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# Delaware Register of Regulations

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Issue Date: NOVEMBER 1, 2017

Volume 21 - Issue 5, Pages 353 - 452

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Regulations:

Errata

Proposed

Final

General Notices

Calendar of Events &  
Hearing Notices



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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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## CITATION TO THE DELAWARE REGISTER

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

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

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

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## 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.

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## 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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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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*.

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## CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
December 1	November 15	4:30 p.m.
January 1	December 15	4:30 p.m.
February 1	January 16	4:30 p.m.
March 1	February 15	4:30 p.m.
April 1	March 15	4:30 p.m.

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## DIVISION OF RESEARCH STAFF

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**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

**PUBLIC NOTICE**

**1100 Board of Dentistry and Dental Hygiene**

\* **Please Note:** The final regulation for 1100 Board of Dentistry and Dental Hygiene that was published in the October 1, 2017 issue of the Delaware *Register* (Volume 21, Issue 4) inadvertently contained a publication error. Subsection 11.7 was stricken in error.

For the current version of 1100 Board of Dentistry and Dental Hygiene, see <http://regulations.delaware.gov/AdminCode/title24/1100.shtml>.

The effective date for the final order and regulation appearing in the October *Register* remains the same.

**1100 Board of Dentistry and Dental Hygiene**  
**(Break in Continuity of Sections)**

**11.0 Crimes Substantially Related to the Practice of Dentistry and Dental Hygiene.**

**(Break in Continuity Within Section)**

- 11.7 Any crime which involves the misuse or illegal possession or sale of a deadly weapon or dangerous instrument and shall include by way of example and not of limitation the following crimes listed in Title 11 of the Delaware Code Annotated:

Offenses Involving Deadly Weapons and Dangerous Instruments

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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.

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**DEPARTMENT OF EDUCATION****OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 103

**PUBLIC NOTICE****Education Impact Analysis Pursuant To 14 Del.C. §122(d)****103 Accountability for Schools, Districts and the State****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** 103 Accountability for Schools, Districts and the State. This regulation is amended to align with the provisions of Delaware's approved federal Every Student Succeeds Act (ESSA) plan. The ESSA plan can be found on the Department's website at: <https://www.doe.k12.de.us/Page/3294>

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before December 4, 2017 to Susan K Haberstroh, Department of Education, 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml), or obtained at the Department of Education, Finance Office located at the address listed above.

**C. IMPACT CRITERIA**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is intended to help improve student achievement as measured against state achievement standards by aligning with the provisions of Delaware's submission and subsequent approval of the Every Student Succeeds Act (ESSA) plan.

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

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation is intended to help ensure all students' health and safety are adequately protected as these issues may be addressed in the approved ESSA plan.

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

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not 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 beyond what is required through the ESSA plan.

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

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

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

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

**\*Please Note:**

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

[http://regulations.delaware.gov/register/november2017/proposed/21 DE Reg 363RFA 11-01-17.pdf](http://regulations.delaware.gov/register/november2017/proposed/21%20DE%20Reg%20363RFA%2011-01-17.pdf)

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

[103 Accountability for Schools, Districts and the State](#)

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**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 225

**PUBLIC NOTICE**

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

**225 Prohibition of Discrimination**

**A. TYPE OF REGULATORY ACTION REQUIRED**

Amendment to Existing Regulation

**B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION**

The Secretary of Education intends to amend 14 DE Admin. Code 225 Prohibition of Discrimination. The regulation is being amended pursuant to a directive from Governor Carney to Secretary Bunting in a memo dated July 17, 2017. The Department was directed to provide guidance through regulation to school districts and charter schools to prohibit unlawful discrimination in educational programs and activities for students. The memo also required stakeholder input and that the new regulation be published for public comment by November 1<sup>st</sup>. The

Department was also charged with producing a model policy that each district and charter school could adopt, or tailor and adopt, to suit the needs of the students in the district. The model policy is attached as Exhibit 1.

Information related to this regulation and model policy can be found at the Department website here <https://www.doe.k12.de.us/page/3531>.

Internally, the Department reviewed information from various sources including the Education Commission of the States and policies from other states and prepared a preliminary draft regulation and model policy. A Development Team was then established to review the preliminary draft regulation and model policy and to make recommendations for revisions. Also, some grammatical changes were made to comply with regulation drafting requirements. The Development Team consisted of seventeen individuals and included superintendents, a charter school head of school, students, local board members, school administrators and an advocate. Four Development meetings were held. The revised draft was made available for general public input.

The Department held four Community Conversations with one in each county and one in the City of Wilmington. An online survey was made available for public input. Many of the comments received were determined to be appropriate for inclusion in implementation guidance.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before December 4, 2017 to Susan K Haberstroh, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml), or obtained at the Department of Education, Finance Office located at the address listed above.

## C. IMPACT CRITERIA

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

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

[http://regulations.delaware.gov/register/november2017/proposed/21\\_DE\\_Reg\\_364RFA\\_11-01-17.pdf](http://regulations.delaware.gov/register/november2017/proposed/21_DE_Reg_364RFA_11-01-17.pdf)

## 225 Prohibition of Discrimination

### 4-0 Prohibition of Discrimination

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# PROPOSED REGULATIONS

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~~No person in the State of Delaware shall on the basis of race, color, religion, national origin, sex, sexual orientation, genetic information, marital status, disability, age or Vietnam Era veteran's status be unlawfully excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving approval or financial assistance from or through the Delaware Department of Education.~~

## 1.0 Purpose

- 1.1 The purpose of this regulation is to provide guidance to School Districts and Charter Schools for the development of a policy prohibiting discriminatory treatment of students on the basis of a Protected Characteristic(s) in all Educational Programs and Activities and Extra-Curricular Activities. The intent of the policy is to foster school environments as welcoming, inclusive places where all students can flourish.
- 1.2 No person in the State of Delaware shall on the basis of race, ethnicity, color, religion, national origin, sex, gender, sexual orientation, genetic information, marital status, disability, age, gender identity or expression or other characteristic protected by state or federal law, known as "Protected Characteristics" under this regulation, be unlawfully excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving approval or financial assistance from or through the State of Delaware.
- 1.3 This regulation requires each School District and Charter School to establish an anti-discrimination policy and procedures for reviewing the policy for compliance with the stated Purpose of the regulation. The established anti-discrimination policy shall, at a minimum, be consistent with this regulation and include any required language as such is noted in the approved Anti-Discrimination Model Policy.

## 2.0 Definitions

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

"Anti-Discrimination Model Policy" means the policy, developed and approved by the Department, to be used by a School District or Charter School in the establishment of its anti-discrimination policy.

"Charter School" means a school established pursuant to Chapter 5 of Title 14 of the Delaware Code.

"Course of Study" or "Unit of Study" means academic based instruction within an Educational Program or Educational Activity.

"Department" means the Delaware Department of Education.

"Educational Program and Activity" mean an activity or program for providing education made available, sponsored or supervised by a Charter School or School District.

"Extra-Curricular Activity" means a student activity made available, sponsored or supervised by a School District or Charter School not falling within the scope of required Charter School or School District activities or relating to formally or informally approved and usually organized student activities connected with the Charter School or School District and not carrying academic credit.

"Protected Characteristic(s)" means race, ethnicity, color, religion, national origin, sex, gender, sexual orientation, genetic information, marital status, disability, age, gender identity or expression or other characteristic protected by state or federal law.

"School District" means a reorganized school district or vocational technical school district established pursuant to Title 14 of the Delaware Code.

## 3.0 Admission to Educational Programs and Activities

- 3.1 All Educational Programs and Activities offered by a public school shall be open and available to students regardless of Protected Characteristic(s), unless the Educational Program and Activity is legally constituted as single gender or is for the purpose of assisting students with a disability.

- 3.2 A School District or Charter School shall not schedule students into a Course of Study or Unit of Study on the basis of Protected Characteristic(s).
- 3.3 No student, on the basis of Protected Characteristic(s), shall be discriminated against in accessing a Course of Study or Unit of Study.
- 3.4 Nothing in this regulation shall be construed to prevent School Districts and Charter Schools from providing separately to each gender those segments of a program of instruction dealing exclusively with human sexuality. A student shall have the opportunity to participate in the program of instruction dealing exclusively with human sexuality that is consistent with the student's gender identity regardless of the student's assigned sex at birth.

## **4.0 Career and Educational Guidance**

- 4.1 School counselors and other school personnel shall present to students a broad spectrum of educational and career opportunities. School counselors and other school personnel shall make reasonable effort to depict individuals with the various Protected Characteristic(s) as representatives in educational and career opportunities.
- 4.2 No materials, tests or procedures shall be employed for guidance purposes that discriminate or limit educational and career choices on the basis of Protected Characteristic(s).

## **5.0 Instructional Materials**

- 5.1 No School District or Charter School shall use instructional materials in a manner that encourages discrimination of individuals based on a Protected Characteristic(s).
- 5.2 Each school with a physical education program shall provide equal opportunity for all students. Goals, objectives and skill development standards, where used, shall neither be designated on the basis of gender nor designed to have an adverse impact on members of any gender.

## **6.0 Extra-Curricular Activities**

- 6.1 Advantages and privileges of Charter Schools and School Districts include all Extra-Curricular Activities made available to, sponsored by or supervised by any Charter School or School District. No Charter School or School District shall make available, sponsor or supervise any Extra-Curricular Activities that restrict student participation on the basis of Protected Characteristic(s). This regulation does not prohibit School Districts or Charter Schools from allowing use of school premises by independent groups with restrictive membership if such premises are generally made available to the public.
- 6.2 No student shall be denied the opportunity in any implied or explicit manner to participate in an Extra-Curricular Activity because of the student's Protected Characteristic(s) except as provided in subsection 6.4. Participation in Extra-Curricular Activities shall be encouraged by each Charter School and School District for all students regardless of their Protected Characteristic(s).
- 6.3 Each School District and Charter School shall provide equal athletic opportunity for male and female students to participate in intramural, club, and interscholastic sports.
  - 6.3.1 In order to provide equal athletic opportunity for male and female students, School Districts and Charter Schools that operate or sponsor intramural, club, or interscholastic sports teams shall:
    - 6.3.1.1 Effectively accommodate athletic interests and abilities of both male and female students; and
    - 6.3.1.2 Provide equivalent benefits and services, including in the provision of equipment and supplies; scheduling of games and practice times; travel and per diem allowance; opportunity to receive coaching and academic tutoring; assignment and compensation of coaches and tutors; provision of locker rooms and facilities for practice and competition; provision of medical and training facilities and services; provision of housing and dining facilities and services; and publicity.
- 6.4 A Charter School or School District may operate or sponsor separate teams for members of each gender where selection for such teams is based upon competitive skill or the activity involved is a

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contact sport, provided that the requirements of subsection 6.3.1.2 are satisfied. A student shall have the opportunity to participate on the team that is consistent with the student's gender identity regardless of the student's assigned sex at birth.

6.4.1 For the purpose of subsection 6.4, a contact sport is a sport that involves bodily contact, including wrestling, football, basketball, lacrosse, soccer, field hockey, and ice hockey.

6.5 Teams comprised primarily or solely of students of one gender shall be granted equivalent instruction, training, coaching, access to all available facilities, equipment and opportunities to practice and compete as teams engaged in a similar activity comprised primarily or solely of students of the opposite gender.

## **7.0 Student Records**

7.1 All students entering a School District or Charter School shall be enrolled in eSchoolPLUS and assigned a DELSIS Student ID. The DELSIS Student ID is the unique identifier used to track a student throughout the student's entire educational career in Delaware.

7.2 Any student who seeks to change the student's name and does so pursuant to 10 Del.C. §5901, shall have the name changed in eSchoolPLUS upon the school's receipt of the petition for change of name granted by the court. The legal name change shall be reflected only on the student's educational records from the effective date of the petition going forward; historical records shall not reflect the change.

7.3 Any student who seeks to change the student's name and does not do so pursuant to 10 Del.C. §5901, may select a "preferred name" based on a Protected Characteristic, which the school shall enter in to eSchoolPLUS; however, the student's legal name shall continue to be the name maintained in eSchoolPLUS and displayed on all educational records for the student.

7.3.1 A school may request permission from the parent or legal guardian of a minor student before a "preferred name" is accepted; provided, however, that prior to requesting the permission from a parent or legal guardian, the school should consult and work closely with the student to assess the degree to which, if any, the parent or legal guardian is aware of the Protected Characteristic and is supportive of the student, and the school shall take into consideration the safety, health and well-being of the student in deciding whether to request permission from the parent or legal guardian.

7.4 All students enrolled in a Delaware public school may self-identify gender or race which is maintained in eSchoolPLUS.

7.4.1 A school may request permission from the parent or legal guardian of a minor student before a self-identified gender or race is accepted; provided, however, that prior to requesting the permission from a parent or legal guardian, the school should consult and work closely with the student to assess the degree to which, if any, the parent or legal guardian is aware of the Protected Characteristic and is supportive of the student, and the school shall take into consideration the safety, health and well-being of the student in deciding whether to request permission from the parent or legal guardian.

7.5 A student's preferred name cannot be placed on the student's diploma unless it is the student's legal name.

7.5.1 A student may apply for a notarized letter of certification from the Department for a legally changed name after the issuance of the diploma. The Department does not issue duplicate or revised diplomas after the diploma has been issued.

## **8.0 Privacy**

The school board of each School District and Charter School shall include a provision within its anti-discrimination policy that accommodates all students and addresses student access to locker rooms and bathrooms. School Districts and Charter Schools shall work with students and families on providing access to locker rooms and bathrooms that correspond to students' gender identity or expression.

## **9.0 Notification and Student Complaint Procedure**

- 9.1 The superintendent of each School District and head of school for each Charter School shall be responsible for ensuring that all school handbooks and codes of conduct follow this regulation. In order to ensure that such obligations are fulfilled, all school handbooks or codes of conduct shall also contain the following:
- 9.1.1 The anti-discrimination policy that is consistent with this regulation and affirms the school's non-tolerance for discrimination, including that which is based upon Protected Characteristic(s);
  - 9.1.2 The school's procedures for an informal process and a formal complaint process, which includes accepting, investigating and resolving students' complaints alleging discrimination in violation of the school's policy under subsection 9.1.1, which procedure shall, at a minimum, contain:
    - 9.1.2.1 A description of the basic procedures;
    - 9.1.2.2 An informal process for students such as identifying specific school staff member(s) a student may speak with if the student does not wish to initiate a formal complaint;
    - 9.1.2.3 A formal student complaint provision that allows for the complaint to be brought by the student or parent or both which includes the following:
      - 9.1.2.3.1 The identification of the administrative position at the school that will address the formal student complaint at each level of the process and the identification of the final decision-maker at the school or School District levels;
      - 9.1.2.3.2 A provision that the formal student complaint be in writing at each step of the process and that the formal student complaint specifies the basis for the complaint, and that it shall be filed.
      - 9.1.2.3.3 A provision that the submitted formal student complaint be addressed during a conference with the student and parent, if requested by the student, by the school within five (5) school days of its receipt and a written determination shall be issued within five (5) school days after the conference;
      - 9.1.2.3.4 The disciplinary or intervention measures that the school may impose if it determines that discrimination has occurred.
    - 9.1.2.4 The appeal process for both the student who filed the formal student complaint or for the individual determined to have engaged in discrimination if either wishes to appeal the disciplinary or intervention measure decision.

(Non-regulatory note - please refer to 14 **DE Admin. Code** 605 for requirements related to student rights and responsibilities.)

## **10.0 Implementation**

- 10.1 The school board of each School District and Charter School shall establish an anti-discrimination policy, which shall be, at a minimum, consistent with this regulation and shall include any required language as such is noted on the approved Anti-Discrimination Model Policy.
- 10.2 The school board of each School District and Charter School shall periodically review its anti-discrimination policy and procedures for compliance with the stated purpose under Section 1.0 of this regulation, and assurance that all obstacles to equivalent access to Educational Programs and Activities and Extra-Curricular Activities for all students regardless of Protected Characteristic(s) are removed.
- 10.3 All School Districts and Charter Schools shall strive to prevent discrimination based upon a student's Protected Characteristic(s), and all School Districts and Charter Schools shall respond promptly to such discrimination when they have knowledge of its occurrence.
- 10.4 The superintendent of each School District and head of school for each Charter School shall promote and direct effective procedures for the full implementation of this regulation and shall make recommendations to district or charter school school board for the necessary policies, program changes, and budget resource allocations needed to achieve adherence to this regulation.
- 10.5 Any contributions to a School District or Charter School for activities and monetary awards within or sponsored by the School District or Charter School or for scholarships administered by the School District or Charter School by any person, group or organization shall be free from any restrictions

# PROPOSED REGULATIONS

based upon Protected Characteristic(s). Schools may post or print information regarding private restricted scholarships as long as no preferential treatment is given to any particular scholarship offered and as long as the school does not endorse or recommend any such scholarship or advise or suggest to a particular student that he or she apply for such a scholarship; provided that a school may so advise or suggest such a restricted scholarship to a student if the school is aware that it is available to that student based on such student's self-identified Protected Characteristic(s).

## **11.0 Policy Reporting Requirements and Timelines**

Each School District and Charter School shall establish its anti-discrimination policy for implementation for the beginning of the 2018-2019 school year. An electronic copy of the current anti-discrimination policy of each School District and Charter School shall be on file with the Department of Education.

## **12.0 Application**

Nothing in this regulation shall alter a School District's or Charter School's rights and responsibilities under any applicable federal or state law including, for example, the First Amendment of the U.S. Constitution, Title IX of the Education Amendments of 1972, the Individuals with Disabilities Act, or Title VI of the Civil Rights Act of 1964.

### EXHIBIT 1

## **MODEL ANTI-DISCRIMINATION POLICY FOR DISTRICTS AND CHARTER SCHOOLS**

### **REQUIRED LANGUAGE is italicized**

*The \_\_\_\_\_ School District/Charter School (hereinafter referred to as "The District/Charter School") recognizes that all schools in Delaware should be welcoming, inclusive places where students are able to learn, achieve, and flourish without unlawful discrimination. It is the District/Charter School policy that no student shall be treated differently, separately, or have any action directly affecting him or her taken on the basis of race, ethnicity, color, religion, national origin, sex, gender, sexual orientation, genetic information, marital status, disability, age, gender identity or expression or any other characteristic protected by state or federal law in any educational program or education activity.*

*This policy reflects the provisions of 14 DE Admin. Code 225 Prohibition of Discrimination.*

### **DEFINITIONS (Additional definitions may be added by School District or Charter School)**

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

***"Educational Program and Activity"** mean an activity or program for providing education made available, sponsored or supervised by a Charter School or School District.*

***"Extra-Curricular Activity"** means a student activity made available, sponsored or supervised by a School District or Charter School not falling within the scope of required Charter School or School District activities or relating to formally or informally approved and usually organized student activities connected with the Charter School or School District and not carrying academic credit.*

***"Protected Characteristic(s)"** means race, ethnicity, color, religion, national origin, sex, gender, sexual orientation, genetic information, marital status, disability, age, gender identity or expression or other characteristic protected by state or federal law.*

### **POLICY**

*The \_\_\_\_\_ School District/Charter School personnel and students are strictly prohibited from engaging in any form of discrimination or retaliation. Prohibited behaviors may include, but are not limited to [note - the policy*

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must include any conduct specifically identified as discriminatory in 14 **DE Admin. Code** 225]:

- Discriminating against a student with regard to access to or scheduling into a course or unit of study on the basis of Protected Characteristic(s).
- Utilizing Protected Characteristic(s) as limiting factors in career determination while providing career and educational guidance.
- Utilizing instructional materials in a manner that encourages discrimination of individuals based on Protected Characteristic(s).
- Prohibiting a student's access to locker rooms or bathrooms on the basis of the student's gender identity or expression.
- Expressing slurs, jokes or remarks that are derogatory, demeaning, threatening or suggestive to a class of persons or a particular student or that promote stereotypes of persons with a Protected Characteristic(s).
- Engaging in discrimination between persons of different races or ethnicities, or even between persons of the same race or ethnicity because of their skin color, complexion or tone.
- Prohibiting a student from being excused from lunch or breakfast because their religion.
- Treating students unfavorably or favorably because they are from a particular country or part of the world because of ethnicity or accent or because they appear to be of a certain ethnic background (even if they are not).
- Treating students differently on the basis of ancestry or physical or cultural characteristics associated with a certain race, such as skin color, hair texture or styles, or certain facial features.

