting, the Office shall present to the Committee each Application and associated Staff Report, as well as the Office's recommendations in accordance with §7.3 above. The Committee shall give significant weight to the Staff Reports and the recommendations contained therein, but shall not be bound thereby.
- 9.3 At the conclusion of the meeting, the Committee shall recommend to the Governor those applications with the greatest potential for accomplishing the purposes of the Act. In connection therewith, the Committee shall consider the provisions of §§2.1 and 8.0 above.
- 9.4 Recommendations of the Committee shall be made by a resolution adopted by no less than a majority of Committee members present. If the Committee is unable to adopt a resolution at the conclusion of the meeting, the Committee shall defer its recommendations until the next meeting, which shall be scheduled at the earliest possible opportunity in accordance with FOIA. In connection therewith, the Committee may request that the Office provide additional information relevant to its consideration of Applications hereunder.
- 9.5 As soon as is practicable following the date upon which the Committee issues its recommendations, the Office shall forward to the Governor:
 - 9.5.1 All Applications recommended by the Committee in accordance with this §9.0, and any supporting materials submitted by the Applicant in connection therewith;
 - 9.5.2 All Staff Reports prepared by the Office and presented to the Committee in connection with such Applications, including all comments of Reviewing Agencies;
 - 9.5.3 The minutes of the Committee meeting held pursuant to §9.0 above; and
 - 9.5.4 Such other information as the Office or the Committee shall deem relevant, or as otherwise requested by the Governor or his designee(s).

10.0 Review and Designation; Agreements Evidencing Designation

- 10.1 As set forth in §1904(b) of the Act, following receipt of any Application set forth in §9.5 above, the Governor:
 - 10.1.1 Shall approve the Application for immediate designation as a District; or
 - 10.1.2 Shall approve the Application for designation as a District, effective one (1) year from the date of such determination by the Governor; or
 - 10.1.3 Shall deny such Application.
- 10.2 In connection with the Designation of any District hereunder, the Office may require the successful Applicant to execute such documents and enter into such agreements as may be necessary or desirable in connection with such designation and the rights and obligations of the Applicant thereunder.

11.0 Preservation of Applications: Subsequent Application Rounds

- 11.1 Any Application that is not approved for District designation will remain on file with the Office for a period of not less than four (4) years from the date the original Application was filed.
 - 11.2 In subsequent Application periods, any Applicant whose Application remains on file will not be required to submit an entirely new Application. Instead, the Office will request that the prior Applicant revise, amend, or supplement only those portions of the prior Application as necessary to update the Application for consideration in the subsequent round of Applications.
 - 11.3 Nothing in this section shall prohibit or prevent the prior Applicant from revising, amending, or supplementing such portions of the Application as may be necessary to improve upon the prior Application and to better position the Applicant for District designation in the subsequent round of Applications.
 - 11.4 Notwithstanding the foregoing, a prior Applicant seeking to renew its Application in any subsequent round of Applications shall be required to obtain and submit a new Resolution in accordance with §5.1.4 above.
-

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 EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 275

REGULATORY IMPLEMENTING ORDER

275 Charter Schools

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** 275 Charter Schools. This regulation amends the approval procedure for charter schools as required by Senate Bill 209 as amended by Senate Amendment 1. The amendments are related specifically to how "impact" may be used as an element of approval and any conditions upon approval or disapproval of a charter.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on September 1, 2014, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens, State Council for Persons with Disabilities and the Delaware Charter School Network. Comments were related to the definition of impact as it relates to the education system of the state, and relative to a proposed definition for "programmatic offerings".

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 275 in order to be in compliance with Senate Bill 209 which clarifies how "impact" may be used as an element of approval and any condition upon approval or disapproval of a charter.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 275 Charter Schools. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 275 Charter Schools attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 275 Charter Schools 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** 275 Charter Schools amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 275 Charter Schools 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 October 9, 2014. 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 9th day of October 2014.

Department of Education

Mark T. Murphy, Secretary of Education

Approved this 9th day of October 2014

State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

Randall L. Hughes II

275 Charter Schools (Break in Continuity of Sections)

3.0 Application Process

(Break in Continuity Within Section)

3.10 Consideration of Impact

(Break in Continuity Within Section)

3.10.5 The State Board, in addition to voting to assent to the decision of the Department, may include any previously proposed conditions related to Impact or modify conditions related to Impact within the Secretary's decision, but shall not include any conditions relating to Impact not previously proposed in accordance with 14 **DE Admin. Code** 275.3.10.2 and 275.3.10.3 in **[their its]** motion for assent to approve such application.

*Please note that no additional changes were made to the regulation as originally proposed and published in the September 2014 issue of the *Register* at page 177 (18 DE Reg. 177). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

275 Charter Schools

FINAL REGULATIONS

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 405

REGULATORY IMPLEMENTING ORDER

405 Minor Capital Improvement Programs

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education intends to amend Title 14 of the Delaware Administrative Code by amending 14 **DE Admin. Code** 405 Minor Capital Improvement Programs.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on September 1, 2014, in the form hereto attached as *Exhibit "A"*. No comments were received for this amended regulation.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 405 Minor Capital Improvement Programs in order to increase the threshold from \$500,000 to \$750,000 for such projects that can be classified as Minor Capital Improvement Projects.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 405 Minor Capital Improvement Programs. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 405 Minor Capital Improvement Programs attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 405 Minor Capital Improvement Programs 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** 405 Minor Capital Improvement Programs amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 405 Minor Capital Improvement Programs 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 October 9, 2014. 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 9th day of October 2014.

Department of Education

Mark T. Murphy, Secretary of Education

Approved this 9th day of October 2014

***Please note that no changes were made to the regulation as originally proposed and published in the September 2014 issue of the *Register* at page 180 (18 DE Reg. 180). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

405 Minor Capital Improvement Programs

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 851

REGULATORY IMPLEMENTING ORDER

851 K to 12 Comprehensive Health Education Program

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** 851 K to 12 Comprehensive Health Education Program. The amendment is needed to clarify some language regarding the incorporation of psychomotor skills learning into the instruction, and the implementation date shall be no later than the 2015-2016 school year.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on August 1, 2014, in the form hereto attached as *Exhibit "A"*. Comments were received from American Heart Association, Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. These organizations expressed similar concerns related to delaying the implementation of the psychomotor skills learning into CPR instruction until the 2015-2016 school year. They also requested an exemption for students with an Individual Education Program (IEP) due to a physical or other limitation which would prevent the student from performing CPR.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 851 K to 12 Comprehensive Health Education Program in order to clarify language regarding the incorporation of psychomotor skills learning into the instruction, and the implementation date shall be no later than the 2015-2016 school year.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 851 K to 12 Comprehensive Health Education Program. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 851 K to 12 Comprehensive Health Education Program attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 851 K to 12 Comprehensive Health Education Program 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** 851 K to 12 Comprehensive Health Education Program amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 851 K to 12 Comprehensive Health Education Program 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 October 9, 2014. 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 9th day of October 2014.

Department of Education

Mark T. Murphy, Secretary of Education

Approved this 9th day of October 2014

State Board of Education

Teri Quinn Gray, Ph.D., President
Jorge L. Melendez, Vice President
G. Patrick Heffernan
Barbara B. Rutt

Gregory B. Coverdale, Jr.
Terry M. Whittaker, Ed.D.
Randall L. Hughes II

*Please note that no changes were made to the regulation as originally proposed and published in the August 2014 issue of the *Register* at page 104 (18 DE Reg. 104). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

851 K to 12 Comprehensive Health Education Program

DEPARTMENT OF FINANCE**OFFICE OF THE STATE LOTTERY**

Statutory Authority: 29 Delaware Code, Section 4826 (29 Del.C. §4826)
10 DE Admin. Code 206

ORDER**206 Internet Lottery Rules and Regulations**

After due notice in the *Register of Regulations* and two Delaware newspapers, written comments on proposed regulations relating to anonymous play and play for free were invited.

The proposed regulations allow PC and Mac players to register to play for free and establish requirements for registering to play for free on a mobile device.

The proposed amendments were published in the *Register of Regulations*, Vol. 18, Issue 3, on September 1, 2014.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

No written comments were received.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The public was given notice and an opportunity to provide written comments and testimony on the proposed amendments.
2. The Lottery finds that the proposed amendments to the rules are necessary and in the public interest.
3. Pursuant to 29 Del.C. §4805, the Lottery has statutory authority to promulgate regulations governing the establishment and operation of lottery matters.

DECISION AND EFFECTIVE DATE

The Lottery hereby adopts the proposed rules in the manner to be published in the *Register of Regulations* in November, 2014, to be effective ten days after publication of the Order in the *Register of Regulations*.

TEXT AND CITATION

The text of the revised rules shall be as published in the *Register of Regulations* in November, 2014 as attached hereto as Exhibit A.

SO ORDERED this 10th day of October, 2014.

DELAWARE STATE LOTTERY OFFICE

Vernon Kirk, Director

*Please note that no changes were made to the regulation as originally proposed and published in the September 2014 issue of the *Register* at page 182 (18 DE Reg. 182). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

206 Internet Lottery Rules and Regulations

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

ORDER

Diamond State Health Plan 1115 Demonstration Waiver Amendment – Promoting Optimal Mental Health for Individuals through Supports and Empowerment

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Diamond State Health Plan (DSHP) Section 1115 Demonstration Waiver to coordinate coverage of the new Home and Community-Based Services (HCBS) behavioral health program, identified as *PROMISE (Promoting Optimal Mental Health for Individuals through Supports and Empowerment)*. 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 September 1, 2014 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 30, 2014 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 proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to submit an application to the Centers for Medicare and Medicaid Services (CMS) to amend the Diamond State Health Plan (DSHP) Section 1115 Demonstration Waiver to coordinate coverage of the new Home and Community-Based Services (HCBS) behavioral health program, identified as *PROMISE (Promoting Optimal Mental Health for Individuals through Supports and Empowerment)*.

Statutory Authority

- 42 U.S.C. §1315, *Demonstration projects*
- Social Security Act §1115, *Demonstration projects*
- 42 CFR 431 Subpart G, *Section 1115 Demonstrations*

Background

Under a waiver of Section 1115(a) of the Social Security Act, the Diamond State Health Plan (DSHP) implemented a mandatory Medicaid managed care demonstration program statewide on January 1, 1996. Goals of the DSHP are to improve and expand access to healthcare to more adults and children throughout the State, create and maintain a managed care delivery system emphasizing primary care, and to strive to control the growth of healthcare expenditures for the Medicaid population.

Specifically, the proposed waiver amendment provides home- and community-based services (HCBS) for individuals in a target population with behavioral health needs in order to support those individuals in the community and prevent institutionalization.

The Department proposes to comprehensively meet the needs of individuals with behavioral health (BH) needs, including individuals identified under the State's Olmstead settlement with the United States Department of Justice.

Summary of Proposal

In accordance with the public notice requirements of 42 U.S.C. §1315(d), 42 CFR Part 431, Subpart G, 42 CFR 447.205 and Title 29, Chapter 101 of the **Delaware Code**, Delaware Health and Social Services (DHSS), Division of Medicaid and Medical Assistance (DMMA), Division of Substance Abuse and Mental Health (DSAMH) gives notice of their intent to file an application with the Centers for Medicare and Medicaid Services (CMS) to amend the Diamond State Health Plan (DSHP) Section 1115 Demonstration Waiver.

If implemented as proposed, the proposed 1115 demonstration amendment will have the following effect on July 1, 2014:

- For adult Medicaid populations meeting the Olmstead settlement behavioral health (BH) target population as well as Medicaid-eligible adults requiring HCBS to live and work in the most integrated setting and meeting targeting and functional limitations statewide, the State will offer an enhanced benefit package of HCBS using the 1915(i)-like authority in the 1115 demonstration in addition to the State Plan services to help maintain individuals in home- and community based settings. The enhanced Medicaid benefit package will be coordinated by DSAMH through the fee-for-service program in compliance with home- and community-based standards and assurances and the signed Olmstead agreement. This population will continue to receive non-BH and most non-enhanced BH Medicaid State Plan services through the managed care organization (MCO) benefit. See the benefit sections below for a description of the covered services. The State is also considering including non-medical transportation services in the State's existing transportation broker contract and the amendment would provide the freedom of choice authority necessary for that contract amendment.
- For adults served in MCOs throughout the State who are not in the PROMISE target populations, the MCOs will integrate all covered services for mental illness, SUDs, and physical health conditions under this demonstration.

Draft of Proposed 1115 Waiver Amendment

A draft of Delaware's waiver amendment is currently available for review on the Division of Medicaid and Medical Assistance (DMMA) website at <http://dhss.delaware.gov/dhss/dmma/> and the Division of Substance Abuse and Mental Health website at <http://www.dhss.delaware.gov/dhss/dsamh/>.