Any persons found to have engaged in discriminatory behavior based on Protected Characteristic(s) of a student shall be subject to the appropriate disciplinary or intervention measure.

No person shall be subjected to retaliation for reporting, testifying, assisting or participating in any manner in an investigation, proceeding or hearing resulting from a complaint of discriminatory behavior. No person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with that person's right to file a complaint of discrimination.

This statement constitutes only the policy of the District/Charter School. A violation of this policy does not necessarily mean that the conduct violates state and/or federal laws.

## **PROCEDURE FOR ADDRESSING ALLEGATIONS OF DISCRIMINATION**

The \_\_\_\_\_ School District/Charter School's procedure for addressing allegations of discrimination is as follows:

(NOTE - The School District or Charter School can utilize an existing procedure provided the procedure contains, at a minimum, the provisions in Section 9.0 of 14 **DE Admin. Code** 225)

### A. Informal Process

A student may contact (identified specific school staff) to discuss a concern about discriminatory conduct if the student does not want to file a formal student complaint. The (identified specific school staff) shall respect any request for student confidentiality as long as there is no information that would adversely affect the health and safety of the student or others.

### B. Formal Student Complaint Procedure

The student will submit the complaint of alleged discrimination in writing to (identified administrative person) on the Formal Student Complaint form.

(identified person) will schedule a conference with the student and parent(s) if requested by the student. This conference must be scheduled within five (5) school days of receipt of the Formal Student Complaint form. The

# PROPOSED REGULATIONS

conference may occur by phone or in person.

(Identified person) will issue a written determination on the complaint within five (5) school days after the conference.

If the complaint is not resolved to the satisfaction of the student or the individual determined to have engaged in discrimination, the determination may be appealed to (final decision maker) within five (5) school days. The appeal must be in writing and provide a basis for the appeal.

(Final decision maker) will schedule a conference with the appellant within three (3) school days. The conference may occur by phone or in person.

(Final decision maker) will issue a written final decision on the appeal within three (3) school days of the conference.

### **Possible Discipline or Intervention Measures:**

A person who has engaged in discriminatory conduct that has resulted in a reportable bullying or harassment incident shall be subject to the \_\_\_\_\_ School District/Charter School's code of conduct for those behaviors.

A person who has engaged in discriminatory conduct that constitutes a crime will be reported to the appropriate authorities.

A person who has engaged in discriminatory conduct may be required to participate in educational or cultural sensitivity training.

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## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 925

### PUBLIC NOTICE

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

### 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs

#### 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 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs. The amendment to subsection 6.17 brings the regulation into compliance with applicable federal law.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 2, 2018 to Susan K Haberstroh, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml), or obtained at the Department of Education, Finance Office located at the address listed above.

#### C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement

standards? The amended regulation is intended to help improve student achievement for students with visual impairment as measured against state achievement standards.

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

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all student's with visual impairments 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 preserves the necessary authority and flexibility of decision making at the local board and school level.

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

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

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

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

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

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

<http://regulations.delaware.gov/register/november2017/proposed/21 DE Reg 372RFA 11-01-17.pdf>

## **925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs**

**Non-regulatory note:** Some sections of this regulation are shown in *italics*. Federal law requires that the Delaware Department of Education identify in writing any Delaware rule, regulation or policy that is a state-imposed requirement rather than a federal requirement (see 20 USC §14079(a)(2)). The *italicized portions* of this regulation are Delaware-imposed requirements for the education of children with disabilities and are not specifically required by federal special education law and regulations.

*(Break in Continuity of Sections)*

### **6.0 Determination of Eligibility**

*(Break in Continuity Within Section)*

#### **6.17 Eligibility Criteria for Visual Impairment including Blindness:**

~~6.17.1 Blindness shall be defined as a visual acuity of 20/200 or less in the better eye with best correction, or a peripheral field so contracted that the widest diameter of such field subtends less than 20 degrees.~~

~~6.17.2 Partially Sighted shall be defined as a visual acuity between 20/70 and 20/200 in the better eye after best correction, or a disease, condition or impairment of the eye or visual system that seriously affects visual function directly, not perceptually. Partially sighted shall also include a degenerative eye disease, which in the opinion of a licensed ophthalmologist or optometrist, is expected to reduce, in the future, either visual acuity or visual field, resulting in partial sight or blindness. A visual impairment may be accompanied by one or more additional disabilities, but~~

# PROPOSED REGULATIONS

- does not include visual perceptual or visual motor dysfunction resulting solely from a learning disability.
- 6.17.3 A licensed ophthalmologist or optometrist shall document that a child has a best, corrected visual acuity of 20/200 or less in the better eye, or a peripheral field so contracted that the widest diameter of such field subtends less than 20 degrees (for blindness), legally blind, or a visual acuity of 20/70 or less in the better eye after all correction, (for partially sighted), or a degenerative eye disease, or has a disease, condition or impairment of the eye or visual system that seriously affects visual function directly, not perceptually.
- 6.17.4 The IEP team shall consider the documentation of visual impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition.
- 6.17.5 The age of eligibility for children identified under this definition shall be from birth until the receipt of a regular high school diploma or the end of the school year in which the student attains the age of twenty one (21), whichever occurs first.
- 6.17.1 Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.
- 6.17.2 This eligibility determination requires a thorough and rigorous evaluation with a data-based media assessment which is based on a range of learning modalities and includes a functional visual assessment.  
(Authority: 34 C.F.R. § 300.8(c)(13))

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

**925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs**

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)  
16 DE Admin. Code 11004

#### PUBLIC NOTICE

#### Child Care Redetermination

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) is proposing to amend Division of Social Services Manual regarding Child Care Redetermination, specifically, *to add a graduated phase-out*.

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, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@state.de.us](mailto:Nicole.M.Cunningham@state.de.us), or by fax to 302-255-4413 by 4:30 p.m. on December 1, 2017. Please identify in the subject line: Child Care Redetermination.

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

#### SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS) is

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proposing to amend Division of Social Services Manual regarding Child Care Redetermination, specifically, *to add a graduated phase-out.*

## Statutory Authority

- Child Care Development Fund (CCDF)
- 45 CFR 98.21 (b) - Child Care Development Block Grant of 2014

## Background

New law requires that child care will continue for an additional 12 months without interruption or increased parent fees as long as the family income is within 85% of the State Median Income guidelines for Delaware. This new law is required so that families will have a transition period or "graduated phase-out" from the child care assistance program to leave the child care assistance program, rather than the assistance abruptly ending.

## Summary of Proposal

### Purpose

The purpose of this proposed regulation is to provide families who exceed the child care income a "graduated phase-out" from the child care assistance program.

### Summary of Proposed Changes

Effective for services provided on and after January 1, 2018 Delaware Health and Social Services/Division of Social Services proposes to amend the Division of Social Service Manual to provide a "graduated phase-out" from the child care assistance program.

### Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on December 1, 2017.

## Fiscal Impact

The following fiscal impact is projected:

	Federal Fiscal Year 2018	Federal Fiscal Year 2019
General (State) funds	\$2,000,000	\$2,250,000
Federal funds	\$6,000,000	\$6,250,000

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

<http://regulations.delaware.gov/register/november2017/proposed/21 DE Reg 374RFA 11-01-17.pdf>

## AMENDED

### 11004.13 Determining Graduated Phase-Out for Child Care at Redetermination

45 CFR 98.21(b)

This policy applies to recipient families whose income exceeds the child care income limit at redetermination.

1. The graduated phase-out of assistance is provided to families that report during redetermination income exceeding 185% but falling at or below 200% of the Federal Poverty Level (FPL).

# PROPOSED REGULATIONS

2. **The graduated phase-out of child care assistance has a two-tier income range applicable at the time of redetermination.**
  - Tier 1: Income over 185% of the FPL - the graduated phase-out of assistance begins.
  - Tier 2: Income over 200% of the FPL - the child care closes.
  
3. **An additional twelve months of child care will be authorized at the time of the graduated phase-out.**
  - A. The family must continue to have a need for child care during the graduated phase-out period.
  - B. The family will remain eligible for the full twelve months of assistance even if during the graduated phase-out period the family's income increases above 200% of the FPL but remains below 85% of the State Median Income (SMI).
  - C. If the family's income exceeds 85% of the SMI during the graduated phase-out period, the child care will close.
  
4. **A new parent fee will be set at the start of the graduated phase-out period.**

## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)  
16 DE Admin. Code 11006

### PUBLIC NOTICE

#### Relative Child Care

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) is proposing to amend Division of Social Services Manual regarding Relative Child Care, specifically, to *outline participation requirements, documentation and training*.

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, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@state.de.us](mailto:Nicole.M.Cunningham@state.de.us), or by fax to 302-255-4413 by 4:30 p.m. on December 1, 2017. Please identify in the subject line: Relative Child Care.

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

### SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS) is proposing to amend Division of Social Services Manual regarding Relative Child Care, specifically, to outline participation requirements, documentation and training.

#### Statutory Authority

- Child Care Development Fund (CCDF)
- Child Care Development Block Grant CFR 98.2, 98.41

#### Background

Relative Child Care is one of several child care options for parents who receive a child care subsidy. The original intent of the program was to provide a child care option for parents who worked during "non-traditional" hours (i.e. shift work, weekends); however, this intent was never formally established through policy. As this type of care is unlicensed, the Division of Social Services (DSS) seeks to revise the current policy to restore the original intent and integrity of the program. In addition, new federal regulations have been established to ensure the health and safety of all children who receive subsidy. DSS is responsible for ensuring that all Purchase of Care providers comply with these new regulations. The revised Relative Child Care policy will enable the Division to better determine who is eligible to participate as a provider, confirm relationships, and fully comply with the new federal health and safety regulations. There are no budget implications as a result of this policy revision.

## Summary of Proposal

### *Purpose*

To establish a structured policy regarding Relative Child Care and to ensure sufficient monitoring of this type of care.

### *Summary of Proposed Changes*

Effective for services provided on and after January 1, 2018 Delaware Health and Social Services/Division of Social Services proposes to amend the Division of Social Service Manual to outline participation requirements, documentation and training.

### *Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on December 1, 2017.

## Fiscal Impact

The policy revision will have no fiscal impact since the purpose is simply to restore the program to its original intent. The policy revision does not require any additional staff, system changes, or additional costs.

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

<http://regulations.delaware.gov/register/november2017/proposed/21 DE Reg 376RFA 11-01-17.pdf>

## AMENDED

### 11006.7 Determining Relative Child Care

45 CFR 98.2, 98.41

This policy applies to families who request Purchase of Care funding for a relative to provide child care.

**1. The relative providing child care must be related to the child by:**

- Marriage.
- Blood relationship, or
- Court decree.

**2. The relative providing child care must be related to the child in one of the following relationships:**

- Great-Grandparent.

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# PROPOSED REGULATIONS

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- Grandparent.
- Adult Sibling.
- Aunt, or
- Uncle.

**3. The relative provider shall:**

- Be 21 years of age or older;
- Only provide care for the children of one family member;
- Not reside in the same home as the children needing care; and
- Only provide care during non-traditional hours that are not normally offered through a licensed child care provider. Relative child care is limited to evening and weekend shift work hours only.

**4. The relative provider must successfully complete:**

- The "Criminal History, Child Abuse, and Neglect Background Check Request Form". This form must be completed for the relative provider and each individual 18 years of age or older who is living in the relative provider's home;
- The orientation class on relative child care rules and regulations;
- 28 hours of approved training within 12 months of completing the relative child care orientation class;
- Three hours of health and safety training annually; and
- CPR and first aid courses. The relative provider's certifications must be current and re-certifications must be completed every two years.

**5. In the children's home, the relative provider shall:**

- Care for a minimum of four children in the home. The total number of children who are cared for in the home may not exceed a maximum of five children.
- Care for no more than two children under two years of age.
- Care for the children of one family member. The children must be related as siblings.

**6. In the relative provider's home, the relative provider shall:**

- Care for a minimum of one child in the home. The total number of children who are cared for in the home may not exceed a maximum of five children.
- Care for no more than two children under two years of age.
- Care for the children of one family member. The children must be related as siblings.

**Note:** Parents and caretakers who need child care during non-traditional hours shall be referred to Delaware's statewide Resource and Referral Agency for assistance in finding a provider.

## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### PUBLIC NOTICE

#### Targeted Case Management for Children and Youth with Serious Emotional Disturbance

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding Targeted Case Management (TCM) for Children and Youth with Serious Emotional Disturbance, specifically, *to establish coverage for targeted case management services for children and youth with serious emotional disturbance, mental health or substance use disorder or co-occurring mental health and substance use disorders meeting Department of Services to Children Youth and Their Families (DSCYF), Division of Prevention and Behavioral Health Services (DPBHS) eligibility criteria.*

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, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@state.de.us](mailto:Nicole.M.Cunningham@state.de.us), or by fax to 302-255-4413 by 4:30 p.m. on December 1, 2017. Please identify in the subject line: Targeted Case Management for Children and Youth with Serious Emotional Disturbance.

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

### SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding Targeted Case Management (TCM) for Children and Youth with Serious Emotional Disturbance, specifically, *to establish coverage for targeted case management services for children and youth with serious emotional disturbance, mental health or substance use disorder or co-occurring mental health and substance use disorders meeting Department of Services to Children Youth and Their Families (DSCYF), Division of Prevention and Behavioral Health Services (DPBHS) eligibility criteria.*

#### Statutory Authority

- 42 CFR §447.201, *State plan requirements*
- 42 CFR §447.205, *Public notice of changes in statewide methods and standards for setting payment rates*
- 42 CFR §441.18, *Case management services, general provisions*
- 42 CFR §447.205, *Case management services, specific requirements*
- §1902(a)(23) of the Social Security Act, *Freedom of choice of qualified providers*
- §1902(a)(25) of the Social Security Act, *Third party liability*
- §1903(c) of the Social Security Act, *FFP for case management included in an individualized education program or individualized family service plan*
- §1915(g)(1) of the Social Security Act, *location and comparability of case management services*

#### Background

On July 20, 2017 The Centers for Medicare & Medicaid Services approved the Delaware State Plan Amendment (SPA) 16-011 to establish coverage and reimbursement methodologies for targeted case management services for individuals with intellectual disabilities. Case management is defined under section 1915(g)(2) of the Social Security Act (the Act) as "services which will assist individuals, eligible under the plan, in gaining access to needed medical, social, educational, and other services." Case management services are often

used to foster the transitioning of a person from institutional care to a more integrated setting or to help maintain a person in the community. There are several ways that case management services may be furnished under the Medicaid program. Home and Community-Based Services (HCBS) Case Management may be furnished as a service under the authority of section 1915(c) when this service is included in an approved HCBS waiver. Persons served under the waiver may receive case management services while they are still institutionalized, for up to 180 consecutive days prior to discharge. This case management service may be provided under the optional Targeted Case Management (TCM) authority of section 1915(g)(2) of the Social Security Act. TCM, defined in section 1915(g) of the Act, may be furnished as a service to institutionalized persons who are about to leave the institution, to facilitate the process of transition to community services and to enable the person to gain access to needed medical, social, educational and other services in the community. TCM may be furnished during the last 180 consecutive days of a Medicaid eligible person's institutional stay if provided for the purpose of community transition. States may specify a shorter time period or other conditions under which TCM may be provided.

**Summary of Proposal***Purpose*

The purpose of this proposed regulation is to add Targeted Case Management (TCM) for Children and Youth with Serious Emotional Disturbance to the Delaware Medicaid State Plan under the authority of §1915(g)(1). Delaware does not currently offer Targeted Case Management to children and youth with serious emotional disturbance under the State Plan.

*Summary of Proposed Changes*

Effective for services provided on and after October 1, 2017 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Title XIX Medicaid State Plan to add Targeted Case Management services for children and youth with serious emotional disturbance.

*Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on December 1, 2017.

*Centers for Medicare and Medicaid Services Review and Approval*

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

*Provider Manuals Update*

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

**Fiscal Impact**

No fiscal impact is projected for the Division of Medicaid and Medical Assistance (DMMA). The Division of Prevention and Behavioral Health Services has been providing care coordination services through its division staff, Child and Family Care Coordination, as well as contracting with a provider for high-fidelity wraparound services also called intensive care coordination. Currently, a limited amount of time is reimbursable through the DSCYF Cost Allocation Plan, this will be discontinued and replaced by Targeted Case Management, at which the funds used to employ staff and contract with providers will be redirected to Targeted Case Management.

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

<http://regulations.delaware.gov/register/november2017/proposed/21 DE Reg 379RFA 11-01-17.pdf>

AMENDED

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Page 1

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
STATE/TERRITORY: DELAWARE

TARGETED CASE MANAGEMENT SERVICES FOR

Children and Youth with Serious Emotional Disturbance, or Co-occurring Mental Health and Substance Use Disorders meeting DPBHS Eligibility Criteria

A. Target Group:

1. Meets the eligibility criteria for services provided by the Division of Prevention and Behavioral Health Services (DPBHS):
2. Is in a federal eligibility category for Delaware Medical Assistance, which governs the determination of eligibility for Delaware Medical Assistance Program. Services shall be provided to children and adolescents under 18 years of age diagnosed with a serious emotional disturbance, mental health or substance use disorder, or co-occurring mental health and substance use disorders, according to the current Diagnostic and Statistical Manual of the American Psychiatric Association.
3. Meets at least two of the following conditions:
  - a. Is not linked to behavioral health, health insurance, or medical services;
  - b. Lacks basic supports for education, income, shelter, and food;
  - c. Needs care coordination services to obtain and maintain community-based treatment and services; or
  - d. Is receiving services through DPBHS.
4.  Target group includes individuals currently living in the community or individuals transitioning to a community setting. Regarding individuals transitioning, targeted case management services will be made available for up to 60 consecutive days of covered stay in an inpatient medical institution (the Medicaid certified facility in which the recipient is currently residing). The target group does not include individuals between ages 22 and 64 who are serviced in institution for Mental Disease or individuals who are inmates of public institutions (State Medicaid Directors Letter (SMDL), July 25, 2000).

B. Areas of State in which services will be provided:

Entire State.

Only in the following geographic areas (authority of section 1915(g)(1) of Act is invoked to provide services less than Statewide:

C. Comparability of Services:

Services are provided in accordance with section 1902(a)(10)(B) of the Act.

Services are not comparable in amount, duration, and scope. Authority of section 1915(g)(1) of the Act is invoked to provide services without regard to the requirements of section 1902(a)(10)(B) of the Act.

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Approval Date

TN No. SPA NEW

Effective Date October 1, 2017

# PROPOSED REGULATIONS

D. Definition of Services:

Targeted case management services are defined as services furnished to assist individuals, eligible under the State Plan, in gaining access to needed medical, social, educational, and other services, which includes responsibility for locating, coordinating and monitoring appropriate services for an individual. Targeted Case Management includes the following:

1. Comprehensive Assessment and Periodic Reassessment of individual needs, to determine the need for any medical, educational, social, or other services. These assessment activities include:
  - Taking client history;
  - Identifying the individual' s needs and strengths and completing related documentation; and
  - Gathering and reviewing documentation/information from other sources such as family members, medical providers, social workers, and educators (if necessary), need to form a complete and comprehensive assessment of the eligible individual.

The Targeted Case Manager will use a child and youth assessment tool designated by the Department or its designee to:

- To the initial assessment and to reassess at a minimum of every 3 months;
  - Record information that may relate to the individual's mental health, social, familial, educational, cultural, medical, and other areas to evaluate the extent and nature of the individual needs and strengths and assist in the development of the Plan of Care (POC); and
  - Coordinate and facilitate child and family team meetings (e.g., family members, friends, caretakers, providers, educators, and others, as appropriate) that:
    - Identify a team meeting location that is suitable for the child and family's needs; and
    - Convene at least once every 3 months, or more frequently, as clinically necessary or indicated in the Plan of Care.
2. Development (and periodic revision) of the Plan of Care based on the information obtained through the initial comprehensive assessment that includes the following:
    - Specifies the goals and actions to address the medical, social, educational, and other services needed by the eligible individual;
    - Includes activities such as ensuring the active participation of the eligible individual, and working with the individual (or the individual's authorized health care decision maker) and others to develop those goals; and
    - Identifies a course of action to respond to the assessed needs of the individual.
  3. Referral and related activities (such as scheduling appointments for the individual) to help the eligible individual obtain needed services, including activities that help link the individual with medical, social, education providers or other programs and services that are capable of providing needed services to address identified needs and achieve goals in the care plan).