The provisions of this waiver amendment are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

Fiscal Impact Statement

There is no increase in cost on the General Fund. Demonstrations must be "budget neutral" over the life of the project, meaning that they cannot be expected to cost the Federal government more than it would cost without the waiver.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

A Client, the Disabilities Law Program of Community Legal Aid Society, Inc., (CLASI), the State Council for Persons with Disabilities (SCPD), the Governor's Advisory Council for Exceptional Citizens (GACEC) and a comment from an individual identified for publication purposes as Public Comment #5 offered the following observations and recommendations summarized below. Each comment has been considered and the agency's response follows.

Agency Response Note: With regard to the following comments, please note that each "Agency Response" provided below was developed and prepared by staff of the Division of Substance Abuse and Mental Health (DSAMH) in collaboration with the Division of Medicaid and Medical Assistance (DMMA).

Client Comment

Please Note: For purposes of confidentiality, the name of the letter writer and the location of the mental health facility are not identified.

This letter is to lodge a complaint against the changes that are occurring to the XXXX Mental Health Facility.

The planned changes, forcing the patients out of this facility, were not, I think, made with the patients' well-being in mind. As a client of this facility, I am greatly opposed to the changes. The XXXX Mental Health Clinic has not only provided me with a safe place, but the groups offered have been invaluable as well. My therapist there is someone I have put my complete trust in and any headway I have made in therapy will now be completely derailed. Forcing mental health clients to start all over again is detrimental to their well-being. I would not be surprised if there was an increase in hospitalizations after the implementation of your new plan.

Agency Response: Thank you for sharing your thoughts and concerns with us regarding PROMISE. We received your letter, and wanted to let you know that we will consider your thoughts and concerns as we move forward with PROMISE. Our goal in making these changes is to improve the quality of behavioral health care and provide a more robust array of services to more people.

Disabilities Law Program of Community Legal Aid Society, Inc. and the State Council for Persons with Disabilities

Please consider this letter and attachments as commentary submitted in response to the solicitation appearing at <http://www.dhss.delaware.gov/dhss/dsamh>. A link at that Web location connects to a 38-page document dated August 22, 2014 entitled "1115 Demonstration Amendment for State of Delaware PROMISE (Promoting Optimal Mental Health for Individuals through Supports and Empowerment) Program Changes", hereinafter "Amendment".

As background, we understand that DHSS is proposing an amendment to the DSHP 1115 Waiver to offer an enhanced benefits package to eligible persons. The target population is described as "individuals meeting the Olmstead settlement BH target population as well as other Medicaid-eligible adults with serious mental illness and/or substance abuse disorder needs requiring HCBS to live and work in the most integrated setting." Amendment, p. 1. Specific eligibility standards are outlined at pp. 3-6.

The enhanced benefit package (pp. 7-8) includes the following fifteen (15) supports:

- care management
- benefits counseling
- community psychiatric support and treatment
- community-based residential supports, excluding assisted living
- financial coaching
- independent activities of daily living/chore
- individual employment supports
- non-medical transportation
- nursing
- peer support
- personal care
- psychosocial rehabilitation
- respite
- short-term small group supported employment
- community transition services

Individuals enrolled in the Pathways program would be categorically ineligible for enrollment in the PROMISE program. Amendment, p. 3. For individuals enrolled in the DSHP and DSHP+ program, case management and services would be coordinated. Amendment, p. 3.

The Disabilities Law Program and the SCPD endorse the initiative subject to consideration of the following.

First, we highly recommend that Target Criteria A (pp. 3-5) be amended to include "Major Neurocognitive Disorder Due to TBI" (DSM-5), a/k/a Dementia Due to Head Trauma (294.1x) under DSM-IV. Consistent with Attachment "A", characteristics associated with Dementia Due to Head Trauma are described as follows:

These symptoms include aphasia, attentional problems, irritability, anxiety, depression or affective liability, apathy, increased aggression, or other changes in personality. Alcohol or other Substance Intoxication is often present in individuals with acute head injuries, and concurrent Substance Abuse or Dependence may be present.

Concomitantly, Target Criteria B should be amended to include at least trauma-based "Major Neurocognitive Disorders".

On a practical level, individuals with a diagnosis of “Major Neurocognitive Disorder Due to TBI” will generally present with an array of symptoms at least equivalent to the included PTSD, OCD, and anxiety-based disorders. The former individuals also frequently have co-occurring physical/spinal cord deficits which could be addressed with many of the supports in the services menu, including personal care, nursing, and respite. Moreover, the diagnosis of Major Neurocognitive Disorder Due to TBI requires persistent and significant impairments:

In DSM-5, not all brain injuries can be considered potentially causative of NCD (neurocognitive disorder). The diagnostic criteria for NCD due to TBI require that the TBI be associated with at least one of four features: loss of consciousness, posttraumatic amnesia, disorientation and confusion, or neurological signs, such as neuroimaging findings, seizures, visual field cuts, anosmia, or hemiparesis (Ref.5, p. 624). Furthermore, the NCD must have its onset either immediately after the TBI or after recovery of consciousness and must persist past the acute post injury period. Thus, trauma that produced no cognitive or neurological changes at the time of the incident cannot produce an NCD under this scheme.

J. Simpson, M.D, Ph.D., DSM-5 and Neurocognitive Disorders, Journal of the American Academy of Psychiatry and the Law (June 1, 2014) (Attachment “B”).

Agency Response: Thank you for your comment. Individuals may have a diagnosis in addition to one of the required diagnostic categories (ie: TBI) and receive services under PROMISE as long as the PROMISE criteria are met.

Second, there is some inconsistency/tension in the descriptions of choice of providers. Compare the following:

All adults receiving PROMISE services will have a choice of practitioner among the contracted and qualified providers. At 8.

If the individual is identified as a CRISP individual, the individual will be enrolled in the PROMISE program only and will receive all services necessary for community living from the PROMISE program through CRISP. At 3.

The Department may wish to conform the reference on p. 8 to acknowledge the “CRISP” exception described on p. 3.

Agency Response: Thank you for your comment. Individuals in the CRISP program will be able to choose from the CRISP providers because they are the providers who are contracted and qualified to provide CRISP services.

GACEC

The Governor’s Advisory Council for Exceptional Citizens (GACEC) has been given the responsibility to provide advocacy and advice on the human service needs of exceptional citizens of all ages in the State of Delaware. The GACEC would like to express support for the comments provided by the Disabilities Law Program (DLP) in reference to the proposed Diamond State Health Plan proposed amendments to coordinate coverage in the *PROMISE (Promoting Optimal Mental Health for Individuals through Supports and Empowerment)* program. PROMISE is the new Home and Community-Based Services (HCBS) behavioral health program. A copy of the DLP letter is attached for your reference. The GACEC endorses the commentary and recommendations provided by the DLP.

Agency Response: Thank you for your comments. Responses to the DLP comments are provided in the above response.

Public Comment #5

Please Note: For purposes of confidentiality, the name of the letter writer and the location of the mental health facility are not identified.

XXXX Mental Health [XMH] was providing stable services for mental health clients such as: individual counseling, Psychiatric Medicine Prescribing, Nurse Evaluations and Group Support for both women and men.

Presently, they are mainstreaming these clients into different programs thus taking away the stability of services for the clients. Many clients were told if they tried the new program they could return to XMH if they were not satisfied. However, when clients wanted to return to their original services provided by XMH they were denied.

Majority of the clients at XMH were very satisfied with the services they offered. In other words, it was working!! So now someone thinks they have a better idea which will save money etc. etc. However, they have no real understanding about the impact this is having on the clients. You are doing a great disservice to mental health patients and their needs.

Please reconsider PROMISE 1115, as it is, not what the mental health patient’s need nor want. Go back and

find another program to save money which DOES NOT affect individuals who have any form of disability.

Remember you also thought changing Detox to Recovery was a good idea which it has not been. (No reflection on the employees they are doing their best.) Learn to understand the true affect your decisions are making on people with disabilities who really often cannot stand up and rally for their best interests.

Agency Response: Thank you for sharing your thoughts and concerns with us regarding PROMISE. Our goal in making these changes is to improve the quality of behavioral health care and provide a more robust array of services to more people.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the September 1, 2014 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Diamond State Health Plan 1115 Demonstration Waiver Amendment to cover *PROMISE (Promoting Optimal Mental Health for Individuals through Supports and Empowerment)* is adopted and shall be final effective November 10, 2014.

Rita M. Landgraf, Secretary, DHSS

***Please note that no changes were made to the regulation as originally proposed and published in the September 2014 issue of the Register at page 186 (18 DE Reg. 186). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

Diamond State Health Plan 1115 Demonstration Waiver Amendment – P.R.O.M.I.S.E.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Title XXI Delaware Healthy Children Program State Plan - Cost Sharing and Payment

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Title XXI Delaware Healthy Children Program State Plan and the Division of Social Services Manual (DSSM) regarding Cost Sharing and Payment, specifically, *Premium Requirements*. 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 September 2014 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 30, 2014 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/Division of Medicaid and Medical Assistance is proposing to amend the Title XXI Delaware Healthy Children Program State Plan and the Division of Social Services Manual (DSSM) regarding Cost Sharing and Payment, specifically, *Premium Requirements*.

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

- Title XXI of the Social Security Act, *State Children's Health Insurance Program*
- 42 CFR Part 457, *State Children's Health Insurance Programs (SCHIPs)*
- 16 Delaware Code, Section 9909

Background

The Balanced Budget Act of 1997, enacted on August 5, 1997, established the "State Children's Health Insurance Program (SCHIP)" by adding Title XXI to the Social Security Act. The purpose of this program is to provide funds to States to enable them to initiate and expand the provision of child health assistance to uninsured, low-income children in an effective and efficient manner that is coordinated with other sources of health benefits coverage for children. Delaware's SCHIP program called the Delaware Healthy Children Program (DHCP) is authorized under Title 19, Chapter 99, and Section 9905 of the **Delaware Code**.

Modified Adjusted Gross Income (MAGI) Conversion Plan

Under the Affordable Care Act, to complete the transition to the MAGI-based methodology, states developed MAGI-based income eligibility standards for the applicable eligibility groups that "are not less than the effective income levels" that were used to determine Medicaid and CHIP income eligibility as of the enactment of the Affordable Care Act. The conversion of current income eligibility standards to equivalent MAGI-based income eligibility standards account for any income disregards now used. Finally, under section 1902(e)(14)(E) of the Act, each state must submit to the Secretary for approval its proposed MAGI-equivalent income eligibility standards and the methodologies and procedures that support those proposed standards, for each applicable eligibility group. This submission is referred to as the state's "MAGI Conversion Plan". Delaware's conversion plan was approved on September 17, 2013.

The conversion to MAGI-based income eligibility standards impacts the percentages of the Federal Poverty Level (FPL) used to set the premium levels under CHIP.

Summary of Proposal

The Centers for Medicare and Medicaid Services (CMS) recently advised Delaware that the State needs to amend the Delaware Healthy Children Program (DHCP) state plan to update the premium levels to account for the MAGI-based conversion standards.

Therefore, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) will be submitting a state plan amendment to change the percentages of the Federal Poverty Level (FPL) applied to the premium levels and to describe the incentives for pre-payment of premiums, as follows:

1. Effective January 1, 2014, the ten dollar (\$10.00) per family per month premium for families with incomes between 101% and 133% of the Federal Poverty Level (FPL) is obsolete. Children in these families transitioned to Medicaid effective January 1, 2014.
2. Effective January 1, 2014, the conversion to MAGI-based standards results in a premium of fifteen dollars (\$15.00) per family per month for families with incomes between 134% and 166% of the FPL and a premium of twenty-five dollars (\$25.00) per family per month for families with incomes between 167% and 212% of the FPL. These revised premium levels have been in practice since January 1, 2014, but had not been set forth in the CHIP state plan.

Section 8 of the DHCP State Plan and Section 18700 of the Division of Social Services Manual (DSSM) will be amended to reflect the above-referenced change to the premium levels.

In addition, based on agency review, DHSS/DMMA intends to amend the DHCP state plan at section 8.2.1 to update the language regarding incentives for pre-payment of premiums. The updated language reflects incentives for pre-payment of premiums that have been in practice since the inception of Delaware's CHIP program. These incentives are described at Section 18700 of the Division of Social Services Manual (DSSM).

Fiscal Impact Statement

The proposed regulation changes impose no increase in costs on the General Fund as the income conversion takes into account current disregards so the net effect is zero.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with

Disabilities (SCPD) offered the following observations summarized below. The Division of Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

GACEC

The GACEC has reviewed the Division of Medicaid and Medical Assistance (DMMA) proposal to modify its schedule of Delaware Healthy Children Program premiums to align with Centers for Medicare and Medicaid Services (CMS) guidance based on the Affordable Care Act. The Delaware Healthy Children Program is the Delaware version of the federal State Children's Health Insurance Program (SCHIP) and is designed to provide health insurance to uninsured, low income children not eligible for Medicaid. Historically, Delaware has charged a monthly premium as a condition of eligibility. Since the proposed changes are being prompted by CMS guidance and benefit low-income families with children, we endorse the proposed changes. Thank you for your time and consideration of our observations.

Agency Response: DMMA appreciates and thanks the GACEC for its endorsement.

No change was requested or made in the final regulation in response to these comments.