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4. Monitoring and follow-up activities, including activities and contacts as necessary to ensure that the Plan of Care is effectively implemented and adequately addresses the needs of the eligible individual and which may be with the individual, family members, service providers, or other entities or individuals and conducted as frequently as necessary, and including regular (at least one annually) monitoring to:

- Determine whether the following conditions are met:
  - Services are being furnished in accordance with the individual's Plan of Care;
  - Services in the care plan are adequate;
  - There are changes in the needs or status of the eligible individual are reflected in the Plan of Care. Monitoring and follow-up activities include making necessary adjustments in the care plan and service arrangements with providers.
- Complete a periodic review of the progress that the individual has made on the Plan of Care goals and objective and the appropriateness and effectiveness of services being provided;
- Provide ongoing follow up on service referrals and monitoring of service provision to ensure that the agreed upon services are provided, meet the individual's needs and goals, and ensure the quality, quantity, and effectiveness of services are appropriate and in accordance with the Plan of Care; and
- Revise, continue, or terminate of the Plan of Care, if no longer appropriate.

Targeted case management includes contacts with non-eligible individuals who are directly related to identifying the individual's needs and care, for the purposes of helping the eligible individual access services, identify needs and supports to assist the eligible individual in obtaining services, providing case managers with useful feedback, and alerting case managers to changes in the eligible individual's needs (42 CFR §440.169(e).

**E. Qualification of Providers:**

A targeted case manager must be employed by DSCYF or a targeted case manager provider agency contracting with DSCYF. A targeted case manager must meet the following criteria:

- Bachelor's degree or higher in Behavioral or Social Science or related field;
- Certification in the State of Delaware to provide the service, which includes criminal and professional background checks, and completion of state-required training in wraparound philosophy and policies within six months of employment;
- Maintain certification through state approved continuing education/professional development annually;
- Six months experience in case management which includes assessing, planning, developing, implementing, monitoring, and evaluating options and services to meet an individual's needs;
- Six months experience in making recommendations as part of a client's service plan, such as, clinical treatment, counseling, or determining eligibility for health or human services/benefits;

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- Six month experience in interpreting laws, rules, regulations, standards, policies and procedures; and
- Six months experience in narrative report writing.

A highly qualified targeted case manager must be employed by DSCYF or a targeted case manager provider agency contracting with DSCYF. A targeted case manager must meet the following criteria:

- Bachelor's degree, Master's degree preferred, in social work, psychology, counseling, nursing, occupational therapy, vocation rehabilitation, therapeutic recreation, or human resources and two years of experience working with special population groups in a direct care setting or a master's degree in one of the fields listed above;
- Successful completion of the approved wraparound certification training, or be classified as "provisionally certified," which means one must successfully complete the Wraparound Certification training within nine months of beginning to provide case management;

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- Maintain wraparound certification status by attending an approved wraparound recertification training at least once every two years;
- Basic knowledge of behavior management techniques;
- Skill in interviewing to gather data and complete needs and strengths assessment in preparation of narratives/reports, in development of service plans, and in individual and group communication;
- Knowledge of state and federal requirements related to behavioral health; and
- Ability to use community resources.

A Targeted Case Management Provider Agency must have:

- A contract with the State of Delaware with requisite expertise in supporting individuals with serious emotional disturbance, substance use disorder or co-occurring disorder and their families;
- Demonstrated ability to coordinate and link community resources required through at least three years of prior experience;
- At least three years of experience with the targeted group;
- Sufficient staff and/or agreements with community organizations to have the administrative capacity to ensure quality of services in accordance with state and federal requirements;
- A financial management system which provides documentation of services and costs;
- Capacity to document and maintain individual case records in accordance with state and federal requirements;
- Demonstrated ability to assure referrals consistent with section 1902(a)(23), freedom of choice of providers;
- Ability to provide linkage with other case managers to avoid duplication of case management services;
- Ability to determine that the client is included in the target group; and
- Ability to access systems to track the provision of services to the client.

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F. Freedom of Choice (42 CFR §441.18(a)(1))

The State assures that the provision of case management services will not restrict an individual's free choice of providers in violation of section 1902(a)(23) of the Act.

1. Eligible individuals will have free choice of any qualified Medicaid provider within the specified geographic area identified in this plan.
2. Eligible individuals will have free choice of any qualified Medicaid providers of other medical care under the plan.

G. Freedom of Choice Exception (§ 1915(q)(1) and 42 CFR 441.18(b)):

Target group consists of eligible individuals with developmental disabilities or with chronic mental illness. Providers are limited to qualified Medicaid providers of case management services capable of ensuring that individuals with developmental disabilities or with chronic mental illness receive needed services: [Identify any limitations to be imposed on the providers and specify how these limitations enable providers to ensure that individuals within the target groups receive needed services.]

The State will limit providers of targeted case management to the Department of Services for Children, Youth and Their Families (DSCYF). DSCYF may sub-contract for this service. This limitation is in compliance with Section 4302.2, paragraph D. of the State Medicaid Manual.

H. Access to Services (42 CFR 441.18(a)(2), 42 CFR 441.18(a)(3), 42 CFR 441.18(a)(6)):

The State assures the following:

- a. Targeted case management services will not be used to restrict an individual's access to other services under the plan;
- b. Individuals will not be compelled to receive case management services, condition receipt of case management services on the receipt of other Medicaid services, or condition of receipt of other Medicaid services on receipt of targeted case management services; and
- c. Providers of case management services do not exercise the agency's authority to authorize or deny the provision of other services under the plan.

I. Payment 42 CFR 441.18(a)(4)

Payment for targeted case management services under the Medicaid State Plan does not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

J. Case Records (42 CRF 441.18(a)(7))

Providers maintain case records that document the following for all individuals receiving case management:

- a. The name of the individual;
- b. The dates of targeted case management services;
- c. The name of the provider agency (if relevant) and the person providing the case management service;
- d. The nature, content, and units of the targeted case management services received and whether goals specified in the Plan of Care have been achieved;
- e. Whether the individual has declined in functioning;

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- f. The need for and occurrences of coordination with other case managers;
- g. A timeline for obtaining needed services; and
- h. A timeline for reevaluation of the plan.

K. Limitations

Case management does not include, and Federal Financial Participation (FFP) is not available in expenditures for services as defined in 440.169 when case management activities are an integral and inseparable component of another covered Medicaid service (State Medicaid Manual (SMM) 4302.F)

Case management does not include, and Federal Financial Participation is not available in expenditures for services as defined in 440.169 when case management activities constitute the direct delivery of underlying medical, education, social, or other services to which an eligible individual has been referred, including for foster care programs, services such as, but not limited to, the following: research gathering and completion of documentation required by the foster care program, assessment of adoption placements, recruitment or interviewing of potential foster care parents, serving of legal papers, home investigations, providing transportation, administration of foster care subsidies, or arrangements of placements (42 CFR 441.18(c)).

FFP is only available for targeted case management services if there are no other third parties liable to pay for such services, including reimbursement under a medical, social, educational, or other program except for case management that is included in an individualized education program or individualized family service plan consistent with 1903(c) of the Act. 1902(a)(25) and 1905(c)).

Writing or entering case notes for the member's case management file and transportation to and from a

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member or member-related contacts are allowable, but not billable TCM activities.

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Attachment 4.19-B  
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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
STATE/TERRITORY: **DELAWARE**

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES

Children and Youth with Serious Emotional Disturbance, or Co-occurring Mental Health and Substance Use Disorders meeting DPBHS Eligibility Criteria

Reimbursements for services are based upon a Medicaid fee schedule established by the Delaware Medical Assistance Program (DMAP).

The fee development methodology built fees considering each component of provider costs as outlined below. These reimbursement methodologies produced rates sufficient to enlist enough providers so that services under the State Plan are available to beneficiaries at least to the extent that these services are available to the general population, as required by 42 CFR 447.204. These rates comply with the requirements of Section 1902(a)(3) of the Social Security Act and 42 CFR 447.200, regarding payments and are consistent with economy, efficiency, and quality of care. Provider enrollment and retention will be reviewed periodically to ensure that access to care and adequacy of payments are maintained. The Medicaid fee schedule is equal to or less than the maximum allowable under the same Medicare rate, where there is a comparable Medicare rate. Room and board costs are not included in the Medicaid fee schedule.

The fee development methodology will primarily be composed of provider cost modeling, through Delaware provider compensation studies, cost data, and fees from similar State Medicaid programs may be considered, as well. The following list outlines the major components of the cost model to be used in fee development:

- Staffing Assumptions and Staff Wages
- Employee-Related Expenses - Benefits, Employer Taxes (e.g., Federal Insurance Contributions Act (FICA), unemployment, and workers compensation)
- Program-Related Expenses (e.g., supplies)
- Provider Overhead Expenses
- Program Billable Units.

The fee schedule rates will be developed as the ratio of total annual modeled provider costs to the estimated annual billable units. A unit of service is defined according to Healthcare Common Procedure Coding System (HCPCS) approved code set unless otherwise specified.

Except as otherwise noted in the State Plan, the State-developed fee schedule is the same for both governmental and private individual providers and the fee schedule and any annual/periodic adjustments to the fee schedule are published in the Delaware *Register of Regulations*.

The Agency's fee schedule rate was set as of July 1, 2016 and is effective for services provided on or after that date. All rates are published on the Delaware Medical Assistance Program (DMAP) website at <http://www.dmap.state.de.us/downloads/feeschedules.html>.

TN No. SPA <u>17-006</u>	Approval Date
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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)  
16 **DE Admin. Code** 20400

### PUBLIC NOTICE

#### Special Needs Trust

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Delaware Social Services Manual (DSSM) regarding Special Needs Trust, specifically, *to add the beneficiary to the list of people able to establish a trust on their behalf.*

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, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@state.de.us](mailto:Nicole.M.Cunningham@state.de.us), or by fax to 302-255-4413 by 4:30 p.m. on December 1, 2017. Please identify in the subject line: Special Needs Trust.

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

### SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Delaware Social Services Manual (DSSM) regarding Special Needs Trust, specifically, *to add the beneficiary to the list of people able to establish a trust on their behalf.*

#### Statutory Authority

- Section 5007 of the 21st Century Cures Act

#### Background

Section 1917(d)(3) of the Social Security Act (the Act) prescribes the rules state Medicaid agencies must apply in evaluating funds in, contributions to, and distributions from, trusts that are funded with a Medicaid applicant's or beneficiary's own assets. For a trust to meet the definition of a "special needs trust" described in section 1917(d)(4)(A) of the Act, the trust must: contain the assets of an individual under age 65 who has a disability; be established for the benefit of such individual; and direct that the state will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid by the state on the individual's behalf. Prior to the Cures Act, a special needs trust also had to be established by a parent, grandparent, legal guardian of the individual, or a court.

The requirement that a third party establish a special needs trust, which is not imposed on the other section 1917(d)(4) trusts, was identified by many stakeholders as a barrier to maximizing the independence of people with disabilities. Section 5007(a) of the Cures Act addressed this criticism for special needs trusts established on or after the date of the law's enactment, December 13, 2016.

#### Summary of Proposal

##### *Purpose*

The purpose of this proposed regulation is to add the individual with a disability under age 65 to the list of individuals able to establish a Special Need Trust.

##### *Summary of Proposed Changes*

Effective for services provided on and after December 13, 2016 Delaware Health and Social Services/Division

of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Delaware Social Services Manual (DSSM) to add the beneficiary to the list of people able to establish a trust on their behalf.

#### *Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on December 1, 2017.

#### *Provider Manuals Update*

A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. DMAP provider manuals and official notices are available on the Delaware Medical Assistance Provider Portal website: <https://medicaid.dhss.delaware.gov/provider>.

#### **Fiscal Impact**

DMMA is proposing a policy change to expand the list of individuals able to establish a Special Need Trust. The Special Needs Trust is an excluded resource for Medicaid. There is no anticipated fiscal impact to the agency as a result of this proposed change in program policy.

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

<http://regulations.delaware.gov/register/november2017/proposed/21 DE Reg 387RFA 11-01-17.pdf>

#### **AMENDED**

#### **20400.9.1 Special Needs Trusts**

A special needs trust contains the assets of an individual under age 65 who is disabled. It is established for the benefit of the individual by a parent, grandparent, legal guardian of the individual or a court.

For Special Needs Trusts created on or after December 13, 2017 by an individual with a disability under age 65 for his or her own benefit can qualify as a special needs trust, conferring the same benefits as a special needs trust set up by a parent, grandparent, legal guardian or court.

The trust may also contain the assets of other individuals.

#### **20400.9.1.1 Treatment of Special Needs Trusts**

For individuals under age 65 the exceptions to the Medicaid eligibility rules continue even after the individual becomes age 65. No additional assets may be added to the trust after the individual reaches age 65. If assets are added they will not be exempted and are subject to penalties. To qualify as a special needs trust, the following conditions must exist:

The trust must be established solely for the needs of an individual with a disability who is under age 65.

The individual is disabled as defined by the SSI program in 1614(a)(3) of the Act.

The trust must be established by the parent(s), grandparent(s), legal guardian(s) of an individual with disabilities or a court.

#### **For trusts created on or after 12/13/2016:**

The trust must be established by the disabled individual under age 65 for his or her own benefit, the disabled individual's parent, grandparent, legal guardian or court.

In addition to the above criteria, the trust must state that upon the individual's death all remaining assets and funds should be paid to the State agency up to the amount paid in Medicaid benefits on the individual's behalf.

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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)  
16 **DE Admin. Code** 5000 & 70000

### PUBLIC NOTICE

#### Medicaid Managed Care Final Rule

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Division of Social Services Manual regarding Medicaid Managed Care Final Rule, specifically, to *align DMMA Medicaid Managed Care Policy with new Federal Requirements*.

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, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@state.de.us](mailto:Nicole.M.Cunningham@state.de.us), or by fax to 302-255-4413 by 4:30 p.m. on December 1, 2017. Please identify in the subject line: Medicaid Managed Care Final Rule.

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

### SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Division of Social Services Manual regarding Medicaid Managed Care Final Rule, specifically, to *align DMMA Medicaid Managed Care Policy with new Federal Requirements*.

#### Statutory Authority

- 42 CFR 438.400
- 42 CFR 438.402
- 42 CFR 438.410
- 42 CFR 438.208(f)
- 42 CFR 438.3
- 81 FR 27497 - 27901, May 6, 2016; Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability Final Rule

#### Background

The Center for Medicaid Services (CMS) has regulated Medicaid managed care since the 1970s. Recent Medicaid managed care regulatory changes have stemmed from intermittent changes in law, including: the Balanced Budget Act of 1997, the Deficit Reduction Act of 2005, and the Affordable Care Act of 2010. On May 6, 2016, CMS published the Medicaid Managed Care Final Rule to comprehensively modernize Medicaid managed care through delivery system reform, improvements to the quality of care, strengthening beneficiary experiences, improving accountability and transparency, and aligning Medicaid managed care with other health coverage programs.

Over the past year, Delaware has thoroughly analyzed the Final Rule and identified Medicaid managed care contract and state operational changes necessary to come into compliance with the provisions of the Final Rule. DMMA is moving forward with implementation of provisions of the Final Rule effective as of January 1, 2018. This requires changes to some of Delaware's internal policy, such as the Delaware Social Services Manual.

#### Summary of Proposal

## *Purpose*

The purpose of this proposed regulation is to amend sections of the Fair Hearing process and the Certification and Regulation of Medicaid Managed Care Organizations to reflect recent changes in the Federal Code of Regulations as a result of the Medicaid Managed Care Final Rule.

## *Summary of Proposed Changes*

Effective for services provided on and after January 1, 2018 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend the Division of Social Services Manual regarding Medicaid Managed Care Final Rule, specifically, *to align DMMA Medicaid Managed Care Policy with new Federal Requirements.*

## *Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on December 1, 2017.

## *Provider Manuals Update*

A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. DMAP provider manuals and official notices are available on the Delaware Medical Assistance Provider Portal website: <https://medicaid.dhss.delaware.gov/provider>.

## **Fiscal Impact**

There is no or minimal fiscal impact as the changes in regulation are only clarification of internal policy.

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

<http://regulations.delaware.gov/register/november2017/proposed/21 DE Reg 389RFA 11-01-17.pdf>

## PROPOSED

### 5000 Fair Hearing Practice and Procedures

#### 5000 Definitions

42 CFR 438.400

#### ***(Break in Continuity Within Section)***

#### **Adverse Benefit Determination**

For recipients enrolled in a MCO, the denial or limited authorization of a requested service, including determinations based on the type or level of service, requirements for medical necessity, appropriateness, setting, or effectiveness of a covered benefit; the reduction, suspension, or termination of a previously authorized service; the denial, in whole or in part, of payment for a service; the failure to provide services in a timely manner, as defined by the State; the failure of the MCO to act within timeframes regarding the standard resolution of grievances and appeals; and the denial of a recipient's request to dispute a financial liability, including cost sharing, copayments, and other recipient financial liabilities.

#### **Appellant**

Anyone who requests a hearing. (Also called Claimant.)

#### **Benefits**

Any kind of assistance, payments or benefits made by TANF, GA, Medicaid, Delaware Healthy Children Program (DHCP), ~~Delaware Prescription Assistance Program (DPAP)~~, Chronic Renal Disease Program (CRDP), Child Care, Refugee, Emergency Assistance or Food Supplement programs.

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*(Break in Continuity of Sections)***PROPOSED****5305 Limiting the Amount of Time to Request a Hearing**

7 CFR 273.15 (g), 42 CFR 431.221, 45 CFR 205.10, 42 CFR 438.208(f)(2)

This policy applies any time an applicant or recipient of any program managed or administered by DSS or DMMA requests a fair hearing.

1. Hearing Office Staff Determine Timely Requests

An appeal (hearing request) is filed when it is received and filed in the Division's hearing office, not at the moment it is placed in the mail. Staff taking oral requests will assure the appeal is filed within the time frames in this section. Timely requests are determined based on four time periods:

*(Break in Continuity Within Section)*

E. For recipients enrolled in a MCO, 120 days from the date of the MCO's notice of resolution of the appeal.

4-A. Timely Notice Period

*(Break in Continuity Within Section)*

2-B. Ninety Days from the Effective Date of Action

*(Break in Continuity Within Section)*

3-C. More than Ninety Days from the Effective Date of Action

*(Break in Continuity Within Section)*

4-D. Food Supplement Program Households

*(Break in Continuity Within Section)*

E. Recipients enrolled in a MCO

A hearing is granted if the request is received within 120 calendar days from the date of the MCO's notice of an appeal resolution upholding an adverse benefit determination. If the request is not received during the timely notice period, the adverse benefit determination is to take effect.

**PROPOSED****5307 Dismissing a Hearing Request**

7 CFR 273.15 (j), 42 CFR 431.223, 45 CFR 205.10 (a)(5)(v), 42 CFR 438.408(f)

This policy applies any time a request for a hearing is filed over which the DSS Hearing Office has jurisdiction.

The hearing officer of the Division will dismiss or deny a request for a fair hearing where:

*(Break in Continuity Within Section)*

C. The appellant has abandoned his or her request by failing without good cause, to appear by him/herself or by an authorized representative at a scheduled hearing.

1. Good cause for failure to appear at a hearing may include, but is not limited to the following:

*(Break in Continuity Within Section)*

3. For recipients enrolled in a MCO the request is not received within 120 calendar days from the date of the MCO's notice of an appeal resolution upholding an adverse benefit determination.

The hearing officer will notify both the appellant and the agency if a request for a hearing is dismissed.