SCPD

Historically, Delaware has charged a monthly premium as a condition of eligibility. CMS guidance based on the Affordable Care Act has prompted the Division of Medicaid & Medical Insurance to modify its schedule of premiums effective January 1, 2014 as follows:

- A. family income between 101%- 133% of the Federal Poverty Level - children transitioned to Medicaid with no premium;
- B. family income between 134% - 166% of Federal Poverty Level - \$15/month per family; and
- C. family income between 167%-212% of Federal Poverty Level - \$25/month per family.

These premium levels had already been implemented effective January 1, 2014. See Summary of Proposal at p. 184 and attached DMMA Administrative Notice 01-2014, last page. However, the Delaware Healthy Children State Plan had not been amended to conform to practice. The proposed regulation amends the Delaware Healthy Children Program plan to reflect the current premium structure.

DMMA is also amending the plan to incorporate a pre-payment premium discount which has been implemented since the inception of the Program but not specifically included in the plan. The discount is described as follows:

Pay three (3) months get one (1) premium free month; pay six (6) months get two (2) premium free months; pay nine (9) months get three (3) premium free months.

SCPD endorses the proposed changes since they are being prompted by CMS guidance and the changes benefit low-income families with children.

Agency Response: DMMA appreciates and thanks the SCPD for its endorsement.

No change was requested or made in the final regulation in response to these comments.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the September 2014 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Delaware Title XXI Delaware Healthy Children Program State Plan regarding Cost Sharing and Payment, specifically, *Premium Requirements*, is adopted and shall be final effective November 11, 2014.

Rita M. Landgraf, Secretary, DHSS

***Please note that no changes were made to the regulation as originally proposed and published in the September 2014 issue of the *Register* at page 183 (18 DE Reg. 183). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[Title XXI Delaware Healthy Children Program State Plan - Cost Sharing and Payment](#)

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)p (16 Del.C. §122(3)p)
16 DE Admin. Code 4405

ORDER

4405 Free Standing Surgical Centers

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“DHSS”) initiated proceedings to adopt amendments to the State of Delaware Regulations governing Free Standing Surgical Centers. The DHSS proceedings to amend the regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, Section 122(3)p.

On July 1, 2014 (Volume 18, Issue 1), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 Delaware Code Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by July 31, 2014, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

Written comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying “Summary of Evidence.”

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations governing Free Standing Surgical Centers were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*. Written comments were received on the proposed regulations during the public comment period (July 1, 2014 through July 31, 2014). Entities offering written comments included:

- State Senator Karen E. Peterson
- Paula F. Paul, PA-C, Delaware Academy of Physician Assistants (DAPA) Chair, Legislative and Policy Outreach Committee
- Raymond M. Krett, Jr., Administrator/Director of Nursing, First State Surgery Center
- Danielle Glover, MPA, Association of periOperative Registered Nurses (AORN) Legal and Government Affairs Associate
- Nancy Fan, M.D., Medical Society of Delaware, President
- Cheryl Gamble, CRNA MSN, President, Delaware Association of Nurse Anesthetists Co-Chair, DANA Government Affairs Committee
- Jacob A. Good
- AmSurg Corporation, Peter J. Shanley, Esquire, Shanley & Associates, P.A.
- Peter J. Shanley, Esquire, Shanley & Associates, P.A.

Public comments and the DHSS (Agency) responses are as follows:

State Senator Karen E. Peterson

The purpose of this letter is to request an amendment to Section 3.2.1.11 of the proposed regulations for Free Standing Surgical Centers.

Section 3.2.1.11 states: “**Applicants wanting to open a FSSC to accommodate patient stays of 23 hours and 59 minutes must have written approval from the local government having jurisdiction prior to applying for licensure to the Department.**”

I request that the following language be added:

“The local government shall certify that the proposed use will not conflict with any zoning restrictions, deed restrictions, and will not adversely affect the quality of life in adjacent residential communities. The applicant shall provide proof to the local government that the owners of all

properties within 1,000 feet of the FSSC property were notified of the intent to file the application and were provided with the name and address of the local government official responsible for certifying the appropriateness of the use of the property.”

The proposed language will protect residents whose properties abut those of the Free Standing Surgical Center, as in the case of The Landings which is immediately adjacent to the First State Surgery Center. All-night activity in the parking lot (patients leaving, employees coming and going) will be disruptive to the residents whose homes are situated next to the Center’s parking lot. There are numerous other communities in my district that could also be adversely affected by this proposal.

Agency Response: The Agency appreciates and acknowledges these comments. Local governments are best positioned to address quality of life issues within their communities. The Agency will revise the regulation to read “3.2.1.11 Applicants wanting to open a FSSC to accommodate patient stays of 23 hours and 59 minutes must have written approval from the local government having jurisdiction certifying that the proposed use will not conflict with any zoning restrictions, deed restrictions and local noise ordinances prior to applying for licensure to the Department”.

**Paula F. Paul, PA-C, Delaware Academy of Physician Assistants
Chair, Legislative and Policy Outreach Committee**

The Delaware Academy of Physician Assistants (DAPA) is pleased to have the opportunity to comment on the Proposed regulations: 4405 Free Standing Surgery Centers.

DAPA represents the approximately 450 physician assistants in our state. Many of our PA’s work in general surgery and surgical subspecialties in both hospitals and free standing surgery centers.

We have 2 specific comments that are detailed below along with the relevant section of the regulations.

We appreciate the opportunity to comment on these regulations. Our comments are as follows:

1. Section 6.7.2 requires that a physician be on call and available to be on-site within 30 minutes. We would suggest that this be revised to require that the physician be available immediately via electronic communications.

Physician assistants have had considerable experience with similar on-site requirements which used to be part of the Medical Practice Act until it was removed in 2012. Time-related onsite requirements are outdated and being removed from most modern legislation and regulations. With the modern developments of telecommunications (and telemedicine) electronic contact is sufficient to deal with emergencies. In the case of a true emergency it is more appropriate to call an ambulance to transfer the patient to the emergency room of the nearest hospital rather than wait 30 minutes.

2. Section 6.7.7 refers to **licensed independent practitioners** but does not define this term. We would suggest that a definition of this term be added to the definitions section of the regulation as follows:

Add to definitions, Section 2.0

"Licensed Independent Practitioners": This term includes physician assistants and advanced practice nurses.

6.6.5 All newly hired employees and contractors must pass a competency evaluation test prior to providing care to patients and annually thereafter.

6.6.6 Attendance records must be kept for all orientation and continuing education programs.

6.7 Medical staff

6.7.1 All persons admitted to the FSSC shall be under the care of a physician.

6.7.2 One (1) or more physicians must be on premises during all hours of surgical services and until all patients have been discharged or must be on call and immediately available **on-site within 30 minutes (via electronic communication)**

6.7.3 A medical director shall be appointed and shall be responsible for the direction, provision and quality of medical care.

6.7.4 All members of the FSSC’s medical staff must be appointed to their position within the FSSC by the governing body.

6.7.5 Medical staff privileges must be granted by the governing body, in writing, and must specify, in detail, the types of procedures that each physician may perform within the FSSC.

6.7.6 Medical staff privileges must be reappraised by the FSSC at least every 24 months.

6.7.7 If the FSSC assigns patient care responsibilities to **licensed independent practitioners (needs**

to be defined) other than physicians, it must have:

- 6.7.7.1 Established credentialing and privileging procedures approved by the governing body; and
- 6.7.7.2 Policies and procedures, approved by the governing body, for overseeing and evaluating

clinical activities.

Agency Response: The Agency appreciates and acknowledges these comments. Based upon review of current national standards, the Agency will revise 6.7.2 to read “One (1) or more physicians should be in attendance in the FSSC, or in the case of overnight care, immediately available via electronic communication, at all times during patient treatment and recovery and until patients are medically discharged.” In addition, the Agency will define “Licensed Independent Practitioner” as “a person currently licensed as an advanced practice nurse pursuant to Title 24 Chapter 17 of the **Delaware Code**, or a person currently licensed as a physician’s assistant pursuant to Title 24 Chapter 19 of the **Delaware Code**.”

**Raymond M. Krett, Jr., Administrator/Director of Nursing
First State Surgery Center**

On behalf of the First State Surgery Center, we appreciate the opportunity to review and provide our comments on the Proposed Regulations for Free Standing Surgery Centers.

While we agree substantially with the majority of the proposed regulations, there are several that we would like to offer comments, questions and suggestions. This letter serves to provide you with those comments, questions and suggestion as follows:

- 2.0 Definitions – the definition “Director” references the requirement for a degree in a “health related field.” We agree that a degree and experience are necessary, but as the Director often handles business aspects of the center, we suggest that the requirements be expanded to allow individuals with Business Management or Finance Degree. The pertinent section may read “a Baccalaureate degree in health care, business management or finance; ...”

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will revise the definition to read “...1) a Baccalaureate Degree; 2) five (5) years healthcare experience; and 3) one (1) year supervisory experience in a surgical setting.”

- 3.1.5 suggest a clarification as a surgery center routinely schedule more patients during the day than the total number of licensed beds. Suggested language in the second sentence “...The number of admitted patients shall not exceed...” to avoid the unintended consequence of not distinguishing between a scheduled patient and an admitted patient.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will revise the second sentence of 3.1.5 to read “The number of admitted patients shall not exceed the total number of licensed beds.”

- 3.1.7 presents an issue that we also see in the entire 3.4. We believe that the Modification of Ownership and Control re-application requirement is a burdensome process for the centers. The voiding of the current license and the requirement to re-apply as a new center and be required to meet current construction/design standards for routine business decisions controlled by corporate bylaws and contracts, such as the retirement of a physician owner, is overly burdensome. These decisions do not impact the continuity or quality of care.

Agency Response: The Agency appreciates and acknowledges these comments. As stated in regulation 3.1.3, free standing surgical center (FSSC) licenses are non-transferable from person to person, entity to entity or from one location to another. Therefore, to ensure the provision of quality care in a safe surgical setting, regulation 3.1.7 will remain as written.

- 3.1.8 requires approval for hours of operation. We are unclear on the purpose of this approval requirement. We believe that the center’s leadership should determine the operational hours of the center based on patient needs and an effective business model. We agree with a requirement of notification of changes in operational hours.

Agency Response: The Agency appreciates and acknowledges these comments. The license for a free standing surgical center (FSSC) will be issued for specific hours of operation. If the FSSC chooses to operate beyond the hours specified on the license, the FSSC must notify the Agency and obtain the necessary approvals. The regulation will remain as written.

- 3.2.1.11 & 3.2.2 require local government approval. We are unclear on the purpose of these requirements. Local government regulations, such as zoning and other restrictions, must always be followed. These processes should be concurrent, but one should not be contingent upon the other.

Agency Response: The Agency appreciates and acknowledges these comments. The local government written approval is required by any free standing surgical center (FSSC) wishing to accommodate patient stays of 23 hours and 59 minutes. To clarify, regulation 3.2.1.11 is specific to new FSSC applicants and regulation 3.2.2 is specific to currently licensed (existing) FSSCs; therefore, the regulations will remain as written.

- 3.4 presents an issue that we also saw in 3.1.7 above. We believe that the Modification of Ownership and Control section requires further discussion, review and revision. The proposed MOC's restrict the natural cycle of any business, such as appointing new partners or the retirement of a partner. These are business decisions, made in accordance with bylaws and contracts, much like any other business and they do not affect quality or continuity of patient care. To require an entire administrative process for natural changes in staffing, ownership, etc, is an unnecessary burden. As proposed, a facility that has been in operation for 10 years that has a Partner retire therefore relinquishing their partnership, would have their license voided, be required to reapply as an initial license and undergo renovations to meet the current construction standards – is this the intent of the proposed regulations?

We question the need/intent of the proposed regulations in regards to the routine business of the facility/corporation. We question why it is significant to the State if a partner moves from a full share to a half share or vice versa, why it is significant if a decision is made to offer a partnership to an individual that would positively impact the facility. We question the intent of this section as it relates to the provision of quality patient care.

Agency Response: The Agency appreciates and acknowledges these comments. The intent of the free standing surgical center (FSSC) regulations is not to restrict the natural cycle of business, but to ensure the provision of quality care in a safe environment. As stated in regulation 3.1.3, FSSC licenses are non-transferable from person to person, entity to entity or from one location to another. The Agency will delete regulations 3.4.5.8 and 3.4.5.9.

- 3.4.1 requires the facility to report any proposed MOC to the department a minimum of 30 calendar days prior to the change. This requirement is inconsistent with the reporting requirement of other licensure and accreditation agencies such as CMS and AAAHC.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency follows a protocol which requires a thirty (30) calendar day notice to ensure the continuity of operations during a modification of ownership and control. Therefore, the regulations will remain as written.

- 3.4.3 & 3.4.4 the proposed list of MOC's voids the current license, requires re-application for licensure, which would be treated as an initial license and requires the facility to meet the current design and construction standards. These requirements are burdensome as well as raise concerns of how a transition period would be handled. Does the facility receive a 'different license' to continue operations or does the facility stop operations since it essentially doesn't have a license?