**PROPOSED****70000 Certification and Regulation of Medicaid Managed Care Organizations**

*(Break in Continuity of Sections)*

3. Experience and Net Worth

# PROPOSED REGULATIONS

- 3.1 Either the MMCO, or a parent company or person affiliated with the MMCO, shall demonstrate, to the satisfaction of DHSS, the following:

***(Break in Continuity Within Section)***

- 3.1.2 Audited financial statements for the most recent calendar or fiscal year demonstrating, on a consolidated basis, generally accepted accounting principles and generally accepted auditing standards net equity in excess of \$10 million.

#### 4. Identification of Accountant, Auditor and Actuary

- 4.1 Each MMCO seeking certification shall identify:

- 4.1.1 The person or persons responsible for preparing the MMCO's financial statements in U.S. generally accepted accounting principles and generally accepted auditing standards format and for preparing any financial reporting required under the Contract. Such person shall have accounting or finance training and experience, and shall have experience in the preparation of financial statements for health plans.

***(Break in Continuity of Sections)***

#### 8. Financial Stability

- 8.1 The MMCO shall be responsible for its sound financial management in accordance with applicable professional standards. The MMCO shall:

***(Break in Continuity Within Section)***

- 8.1.3 Maintain a uniform accounting system that adheres to generally accepted accounting principles and generally accepted auditing standards for charging and allocating to all funding resources the MMCO's costs incurred hereunder including, but not limited to, the American Institute of Certified Public Accountants Statement of Position 89-5 "Financial Accounting and Reporting by Providers of Prepaid Health Care Services."

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

**Medicaid Managed Care Final Rule**

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**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)  
16 DE Admin. Code 16000

**PUBLIC NOTICE**

**Excluded Income**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Social Services Manual (DSSM) regarding application of Modified Adjusted Gross Income (MAGI) methodology, specifically, *to clarify excluded income*.

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, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@state.de.us](mailto:Nicole.M.Cunningham@state.de.us), or by fax to 302-255-4413 by December 1, 2017. Please identify in the subject line: Excluded income.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the

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results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

## SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Social Services Manual (DSSM) regarding application of Modified Adjusted Gross Income (MAGI) methodology, specifically, to clarify excluded income.

### Statutory Authority

- 42 CFR 435.603(e)
- 26 U.S.C. 36B(d)(2)(B)

### Background

The Patient Protection and Affordable Care Act (ACA; P.L. 111-148, as amended) created Section 36(B) of the Internal Revenue Code (IRC) to define household income, based on modified adjusted gross income (MAGI). MAGI is used to determine (1) penalty amounts owed if a person does not comply with the individual mandate or whether an individual is exempt from the individual mandate; (2) eligibility for and the amount of a premium credit to purchase coverage through a health insurance exchange; and (3) Medicaid income eligibility for certain populations.

Under the ACA, states were required to transition to a new income-counting rule based on MAGI to establish uniform standards for what income to include or disregard in determining Medicaid eligibility for most nonelderly and nondisabled individuals, children under the age of 18, and adults and pregnant women under the age of 65.

In 2013, the Centers for Medicare and Medicaid Services (CMS) developed a training manual to help states and eligibility workers understand and apply MAGI-based rules for Medicaid and CHIP. At that time Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) made modifications to the eligibility system, as well as eligibility policy, to meet those requirements. In September of 2016, CMS shared a companion to the 2013 training manual, providing specific language that can be used to make the income counting rules more clear for eligibility workers.

### Summary of Proposal

#### *Purpose*

The purpose of this proposed regulation is to amend the Delaware Social Services Manual to reflect current policy and provide more clarity to eligibility workers regarding excluded income.

#### *Summary of Proposed Changes*

Effective for services provided on and after October 11, 2017, the Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend 16500.2 of the Delaware Social Services Manual (DSSM) to clarify excluded income.

#### *Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on December 1, 2017.

#### *Provider Manuals Update*

A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. DMAP provider manuals and official notices are available on the Delaware Medical Assistance Provider Portal website: <https://medicaid.dhss.delaware.gov/provider>.

### Fiscal Impact

The proposed regulation imposes no increase in costs on the General Fund.

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

<http://regulations.delaware.gov/register/november2017/proposed/21 DE Reg 392RFA 11-01-17.pdf>

#### AMENDED

#### 16500.2 Excluded Income

Scholarships, awards, or fellowship grants used for education purposes and not for living expenses;

American Indian/Alaska Native income as defined in 42 CFR 435.603(e);

Child Support Received;

Gifts and loans;

Inheritance;

Supplemental Security Income (SSI);

Temporary Assistance to Needy Families (TANF) and other government cash assistance;

Veteran's benefits;

Worker's Compensation payments;

Other Non-Taxable Income.

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## DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311 and Chapter 85 (18 **Del.C.** §311 & Ch. 85)

### PUBLIC NOTICE

#### 307 Corporate Governance Annual Disclosure Regulation

#### A. Type of Regulatory Action Required

Proposed New Regulation

#### B. Synopsis of Subject Matter of the Regulation

The Department of Insurance hereby gives notice of proposed new Regulation 307 relating to Corporate Governance and Annual Disclosure. The proposed new regulation sets forth the procedures for filing and the required contents of the Corporate Governance Annual Disclosure (CGAD) prescribed by the Corporate Governance Annual Disclosure Act (the CGAD Act). Through the CGAD Act, the Legislature amended Title 18 of the Delaware Code by adding a new Chapter 85 (see Senate Bill No. 40 as amended by Senate Amendment No. 1, approved on August 2, 2017, effective on January 1, 2018). The CGAD Act requires that the first filing of the CGAD be in 2018. The Delaware Code authority for the new regulation is 18 **Del.C.** §311 and 18 **Del.C.** Chapter 85.

The Department of Insurance does not plan to hold a public hearing on the proposed new regulation. The proposed new regulation appears below and can also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed new regulation. Any written submission in response to this notice and relevant to the proposed new regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, the 4th day, December, 2017. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist

Attn: Regulatory Docket No. 3608-2017

Delaware Department of Insurance

841 Silver Lake Drive  
Dover, DE 19904  
(302) 674-7379  
Email: [Leslie.Ledogar@state.de.us](mailto:Leslie.Ledogar@state.de.us)

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

[http://regulations.delaware.gov/register/november2017/proposed/21 DE Reg 394RFA 11-01-17.pdf](http://regulations.delaware.gov/register/november2017/proposed/21%20DE%20Reg%20394RFA%2011-01-17.pdf)

## **307 Corporate Governance Annual Disclosure Regulation**

### **1.0 Authority**

This regulation is promulgated and adopted pursuant to 18 Del.C. §311 and 18 Del.C. Chapter 85.

### **2.0 Purpose**

The purpose of this regulation is to set forth the procedures for filing a Corporate Governance Annual Disclosure (CGAD), and the required contents of the CGAD deemed necessary by the Commissioner to carry out the provisions of the Corporate Governance Annual Disclosure Act, 18 Del.C. Chapter 85.

### **3.0 Definitions**

"Board" means the Board of Directors of an insurer or an insurance group.

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

"Corporate Governance Annual Disclosure" or "CGAD" means a confidential report filed by an insurer or an insurance group made in accordance with the Corporate Governance Annual Disclosure Act, 18 Del.C. Chapter 85 and this regulation.

"Insurance group" means those insurers and affiliates included within an insurance holding company system as defined in the Insurance Holding Company System Registration Act, 18 Del.C. Chapter 50.

"Insurer" shall have the same meaning as set forth in 18 Del.C. §102(10), except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

"NAIC" means National Association of Insurance Commissioners.

"Senior Management" means any corporate officer responsible for reporting information to the board of directors at regular intervals or providing this information to shareholders or regulators and shall include, by way of example but not by limitation, the Chief Executive Officer (CEO), Chief Financial Officer (CFO), Chief Operations Officer (COO), Chief Procurement Officer (CPO), Chief Legal Officer (CLO), Chief Information Officer (CIO), Chief Technology Officer (CTO), Chief Revenue Officer (CRO), Chief Visionary Officer (CVO), or any other "C" level executive.

### **4.0 Filing Procedures**

4.1 An insurer, or the insurance group of which the insurer is a member, that is required to file a CGAD under 18 Del.C. §8504, shall, no later than June 1 of each calendar year, submit to the Commissioner a CGAD that contains the information described in Section 5.0 of these regulations, according to the following:

4.1.1 The CGAD shall include the signature of the insurer's or insurance group's chief executive officer or corporate secretary attesting that, to the best of that individual's belief and knowledge, the insurer or insurance group has implemented the corporate governance practices required under 18 Del.C. §8504 and this regulation, and that a copy of the CGAD has been provided to the insurer's or insurance group's Board or appropriate Board committee.

4.2 The insurer or insurance group may:

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## PROPOSED REGULATIONS

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- 4.2.1 Determine the appropriate format in which to provide the information required by this regulation; and
- 4.2.2 Customize the CGAD to provide the most relevant information necessary to permit the Commissioner to gain an understanding of the corporate governance structure, policies and practices utilized by the insurer or insurance group.
- 4.3 The insurer or insurance group shall provide information on governance activities that conforms with the structure of the insurer's or insurance group's system of corporate governance, whether at the ultimate controlling parent level, an intermediate holding company level, or at the individual legal entity level, depending upon how the insurer or insurance group has structured its system of corporate governance.
- 4.4 The insurer or insurance group is encouraged to make the CGAD disclosures at any of the following levels, and if the insurer or insurance group determines the level of reporting based on the criteria in subsections 4.4.2 or 4.4.3, it shall indicate the three dominant criteria that were used to determine the level of reporting and explain any subsequent changes in level of reporting:
  - 4.4.1 The level at which the insurer's or insurance group's risk appetite is determined;
  - 4.4.2 The level at which the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and at which the supervision of those factors are coordinated and exercised, or
  - 4.4.3 The level at which legal liability for failure of general corporate governance duties would be placed.
- 4.5 Notwithstanding subsection 4.1.1, if the CGAD is completed at the insurance group level, then it must be filed with the lead state of the group as determined by the procedures outlined in the most recent Financial Analysis Handbook adopted by the NAIC. In these instances, a copy of the CGAD must also be provided to the chief regulatory official of any state in which the insurance group has a domestic insurer, upon request.
- 4.6 An insurer or insurance group may comply with this section by cross-referencing other existing documents such as ORSA Summary Report, Holding Company Form B or F Filings, Securities and Exchange Commission (SEC) Proxy Statements, and foreign regulatory reporting requirements, if the documents provide information that is comparable to the information described in Section 5.0 of this regulation. The insurer or insurance group shall clearly reference the location of the relevant information within the CGAD and attach the referenced document if it is not already filed or available to the Commissioner.
- 4.7 Each year following the initial filing of the CGAD, the insurer or insurance group shall file an amended version of the previously filed CGAD indicating where changes have been made. If no changes were made in the information or activities reported by the insurer or insurance group in the prior year, the filing should so state.

### **5.0 Contents of Corporate Governance Annual Disclosure**

- 5.1 The insurer or insurance group shall complete the CGAD with such specificity and shall include attachments or example documents that are used in the governance process, so as to provide the Commissioner with sufficient evidence with which to evaluate the strength of the insurer's or insurance group's governance framework and practices.
- 5.2 The CGAD shall describe the insurer's or insurance group's corporate governance framework and structure, including a description of each of the following:
  - 5.2.1 The Board and various Board committees that are ultimately responsible for overseeing the insurer or insurance group and the level(s) at which that oversight occurs (by way of example, but not by limitation, ultimate control level, intermediate holding company, or legal entity). The insurer or insurance group shall describe and discuss the rationale for the current Board size and structure; and
  - 5.2.2 The duties of the Board and each of its significant committees and how they are governed (by way of example, but not by limitation, bylaws, charters, and informal mandates), how the Board's

leadership is structured, and the roles of the Chief Executive Officer (CEO) and Chairperson of the Board within the organization.

- 5.3 The insurer or insurance group shall describe the policies and practices of its most senior governing entity and that governing entity's significant committees, including a discussion of each of the following factors:
- 5.3.1 How the qualifications, expertise and experience of each Board member meet the needs of the insurer or insurance group;
  - 5.3.2 How an appropriate amount of independence is maintained on the Board and its significant committees;
  - 5.3.3 The number of meetings held by the Board and its significant committees over the reporting year, including information on director attendance;
  - 5.3.4 How the insurer or insurance group identifies, nominates and elects members to the Board and its committees, including, by way of example but not limitation:
    - 5.3.4.1 Whether a nomination committee is in place to identify and select individuals for consideration;
    - 5.3.4.2 Whether term limits are placed on directors;
    - 5.3.4.3 How the election and re-election processes function; and
    - 5.3.4.4 Whether a Board diversity policy is in place and if so, how it functions; and
  - 5.3.5 The processes in place for the Board to evaluate its performance and the performance of its committees, and any recent measures taken to improve performance, including a description of any relevant training provided to the Board or committee members.
- 5.4 The insurer or insurance group shall describe the policies and practices for directing Senior Management, including a description of the following factors:
- 5.4.1 Any processes or practices, such as suitability standards, to determine whether officers and key persons in control functions have the appropriate background, experience and integrity to fulfill their prospective roles, including:
    - 5.4.1.1 Identification of the specific positions for which suitability standards have been developed and a description of the standards employed; and
    - 5.4.1.2 Any changes in an officer's or key person's suitability as outlined by the insurer's or insurance group's standards and procedures to monitor and evaluate such changes;
  - 5.4.2 The insurer's or insurance group's code of business conduct and ethics, the discussion of which considers, by way of example but not limitation:
    - 5.4.2.1 Compliance with laws, rules, and regulations; and
    - 5.4.2.2 Proactive reporting of any illegal or unethical behavior;
  - 5.4.3 The insurer's or insurance group's processes for performance evaluation, compensation and corrective action to ensure effective senior management throughout the organization, including a description of the general objectives of significant compensation programs and what the programs are designed to reward. The description shall include sufficient detail to allow the Commissioner to understand how the organization ensures that compensation programs do not encourage or reward excessive risk taking. Elements to be discussed may include, by way of example but not limitation:
    - 5.4.3.1 The Board's role in overseeing management compensation programs and practices;
    - 5.4.3.2 The various elements of compensation awarded in the insurer's or insurance group's compensation programs and how the insurer or insurance group determines and calculates the amount of each element of compensation paid;
    - 5.4.3.3 How compensation programs are related to both company and individual performance over time;
    - 5.4.3.4 Whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels;

# PROPOSED REGULATIONS

- 5.4.3.5 Any clawback provisions built into the programs to recover awards or payments if the performance measures upon which they are based are restated or otherwise adjusted; and
- 5.4.3.6 Any other factors relevant in understanding how the insurer or insurance group monitors its compensation policies to determine whether its risk management objectives are met by incentivizing its employees; and
- 5.4.4 The insurer's or insurance group's plans for CEO and Senior Management succession.
- 5.5 The insurer or insurance group shall describe the processes by which the Board, its committees and Senior Management ensure an appropriate amount of oversight to the critical risk areas impacting the insurer's business activities, including a discussion of:
- 5.5.1 How oversight and management responsibilities are delegated between the Board, its committees and Senior Management;
- 5.5.2 How the Board is kept informed of the insurer's strategic plans, the associated risks, and steps that Senior Management is taking to monitor and manage those risks; and
- 5.5.3 How reporting responsibilities are organized for each critical risk area. The description should allow the Commissioner to understand the frequency at which information on each critical risk area is reported to and reviewed by Senior Management and the Board. This description may include, by way of example but not by limitation, the following critical risk areas of the insurer:
- 5.5.3.1 Risk management processes (an ORSA Summary Report filer may refer to its ORSA Summary Report pursuant to the Risk Management and Own Risk and Solvency Assessment Model Act);
- 5.5.3.2 Actuarial function;
- 5.5.3.3 Investment decision-making processes;
- 5.5.3.4 Reinsurance decision-making processes;
- 5.5.3.5 Business strategy and finance decision-making processes;
- 5.5.3.6 Compliance function;
- 5.5.3.7 Financial reporting and internal auditing; and
- 5.5.3.8 Market conduct decision-making processes.

## **6.0 Severability Clause**

If any provision of these regulations, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect other provisions or applications of these regulations which can be given effect without the invalid provision or application, and to that end the provisions of these regulations are severable.

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### OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311 and Chapter 23, and 21 Delaware Code, Sections 2118 and 2118(B) (18 **Del.C.** §311 & Ch. 23, & 21 **Del.C.** §§2118 and 2118(B))  
18 **DE Admin. Code** 901

### PUBLIC NOTICE

### 901 Arbitration of Automobile and Homeowners' Insurance Claims

#### **A. Type of Regulatory Action Required**

Proposed Amendments to an existing Regulation

#### **B. Synopsis of Subject Matter of the Regulation**

The Department of Insurance hereby gives notice of proposed amendments to Regulation 901, Arbitration of Automobile and Homeowners' Insurance Claims. The proposed amendments would raise the filing fees for

Automobile Insurance and Homeowners' Insurance claims from \$30.00 to \$50.00. These fees have not been adjusted since the regulation was codified on March 1, 2002. The Department is also amending the regulation to update style. The Department is also proposing non-substantive amendments to correct style and subsection references.

The Department of Insurance does not plan to hold a public hearing on the proposed amendments. The proposed amendments appear below and can also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed new regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, the 4<sup>th</sup> day, December, 2017. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist  
Attn: Regulatory Docket No. 3647-2017  
Delaware Department of Insurance  
841 Silver Lake Drive  
Dover, DE 19904  
(302) 674-7379  
Email: [Leslie.Ledogar@state.de.us](mailto:Leslie.Ledogar@state.de.us)

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

[http://regulations.delaware.gov/register/november2017/proposed/21 DE Reg 398RFA 11-01-17.pdf](http://regulations.delaware.gov/register/november2017/proposed/21%20DE%20Reg%20398RFA%2011-01-17.pdf)

## 901 Arbitration of Automobile and Homeowners' Insurance Claims

### 1.0 Purpose and Statutory Authority

- 1.4 The purpose of this Regulation is to implement 18 **Del.C.** §331, Ch. 23, and 21 **Del.C.** §§2118 and 2118B by establishing the procedures for the arbitration of certain claims for benefits available under automobile or homeowners' policies or agreements, and/or those statutes. This Regulation is promulgated pursuant to 18 **Del.C.** §§311, 2312, and 29 **Del.C.** Ch. 101. This Regulation should not be construed to create any cause of action not otherwise existing at law.

### 2.0 Insurer's Duty to Arbitrate

- 2.4 Every insurer providing coverage or benefits in this State for automobile or homeowners' insurance policies shall submit to arbitration of covered claims (as defined by 18 **Del.C.** §331, and 21 **Del.C.** §§2118 and 2118B) by their insureds unless it is exempt from arbitration by the Insurance Commissioner.

### 3.0 Exemption from Arbitration

#### *(Break in Continuity Within Section)*

- 3.2 The Commissioner shall exempt a homeowner insurer from arbitration under this Regulation and continue such exemption as long as the internal appraisal or review procedures submitted under ~~section~~ subsection 3.1 contain the following minimum requirements:

### 4.0 Exclusion from Arbitration

#### *(Break in Continuity Within Section)*

- 4.2 The Arbitration Secretary or Panel is authorized to dismiss a matter upon receipt of information sufficient to establish that the claim is excluded under ~~section~~ subsection 4.1.1 and after notice and an opportunity to respond is provided the petitioner.

# PROPOSED REGULATIONS

*(Break in Continuity of Sections)*

## 11.0 Subrogation Arbitration

- 44.4 Subrogation arbitration between or among insurers pursuant to 21 **Del.C.** §2118 is not subject to this Regulation and shall continue to be conducted through Arbitration Forums, Inc., or its successor.

## 12.0 Arbitration Fees

- 12.1 Each party to an arbitration shall tender and pay the following filing fees for arbitration.
- 12.1.1 ~~\$30.00~~ \$50.00 for Automobile Insurance Claims; and
- 12.1.2 ~~\$30.00~~ \$50.00 for Homeowners' Insurance Claims.

*(Break in Continuity of Sections)*

## 14.0 Effective Date

- 44.4 This regulation, as amended, shall replace existing Regulations 10 and 10A in their entirety. This regulation shall become on March 11, 2002. Any health claims commenced under this regulation prior to the effective date of Regulation 11 shall be resolved in accordance with the provisions of 73 **Del. Laws** Ch. 96.