Agency Response: The Agency appreciates and acknowledges these comments. As stated in regulation 3.1.3, free standing surgical center (FSSC) licenses are non-transferable from person to person, entity to entity or from one location to another. The Agency follows a protocol to ensure the continuity of operations during the transition. Therefore, the regulations will remain as written.

- 6.8.5 requires two (2) registered nurses, with specialized training or experience in emergency care, including ACLS certification be available at all times when patients are present. We question the requirement for two ACLS nurses when one ACLS nurse has been proven sufficient in Position Statements by a number of Medical and Nursing Associations (AORN, etc). Is the underlying purpose of this requirement to be that there must be two medical professionals at all times, one of which must be a registered nurse with ACLS Certification?

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will revise the regulations to delete 6.8.5 and add "7.7 There must be healthcare professionals with specialized training or experience in emergency care including current Advance Cardiac Life Support certification, available in the FSSC to provide emergency treatment at all times when patients are present." In addition, the definition of healthcare professionals will be added to 2.0 Definitions.

- 7.6.6 proposes significant requirements for nutritional services. We suggest that the dietitian requirement should be removed as this requirement is burdensome to the center. The nursing staff is

trained to provide appropriate beverages, snacks and meals to outpatient surgical patients. We believe the state should follow the lead of CMS which has recently removed the need for consultants such as a Radiology Consultant, which was burdensome. Additionally, the annual training requirement for food service can be accomplished efficiently and effectively through internet or a self-study requirement.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will revise 7.6.6 to read "All employees/contractors involved in direct patient care shall be trained on basic and special nutritional needs and proper food handling techniques. Training shall be part of the initial orientation and shall be conducted annually thereafter."

**Danielle Glover, MPA, Association of periOperative Registered Nurses (AORN)
Legal and Government Affairs Associate**

AORN represents the interests of 160,000 perioperative registered nurses in the United States and abroad who facilitate the management, teaching, and practice of perioperative nursing, are engaged in perioperative research, are enrolled in nursing education, and perioperative nurses who work in related business and industry sectors. AORN estimates that 40% of its 42,000 perioperative nurse members work in hospital outpatient and free standing ambulatory surgical center environments.

In 2012 AORN submitted comments for proposed revisions to the regulations governing Free Standing Surgical Centers 16 DE Admin. Code 4405 requesting the Delaware Division of Public Health retain its requirement that a qualified registered nurse serve in the role of circulator in Delaware free standing surgical centers or, at the very least, retain its registered nurse circulator requirement for patients undergoing procedures under general anesthesia and moderate and deep sedation.

In the operating room, patients are powerless to make decisions on their own behalf. The registered nurse circulator provides high-quality nursing care through patient assessment, diagnosis, outcome identification, planning, implementation and evaluation. In this role, the registered nurse circulator is often the single advocate for the patient's safety during surgery. No other person is more knowledgeable or qualified to handle the multiple critical issues surrounding patient safety in the operating room than the registered nurse who is specifically trained in perioperative nursing.

AORN is supportive of the proposed rule changes published on July 1, 2014. We appreciate the Delaware Division of Public Health's choice to keep patient safety first and follow best practices by retaining its requirement that a registered nurse be present as a circulating nurse in each operating room where moderate/deep/general anesthesia/sedation is administered during operative procedures.

Agency Response: The Agency appreciates and acknowledges these comments. The regulation will remain as written.

Nancy Fan, M.D., Medical Society of Delaware, President

On behalf of the Medical Society of Delaware, thank you for your work in the crafting of these proposed regulations and for the opportunity to provide comments. We agree substantially with the regulations and look forward to their implementation. In this letter we offer a number of technical amendments and suggestions:

- 2.0 Definitions – the definition of "Clinical Director" requires a "registered nurse" specifically. We agree that the position requires medical expertise, but suggest widening the qualifications to "means a person with a degree in medical or nursing care, currently licensed in their field" to allow for a broader scope of those who may meet the criteria.

Similarly, the definition "Director" references the requirement for a degree in a "health related field." We agree that a degree and experience are necessary, but as the Director often handles business aspects of a practice and expansion to allow individuals with Business Management or Finance. Suggested pertinent section may read "an advanced degree in health care, business management or finance; ..." This would also allow for physicians to be Directors as they may not have a Baccalaureate in health specifically.

Agency Response: The Agency appreciates and acknowledges these comments. The "Clinical Director" is responsible for the supervision and direction of services, which includes nursing services, offered by the free standing surgical center. Similar to the Centers for Medicare and Medicaid Services regulations for ambulatory surgical centers, nursing services must be under the leadership of a registered nurse; therefore, the definition of "Clinical Director" will remain as written. The Agency will revise the definition of "Director" to read "...1) a Baccalaureate Degree; 2) five (5) years healthcare experience; and 3) one (1) year supervisory experience in a surgical setting."

- 3.1.5 should be tweaked for clarification purposes. Suggested language in the second sentence "...The number of admitted patients shall not exceed..." to avoid the unintended consequence of not distinguishing between a scheduled patient and those currently in care.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will revise the second sentence of 3.1.5 to read "The number of admitted patients shall not exceed the total number of licensed beds."

- 3.1.7 presents an issue that we also see in 3.4 which is not allowing for ease of retirement or new hire which is the natural cycle of any business. The process for a Modification of Ownership and Control creates patient care issues where none existed previously. The natural cycle of hires and retirements are business decisions which do not affect the quality or continuity of care and are made in accordance with bylaws much like any other business. Again, patients are not affected by these decisions and to require an entire administrative process for natural changes in staffing, in addition to 3.1.7, particularly 3.4.5.8 and 3.4.5.9, is an unnecessary burden that creates a potential to harm care where none existed previously.

Agency Response: The Agency appreciates and acknowledges these comments. As stated in regulation 3.1.3, free standing surgical center (FSSC) licenses are non-transferable from person to person, entity to entity or from one location to another; therefore, regulation 3.1.7 will remain as written. The Agency will delete regulations 3.4.5.8 and 3.4.5.9.

- Related, 3.4.1 and 3.4.3 raise concerns of how a transition period is handled if there is a modification. These present potentially huge burdens. The notice requirement may not be possible to comply with in some circumstances. Perhaps a "when practicable" wording modification for notice would be in order. Regarding new licenses upon MOC, this requires the facility to undergo a process that may subject it to all new design and construction standards which are not only costly and burdensome, but affect provision of care.

Agency Response: The Agency appreciates and acknowledges these comments. As stated in regulation 3.1.3, free standing surgical center (FSSC) licenses are non-transferable from person to person, entity to entity or from one location to another. The Agency follows a protocol which requires a thirty (30) calendar day notice to ensure the continuity of operations during a modification of ownership and control. Therefore, to ensure the provision of quality care in a safe surgical setting, the regulations will remain as written.

- 3.2.1.11 & 3.2.2 require local government approval. We are unclear on the purpose of these requirements. Local government regulations, such as zoning and other restrictions, must always be followed. These processes should be concurrent, but one should not be contingent upon the other.

Agency Response: The Agency appreciates and acknowledges these comments. The local government written approval is required by any free standing surgical center (FSSC) wishing to accommodate patient stays of 23 hours and 59 minutes. To clarify, regulation 3.2.1.11 is specific to new FSSC applicants and regulation 3.2.2 is specific to currently licensed (existing) FSSCs; therefore, the regulations will remain as written.

- 6.8.5 requires two registered nurses where one ACLS Nurse has been proven sufficient by a number of Associations. We suggest that the underlying purpose is met to state that there must be two medical professionals at all times, one of which must be a registered nurse with ACLS training.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will revise the regulations to delete 6.8.5 and add "7.7 There must be healthcare professionals with specialized training or experience in emergency care including current Advance Cardiac Life Support certification, available in the FSSC to provide emergency treatment at all times when patients are present." In addition, the definition of healthcare professionals will be added to 2.0 Definitions.

7.6.6 requires a dietitian to be available for consultation and requires annual training. We suggest that the dietitian requirement should be lowered to suggested, "shall" replaced with "may." We believe the state should follow the lead of CMS which has recently removed the need for consultants such as a Radiology Consultant, which drive up costs. Additionally, the annual training requirement for food service can be accomplished efficiently and effectively through internet or a self-study requirement.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will revise 7.6.6 to read "All employees/contractors shall be trained on basic and special nutritional needs and proper food handling techniques. Training shall be part of the initial orientation and shall be conducted annually thereafter."

**Cheryl Gamble, CRNA MSN, President, Delaware Association of Nurse Anesthetists
Co-Chair, DANA Government Affairs Committee**

The Delaware Association of Nurse Anesthetists (DANA) applauds the work of the Department for its efforts in proposing revisions to Regulation 4405- Free Standing Surgical Centers.

DANA is comprised of certified registered nurse anesthetists (CRNAs) who work in hospitals, surgery centers, and office-based practices throughout Delaware and the surrounding area. The organization strives to assure the highest standards of anesthesia care for patients and promotes professionalism among its members. With these goals in mind, DANA expresses its support of the proposed amendments but offers three (3) suggested changes for purposes of clarity:

1. Add clarifying language at the end of Section 2.0.

In section 2.0 following the definition of "Surgery", DANA proposes adding the phrase: "Nothing in this definition is intended to restrict the practice of qualified licensed healthcare professionals practicing in accordance with Delaware law."

DANA suggests adding this language to avoid unintended confusion about the appropriate role of qualified licensed healthcare professionals in Free Standing Surgical Centers. The statute that authorizes this regulation, 16 Del.C. §122(3)p, makes it clear that Regulation 4405 shall not expand or limit the scope of practice afforded to professionals under other provisions of Delaware law.

Since the Delaware Code clearly outlines the parameters of practice for all licensed healthcare professionals in their respective practice acts, DANA respectfully submits that adding the proposed language clarifies that the roles of these licensees are not changed simply by virtue of working in Free Standing Surgical Centers. For example, a Certified Registered Nurse Anesthetist (CRNA) is authorized and licensed in Delaware to provide sedation, regional and general anesthesia in the ordinary course of CRNA nursing practice using "needles" and injecting "therapeutic substances" as those terms appear in section 2.0 of the proposed regulations but the broad definition of "Surgery" in that section could be misconstrued to define CRNA practice as surgery which is limited to the practice of medicine.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will revise 6.6.4 by adding the following sentence, "Nothing in these regulations is intended to restrict the practice of qualified licensed healthcare professionals practicing in accordance with Delaware law."

2. Unify terminology in sections 6.0 and 7.0.

For the sake of clarity DANA suggests choosing one phrase to use throughout the regulation to refer to licensed healthcare professionals who are not physicians. In sections 6.7.7, 7.2, and 7.3 the proposed regulation refers to "licensed independent practitioner", "qualified licensed independent healthcare practitioner", and "qualified licensed healthcare practitioner."

DANA suggests using the phrase "qualified licensed healthcare professional" which is used in other sections of the Delaware Code.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will revise 6.7.7, 7.2 and 7.3 to consistently use "licensed independent practitioner". In addition, "licensed independent practitioner" has been added to regulation 2.0 Definitions.

3. Add language in section 7.4 to reflect the current standard of care in evaluating a patient for proper recovery from anesthesia.

In accordance with the Centers for Medicare and Medicaid Services¹ and the Delaware law, DANA suggests adding the phrase "or certified registered nurse anesthetist" after the word "physician" to reflect the appropriate standard of care and current practice of evaluating patients for proper recovery from anesthesia.

¹ The Federal Regulations direct that a physician or anesthetist must evaluate a patient for proper anesthesia recovery prior to discharge from an ambulatory surgery center. See 42 CFR 416.42(a) - Standard: Anesthetic Risk and Evaluation (2) Before discharge from the ASC, each patient must be evaluated by a physician or by an anesthetist as defined at §410.69(b) of this chapter, in accordance with applicable State health and safety laws, standards of practice, and ASC policy, for proper anesthesia recovery.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will add "or certified registered nurse anesthetist" to 7.4. In addition, "Certified Registered Nurse Anesthetist" was added to regulation 2.0 Definitions.

Jacob A. Good

I am writing to voice my concerns for the proposed rules and regulation changes for the Free Standing Surgical

Centers.

I live in, and also am a board member of, a neighborhood that is surrounded by medical office facilities on 3 sides. Some of these facilities have an interest in the proposed Free Standing Surgical Centers. These facilities are within 20 - 30 feet from the office building to the dwelling units of the neighborhood. The parking lots are also in very close proximity to several other homes.

Having patients and visitors at these facilities continuously around the clock would be very disturbing to the residents of the homes and to our community 24 hours a day. The majority of us have purchased our homes well before the medical buildings were built. Our quality of life during the day has diminished since the facilities have been built with excessive noise, car alarms, trespassers, and even medical waste blowing into our yards from the dumpsters. Having a 23 hour and 59 minute surgical facility would mean 24 hours of nuisance noise and further diminishing our quality of life at home.

The Departments proposal for **Section 3.2.1.11 Applicants wanting to open a FSSC to accommodate patient stays of 23 hours and 59 minutes must have written approval from local government having jurisdiction prior to applying for licensure to the Department**, is very vague, and has no guidelines or standards to follow for approval.

Senator Karen Peterson sent the Department another proposal to add to **Section 3.2.1.11** which reads something like:

The local government shall certify that the proposed use will not conflict with any zoning restrictions, deed restrictions, and will not adversely affect the quality of life in adjacent communities.

In addition to Karen's proposal I would also like amend Section 3.2.1.11 to read: **Section 3.2.1.11 Applicants wanting to open a FSSC to accommodate patient stays of 23 hours and 59 minutes must have written approval from local government having jurisdiction prior to applying for licensure to the Department. The local government shall certify that the proposed use will not conflict with any zoning restrictions, deed restrictions, and will not adversely affect the quality of life in adjacent communities. All members residing in communities within 1000 feet of the FSSC shall be notified by the facility of their intent and the facility shall conduct a meeting with the community or communities at a convenient and neutral location. 50% of community's approval shall be required prior to applying for government approval.**

Acceptance of this proposal will certainly assure not only our quality of life is protected, but also of the quality of life for other communities throughout Delaware.

Please notify Senator Karen Peterson and myself of your decision, and if denied, state a reason for denial.

Agency Response: The Agency appreciates and acknowledges these comments. Local governments are best positioned to address quality of life issues within their communities. The Agency will revise the regulation to read "3.2.1.11 Applicants wanting to open a FSSC to accommodate patient stays of 23 hours and 59 minutes must have written approval from the local government having jurisdiction certifying that the proposed use will not conflict with any zoning restrictions, deed restrictions and local noise ordinances prior to applying for licensure to the Department".

AmSurg Corporation, Peter J. Shanley, Esquire, Shanley & Associates, P.A.

Please accept this correspondence in response to the above referenced proposed Restated Regulation 4405 Free Standing Surgical Centers of Title 16 of the Administrative Code of the State of Delaware. I submit this correspondence on behalf of my client, AmSurg Corp. ("AmSurg").

Background

AmSurg is the largest ambulatory surgery company in United States, with 244 surgery centers in 35 states and the District of Columbia. AmSurg performs over 392,313 procedures per year. A few statistics on the breakdown of services provided by AmSurg facilities nationally:

- 152 of the AmSurg centers are exclusive to gastroenterology ("GI")
- 37 of the AmSurg centers are exclusive to ophthalmology.
- 55 of the centers are multispecialty.

By the end of 2013, over 98 percent (in the United States) of the AmSurg centers were fully accredited by the Joint Commission or the Accreditation Association for Ambulatory Health Care.

In Delaware, AmSurg operates four Free Standing Surgery Centers ("FSSC"), three are GI dedicated and

one is multispecialty. The three GI centers offer services in Lewes and Newark and the multispecialty center is located in Dover.

AmSurg is committed to the highest quality, efficiency, access and cost, which is consistently achieved by its medical staffs and administration. Notably, all of the AmSurg facilities in Delaware share significant ownership with physicians, and more importantly, such physician owners are directly involved in overseeing clinical matters and setting care standards.

Comments

The July 1, 2014 Public Notice states that "any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to [you] by Thursday, July 31, 2014". On behalf of AmSurg, I would like to state that such Public Notice may be considered technically compliant with the Delaware Administrative Procedures Act, we nevertheless offer a general procedural objection for purpose of reservation of all available rights. As such, AmSurg reserves the right to challenge the proposed rules on procedural grounds.

Before I give you specific comments on proposed Regulation 4405, I question whether the information in the Public Notice complies with Section 10115(a)(1) of Subchapter II of Chapter 101 of Title 29 of the Delaware Code. I also suggest that the complete restatement of Rule 4405 and the adverse effect this restatement will have on existing licensed FSSCs require that the comment period be extended to Friday, August 29, 2014, and that a public hearing be held on proposed Regulation 4405, at an appropriate time after the end of the comment period.

I will now give you AmSurg's specific concerns in numbered paragraph format for ease of reference.

1. Because proposed Regulation 4405 completely replaces existing Regulation 4405, all existing FSSCs should be grandfathered for ten full calendar years after the effective date of the adoption of Regulation 4405.

Agency Response: The Agency appreciates and acknowledges these comments. The intent of the free standing surgical center (FSSC) regulations is to ensure the FSSC is utilizing current accepted standards of practice. Grandfathering all existing FSSCs for ten (10) full years could potentially delay the FSSC implementation of current accepted standards of practice and would be inconsistent with the Agency's mission.

2. Existing Delaware law provides that free-standing diagnostic endoscopy facilities and pain management centers are exempt from Delaware licensure otherwise applicable to FSSCs. The definition of "Surgery" in Section 2.0 of proposed Regulation 4405 arguably includes GI procedures and pain management services. Both specialties should be expressly excluded from the definition of Surgery. These exclusions should also be included in the definition of FSSC.

Agency Response: The Agency appreciates and acknowledges these comments. The existing law does not exempt free standing diagnostic endoscopy facilities and pain management centers from state licensure. A Delaware Attorney General's interpretation, issued on January 12, 1995, exempted single specialty diagnostic endoscopy and pain management centers from licensure as a free standing surgical center. Therefore, the regulations will remain as written.

3. In Section 2.0 of proposed Regulation 4405, the term "Director" is defined as an individual appointed by the governing body to act on its behalf in the overall management of the facility and the Director shall have: 1) a Baccalaureate Degree in a health related field; 2) five (5) years healthcare experience; and 3) one (1) year supervisory experience in a surgical setting. In existing Regulation 4405, the concept of "Director" is found in Section 2.1 where the reference is to "Chief Executive Officer". There is no reference in Section 2.1 that the CEO must have a Baccalaureate Degree in a health related field. Many FSSCs have CEOs that do not have a Baccalaureate Degree in a health related field. If the proposed Regulation 4405 is adopted as written, will the fact that many of the CEOs do not meet the definition of "Director" mean that the FSSCs would lose their licenses? We recommend that the second sentence of this definition be modified to read: "The director shall have education and experience sufficient to oversee the administrative and clinical responsibilities of the FSSC as determined by the Governing Body."

Agency Response: The Agency appreciates and acknowledges these comments. The Agency has revised the definition of "Director" to read "...1) a Baccalaureate Degree; 2) five (5) years healthcare experience; and 3) one (1) year supervisory experience in a surgical setting." The Agency will not apply this regulation to directors appointed prior to the effective date of this regulation. Directors appointed on or after the effective date of this regulation must comply with the new standards.

4. Section 3.1.7 requires that any FSSC that undergoes a modification or ownership re-apply for licensure meeting new design and construction standards. We recommend that this Section be revised to state: "Any FSSC that undergoes a modification of ownership and control is required to notify the State of that new ownership."

Agency Response: The Agency appreciates and acknowledges these comments. As stated in regulation 3.1.3, free standing surgical center (FSSC) licenses are non-transferable from person to person, entity to entity or from one location to another. Therefore, to ensure the provision of quality care in a safe surgical setting, regulation 3.1.7 will remain as written.

5. Section 3.4 of proposed Regulation 4405 covers the modification of ownership and control ("MOC"). Ownership is covered in Section 2.4 of existing Regulation 4405. If there is a change in ownership under the existing Regulation, the change must be reported to the Office of Health Facilities Licensing and Certification in writing immediately prior to or after the change. In Section 3.4.3 of proposed Regulation 4405, a MOC voids the current license and possession of the facility. This provision in effect makes it difficult for an Owner of a FSSC to transfer ownership because to do so will cancel the facility's license and subject the new owner and the facility to the then applicable licensing requirements pursuant to Section 3.4.4. We recommend that Sections 3.4.3 and 3.4.4 be deleted.

Agency Response: The Agency appreciates and acknowledges these comments. As stated in regulation 3.1.3, free standing surgical center (FSSC) licenses are non-transferable from person to person, entity to entity or from one location to another. Therefore, the regulations will remain as written.

6. Existing Regulation 4405 provides for the appointment of a CEO, a Medical Director and a Director of Nursing. Proposed Regulation 4405 requires the appointment of a Director (Section 6.1.1), a Clinical Director (Section 6.2.1) and a Medical Director (Section 6.7.3). Presumably, the term Clinical Director in Section 6.2.1 of proposed Regulation 4405 is designed to replace the position of the Director of Nursing in existing Regulation 4405. In Section 6.2.3.1, the Clinical Director must be a registered nurse with at least one year of surgical and administrative/supervisory experience. Section 7.1 in existing Regulation 4405 provides that the Director of Nursing must currently be licensed by the State of Delaware as a professional registered nurse. The requirement that the Clinical Director have at least one year of surgical and administrative/supervisory experience may mean that a number of Directors of Nursing may not qualify for the position of Clinical Director under proposed Regulation 4405. In many FSSCs, the position of Director and Clinical Director under proposed Regulation 4405 and the position of CEO and Director of Nursing under existing Regulation 4405 would be held by the same individual, i.e. a registered nurse. In those circumstances under proposed Regulation 4405, it is doubtful that the same person could be both the Director and the Clinical Director unless proposed Section 6.2.3 is modified to make it clear that a nurse licensed in Delaware as a professional registered nurse meets the requirement that the Director have a baccalaureate degree in health (Definition of Director). In addition, the requirement that the Clinical Director have at least one year of surgical experience may exclude endoscopy and other nurses from acting as a Clinical Director. The requirement that the Clinical Director have one year of surgical and administrative/supervisory experience may also prevent in many cases FSSCs from promoting within. We recommend that Section 6.2.3.1 be modified to delete the words "with at least one year of surgical and administrative/supervisory experience."

Agency Response: The Agency appreciates and acknowledges these comments. The Clinical Director of a FSSC must have surgical and administrative/supervisory experience to ensure the provision of quality care in a safe setting. Therefore, the regulation will remain as written.

7. Section 6.6.5 in proposed Regulation 4405 requires that all newly hired employees and contractors must pass a competency evaluation test prior to providing care to patients and annually thereafter. Proposed Regulation 4405 does not provide any material guidance relating to the criteria for a "competency evaluation test". We suggest that the language be modified to state that "all newly hired employees and contractors must have a written validation of competency upon orientation, prior to providing care to patients, and annually thereafter."

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will revise 6.6.5 to read "All newly hired employees and contractors must have a written validation of competency upon orientation, prior to providing care to patients, and annually thereafter."

8. Section 6.8.5 provides that there must be two registered nurses with specialized training or experience in emergency care, including Advanced Cardiac Life Support Certification, available in the

FSSC to provide emergency treatment whenever there is a patient in the facility. If in fact every FSSC must have two qualified registered nurses in the facility when patients are present, most Delaware licensed FSSCs will not qualify. We suggest that Section 6.8.5 be modified to provide that there be two (2) clinical staff, one of which must have specialized training or experience in emergency care, including ACLS certificate, available in the FSSC to provide emergency treatment at all times when patients are present.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will revise the regulations to delete 6.8.5 and add "7.7 There must be healthcare professionals with specialized training or experience in emergency care including current Advance Cardiac Life Support certification, available in the FSSC to provide emergency treatment at all times when patients are present." In addition, the definition of healthcare professionals will be added to 2.0 Definitions.

9. Section 6.8.6 in the proposed Regulation 4405 requires that there be a registered nurse, qualified by education and experience in operating room nursing, be present as a circulating nurse in each operating room where moderate/deep/general anesthesia/sedation is administered during operative procedures. We suggest that Section 6.8.6 be reworded to state: "A registered nurse or CRNA qualified by education and experience, be present in each operating or procedure room where moderate/general anesthesia/sedation is administered."

Agency Response: The Agency appreciates and acknowledges these comments. In accordance with nationally recognized standards of practice, one registered nurse circulator should be dedicated to each patient undergoing an operative procedure and be present for the duration of the intraoperative experience. Therefore, the regulation will remain as written.

10. Section 4.5.4 in existing Regulation 4405 provides that each patient's medical record must contain a medical history and physical examination completed prior to surgery. Proposed Regulation 4405 in Section 7.2 substantially expands what must be in the patient's medical record prior to the date of the scheduled surgery. This Section refers to the term "comprehensive medical history and physical assessment" and provides that it must include at a minimum physical assessments relating to vital signs, head and neck, heart and lungs, abdomen, rectal/pelvic (as appropriate), extremities, neurological, and other pertinent physical findings. We suggest that the Regulation be modified to reflect the fact that in many cases, all these physical assessments are not appropriate.

Agency Response: The Agency appreciates and acknowledges these comments. The comprehensive medical history and physical assessment is used to determine if there is anything in the patient's overall condition that requires additional intervention to reduce risks or to indicate that the free standing surgical center may not be the appropriate setting for the patient's surgery. Therefore, the regulation will remain as written.

11. Section 11.11.4 provides that each FSSC must establish procedures for the notification to patients regarding the pending destruction of medical records. This is not currently a CMS requirement. To attempt to notify every patient of the destruction of medical records would be overly burdensome on FSSCs. We request that Section 11.11.4 be deleted.

Agency Response: The Agency appreciates and acknowledges these comments. The intent of the regulation is for the free standing surgical center (FSSC) to establish a procedure to notify patients of the pending destruction of medical records. The regulation does not specify the method each FSSC must utilize to comply with this regulation. Therefore, the regulation will remain as written.