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

**901 Arbitration of Automobile and Homeowners' Insurance Claims**

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### OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 332, 6408, 6416 and 6417 (18 **Del.C.** §§332, 6408, 6416 & 6417)  
18 **DE Admin. Code** 1301

### PUBLIC NOTICE

### 1301 Internal Review and Independent Utilization Review of Health Insurance Claims

#### A. Type of Regulatory Action Required

Re-proposal of amendments to an existing regulation.

#### B. Synopsis of Subject Matter of the Regulation

At 21 DE Reg 192 (September 1, 2017) the Department published a notice of its intent to amend Regulation 1301 and solicited written comments from the public for thirty (30) days as mandated by 29 **Del.C.** §10118(a).

In the Department's September 1 notice, the Department proposed to amend the definition of "Authorized Representative" and the content of the notice to be provided by insurance carriers to their insureds. These proposed amendments implement Section 3 of HB 100, which amended 18 **Del.C.** §332 to now require that an insurance carrier, when informing a covered person of its internal review process, must inform the covered person of the availability of assistance from the Delaware Department of Justice in the preparation of an appeal of an adverse determination involving treatment for substance abuse. HB 100 was signed into law on May 30, 2017, became effective on September 27, 2017 and sunsets on January 1, 2020 unless expressly reauthorized prior to that date. The Department also proposed non-substantive amendments to correct punctuation at subsections 3.1.6 and 9.4.6, and to correct style throughout subsections 5.7, 7.1 and 11.1, and throughout Sections 9.0 and 10.0.

#### Summary of Comments Received With Agency Response and Explanation of Changes

The Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities

submitted an identical set of comments on the substance of the proposed amendments. Both organizations endorsed the Department's proposed amendments. Following are the Department's summary of each comment and the Department's responses.

1. COMMENT: The commenters support the Department's proposed amendments to the regulation.

**RESPONSE:** The Department appreciates the commenters' support.

2. COMMENT: H.B. No. 100 (lines 37-38) contemplates retention of attorneys to represent individuals in substance abuse insurance disputes, but H.B. No. 100 (line 24) contemplates the use of "experts" in substance abuse insurance disputes. The term "expert" is not defined and could encompass professionals in the field of addiction who, under attorney supervision, could appear on a covered person's behalf in proceedings authorized by 18 **DE Admin. Code** 1301. Therefore, in the definition of "Authorized Representative," it may be preferable to not categorically limit Department of Justice (DOJ) assistance to attorneys.

**RESPONSE:** The Department agrees that the definition of "Authorized Representative" should not be limited to "an attorney retained or employed by the Delaware Department of Justice." In addition to the reasons stated by the commenters, HB 100 at lines 51-53 states that, "The written forms provided by the carrier must inform the covered person of the availability of assistance in the preparation of an appeal of an adverse determination involving treatment for substance abuse . . . (emphasis added)." This provision does not limit the assistance to legal assistance. Therefore, with this proposal the Department is amending the definition of "Authorized Representative" to reflect that assistance is available from the Department of Justice, not just legal assistance.

3. COMMENT: The Department should consider providing a specific DOJ website address (with description of its substance abuse legal assistance program) in addition to a telephone number.

**RESPONSE:** The Department agrees with the comment. With this proposal, the Department will add the DOJ's website address and email address to the definition of "Authorized Representative" and in the sections that contain notice requirements.

4. COMMENT: The notice is "buried in the boilerplate" and not prominent. To fulfill the spirit of HB 100, the Department could consider a separate heading (e.g., "Substance Abuse Treatment Denials: Special Assistance") followed by a brief explanation and DOJ contact information (website and phone number).

**RESPONSE:** The Department agrees that the notice provision could be clarified. With this proposal, the Department will add paragraph separators to offset the wording concerning the availability of assistance from the DOJ and will add clarifying language. The Department will also retitle section 1301-4 to more clearly convey the purpose of this section.

5. COMMENT: The notice only informs an aggrieved person of the availability of DOJ assistance with mediation. See §4.0. This is misleading since DOJ assistance is also available in the internal review process (§3.0), IHCAP procedure (§5.0), and expedited IHCAP procedure (§6.0). Apart from carrier notice of the availability of DOJ assistance in contexts other than mediation, the Department could consider including a notice of DOJ assistance as a complement to the notice in §5.4.

**RESPONSE:** The Department agrees that assistance is available at all stages of review as indicated by the commenters. The definition of "Authorized representative" as proposed explicitly defines the authorized representative as "an individual who a covered person willingly acknowledges to represent his interests during the internal review process and/or an appeal through the Independent Health Care Appeals Program (emphasis added)." Additionally, with this proposal, the Department is proposing to add minimum notice requirements at subsection 3.3.2 to require that the notice of the availability of an appeal through the insurer's internal review program also include language that informs the insured of the availability of DOJ assistance at the internal review stage of a claim denial or reduction for treatment for substance abuse.

6. COMMENT: The proposed notice indicates that DOJ assistance is only available "if you are approaching the deadline for filing your appeal." This limitation is not authorized by law and will deter requests for DOJ assistance.

**RESPONSE:** The Department maintains that the assistance of an "Authorized representative" is available throughout the appeals process, as discussed in the response to Comment 4. However, to the extent that the phrase "if you are approaching the deadline for filing your appeal" is misleading, the Department proposes to remove that phrase in this proposal.

7. COMMENT: To encourage individuals to consider DOJ assistance, it would be preferable to clarify that DOJ assistance is "free." This could be easily accomplished by revising the relevant language to ". . . receive free legal assistance."

**RESPONSE:** The statute does not articulate whether DOJ assistance is free of charge. Accordingly, the

Department lacks statutory authority to make the amendment suggested by the commenters.

In response to the comments received, the Department has determined to re-propose the amendments to Regulation 1301, with additional amendments that incorporate commenters' suggestions as noted in the above responses to comments.

The Department does not plan to hold a public hearing on the proposed amendments. The proposed amendments appear below and can also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>. The Department's docket number is DOI Docket No. 3571-2017. The re-proposal of companion amendments to Regulation 1315 may be viewed elsewhere in this edition of the *Register of Regulations*.

Any person may 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 new regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, on Monday, the 4<sup>th</sup> day, December, 2017. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist  
 DOI Docket No. 3571-2017  
 Office of Legal and Special Projects  
 Delaware Department of Insurance  
 841 Silver Lake Drive  
 Dover, DE 19904  
 (302) 674-7379  
 Email: [Leslie.Ledogar@state.de.us](mailto:Leslie.Ledogar@state.de.us)

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

[http://regulations.delaware.gov/register/november2017/proposed/21 DE Reg 400RFA 11-01-17.pdf](http://regulations.delaware.gov/register/november2017/proposed/21%20DE%20Reg%20400RFA%2011-01-17.pdf)

## 1301 Internal Review and Independent Utilization Review of Health Insurance Claims *(Break in Continuity of Sections)*

### 2.0 Definitions

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

#### *(Break in Continuity Within Section)*

**"Authorized representative"** means an individual ~~who~~ whom a covered person willingly acknowledges to represent his interests during the internal review process and/or an appeal through the arbitration process or the Independent Health Care Appeals Program, including but not limited to a provider to whom a covered person has assigned the right to collect sums due from a carrier for health care services rendered by the provider to the covered person. A carrier may require the covered person to submit written verification of his consent to be represented. If a covered person has been determined by a physician to be incapable of assigning the right of representation, the covered person may be represented by a family member or a legal representative. In cases involving the existence or scope of private or public coverage for substance abuse treatment, assistance may be provided by or through the Delaware Department of Justice as an authorized representative, regardless of whether the covered person has been determined by a physician to be incapable of assigning the right of representation. The Department of Justice may be reached by calling 302-577-4206, by visiting <http://attorneygeneral.delaware.gov/dojtreatmentassistance/>, or by email at [dojtreatmentassistance@state.de.us](mailto:dojtreatmentassistance@state.de.us).

#### *(Break in Continuity Within Section)*

### 3.0 Minimum Requirements for an Internal Review Process (IRP)

- 3.1 In addition to the requirements set forth in 18 **Del.C.** §332, the ~~following~~ provisions of this section shall govern the internal review process of all carriers offering health insurance in Delaware:
- ~~3.13.2~~ All written procedures and forms utilized by a carrier shall be readable and understandable by a person of average intelligence and education. All such documents shall meet the following criteria:
- ~~3.1.13.2.1~~ The type size shall not be smaller than 11 point;
- ~~3.1.23.2.2~~ The type style selection shall be at the discretion of the carrier but shall be of a type that is clear and legible;
- ~~3.1.33.2.3~~ Captions or headings shall be designed to stand out clearly;
- ~~3.1.43.2.4~~ White space separating subjects or sections should be distinct;
- ~~3.1.53.2.5~~ There must be included a table of contents sufficient to guide and assist the covered person or his authorized representative;
- ~~3.1.63.2.6~~ Where appropriate, definitions shall be included, shall be sufficient to clearly apply to the usage intended, and shall not conflict with the definitions contained in this regulation; and
- ~~3.1.73.2.7~~ The forms shall be written in everyday, conversational language to the extent possible to preserve the legal meaning.
- ~~3.1.83.2.8~~ Short familiar words shall be used and sentences shall be kept as short and simple as possible.
- ~~3.23.3~~ The carrier shall provide all forms relating to grievances, appeals, arbitration or other procedures relating to IRP as examples along with the written notice of IRP provided to the covered person.
- ~~3.33.4~~ Written notice.
- ~~3.3.13.4.1~~ For any IRP not previously approved by the Department, the carrier shall provide written notice of the IRP to all covered persons within 30 days of approval by the Department.
- ~~3.3.23.4.2~~ The carrier shall provide the notice required by 18 **Del.C.** §332(c)(1) to covered persons following any adverse determination, and annually, either upon the policy renewal date, open enrollment date, or a set date for all covered persons, in the carrier's discretion. In addition to the requirements set forth in 18 Del.C. §332(c)(1), the notice shall also, at a minimum, provide as follows:
- ~~3.4.2.1~~ You have the right to seek a review of a claim reduction or denial through this insurer's internal review process.
- ~~3.4.2.2~~ If your claim involves an adverse determination involving treatment for substance abuse, you may be eligible to receive assistance by or through the Delaware Department of Justice during this company's internal review process. The Delaware Department of Justice may be reached by calling 302-577-4206, by visiting <http://attorneygeneral.delaware.gov/dojtreatmentassistance/>, or by email at [dojtreatmentassistance@state.de.us](mailto:dojtreatmentassistance@state.de.us), for more information.
- ~~3.3.33.4.3~~ For every new policy issued after the Department's approval of the IRP, the carrier shall provide covered persons with a copy of the IRP at the time, or prior to the time, the carrier sends identification cards, member handbooks or similar member materials to newly covered persons.
- ~~3.3.43.4.4~~ When a covered person's dependents are also covered, a single notice to the principal covered person shall be sufficient under this section.
- ~~3.43.5~~ Under circumstances where an oral or written grievance may not contain sufficient information and the carrier requests additional information, such request shall not be burdensome or require such information as the carrier might reasonably be expected to obtain through its normal claims process.

#### **4.0 Mediation Services Notice Requirements for Appeal of a Carrier's Final Coverage Decision**

At the time a carrier provides to a covered person written notice of a carrier's final coverage decision, if the final coverage decision does not authorize payment of the claim in its entirety, the carrier shall provide the covered person with a written notice of the process by which a covered person may appeal the carrier's final coverage decision. The notice shall include a statement that mediation services are

# PROPOSED REGULATIONS

offered by the Department. Such notice may be separate from or a part of the written notice of the carrier's decision.

Any The notice provided to a covered person shall, at a minimum, contain the following language:

"You have the right to seek a review of a claim reduction or denial through the Delaware Insurance Department. The Delaware Insurance Department ~~also~~ provides free informal mediation services which are in addition to, but do not replace, your right to a review of this decision through an external review or through the Department's arbitration program, as applicable. You can contact the Delaware Insurance Department for information about claim denial review or mediation by calling the Consumer Services Division at 800-282-8611 or ~~302-739-4254~~ 302-674-7310.

Your decision to pursue mediation with the Department does not change the deadlines imposed for filing a request for an external review (set by Section 5.0 of this regulation) or arbitration (set by Regulation 1315 of Delaware Administrative Code Chapter 18, 18 DE Admin. Code 1315).

If your request for review involves a claim reduction or denial involving treatment for substance abuse, you may be eligible to receive assistance by or through the Delaware Department of Justice by calling 302-577-4206, by visiting <http://attorneygeneral.delaware.gov/dojtreatmentassistance/>, or by email at [dojtreatmentassistance@state.de.us](mailto:dojtreatmentassistance@state.de.us) for more information.

All requests for review through ~~procedures established by the Delaware Insurance Department~~ the Department's arbitration program must be filed with the Department within 60 days from the date you receive this carrier's notice; otherwise, this decision will be final. All requests for external review must be filed with this carrier within four months of your receipt of this final coverage decision."

## 5.0 IHCAP Procedure

### *(Break in Continuity Within Section)*

- 5.7 Within 45 days after the IURO's receipt of an appeal, the assigned IURO shall provide written notice of its decision to uphold or reverse the final coverage decision to the covered person or his authorized representative, the carrier and the Department, which notice shall include the following information:
- 5.7.1 ~~the~~ The qualifications of the members of the review panel;
  - 5.7.2 a A general description of the reason for the request for external review;
  - 5.7.3 ~~the~~ The date the IURO received the assignment from the Department to conduct the external review;
  - 5.7.4 ~~the~~ The date(s) the external review was conducted;
  - 5.7.5 ~~the~~ The date of its decision;
  - 5.7.6 ~~the~~ The principal reason(s) for its decision; and
  - 5.7.7 ~~references~~ References to the evidence or documentation, including practice guidelines and clinical review criteria, considered in reaching its decision.
- 5.8 The decision of the IURO is binding upon the carrier except as provided in 18 Del.C. §6416(b).

### *(Break in Continuity of Sections)*

## 7.0 Refusal or Dismissal of IHCAP Appeal

### *(Break in Continuity Within Section)*

- 7.2 Carrier's motion to dismiss an IHCAP appeal.
- 7.2.1 A carrier may move to dismiss an IHCAP appeal if the carrier believes the appeal:

- 7.2.1.1 ~~the appeal concerns~~ Concerns a benefit that is the subject of an express written exclusion from the covered person's health insurance;
  - 7.2.1.2 ~~the appeal is~~ Is appropriate for arbitration; or
  - 7.2.1.3 ~~the appeal should~~ Should be dismissed because it is inappropriate for IHCAP review as explained in a sworn statement by an officer of the carrier.
- 7.2.2 The carrier's motion to dismiss must be made in writing at the time the carrier transmits the appeal to the Department and must include any necessary supporting documentation.
- 7.2.3 The Department shall review the appeal and motion for dismissal and may, in its discretion:
- 7.2.3.1 ~~dismiss~~ Dismiss the appeal and notify the covered person or his authorized representative in writing that the appeal is inappropriate for the IHCAP; or
  - 7.2.3.2 ~~appoint~~ Appoint an IURO to conduct a full external review.
- (Break in Continuity of Sections)**

## **9.0 Approval of Independent Utilization Review Organizations**

### ***(Break in Continuity Within Section)***

- 9.4 In connection with each external review, neither the expert reviewer, nor the independent review organization, shall have any material professional, familial or financial conflict of interest with any of the following:
- 9.4.1 The plan<sub>;</sub>
  - 9.4.2 Any officer, director or management of the plan<sub>;</sub>
  - 9.4.3 The physician, the physician's medical group or the independent practice association proposing the service or treatment<sub>;</sub>
  - 9.4.4 The institution at which the service or treatment would be provided<sub>;</sub>
  - 9.4.5 The development or manufacture of the principal drug, device, procedure or other therapy proposed for the covered person whose treatment is under review<sub>;</sub>
  - 9.4.6 The covered person<sub>;</sub> or
  - 9.4.7 ~~National~~ Any national, state or local trade association of health benefit plans or health-care providers.

## **10.0 Recordkeeping and Reporting Requirements**

- 10.1 A carrier and IURO shall maintain written or electronic records for five years, after completion of the appeal process, documenting all grievances and appeals for IHCAP review including, at a minimum, the following information:
- 10.1.1 For each grievance:
    - 10.1.1.1 ~~the~~ The date received;
    - 10.1.1.2 ~~name~~ Name and plan identification number of the covered person on whose behalf the grievance was filed;
    - 10.1.1.3 ~~a~~ A general description of the reason for the grievance; and
    - 10.1.1.4 ~~the~~ The date and description of the final coverage decision.
  - 10.1.2 For each appeal for IHCAP review:
    - 10.1.2.1 ~~the~~ The date received;
    - 10.1.2.2 ~~name~~ Name and plan identification number of the covered person on whose behalf the appeal was filed;
    - 10.1.2.3 ~~a~~ A general description of the reason for the appeal; and
    - 10.1.2.4 ~~date~~ Date and description of the IURO's decision or other disposition of the appeal.
- 10.2 A carrier shall file with its annual report to the Department the following information:
- 10.2.1 The total number grievances filed<sub>;</sub> and

# PROPOSED REGULATIONS

10.2.2 The total number of IHCAP appeals filed, with a breakdown showing the total number of final coverage decisions:

10.2.2.1 ~~the total number of final coverage decisions upheld~~ Upheld through IHCAP; and

10.2.2.2 ~~the total number of final coverage decisions reversed~~ Reversed through IHCAP.

***(Break in Continuity Within Section)***

## 11.0 Non-Retaliation

11.1 A carrier shall not disenroll, terminate or in any way penalize a covered person who exercises his or her rights to file a grievance or appeal for IHCAP review solely on the basis of such filing.

***(Break in Continuity of Sections)***

## 14.0 Effective Date

This regulation shall become effective 10 days after being published as a final regulation. The amendments to Sections 3.0 and 4.0 of this regulation and to the definition of "Authorized representative," all of which implement HB 100, 81 Del. Laws, Ch. 28 §3 (May 30, 2017) shall become effective 10 days after being published as a final regulation and shall sunset on January 1, 2020 unless expressly reauthorized prior to that date.

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

**1301 Internal Review and Independent Utilization Review of Health Insurance Claims**

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### OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 and 332 (18 Del.C. §§311 & 332)  
18 DE Admin. Code 1315

### PUBLIC NOTICE

**1315 Arbitration of Health Insurance Disputes Between Individuals and Carriers**

#### A. Type of Regulatory Action Required

Re-proposal of amendments to an existing regulation.

#### B. Synopsis of Subject Matter of the Regulation

At 21 DE Reg 196 (September 1, 2017) the Department published a notice of its intent to amend Regulation 1315 and solicited written comments from the public for thirty (30) days as mandated by 29 Del.C. §10118(a).

In the Department's September 1 notice, the Department proposed to amend the definition of "Authorized Representative" to implement Section 3 of HB 100. Section 3 of HB 100 amended 18 Del.C. §332 to now require that an insurance carrier, when informing a covered person of its right to appeal an adverse coverage decision, must inform the covered person of the availability of assistance from the Delaware Department of Justice in the preparation of an appeal of an adverse determination involving treatment for substance abuse. HB 100 was signed into law on May 30, 2017, became effective on September 27, 2017 and sunsets on January 1, 2020 unless expressly reauthorized prior to that date. The Department also proposed non-substantive amendments in punctuation and grammar throughout Sections 3 and 4.

#### Summary of Comments Received With Agency Response and Explanation of Changes

The Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities submitted an identical set of comments on the substance of the proposed amendments. Both organizations endorsed the Department's proposed amendments. Following are the Department's summary of each comment

and the Department's responses.

1. COMMENT: The commenters support the Department's proposed amendments to the regulation.

**RESPONSE:** The Department appreciates the commenters' support.

2. COMMENT: H.B. No. 100 (lines 37-38) contemplates retention of attorneys to represent individuals in substance abuse insurance disputes, but H.B. No. 100 (line 24) contemplates the use of "experts" in substance abuse insurance disputes. The term "expert" is not defined and could encompass professionals in the field of addiction who, under attorney supervision, could appear on a covered person's behalf in proceedings authorized by 18 **DE Admin Code** 1301. Therefore, in the definition of "Authorized Representative," it may be preferable to not categorically limit Department of Justice (DOJ) assistance to attorneys.

**RESPONSE:** The Department agrees that the definition of "Authorized Representative" should not be limited to "an attorney retained or employed by the Delaware Department of Justice." In addition to the reasons stated by the commenters, HB 100 at lines 51-53 states that, "The written forms provided by the carrier must inform the covered person of the availability of assistance in the preparation of an appeal of an adverse determination involving treatment for substance abuse . . . (emphasis added)." This provision does not limit the assistance to legal assistance. Therefore, with this proposal the Department is amending the definition of "Authorized Representative" to reflect that assistance is available from the Department of Justice, not just legal assistance.

3. COMMENT: The Department should consider providing a specific DOJ website address (with description of its substance abuse legal assistance program) in addition to a phone number.

**RESPONSE:** The Department agrees with the comment. With this proposal, the Department will add the DOJ's website address and email address to the definition of "Authorized Representative."

4. COMMENT: HB 100 can only be effective if covered persons denied substance abuse treatment receive timely and prominent notice of the availability of DOJ assistance. The Department of Insurance is charged with developing the language in such notices (lines 51-53). Unfortunately, this arbitration regulation omits any reference to such notice and does not otherwise inform persons of the availability of such assistance. At a minimum, the Department should consider adding a provision notifying an aggrieved person contesting denial of substance abuse treatment of possible DOJ assistance in subsections 3.14 and 3.5.

**RESPONSE:** The Department disagrees that a notice in addition to the notice provided in 18 **DE Admin. Code** 1301-4 is necessary. Regulations 1301 and 1315 are complementary regulations; adding the same notice in each regulation would be redundant. With the re-proposal of amendments to Regulation 1301 published elsewhere in this edition of the *Register of Regulations*, the Department is proposing to amend the substance of the minimum required notices at 18 **DE Admin. Code** 1301-3.3.2 and 1301-4.0 to more fully describe the appeals options available to an insured.

In response to the comments received, the Department has determined to re-propose the amendments to Regulation 1315, with additional amendments that incorporate commenters' suggestions as noted in the above responses to comments.

The Department does not plan to hold a public hearing on the proposed amendments. The proposed amendments appear below and can also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>. The Department's docket number is DOI Docket No. 3572-2017. The re-proposal of companion amendments to Regulation 1301 may be viewed elsewhere in this edition of the *Register of Regulations*.

Any person may 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 new regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, on Monday, the 4<sup>th</sup> day, December, 2017. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist  
DOI Docket No. 3572-2017  
Office of Legal and Special Projects  
Delaware Department of Insurance  
841 Silver Lake Drive  
Dover, DE 19904  
(302) 674-7379  
Email: [Leslie.Ledogar@state.de.us](mailto:Leslie.Ledogar@state.de.us)

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

<http://regulations.delaware.gov/register/november2017/proposed/21 DE Reg 406RFA 11-01-17.pdf>

## 1315 Arbitration of Health Insurance Disputes Between Individuals and Carriers (Break in Continuity of Sections)

### 2.0 Definitions

#### (Break in Continuity Within Section)

“**Authorized representative**” means an individual ~~who~~ whom a covered person willingly acknowledges to represent his interests during the internal review process and/or an appeal through the arbitration process or the Independent Health Care Appeals Program, including but not limited to a provider to whom a covered person has assigned the right to collect sums due from a carrier for health care services rendered by the provider to the covered person. A carrier may require the covered person to submit written verification of his consent to be represented. If a covered person has been determined by a physician to be incapable of assigning the right of representation, the covered person may be represented by a family member or a legal representative. In cases involving the existence or scope of private or public coverage for substance abuse treatment, assistance may be provided by or through the Delaware Department of Justice as an authorized representative, regardless of whether the covered person has been determined by a physician to be incapable of assigning the right of representation. The Department of Justice may be reached by calling 302-577-4206, by visiting <http://attorneygeneral.delaware.gov/dojtreatmentassistance/>, or by email at [dojtreatmentassistance@state.de.us](mailto:dojtreatmentassistance@state.de.us).

#### (Break in Continuity Within Section)

### 3.0 Arbitration Procedure to Review a Carrier’s Final Coverage Decision

#### 3.1 Petition for Arbitration

- 3.1.1 A covered person or his authorized representative may request review of a carrier’s final coverage decision through arbitration by delivering a Petition for Arbitration, using the standardized form available from the Department by mail and on its web site, and all supporting documentation to the Department so that ~~the request for review~~ the request for review is received by the Department within sixty days of receipt by the covered person of written notice of the carrier’s final coverage decision. ~~The Department shall make available, by mail and on its web site, a standardized form for a Petition for Arbitration.~~

#### (Break in Continuity Within Section)

#### 3.2 Response to Petition for Arbitration

- 3.2.1 Within 20 days of receipt of the Petition, the carrier must deliver to the Department an original and one copy of a Response with supporting documents or other evidence attached.
- 3.2.2 At the time of delivering the Response to the Department, the carrier must also:
- 3.2.2.1 ~~send~~ Send a copy of the Response and supporting documentation to the covered person or his authorized representative by certified mail, return receipt requested;
- 3.2.2.2 ~~deliver~~ Deliver to the Department a proof of service confirming that a copy of the Response was mailed to the covered person or his authorized representative by certified mail, return receipt requested; and
- 3.2.2.3 ~~deliver~~ Deliver to the Department a \$75.00 filing fee.
- 3.2.3 The Department may return any non-conforming Response to the carrier.
- 3.2.4 If the carrier fails to deliver a Response to the Department in a timely fashion, the Department, after verifying proper service, and with written notice to the parties, may assign the matter to the next scheduled Arbitrator for summary disposition. The Arbitrator may:

3.2.4.1 ~~The Arbitrator may determine~~ Determine the matter in the nature of a default judgment after establishing that the Petition is properly supported and was properly served on the carrier; and

3.2.4.2 ~~The Arbitrator may allow the re-opening of~~ Allow the matter to be reopened to prevent a manifest injustice. A request for re-opening must be made by the covered person or his authorized representative no later than seven days after notice of the default judgment.

***(Break in Continuity Within Section)***

## 3.4 Appointment of Arbitrator

3.4.1 Upon receipt of a ~~proper~~ Response that conforms with the requirements of this regulation, the Department shall assign an Arbitrator from a panel of Arbitrators and shall schedule the matter for a hearing so that the Arbitrator can render a written decision within 45 days of the delivery to the Department of the Petition for Arbitration.

***(Break in Continuity Within Section)***

## 3.5 Arbitration Hearing

***(Break in Continuity Within Section)***

3.5.2 The arbitration hearing is to be limited, to the maximum extent possible, to each party being given the opportunity to explain their view of the previously submitted evidence and to answer questions presented to the parties by the Arbitrator.

***(Break in Continuity Within Section)***

## 4.0 Carrier Recordkeeping and Reporting Requirements

4.1 A carrier shall maintain written or electronic records documenting all grievances and Petitions for Arbitration including, at a minimum, the following information:

4.1.1 For each grievance:

4.1.1.1 ~~the~~ The date received;

4.1.1.2 ~~name~~ Name and plan identification number of the covered person on whose behalf the grievance was filed;

4.1.1.3 ~~a~~ A general description of the reason for the grievance; and

4.1.1.4 ~~the~~ The date and description of the final coverage decision.

4.1.2 For each Petition for Arbitration:

4.1.2.1 ~~the~~ The date the Petition was filed;

4.1.2.2 ~~name~~ Name and plan identification number of the covered person on whose behalf the Petition was filed;

4.1.2.3 ~~a~~ A general description of the reason for the Petition; and

4.1.2.4 ~~date~~ Date and description of the Arbitrator's decision or other disposition of the Petition.

4.2 A carrier shall file with its annual report to the Department the following information:

4.2.1 The total number grievances filed.

4.2.2 The total number of Petitions for Arbitration filed, with a breakdown showing:

4.2.2.1 ~~the~~ The total number of final coverage decisions upheld through arbitration; and

4.2.2.2 ~~the~~ The total number of final coverage decisions reversed through arbitration.

***(Break in Continuity of Sections)***

## 8.0 Effective Date

This Regulation shall become effective ten days after being published as a final regulation. The amendment to the definition of "authorized representative" shall become effective 10 days after being published as a final regulation and shall sunset on January 1, 2020 unless expressly reauthorized prior to that date.

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

**1315 Arbitration of Health Insurance Disputes Between Individuals and Carriers**

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL  
CONTROL**

**DIVISION OF WATER**

**GROUNDWATER DISCHARGES SECTION**

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

**REGISTER NOTICE  
SAN #2012-21**

**7102 Regulations Governing Underground Injection Control**

**1. TITLE OF THE REGULATION:**

State of Delaware Regulations Governing Underground Injection Control.

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

The purpose of the proposed revisions is to bring the regulations into compliance with current federal requirements, as determined by the United States Environmental Protection Agency (EPA). The EPA issued the *Revisions to the Underground Injection Control (UIC) Regulations for Class V Injection Wells*, effective April 2000 and December 2011. With this, the State of Delaware Regulations Governing Underground Injection Control is to be amended. The revised State regulations will also expand the existing regulations to include additional requirements for multiple water management activities. The regulations were published in the May 1, 2017, Delaware *Register of Regulations* and a public hearing was held on May 25, 2017. As a result of additional review and comments received, changes were made to the initial proposed UIC regulations. Since changes were made by the Department subsequent to the hearing record having closed for public comment, the decision was made to republish this revised proposed regulation and to reopen the public comment period for an additional 30 days to provide complete transparency to the public.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

None.

**4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**

Title 7, Delaware Code, Chapter 60, Environmental Control

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

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

**6. NOTICE OF PUBLIC COMMENT:**

The hearing record on the proposed changes to State of Delaware Regulations Governing Underground Injection Control will be re-opened November 1, 2017 for a 30-day public comment period ending at the close of business on December 1, 2017. Individuals may submit written comments regarding the proposed changes via e-mail to [Lisa.Vest@state.de.us](mailto:Lisa.Vest@state.de.us) or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042.

**7. PREPARED BY:**

Katharyn Potter  
Delaware DNREC

Phone: (302) 739-9948  
Fax: (302) 739-7764

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Groundwater Discharges Section    Email: [katharyn.potter@state.de.us](mailto:katharyn.potter@state.de.us)  
89 Kings Highway  
Dover, DE 19901

**\*Please Note:**

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

[http://regulations.delaware.gov/register/november2017/proposed/21 DE Reg 410RFA 11-01-17.pdf](http://regulations.delaware.gov/register/november2017/proposed/21%20DE%20Reg%20410RFA%2011-01-17.pdf)

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

[7102 Regulations Governing Underground Injection Control](#)

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## DEPARTMENT OF STATE

### DIVISION OF PROFESSIONAL REGULATION

#### 1725 POLYSOMNOGRAPHY ADVISORY COUNCIL

Statutory Authority: 24 Delaware Code, Section 1799W(c) (24 **Del.C.** §1799W(c))  
24 **DE Admin. Code** 1725

#### PUBLIC NOTICE

#### 1725 Polysomnography Advisory Council

The Delaware Polysomnography Council of the Board of Medical Licensure and Discipline, pursuant to 24 **Del.C.** §1799W(c), proposes to amend its rules and regulations. The proposed regulation change allows respiratory therapists with specific sleep credentials to act as supervisors to polysomnographic trainees.

The Council will hold a public hearing on the proposed regulation change on November 21, 2017 at 9:00 a.m., Second Floor Conference Room C, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Devashree Brittingham, Administrative Specialist of the Delaware Board of Medical Licensure and Discipline, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until December 6, 2017 pursuant to 29 **Del.C.** §10118(a).

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

[http://regulations.delaware.gov/register/november2017/proposed/21 DE Reg 411RFA 11-01-17.pdf](http://regulations.delaware.gov/register/november2017/proposed/21%20DE%20Reg%20411RFA%2011-01-17.pdf)

#### 1725 Polysomnography Advisory Council (Break in Continuity of Sections)

#### 2.0 Definitions

##### *(Break in Continuity Within Section)*

"Supervisor" means a licensed polysomnographer or a licensed respiratory care practitioner with one of the following credentials: Sleep Disorder Specialist (SDS); Registered Polysomnographic Technologist (RPSGT); or Certified Polysomnographic Technician (CPSGT).

##### *(Break in Continuity of Sections)*

#### 6.0 Polysomnographic Students and Polysomnographic Trainees

6.1 A polysomnographic student may only practice under the direct supervision of a licensed polysomnographer supervisor as defined in these regulations.

- 6.2 Direct supervision means that a ~~licensed polysomnographer~~ supervisor will be personally present and immediately available within the treatment area to provide aid, direction, and instruction when procedures are performed. All evaluations, progress notes, and/or chart entries must be co-signed by a licensed polysomnographer or licensed respiratory care practitioner credentialed as an SDS, RPSGT, or CPGST.
- 6.3 A polysomnographic trainee may provide sleep-related services under the direct supervision of a ~~licensed polysomnographer~~ supervisor as part of the trainee's clinical experience for no more than two years.

*(Break in Continuity of Sections)*

## 10.0 Responsibilities of Supervisors and Polysomnographic Students and Trainees

- 10.1 A ~~licensed polysomnographer serving as a~~ supervisor to either a polysomnographic student or trainee accepts total responsibility for the sleep-related services provided by the student or trainee.
- 10.2 A student or trainee is permitted to have more than one ~~supervising licensed polysomnographer~~ supervisor.
- 10.3 ~~Only licensed polysomnographers~~ A supervisor must have a license in good standing ~~may to~~ supervise students or trainees.
- 10.4 A ~~licensed polysomnographer~~ supervisor may supervise no more than three students or trainees at one time.

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

**1725 Polysomnography Advisory Council**

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## DEPARTMENT OF TRANSPORTATION DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 17 Delaware Code, Sections 134 and 141; 21 Delaware Code, Chapter 41  
(17 Del.C. §134, 141 and 21 Del.C. Ch. 41)  
2 DE Admin. Code 2402

### PUBLIC NOTICE

#### 2402 Delaware Manual on Uniform Traffic Control Devices

Under Title 17 of the Delaware Code, Sections 134 and 141, as well as 21 Delaware Code Chapter 41, the Delaware Department of Transportation (DelDOT), adopted a Delaware version of the Federal Manual on Uniform Traffic Control Devices (MUTCD). The Department has now drafted revisions to the Delaware MUTCD. A description of the proposed changes accompanies this notice.

The Department will take written comments on the draft changes to the Delaware MUTCD from November 1, 2017 through December 1, 2017. Copies of the Draft Delaware MUTCD Revisions can be obtained by reviewing or downloading a PDF copy at the following web address: <http://regulations.delaware.gov/>

Questions or comments regarding these proposed changes should be directed to: Mark Luszcz, P.E., PTOE, Chief Traffic Engineer, Traffic Section, Division of Transportation Solutions, Delaware Department of Transportation, 169 Brick Store Landing Road, Smyrna, DE 19977 (302) 659-4062 (telephone) (302) 653-2859 (fax) [mark.luszcz@state.de.us](mailto:mark.luszcz@state.de.us).

The following is a summary of proposed changes to be incorporated into Revision 3 of the Delaware MUTCD, dated October 2017

Pages	Sec/Fig/ Table	Para.	DeDOT Comment / Proposed Change	Modification
1A-3	Section 1A.07	01A	Add option for traffic control devices and applications based on engineering judgment and approval of DeDOT Chief Engineer.	<i>Text added.</i> <b>Justification:</b> Clarified approval process for traffic control devices that do not comply with standard statements.
1A-14	Section 1A.13	03	Add definition of bicycle box.	<i>Text added.</i> <b>Justification:</b> Concept of bicycle box is being introduced into the DE MUTCD.
2B-3	Table 2B-1	-	Add a footnote for ONE WAY (R6-1) signs to allow smaller signs on multi-lane conventional roads and expressways based on engineering judgment.	<i>Table modified.</i> <b>Justification:</b> Excessively large ONE WAY signs takes away from the visibility and message of the STOP sign on the minor street approach and other more important sign messages.
2B-14	Section 2B.11	01E	Incorporate FHWA Official Interpretation – R1-5 Sign text into manual.	<i>Text added.</i> <b>Justification:</b> Updated text to reflect the FHWA official interpretation of the R1-5 series.
2B-38	Section 2B.37	03C	Provide guidance regarding spacing between DO NOT ENTER and WRONG WAY signs.	<i>Text added.</i> <b>Justification:</b> Numerous instances across the state where DO NOT ENTER AND WRONG WAY signs are being installed too close together.
2B-78 2B-79	Figure 2B-33 Section 2B.72	08A	Added IT CAN WAIT! plaque as an option	<i>Text added and figure modified.</i> <b>Justification:</b> Revised to reflect use of educational plaque
2C-2 2C-5 2C-35 2C-36	Table 2C-1 Table 2C-2 Section 2C.50 Figure 2C-11	01	Change designation for the Duck Crossing sign from W11-11-DE to W11-3-DE.	<i>Table modified, text added, and figure modified.</i> <b>Justification:</b> Revised to reduce potential confusion regarding sign designations for the Duck Crossing (originally W11-11-DE) sign and the Golf Cart (W11-11) sign.
2C-17	Figure 2C-3	-	Remove signs W1-11R and W13-1P from figure; keep text referring to these signs as an option.	<i>Figure modified.</i> <b>Justification:</b> W11-1R and W13-1P signs are often misused based on their depiction in Figure 2C-3d
2C-2 2C-5 2C-33 2C-34 2C-39	Table 2C-1 Table 2C-2 Section 2C.49 Figure 2C-10 Section 2C.60	06A 01A	Create new sign called W11-1-DE with text "IN LANE". Provide guidance about preferred width of shoulder. Add new sign to list of vehicular traffic warning signs on Page 2C-33.	<i>Text added and figure modified.</i> <b>Justification:</b> Updated to reflect DeDOT's desire to discontinue the use of the Share the Road plaque.
2D-3 2D-4 2E-6	Section 2D.05 Section 2E.14	01 04 07A	Revise text regarding lettering style to match original federal text.	<i>Text modified.</i> <b>Justification:</b> FHWA rescinded use of Clearview font.
2D-21 2D-28	Figure 2D-7 Section 2D.41 Table 2D-1	08A	Add DART Beach Bus Park & Ride (D2-2-DE) sign to Figure 2D-7 and as an option in Section 2D.41, paragraph 08A.	<i>Text and figure modified.</i> <b>Justification:</b> Sign provides guidance regarding the distance to Park & Rides serving the DART Beach Bus

# PROPOSED REGULATIONS

2D-29	Section 2D.43	07A 08A	Incorporate Interim Guidance – Overhead Street Signs Mounted on Traffic Signals memo	<i>Text modified.</i> <b>Justification:</b> Smaller letter heights are sufficient to convey information to motorists and problems with mounting large signs on signal mast arms and span wires.
2I-2 2I-13 2I-14	Table 2I-1 Figure 2I-8 Section 2I.09	01A 09A	Change “DISABLED VEHICLES” in sign D12-4-DE to “TRAFFIC PROBLEMS” and update text accordingly in Section 2I.09. Create new plaque “TRAFFIC ALERT WHEN FLASHING” as an optional supplement to the D12-1-DE sign, and update text accordingly in Section 2I.09	<i>Text and figure modified.</i> <b>Justification:</b> Revised to reflect current practices; TRAFFIC PROBLEMS conveys are more comprehensive message compared to DISABLED VEHICLES.
2K-3 2K-6	Figure 2K-1 Section 2K.07	02	Add reference to Standards for Agricultural Tourism Attraction Guide Signs memo; delete existing guidance	<i>Text and figure modified.</i> <b>Justification:</b> Standards for Agricultural Tourism signs have been modified.
3B-58	Section 3B-13 Figure 3B-15F Figure 3B-15G Figure 3B-15H	01.B.6	Remove RPMs from turn lanes on Figure 3B-15F and 3B-15H. Remove Figure 3B-15G. Create new Figure 3B-15G for RPM application for two-way left-turn lanes with 80’ spacing through the two-way left-turn lane and 40’ spacing approaching the intersection. Remove 48’ RPM spacing from Figure 3B-15F. Remove any text regarding 20’ RPM spacing (note 2 in multiple figures) along conventional roadways. Revise spacing for all RPMs to 40’ or 80’ for conventional roadways.	<i>Text and figures modified.</i> <b>Justification:</b> Excessive use of RPMs along conventional roadways; clarification needed for usage of RPMs along two-way left-turn lanes.
3B-60	3B.16	10	Add text to reference bicycle boxes in Part 9.	<i>Text modified.</i> <b>Justification:</b> Added Bicycle Boxes based on recommendations from the NCUTCD.
4D-14	Section 4D.11	07C	Add Standard for two-inch wide yellow retroreflective border on signal backplates	<i>Text modified.</i> <b>Justification:</b> Experience with use of two-inch retroreflective borders on backplates have shown superior improvements in conspicuity compared to thinner borders.
4E-7 to 4E-10	Section 4E.08 Figure 4E-3 Figure 4E-4	04 06A	Add text to Section 4E.08 paragraph 04 with additional criteria regarding 10” guidance at landing area and extension. Revise wording in Section 4E.08 paragraph 06A. Update depictions of landing areas and pedestrian pushbuttons in Figure 4E-3 and Figure 4E-4.	<i>Text and figures modified.</i> <b>Justification:</b> Corrected issues with landing areas in Figure 4E-4. Updated for current practice in Delaware for Figure 4E-3.