12. Section 12.4 of proposed Regulation 4405 provides that orders given orally for drugs and biologicals must be followed by a written order and signed by the prescribing physician within 48 hours. We do not feel that the 48 hours requirement is realistic because it does not take into account weekends/holidays/etc. We suggest that the reference to "within 48 hours" be deleted.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will remove "within 48 hours" from regulation 12.4.

13. Sections 4.2 through 4.5 incorporate in Regulation 4405 five separate Federal regulations. Specifically, Section 4.2 adopts Part 416, Subparts A, B and C found in 42 CFR Ch. IV. This Regulation is 11 pages in length and applies to ambulatory surgical services.

Section 4.3 incorporates the 2012 National Fire Protection Association's Life Safety Code. This Code is outlined in 43 separate Chapters.

Section 4.4 incorporates the provisions issues by the Centers for Disease Control relating to the transmission of Mycobacterium tuberculosis. These Guidelines are found in a 107 page publication dated December 30, 2005.

Section 4.5 adopts the 2014 Facility Guidelines for Design and Construction of Health Care Facilities. These Guidelines are stated in 397 pages of documentation.

It is not possible for any person to understand the effect of incorporating these provisions in Regulation 4405 within 30 days. Therefore, I request that Sections 4.2 through 4.5 be deleted. If appropriate after public review, they can be added at a later date.

Agency Response: The Agency appreciates and acknowledges these comments. The purpose of the free standing surgical center regulations is to ensure the provision of quality care in a safe surgical setting. Compliance with the specified regulations and standards is required to ensure the provision of quality care in safe surgical setting; therefore, the regulation will remain as written.

Conclusion

Existing Regulation 4405 and any modification thereof should have a positive impact on the delivery of care in Delaware FSSCs. We suggest that overall proposed Regulation 4405 does not meet this criteria and will create unintended consequences. The proposed Regulation does not adequately recognize that certain FSSCs are specialized, particularly GI, ophthalmology and pain management, and that certain provisions in the proposed Regulation are not based on a discernible and rational purpose regarding currently licensed and specialized FSSCs with a consistent track record of good outcomes.

We are also concerned that the Division will incur additional costs of implementation at a time when budget cuts are a regular occurrence among Delaware agencies, particularly in light of the apparent lack of a correlation between the proposed rules and increased quality and efficiency.

We are requesting that the Division of Public Health:

1. Tailor the proposed Regulation to remove or modify the objectionable provisions as noted above;
2. Grandfather existing operational and specialized facilities from the Regulation as discussed above;
3. Rescind or delay the implementation of the proposed Regulation in order to weigh the potential implementation time and costs that will be incurred by both the Division and FSSCs, and whether such implementation will improve quality and increase efficiency among providers; and
4. Delete Sections 4.2 through 4.5.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency has evaluated and responded to each comment received during the public comment period. The proposed free standing surgical center regulations incorporate updated standards and guidelines. As of the effective date of these regulations, the Delaware Attorney General's interpretation, issued on January 12, 1995, which exempted single specialty diagnostic endoscopy and pain management centers from licensure as a free standing surgical center is still in effect. Therefore, the Agency will proceed with finalizing the regulations with the non-substantive revisions.

Peter J. Shanley, Esquire, Shanley & Associates, P.A.

Today I sent you a detailed letter discussing proposed restated Regulation 4405- Free Standing Surgical Centers. This letter was submitted to you on behalf of my client, AmSurg Corporation.

In comment 2, I state that existing Delaware law provides that free standing diagnostic endoscopy facilities and pain management centers are exempt from Delaware Licensure requirement otherwise applicable to FSSCs and comment 2 requests that the definition of "surgery" should be modified in Section 2.0 of proposed Regulation 4405 to expressly exclude both specialties from the definition of "surgery".

The purpose of this letter is to expand on my comment that existing Delaware law exempts endoscopy facilities and pain management centers from Delaware Licensure regulations.

Enclosed is a copy of a July 16, 2009 letter to a redacted ASC that provides pain management procedures. Mary Peterson, Director of the Office of Health Facilities, Licensing and Certification specifically states that pain management centers are excluded from State Licensure in Delaware, Ms. Peterson refers to the enclosed Delaware Attorney General interpretation dated January 12, 1995 that specifically states that pain management and endoscopy centers are excluded from Delaware Licensure requirements because these services do not constitute surgery under Delaware law.

Clearly, proposed Regulation 4405 should exclude these FSSCs as required by Delaware law.

Agency Response: The Agency appreciates and acknowledges these comments. The existing law does not exempt free standing diagnostic endoscopy facilities and pain management centers from state licensure. A Delaware Attorney General's interpretation, issued on January 12, 1995, exempted single specialty diagnostic endoscopy and pain management centers from licensure as a free standing surgical center. Therefore, the

regulations will remain as written.

The public comment period was open from July 1, 2014 through July 31, 2014. Minor amendments were made to the proposed regulations based on public comment; these amendments are not substantive in nature. Additionally, some grammatical amendments were made to the proposed regulations. The regulations have been reviewed by the Delaware Attorney General's office and approved by the Cabinet Secretary of DHSS.

FINDINGS OF FACT:

Minor amendments were made to the proposed regulations based on public comment; these amendments are not substantive in nature. Additionally, some grammatical amendments were made to the proposed regulations. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations governing Free Standing Surgical Centers are adopted and shall become effective November 11, 2014, after publication of the final regulation in the Delaware *Register of Regulations*.

Rita M. Landgraf, Secretary

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

4405 Free Standing Surgical Centers

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 1007 (16 **Del.C.** §1007)
16 **DE Admin. Code** 4407

ORDER

4407 Hospital Standards (Construction, Maintenance, and Operation)

NATURE OF THE PROCEEDINGS:

The Delaware Department of Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Hospital Standards (Construction, Maintenance, and Operation). The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 **Del.C.** §1007.

On August 1, 2014 (Volume 18, Issue 2), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by September 2, 2014, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

Written comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Hospital Standards (Construction, Maintenance, and Operation) were published in the *Delaware State News*, the *News Journal* and the Delaware *Register of Regulations*.

Entities offering written comments include:

- State Council for Persons with Disabilities, Denise McMullin-Powell, Chairperson
- Governor's Advisory Council for Exceptional Citizens, Robert D. Overmiller, Chairperson

Public comments and the DHSS (Agency) responses are as follows:

State Council for Persons with Disabilities, Denise McMullin-Powell, Chairperson:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Public Health's (DPH's) proposal to amend its hospital standards to ensure that hospital staff have ready access to a locked hospital bathroom in the event of an emergency. This is a result of enactment of H.B. 129 ("Christina's Law") which the Governor signed on June 10, 2014. DPH is implementing the statutory mandate by proposing the addition of the following subsection to its regulations covering hospital construction, maintenance, and operation:

- 4.4. Hospitals must develop and implement policies and procedures for hospital staff to have ready access to a locked hospital bathroom in the event of an emergency.

The proposed regulation was published as 18 DE Reg. 119 in the August 1, 2014 issue of the *Register of Regulations*. SCPD has the following observations.

First, placement of this sentence in the personnel-related "§4.0 Governing Body, Organization and Staff" regulation is counterintuitive. If someone were looking for a standard on bathroom access, it may be more logical to place the sentence in "§3.0 Physical Environment".

Agency Response: The Agency appreciates and acknowledges these comments. The hospital's governing body is responsible for all hospital operations; therefore, the regulations will remain as written.

Second, it's unclear what process will be used to alert hospitals of the new regulation and what time line applies to "development and implementation" of the policies and procedures. Are hospitals out of compliance if a policy is not operational on the effective date of the regulation (e.g. October 1, 2014) or do they enjoy some time to develop and implement the policies and procedures? DPH may wish to consider either inserting a firm effective date (e.g. December 1, 2014) or communicating an expectation through a sub-regulatory letter or guidance document.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency has developed a plan to notify all licensed hospitals and ensure the implementation of the new regulations.

Third, in reviewing the regulation, SCPD noted that 1977 and 1981 versions of national standards are incorporated by reference. See §§3.1 and 4.1. DPH may wish to review these references to determine if they should be updated. Literally, the 1977 and 1981 versions of standards are binding.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency intends to review and update the hospital regulations in the near future.

Governor's Advisory Council for Exceptional Citizens, Robert D. Overmiller, Chairperson:

The Governor's Advisory Council for Exceptional Citizen's (GACEC) has reviewed the Division of Public Health (DPH) proposal to implement the requirements of House Bill No. 129 which was signed by Governor Markell on June 10, 2014.

As background, a 14 year old girl experienced a medical emergency while locked in a hospital bathroom and staff was unable to unlock the door prior to her death. This prompted the introduction and eventual enactment of House Bill No. 129, labeled "Christina's Law". The preamble to House Amendment No. 1 to House Bill No. 129 provides details on the inability of hospital staff to reach Christina without undue delay.

The legislation requires the Department of Health and Social Services to "adopt regulations to ensure that hospital staff persons have ready access to a locked hospital bathroom in the event of an emergency." The Division of Public Health is implementing the statutory mandate by proposing the addition of the following subsection to its regulations covering hospital construction, maintenance, and operation:

- 4.4. Hospitals must develop and implement policies and procedures for hospital staff to have ready access to a locked hospital bathroom in the event of an emergency.

Council would like to share a few observations.

First, placement of this sentence in the personnel-related "§4.0 Governing Body, Organization and Staff" regulation is unexpected. If someone were looking for a standard on bathroom access, it may be more logical to place the sentence in "§3.0 Physical Environment".

Agency Response: The Agency appreciates and acknowledges these comments. The hospital's governing body is responsible for all hospital operations; therefore, the regulations will remain as written.

Second, the process that will be used to alert hospitals of the new regulation and what time line applies to "development and implementation" of the policies and procedures is not clear in the proposed regulations. Are hospitals out of compliance if a policy is not operational on the effective date of the regulation (e.g. October 1,

2014) or do they enjoy some time to develop and implement the policies and procedures? The Department of Health and Social Services (DHSS) may wish to consider either inserting a firm effective date (e.g. December 1, 2014) or communicating an expectation through a sub-regulatory letter or guidance document.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency has developed a plan to notify all licensed hospitals and ensure the implementation of the new regulations.

Third, in reviewing the regulation, it was noted that versions of national standards from 1977 and 1981 are incorporated by reference. See §§3.1 and 4.1. DPH may wish to review these references to determine if they should be updated. The 1977 and 1981 versions of standards appear to be binding.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency intends to review and update the hospital regulations in the near future.

The public comment period was open from August 1, 2014 through September 2, 2014.

Based on comments received during the public comment period, no changes have been made to the proposed regulations. The regulations have been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

FINDINGS OF FACT:

Based on public comments received, no changes were made to the proposed regulation. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Hospital Standards (Construction, Maintenance, and Operation) are adopted and shall become effective November 11, 2014, after publication of the final regulation in the Delaware *Register of Regulations*.

Rita M. Landgraf, Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the August 2014 issue of the *Register* at page 119 (18 DE Reg. 119). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

4407 Hospital Standards (Construction, Maintenance, and Operation)

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Chapter 30D (16 Del.C. Ch. 30D)
16 DE Admin. Code 4454

ORDER

4454 Tanning Facilities Regulations

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Tanning Facilities. The DHSS proceedings to adopt the regulations were initiated pursuant to 29 **Delaware Code** Chapter 101 and authority as prescribed by 16 **Delaware Code**, Chapter 30D.

On September 1, 2014 (Volume 18, Issue 3), DHSS published in the *Delaware Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by October 1, 2014, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

No written comments were received during the public comment period. Therefore, no evaluation or summarization of comments is presented in the accompanying "Summary of Evidence." One letter of endorsement was received during the public comment period from the American Academy of Dermatology Association.

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Tanning Facilities were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*. One letter of support was received on the proposed regulation during the public comment period (September 1, 2014 through October 1, 2014).

Entity offering a letter in support of the proposed regulation:

American Academy of Dermatology Association, Brett Coldiron, MD, FAAD, President:

(In Part)

On behalf of nearly 13,000 U.S. members of the American Academy of Dermatology Association (AADA), I am writing to share our support for the proposed indoor tanning regulations, which implement legislation protecting minors under 18 from using indoor tanning devices (SB 94, 147th General Assembly, Regular Session). As dermatologists, we dedicate our lives to promoting habits in our patients that ensure healthy skin. The AADA commends Delaware for its leadership in enacting SB 94 and we urge the Division of Public Health to adopt the proposed rule.

The public comment period was open from September 1, 2014 through October 1, 2014.

Based on comments received during the public comment period, no changes have been made to the proposed regulations. The regulation has been reviewed by the Delaware Attorney General's office and approved by the Cabinet Secretary of DHSS.

FINDINGS OF FACT:

Based on public comments received, no changes were made to the proposed regulations. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Tanning Facilities are adopted and shall become effective January 1, 2015, after publication of the final regulation in the *Delaware Register of Regulations*.