6E-11	Section 6E.08	01A 01B 04A	Add Standard to prohibit flagger stations on Interstates, Freeways, and Expressways. Add Option for use of flaggers to support emergencies and incidents. Add Guidance for location of flagger stations for moving operations on two-lane, two-way roadways.	<i>Text added.</i> <b>Justification:</b> Reflects DelDOT's current standard practice.
6F-1 6F-11	Section 6F.01 Section 6F.03	02 03 05 18	Add reference to AASHTO's <i>Manual for Assessing Safety Hardware</i> (MASH) when referring to NCHRP Report 350	<i>Text modified.</i> <b>Justification:</b> AASHTO's MASH is an update to NCHRP Report 350
6F-11	Section 6F.04	04 – 06	Add Guidance, Option, and Standard for use of ballasts and sandbags with temporary sign stands.	<i>Text added.</i> <b>Justification:</b> Reflects DelDOT's current standard practice.
6F-3 6F-20 6F-26 6H-79 6H-81	Table 6F-1 Figure 6F-5 Section 6F.59 Figure 6H-28 Figure 6H-29	03, 13 & 13A	Add the following signs to Table 6F-1 and Figure 6F-5: M4-9-DE1 (48"x36" I/F/E, 30"x24" Other), M4-9b-DE (9"x12"), and M4-9b-DE1 (9"x12"). Update text in Section 6F.59 to include new signs. Update the TA-28 and TA-29 to show new smaller signs.	<i>Text, table and figures modified.</i> <b>Justification:</b> There have been reports that motorists have confused pedestrian / bicycle detour signs for vehicular detour signs. The smaller version of these signs for pedestrians / bicyclists are intended to reduce driver confusion
6F-24	Section 6F.50	02A	Replace Share the Road plaque with W11-1-DE.	<i>Text modified.</i> <b>Justification:</b> Text updated to reflect DelDOT's current standard practice to discontinue the use of the Share the Road plaque, as discussed in the <i>Bicycle Warning Sign and Share the Road Plaque</i> memorandum.
6F-29	Section 6F.60	30D	Add Guidance for placement of portable changeable message sign and drums to accommodate bicycles to the extent possible on conventional roads.	<i>Text added.</i> <b>Justification:</b> Reflects DelDOT's current standard practice.
6F-37	Section 6F.67	01	Add Standard for base color of drums (orange).	<i>Text added.</i> <b>Justification:</b> Reflects DelDOT's current standard practice.
6G-10	Section 6G.13	04A	Update text to include reference to <i>Traffic Control Within Intersections</i> memorandum.	<i>Text modified.</i> <b>Justification:</b> The memorandum describes DelDOT's current standard practice.
6G-12	Section 6G.14	05 06	Add Standard to prohibit use of flaggers on Interstates, Freeways, and Expressways. Add Option for use of flaggers to support emergencies or incidents	<i>Text added.</i> <b>Justification:</b> Reflects DelDOT's current standard practice.
6G-16	Section 6G.22	All	Create new section based on <i>Interim Guidance – Rolling Road Blocks</i> memorandum.	<i>Section added.</i> <b>Justification:</b> The memorandum describes DelDOT's current standard practice.

# PROPOSED REGULATIONS

6G-17	Section 6G.23	All	Create new section based on <i>Interim Guidance – Installing and Removing TTC Devices</i> memorandum.	<i>Section added.</i> <b>Justification:</b> The memorandum describes DelDOT's current standard practice.
6G-19	Section 6G.24	All	Create new section based on <i>Interim Guidance – Aerial Work</i> memorandum.	<i>Section added.</i> <b>Justification:</b> The memorandum describes DelDOT's current standard practice.
6H-38	Figure 6H-11A	01	Include Note 2 (Standard) from Figure 6H-11 in Figure 6H-11A	<i>Figure modified.</i> <b>Justification:</b> Modifications to regulatory signs (e.g., new STOP signs and new intersection traffic control types/operations), albeit temporary, require DelDOT Traffic's formal approval and Traffic Control Device Authorization.
6H-66 & 6H-67	Figure 6H-21A	-	Create new typical application (TA-21A) for turn lane closure (left-turn or right-turn lane). Include shoulder closure taper transitioning into in-place left or right turn lane closure.	<i>Figure added.</i> <b>Justification:</b> A right-turn lane closure is a very common MOT application; yet, TA-21 is primarily intended for thru lane applications and TA-23 is a relatively uncommon double left-turn lane closure.
6H-71	Figure 6H-23	-	Shift signs and sign dimensions A and B on the eastbound approach back.	<i>Figure modified.</i> <b>Justification:</b> The former sign dimensions erroneously depicted the stop line as the primary point of measure; however, the beginning of the turn lane closure taper is the appropriate reference point.
7B-1 7B-4 7B-7 7B-9	Table 7B-1 Figure 7B-1 Figure 7B-3 Figure 7B-5	-	Update name and size of overhead school speed limit sign in Table 7B-1. Update overhead school speed limit sign in Figures 7B-1, 3, and 5.	<i>Table and figures modified.</i> <b>Justification:</b> Previously, sign read "School Speed XX Limit When Flashing". Sign has been updated to read "School Speed Limit XX When Flashing" as described in <i>Interim Guidance – Overhead School Speed Limit XX When Flashing Sign</i> memorandum.
7B-7 7B-9 7B-13	Figure 7B-3 Figure 7B-5 Section 7B.15	17 & 18	Update school speed limit assembly signs with flashing beacons in Figures 7B-3 and 7B-5. Remove paragraph 18 in Section 7B.15, as paragraph 16 is sufficient for the description and location of the beacons, and paragraph 18 is incorrect.	<i>Text and figures modified.</i> <b>Justification:</b> Flashing beacons on school speed limit sign assembly has been updated to comply with MUTCD standards. Previously, both flashing beacons were located on top of the assembly, an arrangement which should only be used at railroad crossings.
7B-10	Section 7B.12	04A	Add paragraph 04A to Section 7B.12 to include R1-5 series signs.	<i>Text modified.</i> <b>Justification:</b> Updated text to reflect the FHWA official interpretation of the R1-5 series described in <i>FHWA Official Interpretation – R1-5 Sign</i> memorandum.
9B-2 9B-5 9B-8	Table 9B-1 Figure 9B-2(1) Section 9B.11	06 - 09	Add text and update table and figure for new EXCEPT BICYCLES R3-7bP plaque.	<i>Text, table, and figure modified.</i> <b>Justification:</b> Added plaque based on recommendations from the <i>NCUTCD Except Bicycles Plaque</i> and <i>FHWA Interim Approval #18</i> memorandums.

9B-3 9B-11 9B-15	Table 9B-1 Section 9B.19 Figure 9B-3 Figure 9B-5	02	Remove W16-1P sign from Table 9B-1 and Figure 9B-3 (no longer related to bicycles). Add W11-1-DE sign to Figure 9B-3. Replace paragraph 02 with Option for W11-1-DE instead of SHARE THE ROAD plaque.	<i>Text, table, and figures modified.</i> <b>Justification:</b> New Bicycle IN LANE warning sign added based on DelDOT's current practice. Text updated to reflect DelDOT's current standard practice to discontinue the use of the Share the Road plaque, as discussed in the <i>Bicycle Warning Sign and Share the Road Plaque</i> memorandum.
9B-4	Section 9B.04	01A	Add Guidance for use of Bike Lane (R3-17) sign.	<i>Text added.</i> <b>Justification:</b> Reduce overuse of signs.
9B-5 9B-6 9B-7 9C-2	Figure 9B-2(1) Section 9B.05 Figure 9C-1	01 - 04	Eliminate use of the R4-4. Replace all references to R4-4 with R4-4-DE. Modify text to allow optional use of R4-4-DE for all weaving movements between bicycles and right-turning vehicles.	<i>Table and figures modified.</i> <b>Justification:</b> Application of both sign messages was confusing.
9B-20	Section 9B.27 Figure 9B-9	01 - 05	Add new section for Low Stress Bicycle Network Signs.	<i>Section and figure added.</i> <b>Justification:</b> Signs allow a new classification of bicycle facilities.
9B-15 9C-2 9C-3 9C-4 9C-6 9C-7 9C-8 9C-13 9C-14 9C-15 9C-16 9C-17	Figure 9B-5 Figure 9C-1 Figure 9C-1A Figure 9C-1B Figure 9C-1D Figure 9C-1E Figure 9C-1F Figure 9C-4 Figure 9C-4A Figure 9C-5 Figure 9C-6 Figure 9C-6A	-	Remove optional signs from figures.	<i>Figures modified.</i> <b>Justification:</b> Optional signs shown on figures have led to the overuse of optional signs.
9C-9	Figure 9C-1G	-	Remove Figure 9C-1G	<i>Figure removed.</i> <b>Justification:</b> Figure is no longer needed since the use of raised pavement markers is changing in Part 3 and will no longer be used along dotted lines.
9C-10	Section 9C.04	03A	Modify the Guidance text to include "should" condition.	<i>Text modified.</i> <b>Justification:</b> Clarified Guidance statement.
9C-12 9C-15 9C-16	Section 9C.04 Figure 9C-4B Figure 9C-4C	15 – 21	Add paragraphs 15 – 21 in Section 9C.04. Add Figures 9C-4B and 9C-4C.	<i>Text and figures added.</i> <b>Justification:</b> Text and figures added to depict common practice in Delaware for right-turn lane treatments where space does not exist to provide a dedicated bicycle lane to the left of a right-turn only lane, as described in the <i>Interim Guidance; Part 9, Right-Turn Lane Markings for Bicycles</i> memorandum.

9C-23	Section 9C.08	01 – 07	Add new section and figures.	<i>Text and figures added.</i>
9C-25	Figure 9C-10			<b>Justification:</b> Added Bicycle Boxes based on recommendations from the <i>NCUTCD Bicycle Box</i> and <i>FHWA Interim Approval #18</i> memorandums.
9C-26	Figure 9C-11			

**\*Please Note:**

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

<http://regulations.delaware.gov/register/november2017/proposed/21 DE Reg 412RFA 11-01-17.pdf>

(2) **Due to the size of the proposed regulation, the Delaware Manual on Uniform Traffic Control Devices is not being published here. A PDF version is available at the following location:**

DE MUTCD Revision 3 - Part 1 - General

<http://regulations.delaware.gov/register/november2017/proposed/MUTCDPart1General.pdf>

DE MUTCD Revision 3 - Part 2 - Signs

<http://regulations.delaware.gov/register/november2017/proposed/MUTCDPart2Signs.pdf>

DE MUTCD Revision 3 - Part 3 - Markings

<http://regulations.delaware.gov/register/november2017/proposed/MUTCDPart3Markings.pdf>

DE MUTCD Revision 3 - Part 4 - Highway Traffic Signals

<http://regulations.delaware.gov/register/november2017/proposed/MUTCDPart4HighwayTrafficSignals.pdf>

DE MUTCD Revision 3 - Part 6 - Temporary Traffic Control

<http://regulations.delaware.gov/register/november2017/proposed/MUTCDPart6TemporaryTrafficControl.pdf>

DE MUTCD Revision 3 - Part 7 - School Areas

<http://regulations.delaware.gov/register/november2017/proposed/MUTCDPart7SchoolAreas.pdf>

DE MUTCD Revision 3 - Part 9 - Bicycle Facilities

<http://regulations.delaware.gov/register/november2017/proposed/MUTCDPar9BicycleFacilities.pdf>

## DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 21 Delaware Code, Section 4504 (21 **Del.C.** §4504)  
2 **DE Admin. Code** 2405

### PUBLIC NOTICE

#### 2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual

Pursuant to the authority provided by 21 **Del.C.** §4504, the Delaware Department of Transportation (DelDOT), adopted the Oversize/Overweight Hauling Permit Policy and Procedures Manual.

The Department, through its Division of Transportation Solutions, seeks to adopt general revisions to its existing regulation, the Oversize/Overweight Hauling Permit Policy and Procedures Manual, to address procedural changes. These collective changes are administrative in nature and serve in part to clarify the intent of the Department as enacted through these regulations.

#### Public Comment Period

DelDOT will take written comments on these proposed general revisions to Section 2405 of Title 2, Delaware Administrative Code, from November 1, 2017 through December 1, 2017. The public may submit their comments to:

Adam Weiser, P.E., PTOE, Safety Programs Manager, Traffic Section

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([Adam.Weiser@state.de.us](mailto:Adam.Weiser@state.de.us)) or in writing to his attention,  
Division of Transportation Solutions  
Traffic Safety Section  
Delaware Department of Transportation  
169 Brick Store Landing Road  
Smyrna, DE 19977

**\*Please Note:**

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

<http://regulations.delaware.gov/register/november2017/proposed/21 DE Reg 418RFA 11-01-17.pdf>

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

[2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual](#)

## 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(b) (14 **Del.C.** §122(b))

**REGULATORY IMPLEMENTING ORDER****903 Best Interest Determination Process for School Placement - Students in Foster Care****I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

The Secretary of Education intends to amend 14 **DE Admin. Code** by adding a new regulation 903 Best Interest Determination Process for School Placement- Students in Foster Care. The regulation is required by Senate Bill 87 of the 149<sup>th</sup> General Assembly. Specifically, this regulation outlines the process for determining whether remaining in the school of origin is in the best interest of a student in foster care, including: 1) the timeline for the best interest meetings; 2) mandatory participants in the best interest meetings; and 3) how the decisions for best interest is determined.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on September 1, 2017, in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Citizens, State Council for Persons with Disabilities, the Office of the Child Advocate, and an individual citizen.

There were comments related to participation of individuals at the Best Interest meeting and the final decision, and the parties responsible for that final decision. The Department notes that every individual attending the Best Interest meeting has the opportunity for input; however, to facilitate the decision-making process the final determination is entrusted to the required participants. A comment was made regarding a dispute resolution process and the amended language makes reference to a process. A comment was made regarding defining "developmentally appropriate" for invitation to the Best Interest meeting. The comment was considered and it was determined that no specific definition be included because it is a term of art well understood by the agency personnel. Comments were received regarding considering the appropriateness of the current education setting and the proximity of the child to the school. These matters are part of the approved Best Interest Meeting

Determination Form.

Comments were received regarding the applicability of the regulation to the enabling Delaware statute. The Department considered the comment and determined that the specific provision in the current law controls. The regulation was amended for clarification that the regulation applies to students in foster care in accordance with the specific provisions of the law. Comments were received regarding applicable to charter schools in 3.1.3. A charter school operates under a single charter regardless of the grade configuration. Comments were received regarding the timing of the notification of the Department related to the inability of the Best Interest meeting to be schedule under the required timeline provisions. This notification does not affect the provision of services. Clarification was made to address the applicability of other federal laws.

## II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** by adding a new regulation 903 Best Interest Determination Process for School Placement - Students in Foster Care because of Senate Bill 87 of the 149<sup>th</sup> General Assembly.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** by adding a new regulation 903 Best Interest Determination Process for School Placement - Students in Foster Care. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 903 Best Interest Determination Process for School Placement - Students in Foster Care attached hereto as *Exhibit "B"* is hereby added to 14 **DE Admin. Code**. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 903 Best Interest Determination Process for School Placement - Students in Foster Care hereby added to 14 **DE Admin. Code** 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** 903 Best Interest Determination Process for School Placement - Students in Foster Care hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 903 Best Interest Determination Process for School Placement - Students in Foster Care 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 13, 2017. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

## VI. Effective Date of Delaware Statute

Notice is hereby given to the Register of Regulations that the publication of this final regulation 14 **DE Admin. Code** 903 Best Interest Determination Process for School Placement - Students in Foster Care is required for sections 1, 2 and 3 of Senate Bill 87 of the 149<sup>th</sup> General Assembly to become effective.

**IT IS SO ORDERED** the 13<sup>th</sup> day of October 2017.

### **Department of Education**

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

Approved this 13<sup>th</sup> day of October 2017

### **903 Best Interest Determination Process for School Placement - Students in Foster Care**

#### **1.0 Purpose**

Under 14 **Del.C.** §202A, a student in the custody of DSCYF [who is in foster care] must remain in the student's School of Origin unless a determination is made that it is not in the student's best interest to attend such

school. The purpose of this regulation is to provide the process for the determination of best interest in school placement decisions for students in foster care.

## **2.0 Definitions**

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

**"Best Interest Meeting"** means the convening of certain individuals as noted within this regulation to determine if the student should remain in the "school of origin".

**"Best Interest Meeting Determination Form (Foster Care)"** means the document, which may be amended from time to time, approved by the Department for use in the determination of best interest in school placement decisions for students in foster care.

**"Charter School"** means a charter school board established pursuant to Chapter 5 of Title 14 of the Delaware Code.

**"Child in DSCYF custody"** or **"student in foster care"** means a student in the custody of the Department of Services for Children, Youth and Their Families (DSCFY) pursuant to Chapter 25 of Title 13 of the Delaware Code.

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

**"DFS"** means the Division of Family Services, a unit of the Delaware Department of Services for Children, Youth and Their Families.

**"DFS Caseworker"** means the caseworker assigned to the student in foster care.

**"DSCYF"** means the Delaware Department of Services for Children, Youth and Their Families.

**"LEA Foster Liaison"** means the Local Educational Agency Liaison for students in foster care.

**"Local School District"** shall mean a reorganized school district or vocational technical school district established by 14 Del.C. Ch. 10.

**"Secretary"** means the Secretary of Education.

**"State Coordinator"** means the Delaware Coordinator for Education of Students in Foster Care.

## **3.0 School of Origin for Students in Foster Care**

3.1 **"School of Origin"** means the following:

3.1.1 the school in which the student is enrolled at the time of entry into [the] foster care;

3.1.2 the school in which the student is enrolled at the time of change of placement while in foster care;  
or

3.1.3 the school identified for the next grade level in the same Local School District where the child in foster care is enrolled.

## **4.0 Best Interest Meeting Timeline**

4.1 A Best Interest meeting must occur within five (5) school days based on the School of Origin's school [instructional] calendar [or seven (7) business days in the event of the summer recess]:

4.1.1 when a student is placed into foster care;

4.1.2 when there is a change in foster care placement; or

4.1.3 when the student leaves the custody of DSCYF.

4.2 If it is determined a Best Interest Meeting under subsection 4.1 cannot occur within the specified time, documentation identifying the reason for the meeting delay shall be provided to the State Coordinator within ten (10) working days. This information shall be provided annually to the chief school officer of the local school district or charter school.

4.3 If subsection 4.1 is not applicable, a Best Interest meeting shall be held at least once a year, preferably within the last two (2) months of the school calendar.