Rita M. Landgraf, Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the September 2014 issue of the *Register* at page 191 (18 DE Reg. 191). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

4454 Tanning Facilities Regulations

DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 and 1333 (18 Del.C. §§311 and 1333)

**ORDER
Docket No. 2401**

404 Derivative Instruments

Proposed Regulation 404 relating to Derivative Instruments was published in the *Delaware Register of Regulations* on September 1, 2014. The comment period remained open until September 30, 2014. There was no public hearing on proposed Regulation 404. Public notice of the proposed Regulation 404 in the *Register of Regulations* was in conformity with Delaware law.

FINAL REGULATIONS

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Comments were not received on the proposed amended Regulation 404.

With no comments received and no additional amendments being suggested, no changes were made to the proposed Regulation 404.

FINDINGS OF FACT

Based on Delaware law and the record in this docket, I make the following findings of fact:

1. 18 **Del.C.** §§311 and 1333 of the Insurance Code requires a regulation to set forth rules and procedural requirements which the Commissioner deems necessary to carry out the provisions of the Code.
2. The requirements of proposed Regulation 404 best serve the interests of the public and of insurers and comply with Delaware law.

DECISION AND EFFECTIVE DATE

Based on the provisions of 18 **Del.C.** §§311 and 1333, and of 29 **Del.C.** Ch. 101, and the record in this docket, I hereby adopt proposed Regulation 404 as may more fully and at large appear in the version attached hereto to be effective 10 days after being published as final.

TEXT AND CITATION

The text of proposed Regulation 404 last appeared in the *Register of Regulations* Vol. 18, Issue 3, pages 195-201.

IT IS SO ORDERED this 15th day of October, 2014.
Karen Weldin Stewart, CIR-ML
Insurance Commissioner

***Please note that no changes were made to the regulation as originally proposed and published in the September 2014 issue of the *Register* at page 195 (18 DE Reg. 195). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

404 Derivative Instruments

DEPARTMENT OF JUSTICE FRAUD AND CONSUMER PROTECTION DIVISION INVESTOR PROTECTION UNIT

Statutory Authority: 6 Delaware Code, Section 73-102(b) (6 **Del.C.** §73-102(b))

ORDER

Rules and Regulations Pursuant to the Delaware Securities Act

WHEREAS, on September 1, 2014, the Delaware *Registrar of Regulations*, pursuant to the request of the Investor Protection Director, caused the proposed rules and regulations pursuant to the Delaware Securities Act to be published in the Delaware *Register of Regulations*, 18 DE Reg. 202 (9/1/14); and

WHEREAS, the proposed rules and regulations were held open for public comment until October 1, 2014; and

WHEREAS, no comments were received by the Investor Protection Director, and therefore no evaluation or summarization of comments is presented in the accompanying "Summary of Evidence";

NOW THEREFORE, IT IS HEREBY ORDERED this 10th day of October, 2014, that the information set forth

herein shall constitute the required summary of evidence and information submitted; the summary of findings of fact with respect to the evidence and information submitted; and the decision to adopt the rules and regulations in the form attached hereto as **Exhibit A**.

IT IS FURTHER ORDERED that, pursuant to 6 **Del.C.** §73-102(b) and 29 **Del.C.** §10118(b)(3), upon consideration of the information submitted to the Director of the Investor Protection Unit, and based upon the findings of fact with respect to the information submitted, the Rules and Regulations Pursuant to the Delaware Securities Act, in the form attached hereto as **Exhibit A**, are adopted effective January 1, 2015.

SUMMARY OF EVIDENCE AND INFORMATION SUBMITTED

The public comment period was open from September 1, 2014 to October 1, 2014. No comments were received on the proposed regulations during the public comment period and no changes have been made to the proposed regulations.

SUMMARY FINDINGS OF FACT

The revision makes substantial changes to the Rules and Regulations Pursuant to the Delaware Securities Act (the "Rules"). The Rules are being changed as follows:

1. to reflect the passage of amendments to the Delaware Securities Act, 6 **Del.C.** Ch. 73 (the "Act") in 2013. *See, An Act to Amend Title 6 of the Delaware Code Relating to the Delaware Securities Act, 79 Del. Laws.* c. 182, including
 - a. changing "Securities Division" and "Division" to "Investor Protection Unit" and "Unit," respectively,
 - b. changing "Securities Commissioner" and "Commissioner" to "Investor Protection Director" and "Director," respectively, and
 - c. adding flexibility to the Unit's administrative hearing process to allow for the Director to delegate authority to the hearing officer, who would now be referred to as the "presiding officer" (see changes throughout Part B of the Rules);
2. to increase the fee for written interpretive opinions from the Unit to \$300 (see Rule 102);
3. to clarify and adjust various aspects of the administrative hearing process, including
 - a. the rules for service and the form of papers to be filed (see Rules 210 and 212),
 - b. that the Unit may issue a complaint for any violation of an order, or any other lawful condition imposed upon the defendant by the Director (see Rules 220 and 221),
 - c. to extend the timing for disclosure of documents prior to a hearing and the disclosure of expert qualifications and opinions (see Rule 243),
 - d. to clarify that the Unit does not need to file findings of fact and law in default judgment see Rule 252), and
 - e. to clarify the respective roles of Unit and the Director with respect to summary orders, including that a summary order requires action by either the Unit or the Director, but not necessarily both (see Rules 260, 261, 262, and 264);
4. to clarify the process, authority, and parameters for issuing subpoenas in administrative proceedings and investigations (see Rules 203 and 304);
5. to add a fee for Form D notice filings required under Section 73-204(e) of the Act, which fee is proposed to be set at one half of one percent of the maximum aggregate offering price of securities to be offered in Delaware during the initial registration period, but not less than \$200.00 or more than \$1000.00 (see Rule 404);
6. to impose a late fee for failing to pay a required fee on time (see Rule 404);
7. to require Form D notice filings to be made earlier than the current 15 day period if an earlier filing is required by the SEC (see Rule 406);
8. to conform the Rules to existing practice for the processing of registration applications whereby applications for registration are not complete until processed through CRD or IARD (as the case may

- be) and the prerequisites of registration with the SEC, FINRA, and/or the applicant's home state (as the case may be) are met (see Rules 600, 601, 700 and 701);
9. to establish that the suitability standard for broker-dealers and investment advisers is revised to clarify that the standard applies to recommended investment strategies, as well as recommended purchase and sale transactions (see Rules 609(b)(3), 609(d)(4)-(6), and 709(a)(1));
 10. to update the standards of practice for investment advisers having custody of client funds (see Rule 708);
 11. to clarify the supervisory responsibility of investment adviser and broker-dealer firms (see Rules 609(b)(4) and 709(a)(4));
 12. to clarify that a broker-dealer's violation of any conduct rule promulgated by FINRA is a dishonest and unethical practice (see Rule 609(b)(28));
 13. to impose a requirement on broker-dealers and investment advisers with a place of business in Delaware to post a public notice of registration in such place of business, which public notice states:

Investment firms and professionals in Delaware must be registered with the Investor Protection Unit of the Delaware Department of Justice. This firm has been so registered. Registration does not mean this business has been approved or reviewed by the Investor Protection Unit.

To check the registration status of any investment firm or professional in Delaware, or to file a complaint with the Investor Protection Unit, please call (302) 577-8424 or e-mail Investor.Protection@state.de.us.

(see Rules 611 and 712); and
 14. to add an exemption from registration for certain investment advisers who are also exempt from federal registration as private fund advisers (see Rule 711).
 15. The revision also makes a variety of technical changes that correct stale citations, delete references to entities that no longer exist, modernize the use of language, eliminate inapplicable grandfathering provisions, and make stylistic changes for the sake of uniformity.

DATED THIS 10th DAY OF OCTOBER, 2014

BY ORDER OF:

Owen Lefkon, Investor Protection Director for the State of Delaware

*Please note that no changes were made to the regulation as originally proposed and published in the September 2014 issue of the *Register* at page 202 (18 DE Reg. 202). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

Rules and Regulations Pursuant to the Delaware Securities Act

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WATERSHED STEWARDSHIP

Statutory Authority: 7 Delaware Code, Chapter 40 (7 Del.C. Ch.40)
7 DE Admin. Code 5101

5101 Sediment and Stormwater Regulations

Secretary's Order No. 2014-WS-0022

Date of Issuance: October 15, 2014

Effective Date: November 11, 2014

This Order of the Secretary of the Department of Natural Resources and Environmental Control (Department)

considers the record developed on a proposed amendment to 7 DE Admin. Code 5101 (Regulation 5101).

Background

The Department's Division of Watershed Stewardship (Division), through experts in its Sediment and Stormwater Program, prepared a proposed amendment to Regulation 5101, which the Department had published in the September 1, 2014 issue of the *Delaware Register of Regulations*. Legal notices also were published in the *News Journal* and *Delaware State News*. The notices also provided the opportunity for public comment, including at a September 25, 2014 public hearing. The time period for written public comment ended on October 10, 2014. In an October 13, 2014, Hearing Officer's Report, the Department's presiding hearing officer reviewed the record and recommended approval of the proposed amendment.

Discussion

The Department proposed amendment to Regulation 5101 is made to clarify and remove any ambiguity that may be in Regulation 5101 concerning the role of the Technical Documents (TD). As stated by the Department's counsel, the amendment is curative. Indeed, the Department's counsel currently is defending Regulation 5101 and Secretary's Order No. 2013-WS-0026 issued July 18, 2013 (2013 Order), which approved the currently effective Regulation 5101 in Superior Court in *Baker v DNREC, CA No. S13C-08-026 THG* (Appeal).

This appeal of the 2013 Order is based upon a misunderstanding of the role of TD. This amendment seeks to clarify and cure any misunderstanding of the role of the TD. The amendments approved by this Order are curative in that Regulation 5101, as approved by the 2013 Order, will not change nor will the Department's implementation of Regulation 5101. Instead, the language changes are to clarify and remove any ambiguity that may exist in Regulation 5101 about the role of the TD in the administration of Regulation 5101.

This Order relies on the October 10, 2014 letter from the Department's counsel in the Appeal because this change is prompted by the Appeal, which the Department believes may have been filed based upon a misunderstanding of Regulation 5101 or admittedly less than clear language. It is the language that refers to the TD that this amendment clarifies and/or corrects so as to remove any misunderstanding or confusion. The Department of Justice letter includes an analysis of the procedural issues raised on appeal and in the public comments, and concludes that the amendment is curative and could have been promulgated as exceptions to the *Administrative Procedures Act*, 29 *Del.C.* §10101 *et seq.* (APA). Instead, the Department promulgated this amendment under the APA's full public hearing process as opposed to the abbreviated process allowed for curative changes such as proposed by this amendment.

The changes reinforce the Department's stated intent that the TD was not to be a regulation. Instead, the TD was provided and cited in Regulation 5101 in order to provide the regulated community with assistance in understanding and implementing Regulation 5101, particularly in the new provision whereby Sediment & Stormwater Plans may be approved using methods not contained in the TD if they provide "functional equivalency" to achieve the necessary environmental protection from urban stormwater runoff, which also poses a significant risk to public health and safety. Regulation 5101, as approved in the 2013 Order, was a comprehensive change to the sediment and stormwater regulation in Delaware after years of meetings and discussions with all interested participants.

The Appeal seeks to reverse the 2013 Order and its approval of Regulation 5101. The Appeal is based upon the alleged failure to include the TD as part of Regulation's APA procedure. Instead, the 2013 Order discussed the issue, but Regulation 5101 included language that could cause ambiguity in the role of the TD. This amendment is promulgated as a curative change in order to resolve any uncertainty that may exist.

The letter from the Department's counsel in the litigation before Superior Court in *Baker v DNREC, CA No. S13C-08-026 THG* is the Department's legal position that the proposed amendment seeks to implement in language changes to Regulation 5101 to remove any ambiguity and satisfy the appeal, if possible, through such changes.

In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary, adopts as a final regulation the amendment to Regulation 5101 as set forth in the Appendix A;

2. The approved amendment to Regulation 5101 is based upon the version published in the September 1, 2014 *Delaware Register of Regulations*; and
3. The Department shall provide written notice to the persons affected by the Order, as determined by the Department, including those persons who requested to receive notice on Regulation 5101, and shall be submitted to the *Delaware Register of Regulations* for publication in its next available issue.

David S. Small, Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the September 2014 issue of the *Register* at page 204 (18 DE Reg. 204). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

5101 Sediment and Stormwater Regulations

**DEPARTMENT OF SAFETY AND HOMELAND SECURITY
OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER**

Statutory Authority: 4 Delaware Code, Section 304(a) (4 **Del.C.** §304(a))

ORDER

1407 A Rule Pertaining to Movie Theaters

Date of Issuance: October 21, 2014

Effective Date: November 11, 2014

Under the authority vested in the Alcoholic Beverage Control Commissioner ("OABCC") under 29 **Del.C.** §8001 et seq., 29 **Del.C.** §10111 et seq. and 4 **Del.C.** §304, the following findings, reasons and conclusions are entered as an Order of the Commissioner to create the regulation, 4 **DE Admin. Code** 1407, A Rule Pertaining to Movie Theaters. The only comments made regarding the hearings and by written comment were in favor of adopting the proposed regulation with the exception that Mr. Ketchum of Penn Cinema spoke against the adoption of 1407 - §2.0(c.).

1407 - §2.0(c.) requires a camera to be located in the theaters that is able to be monitored from a central location, and Mr. Ketchum testified that this requirement would be expensive and unnecessary. It is important for operators of movie theaters to monitor patrons to prevent the passing of alcohol legally purchased to minors and the monitored cameras are an excellent means of accomplishing this. In addition, the statute requires the cameras and therefore the Rule must require the cameras.

In conclusion, the following findings and conclusions are entered:

1. OABCC, acting through this Order of the Commissioner, adopts the proposed regulation as a final regulation, as set forth below,
2. The approval of the proposed regulation as the final regulation will protect and improve the Manner in which alcohol is served in movie theaters;
3. The Regulation approved by this Order was developed consistent with the applicable law and regulatory standards, and is supported by comments from the industry;
4. OABCC provided public notice of the proposed regulation and the public hearing in a manner required by the law and regulations,
5. OABCC held public hearings in a manner required by the law and regulations, and considered all timely and relevant public comments in making its determination;
6. OABCC's proposed Regulation 1407, as published in the September 1, 2014, *Delaware Register of Regulations*, and as set forth below, is well supported by the record, and is reasonable to regulate the sale of alcohol consistent with the applicable laws and regulations.
7. OABCC shall have published this Order in the *Delaware Register of Regulations*; and the notice in newspapers, and the Regulation amendment will go into effect ten days after its publication in the *Delaware Register of Regulations*.

John H. Cordrey, Commissioner

*Please note that no changes were made to the regulation as originally proposed and published in the September 2014 issue of the *Register* at page 209 (18 DE Reg. 209). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1407 A Rule Pertaining to Movie Theaters

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

1100 BOARD OF DENTISTRY AND DENTAL HYGIENE

Statutory Authority: 24 Delaware Code, Section 1106(a)(1) (24 Del.C. §1106(a)(1))
24 DE Admin. Code 1100

ORDER

1100 Board of Dentistry and Dental Hygiene

On June 1, 2014, the Delaware Board of Dentistry and Dental Hygiene published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 17, Issue 12. This notice further indicated that written comments would be accepted by the Board for thirty days, 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 August 21, 2014 at a regularly scheduled meeting of the Delaware Board of Dentistry and Dental Hygiene 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 given at the public hearing on August 21, 2014. No written comments were received by the Board during the initial thirty day public comment period; nor were any written comments received after the public hearing during the fifteen day 29 Del.C. §10118(a) second public comment period.

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 two written public comment periods, or the public hearing.
3. Pursuant to 24 Del.C. §1106(a)(1) the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed changes amend Board's regulations, at 6.0, et. seq. set forth guidelines for application renewal and late renewal, including the procedure for attestation to completion of continuing education and the period for late renewal without the need to reapply.
5. 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 changes to the Board's rules and regulations.
6. Having received no public comments, the Board finds no reason to amend the regulations as proposed.

Decision and Order Concerning the Regulations

NOW THEREFORE, pursuant to 24 Del.C. §1106(a)(1) and for the reasons set forth above, the Board of Dentistry and Dental Hygiene does hereby ORDER that the regulations be, adopted and promulgated as set forth in the Delaware *Register of Regulations* on November 1, 2014. 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 October, 2014.

BOARD OF DENTISTRY AND DENTAL HYGIENE

John Lenz, DDS, President	June Ewing, Public Member
Brian McAllister, DDS, Secretary	Nathaniel Gibbs, Public Member
Carol Argo, RDH	Thomas A. Mercer, DMD
Debra Bruhl, RDH, Hygiene Advisory	Mary Trinkle, RDH, Hygiene Advisory
Lucinda Bunting, DMD	Sharon Welsh, DDS
Buffy Parker, RDH, Hygiene Advisory	

***Please note that no changes were made to the regulation as originally proposed and published in the June 2014 issue of the *Register* at page 1159 (17 DE Reg. 1159). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1100 Board of Dentistry and Dental Hygiene

DIVISION OF PROFESSIONAL REGULATION

4400 DELAWARE MANUFACTURED HOME INSTALLATION BOARD

Statutory Authority: 24 Delaware Code, Section 4416(b)(1) (24 **Del.C.** §4416(b)(1))
24 **DE Admin. Code** 4400

ORDER

4400 Delaware Manufactured Home Installation Board

On June 1, 2014, the Delaware Board of Manufactured Home Installation published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 17, Issue 12. This notice indicated that written comments would be accepted by the Board for thirty days, 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 July 14, 2014 at a regularly scheduled meeting of the Delaware Board of Manufactured Home Installation 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 given at the public hearing on July 14, 2014. No written comments were received by the Board during the initial thirty day public comment period; nor were any written comments received after the public hearing during the fifteen day 29 **Del.C.** §10118(a) second public comment period.

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 two written public comment periods, or the public hearing.
3. Pursuant to 24 **Del.C.** §4416(b)(1) the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.

4. The majority of the proposed changes are changes of an administrative nature.
5. 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 changes to the Board's rules and regulations.
6. 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.** §4416(b)(1) and for the reasons set forth above, the Board of Manufactured Home Installation 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 June 1, 2014. 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 _ the _day of October, 2014.

DELAWARE BOARD OF MANUFACTURED HOME INSTALLATION

Margaret Harper

Keith Rudy

Valerie Lacey

Richard Snyder

Leslie Persans

John Starke

Dean Pierson

Barbara Williams

Kevin Reinike

***Please note that no changes were made to the regulation as originally proposed and published in the June 2014 issue of the *Register* at page 1164 (17 DE Reg. 1164). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

4400 Delaware Manufactured Home Installation Board

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, November 20, 2014 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF PUBLIC HEALTH
PUBLIC NOTICE
4451 Body Art Establishments

On November 1, 2014, the Department of Health and Social Services, Division of Public Health, Health Systems Protection, plans to publish proposed regulations which amend the State of Delaware Regulations Governing Body Art Establishments and hold them out for public comment per Delaware law.

The regulation has been revised to include:

- Establishment of an annual inspection requirement.
- Establishment of a requirement that if operations are discontinued longer than sixty (60) days, or per order of the Division of Public Health, the permit holder shall obtain approval from the Division before resuming operations.

The Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services, will hold a public hearing to discuss proposed amendments to the Delaware Regulations Governing Body Art Establishments.

The public hearing will be held on November 25, 2014 at 10:00 a.m. in the First Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Copies of the proposed regulation are available for review in the November 1, 2014 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Health Systems Protection Section at 302-744-4705.

Anyone wishing to present his or her oral comments at this hearing should contact Ms. Deborah Harvey at (302) 744-4700 by November 25, 2014. Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulation as a supplement to or in lieu of oral testimony should submit such comments by Wednesday, December 10, 2014 to:

Deborah Harvey
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: Deborah.Harvey@state.de.us
Phone: (302) 744-4700

DIVISION OF SOCIAL SERVICES
PUBLIC NOTICE**Delaware's Temporary Assistance for Needy Families (TANF) State Plan Renewal**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) is proposing to renew Delaware's eligibility status for the Temporary Assistance for Needy Families (TANF) program provided for in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), (P.L. 104-193).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy & Program Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware

19720-0906 or by fax to (302) 255-4425 by 4:30 p.m. on December 15, 2014. A draft copy of the Delaware TANF State Plan has been prepared which reflects amendments as well as basic improvements to the various descriptions of programs and services. This document may be viewed and downloaded from the Internet at the Division of Social Services' website at <http://www.dhss.delaware.gov/dhss/dss/>. Requests for electronic or paper copies of the draft TANF State Plan may be sent to Janneen Boyce at the above address or emailed to janneen.boyce@state.de.us.

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

DEPARTMENT OF INSURANCE
OFFICE OF THE COMMISSIONER
PUBLIC NOTICE
1003 Credit for Reinsurance

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed amended Department of Insurance Regulation 1003 relating to Credit for Reinsurance [Formerly Regulation 79]. The docket number for this proposed AMENDED regulation is 2427.

The proposed amended regulation supports the Credit for Reinsurance Act (18 **Del.C.** §§910-916) and makes two changes for national accreditation purposes (see 8.2.4.8 and 8.2.7.4). The Delaware Code authority for the change is 18 **Del.C.** §311 and §915; and 29 **Del.C.**, Ch. 101.

The Department of Insurance does not plan to hold a public hearing on the proposed amended regulation. The proposed amended regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at:

www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Monday, December 1, 2014. Any such requests should be directed to:

Regulatory Specialist Rhonda West
Delaware Department of Insurance
841 Silver Lake Boulevard
Dover, DE 19904
Phone: (302) 674-7379
Fax: (302) 739-5566
Email: rhonda.west@state.de.us

DEPARTMENT OF LABOR
DIVISION OF INDUSTRIAL AFFAIRS
Office of Workers' Compensation
PUBLIC NOTICE
1341 Workers' Compensation Regulations

The Secretary of Labor, in accordance with 19 **Del.C.** §2322B, has proposed revisions to the rules and regulations relating to the Delaware Workers' Compensation Health Care Payment System (HCPS). These proposals substantially revise the fee schedule instructions and guidelines.

A public meeting will be held before the Workers' Compensation Oversight Panel ("Panel") at 4:00 p.m. on November 24, 2014, in the Department of Labor Fox Valley Annex, 4425 N. Market Street, Wilmington, Delaware 19802, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules

may obtain a copy from Donna Forrest, Medical Component Manager, Office of Workers' Compensation, Division of Industrial Affairs, Department of Labor, 4425 N. Market Street, Wilmington, Delaware, 19802. Persons wishing to submit written comments may forward them to the Panel at the above address. The final date to receive written comments will be 20 days after the public meeting.

The Panel will consider making a recommendation to the Secretary at the regularly scheduled meeting following the public meeting.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
PUBLIC NOTICE
100 Board of Accountancy

Pursuant to 24 **Del.C.** §105(a)(1), the Delaware Board of Accountancy has proposed revisions to its rules and regulations. The rules pertaining to firm ownership are amended to clarify that all non-licensee owners of firms must be individuals and must be active participants in the firm.

A public hearing will be held on November 19, 2014 at 9:00 a.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 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 Board of Accountancy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. Written comments will be accepted until December 4, 2014 in accordance with 29 **Del.C.** §10118(a).

DIVISION OF PROFESSIONAL REGULATION
PUBLIC NOTICE
4100 Board of Home Inspectors

The Delaware Board of Home Inspectors, pursuant to 24 **Del.C.** §4106(a)(1), proposes to amend its rules and regulations. The proposed regulation changes decrease the number of supervised inspections a trainee inspector must complete prior to being eligible for full licensure and decreases the number of inspections an experience applicant must complete to be eligible for licensure. The changes are being proposed in light of a recent statutory change that decreased the number of inspections endorsement candidates are required to complete to be eligible for licensure. The changes also eliminate INTERNACHI membership as a qualification for licensure as an experience applicant as the Board believes that INTERNACHI membership is not as strong an indicator of an applicant's qualifications as ASHI and NAHI membership.

The Board will hold a public hearing on the proposed regulation change on December 9, 2014 at 9:00 a.m., Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Amanda McAtee, Administrative Specialist of the Delaware Board of Home Inspectors, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until December 24, 2014 pursuant to 29 **Del.C.** §10118(a).

DIVISION OF PROFESSIONAL REGULATION
PUBLIC NOTICE
5200 Board of Examiners of Nursing Home Administrators

The Delaware Board of Examiners of Nursing Home Administrators, pursuant to 24 **Del.C.** §5206(1), proposes to revise its regulations. The proposed revisions to the regulations would mandate that AIT registrants take additional training in preparation for the National Association of Long Term Care Administrator Boards and the practice of nursing home administration. The Board has always strongly recommended that applicants take the course and now recommends that the course become mandatory pursuant to 24 **Del.C.** §5209(a)(1).

The Board will hold a public hearing on the proposed rule change on January 13, 2015 at 1:00 p.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Sheryl Paquette, Administrator of the Delaware Board of Nursing Home Administrators, Cannon Building, 861 Silver Lake Blvd, Suite 203, Dover, DE 19904.

EXECUTIVE DEPARTMENT
OFFICE OF MANAGEMENT AND BUDGET
OFFICE OF STATE PLANNING COORDINATION
PUBLIC NOTICE

Regulations Governing the Administration and Review of Applications for Designation as Downtown Development Districts

Pursuant to its authority under the Downtown Development Districts Act, 22 **Del.C.** §§1901 *et seq.* the Office of State Planning Coordination proposes these Guidelines to establish procedures relating to the administration and review of Applications for designation as Downtown Development Districts.

Interested persons may submit written comments to Connie Holland, AICP, via email at connie.holland@state.de.us or via U.S. Mail at the Office of State Planning, 122 Martin Luther King Blvd. South, 3rd Floor, Dover, DE 19901. The public comment period will close on November 30, 2014.