## **5.0 Process for the Determination of Best Interest**

- 5.1 The DFS Caseworker and LEA Foster Care Liaison shall be responsible for the coordination of the date, time, and method for the Best Interest Meeting using available technology; however, in person attendance is preferred.
- 5.1.1 The LEA Foster Liaison shall:
- 5.1.1.1 invite needed educationally related participants; and
- 5.1.1.2 invite the special education administrator or designee from the student's school of residence, based on the address of the DSCYF custody placement at the time of the meeting, and the student's School of Origin[, and the educational surrogate parent when applicable] to participate in the Best Interest meeting if the student is eligible for or receiving special education services.
- 5.1.2 The DFS Caseworker shall:
- 5.1.2.1 invite the parent(s) or legal guardian(s) or Relative Caregiver, foster care parent(s), attorney for the child or CASA, and educational decision maker, as applicable; and
- 5.1.2.2 invite the student to attend when it is determined to be developmentally appropriate by the DFS Caseworker.
- 5.2 The Best Interest Meeting shall be conducted in a manner that results in the Best Interest Determination Form (Foster Care) being completed.
- 5.3 The Best Interest determination shall be made by the following individuals:
- 5.3.1 a representative of DSCYF, **[preferable preferably]** the DFS Caseworker,
- 5.3.2 a representative of the student's School of Origin, and
- 5.3.3 a representative of the student's school of residence based on the address of the DSCYF custody placement at the time of the meeting.
- 5.4 If no agreement is reached by all of the representatives specified in subsection 5.3 for changing the school placement from the School of Origin to the student's school of residence, based on the address of the DSCYF custody placement at the time of the meeting, then the student shall remain in the School of Origin **[pending finalization of any applicable dispute resolution process].**
- 5.4.1 Except in accordance with subsection 5.4.2, a subsequent Best Interest Meeting shall not occur unless subsection 4.1 or subsection 4.3 applies.
- 5.4.2 If exigent circumstances exist for a subsequent Best Interest Meeting to occur, an application shall be submitted on a form approved by the Department to the State Coordinator. The Secretary or designee will determine whether to approve the application for the requested subsequent Best Interest Meeting.

## **[6.0 Applicability**

- 6.1 Nothing in this regulation shall alter a Local School District or Charter School's duties under the Individual with Disabilities Act (IDEA) or 14 DE Admin. Code 922 through 929. Nothing in this regulation shall prevent a Local School District or Charter School from providing supportive instruction to children with disabilities in a manner consistent with the Individuals with Disabilities Education Act (IDEA) and Delaware Department of Education regulations.**
- 6.2 Nothing in this regulation shall alter a Local School District or Charter School's duties under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act to students who are qualified individuals with disabilities. Nothing in this regulation shall prevent a Local School District or Charter School from providing supportive instruction to such students.]**
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# FINAL REGULATIONS

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES COMMISSION FOR STATEWIDE CONTRACTS TO SUPPORT EMPLOYMENT FOR INDIVIDUALS WITH DISABILITIES

Statutory Authority: 16 Delaware Code, Section 9604(a)(2)b and (e) (16 **Del.C.** §9604(a)(2)(b) and (e))

### ORDER

#### 9102 Regulations for Set Aside Contracts

#### BEFORE THE STATE USE LAW COMMISSION OF THE STATE OF DELAWARE

**AND NOW**, this 17<sup>th</sup> day of October, 2017, the Commission for Statewide Contracts to Support Employment for Individuals with Disabilities (the "Commission") determines and orders the following:

**WHEREAS**, pursuant to 16 **Del.C.** §9604(e) and 29 **Del.C.** §10111, the Commission has the statutory power and authority to promulgate regulations which, inter alia, will govern its operations; and

**WHEREAS**, pursuant to 29 **Del.C.** §§10113(b)(1) and (2), the Commission wishes to adopt and promulgate such regulations and to publish them in the Registrar of Regulations as required by 29 **Del.C.** §10113; and

**WHEREAS**, these regulations describe and govern the Commission's operations, including the process by which central nonprofit agencies are selected; contracts, or portions of contracts, are set aside and awarded to central nonprofits or community rehabilitation programs; and prices are set. Hence, these regulations are exempt from formal notice requirements pursuant to 29 **Del.C.** §10113(b)(2) and 16 **Del.C.** §9604(e), and no formal notice period or public comment period is required pursuant to 29 **Del.C.** §§10115 to 10118;

#### **NOW, THEREFORE, IT IS ORDERED BY THE AFFIRMATIVE VOTE OF NOT FEWER THAN FOUR COMMISSIONERS:**

1. Pursuant to 16 **Del.C.** §9604(e) and 29 **Del.C.** §10113(b)(2), the Commission hereby adopts the Regulations for Set Aside Contracts (the "Rules") as its official regulations as defined by 29 **Del.C.** §1132(3). A true and correct copy of the Rules is attached as **Exhibit "A"**.

2. The Director of the Division for the Visually Impaired shall transmit a copy of this order (with the attached Rules) to the Registrar of Regulations for publication in the Delaware *Register*. An exact copy of the Rules shall be published as the current official regulations in the Delaware *Register*.

3. The Commission reserves the jurisdiction and authority to enter such further orders in this matter as may be deemed necessary or proper, including promulgating any amendments to the Rules and promulgating any additional regulations in the future.

#### **BY ORDER OF THE COMMISSION:**

Doyle Dobbins, Vice-Chair - member of public

Deloris Hayes-Arrington (Finance) - Finance member

Dean Stotler, GSS - GSS Director

Carvella Jackson - member of public

Cynthia Fairwell (DOL) - DVR Director

[NOTE: Two voting members from the public have not been appointed as of this date.]

#### **9102 Regulations for Set Aside Contracts**

#### **1.0 General Provisions**

The Commission for Statewide Contracts to Support Employment for Individuals with Disabilities (the "Commission") is established by Chapter 96 of Title 16 of the Delaware Code. The purpose of these regulations is to guide the Commission in its work of enabling, through set aside contracts, the employment of Delaware citizens who are visually impaired or who have other disabilities.

## **2.0 Definitions**

The following words and terms, when used in these regulations, have the following meaning unless such terms are otherwise defined in the Delaware Code or unless the context clearly indicates otherwise. Words used in the singular number include the plural, and the plural includes the singular. Words importing the masculine gender include the feminine as well and all singular terms will include the plural, except as otherwise clearly indicated by the context.

**"Central nonprofit agency" or "CNA"** means any nonprofit entity under 26 U.S.C. §501 that is organized under the laws of the State of Delaware and that the Commission selects to do at least one of the tasks set forth in either 16 **Del.C.** §9602(3)a or §9602(3)b.

**"Community rehabilitation program" or "CRP"** means any entity that provides or coordinates rehabilitation services for individuals with visual impairments and other disabilities, including assessment, customized employment, medical, personal assistance, psychiatric, psychological, rehabilitation technology, supported employment, or vocational services. A CRP typically will contract with a state agency, such as the Division of Vocational Rehabilitation, the Division for the Visually Impaired, the Division of Substance Abuse and Mental Health, the Division of Developmental Disabilities Services, or the Division of Services for Aging and Adults with Physical Disabilities, to provide assistance to eligible individuals according to their needs in all areas of community participation, including the assistance individuals may need to obtain and keep employment.

**"Fair market value"** means the price, service level, quality, and life cycle costing for a product or service that is commercially reasonable when compared to the open market.

**"Government Support Services" or "GSS"** means the section of the Office of Management and Budget that is established by and has all of the powers, duties, and functions set forth in 29 **Del.C.** §6308A.

**"Procurement list"** means the list of formally negotiated contacts by Government Support Services for the purchase of products or services as reference in 16 **Del.C.** §9604(d).

**"Set-aside contract"** means a formal, negotiated agreement between one or more CNAs or CRPs and Government Support Services for a service or product that has been exempted from the procurement process under Chapter 69 of Title 29 of the Delaware Code and awarded by the Commission for a price that the Commission has approved.

## **3.0 Selection, Accountability, and Funding of CNAs**

- 3.1 **CNA Selection.** The Commission shall designate one or more CNAs for a three-year period, after which each designated CNA may apply to renew its designation for another three years. Applications for CNA status may be made to the Commission between March 1<sup>st</sup> and April 30<sup>th</sup> and between September 1<sup>st</sup> and October 31<sup>st</sup> of each calendar year. The CNA selection criteria shall be reviewed and revised periodically by the Commission. Nevertheless, an applicant must demonstrate the following minimum criteria:
- 3.1.1 Its tax-exempt non-profit entity status under 26 U.S.C. §501 and under similar state income tax codes. Such status must be verified by providing proper documentation;
  - 3.1.2 Its ability to manage contracts within the State of Delaware;
  - 3.1.3 Its expertise in the employment of persons with visual impairments or other disabilities, which may include evidence of its history of providing job opportunities to such persons;
  - 3.1.4 Its capacity to fulfill the duties of a CNA, as described in subsection 3.2 of these regulations; and
  - 3.1.5 Its ability to fulfill the duties of a CNA as shown by letters of reference from CRPs with which it intends to subcontract.
- 3.2 **Duties of the CNAs.** The responsibilities of the CNAs shall include, but not be limited to, the following:
- 3.2.1 Recruiting and assisting CRPs in developing and submitting proposals for set aside contracts for suitable products and services;
  - 3.2.2 Facilitating the distribution of subcontracts among CRPs;

- 3.2.3 Managing and coordinating the deliverables of service under set aside contracts, including quality assurance and general administration of subcontracts with CRPs;
  - 3.2.4 Handling complaints and ongoing customer relations with agencies of this State;
  - 3.2.5 Educating and training CRPs to improve the quality and cost-effectiveness of services described in set aside contracts;
  - 3.2.6 Promoting the increase in supported employment opportunities for persons who are visually impaired or who have other disabilities;
  - 3.2.7 Marketing products and services to potential consumers;
  - 3.2.8 Researching and developing products and services;
  - 3.2.9 Producing content that the Commission may consider for inclusion in its annual report and in other public relations materials or submitting information to the Commission that may be included in the Commission's annual report;
  - 3.2.10 Preparing accurate purchase orders and invoices for those set aside contracts mentioned by the CNA;
  - 3.2.11 Making payments to CRPs in a timely manner; and
  - 3.2.12 Other duties as designated by the Commission.
- 3.3 Semi-annual Reviews. The Commission or its designee shall conduct semi-annual reviews of the services provided by CNAs to determine whether the CNAs have fulfilled the duties listed in subsection 3.2 of these regulations. The Commission shall use as the basis for its reviews the work and performance of the CNAs as documented in its meeting minutes from regularly-scheduled meetings or as documented in other materials that have been provided upon the Commission's request. The reviews must be completed between March 1st and April 30<sup>th</sup> and between September 1<sup>st</sup> and October 31<sup>st</sup> of each calendar year. If the Commission notes any deficiencies in the performance of a CNA, the Commission will negotiate with the CNA a mutually-agreeable corrective action plan.
- 3.4 CNA Management Fees. CNA management fees must be included as part of any approved set aside contract price for products or services. Invoices will be paid according to the contract price. Agreements between CNAs and CRPs regarding management fees charged by the CNAs may be reviewed annually by the Commission. Subsection 5.7 of these regulations provides guideline for CNAs and CRPs with regard to fair market value.
- 3.5 CRP Affiliation Prohibited. CNAs shall not require CRPs to pay membership dues in order for CRPs to be assigned a subcontract under set aside contracts held by the CNAs.
- 3.6 Direct Contracting by CRPs. CRPs may receive set aside contracts directly from the Commission or from the State if the CRPs' personnel can fulfill the duties normally expected of a CNA as described in subsection 3.2 of these regulations.
- 3.7 State Agency CNAs. The Division for the Visually Impaired will fulfill the duties of a CNA for the Delaware Industries for the Blind. Other state agencies may apply to be considered as CNAs by the Commission if the agencies can fulfill the duties of CNAs as described in subsection 3.2 of these regulations.

#### **4.0 Duties of the CRPs**

- 4.1 The responsibilities of the CRPs shall include, but not be limited to, the following:
- 4.1.1 Recruiting and assisting individuals with disabilities for opportunities and job placement in set aside contracts for suitable products and services;
  - 4.1.2 Facilitating the distribution of opportunities for individuals with disabilities among established set aside contracts;
  - 4.1.3 Managing and coordinating the deliverables of service under set aside contracts, including quality assurance and general administration of set aside contracts they hold or through the CNA on whose behalf they are performing services;
  - 4.1.4 Handling complaints and ongoing customer relations with agencies of this State when directly contracted and through their CNAs when subcontracted;

- 4.1.5 Educating and training individuals with disabilities to improve the quality and cost-effectiveness of services described in set aside contracts;
- 4.1.6 Promoting the increase in supported employment opportunities for persons who are visually impaired or who have other disabilities;
- 4.1.7 Marketing products and services to potential consumers;
- 4.1.8 Researching and developing products and services;
- 4.1.9 Producing content that the Commission may consider for inclusion in its annual report and in other public relations materials or submitting information to the Commission that may be included in the Commission's annual report;
- 4.1.10 Preparing accurate purchase orders and invoices for those set aside contracts under which they are operating; and
- 4.1.11 Other duties as designated by the Commission.

## **5.0 Set Aside Contract Requests**

- 5.1 All set aside contract requests submitted by a CRP, its designed CNA, or both, if applicable, must provide all relevant information required by the Commission.
- 5.2 Agencies and community service providers who desire to participate in set aside contract requests need to provide verification that they are a CRP as defined by Delaware law. A CNA is responsible for ensuring that CRPs with which it subcontracts meet the requirements for participation.
- 5.3 When a CNA or a CRP wants to develop and research a new product or service for a set aside contract, the CNA or CRP may submit to the Commission a "Request for Assignment." The form set forth in Section 9.0 must be used when requesting an assignment.
- 5.4 The period allowed for developing the new product or service should not exceed twelve (12) months.
- 5.5 At the end of a development period, the CNA or CRP must present the assigned product or service to the Commission for its consideration as a set aside contract. If the CNA or CRP does not request a set aside contract at that time, then the CNA or the CRP may request a time extension. If a CNA or a CRP requests a time extension, the Commission may approve a six-month extension by a majority vote at a regularly-scheduled and convened meeting and shall document such granted time extension.
- 5.6 In keeping with the scope and purpose of 16 **Del.C.** Ch. 96, the Commission, designated CNAs, and any CRPs assigned to a set aside contract must assure that persons who are visually impaired or who have other disabilities as defined by the Americans with Disabilities Act of 1990 (ADA) will perform 75% of all direct labor for service-based contracts and 50% of all direct labor for product-based contracts. A phase-in plan may be requested by the CNA or the CRP, and any such approved phase-in plan will start at 25% less than the direct labor requirements, with that percentage increased to the required minimum standards as soon as possible, but no less than eighteen (18) months into the term of the set aside contract.
- 5.7 The Commission will typically consider products or services proposed to it if the price of the product or service is within 10% or less of the amount the State is currently paying, or if the price is 10% or less than or within the fair market value.
- 5.8 If two CRPs or CNAs request a set aside contract for the same service or product at the same time, the Commission will determine which agency is best prepared to provide the service or product by evaluating each CNA based on criteria delineated in subsections 3.1 and 3.2 and by evaluating each CRP based on the criteria delineated in subsection 4.1.

## **6.0 Information for a Set Aside Contract**

- 6.1 The designated CNA and CRP must provide the following information when requesting a set aside contract for a particular product or service:
  - 6.1.1 A copy of a specification or a clear description of the product or service, including samples of products, when appropriate.
  - 6.1.2 A verification of the fair market value and employment impact, which may include:

- 6.1.2.1 Obtaining the most recent state bidding or award information;
- 6.1.2.2 Providing commercial or competitive price information; and
- 6.1.2.3 Identifying the anticipated number of people who will be employed by the set aside contract.

6.2 Based on a majority vote, and after it has assured itself that the designed CNA and/or CRP has provided it with all of the necessary information, the Commission will review and respond to the CNA and/or CRP regarding the acceptability of the proposal for a set aside contract.

## **7.0 Approved Set Aside Contracts**

- 7.1 To approve a set aside contract request, the majority of the members present at two properly-noticed and convened public meetings of the Commission must vote upon the request. If the request is deemed to be an urgent circumstance, the majority of the Commission members may vote to waive the waiting period and may approve the set aside contract request at one properly-noticed and convened public meeting.
- 7.2 Once the Commission has approved a set aside contract, it shall notify in writing GSS and the CRP, CNA, or both regarding the approval and provide to GSS a copy of the set aside contract.
- 7.3 GSS shall add the approved set aside contract to the procurement list of products and services and shall publish the procurement list on the State's "My Marketplace" website portal or on any other state electronic procurement advertising system.
- 7.4 The Commission, a CNA, a CRP, or GSS may recommend that a product or service be removed from the procurement list after the Commission has documented that the product or service is no longer needed. The removal of any product or service from the procurement list will depend on an analysis provided by GSS and on GSS' protocols for making such changes.
- 7.5 Set Aside Contract Promotion. In keeping with the scope and purpose of 16 Del.C. Ch. 96, the Commission may promote the purchase of products and services that are within approved set aside contracts and ensure that approved set aside contracts are published on the procurement list that is circulated to all State agencies and other government entities in the State of Delaware. The Commission, CRPs, and designated CNAs may monitor available spend data for State agencies to determine whether or not the products and services offered through the procurement list are procured from the set aside contract holder.

## **8.0 Changes to an Established Set Aside Contract**

- 8.1 After an initial set aside contract has been established, the State or a CRP and/or its designated CNA may request the following changes:
  - 8.1.1 Price Changes and Modifications. The request must verify fair market value and employment impact by:
    - 8.1.1.1 Providing written substantiation for a price modification;
    - 8.1.1.2 Obtaining the most recent state bidding or award information;
    - 8.1.1.3 Providing commercial or competitive price information;
    - 8.1.1.4 Submitting a new cost analysis that highlights changes from the original set aside contract; and
    - 8.1.1.5 Providing updated or new information on the number of people employed by the set aside contract.
- 8.2 Transfer of Set Aside Contract. From time to time it may be necessary for a CNA or a CRP to cease performing a service or providing a product that is the subject of a set aside contract.
  - 8.2.1 If the contract is held by a CNA, the CNA may transfer the set aside contract to a different CRP as long as no modifications are made to the set aside contract. The CNA shall notify the Commission at its next regularly-scheduled meeting that the CNA has transferred the set aside contract to a different CRP.

- 8.2.2 If the transfer of the set aside contract is from one CNA to another CNA, the transfer must be ratified by a majority vote of Commission members that are present at the next regularly-scheduled Commission meeting.
- 8.2.3 If a CRP abandons a set aside contract or is unable to fulfill its contractual duties under a set aside contract, the CPR must immediately notify the Commission and Government Support Services.
- 8.2.4 The transferring and receiving CRP and/or designated CNA must develop a detailed plan for the transfer of a set aside contract to ensure that there will be no disruption of service.

## **9.0 Request for Assignment Form**

The following shall be the "Request for Assignment" form that must be used by a CNA or a CRP that wants to develop and research a new product or service for a set aside contract:

AGENCY:

\_\_\_\_\_

DATE:

\_\_\_\_\_

LIST PRODUCT(S) AND/OR SERVICE(S) TO BE ASSIGNED FOR DEVELOPMENT:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ESTIMATED TIME NEEDED TO DEVELOP:

\_\_\_\_\_

COMMENTS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ASSIGNMENT DATE:

\_\_\_\_\_

NAME / TITLE:

\_\_\_\_\_  
\_\_\_\_\_

REQUESTING AUTHORITY:

**10.0 Effective Date**

This regulation is effective ten days after publication in the *Delaware Register of Regulations*.

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**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

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

**ORDER****Dental Fee Schedule****NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XIX Medicaid State Plan regarding Delaware Medicaid's Dental Fee Schedule, specifically, *to reduce reimbursement rates for dental services*. 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 August 2017 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 2017 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**SUMMARY OF PROPOSAL**

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding Delaware Medicaid's Dental Fee Schedule, specifically, *to reduce reimbursement rates for dental services*.

**Statutory Authority**

- 42 CFR 447.205, *Public notice of changes in Statewide methods and standards for setting payment rates*
- 42 CFR 440.100, *Dental Services*
- 42 CFR 447.201, *State plan requirements*

**Background**

According to Health Policy Institute (HPI), Delaware Medicaid ranks the highest with regard to payment of dental services to the Medicaid provider community at 81.1% of commercial insurance charges. Delaware reimburses dental providers a full 10.2% higher than the second highest ranking Medicaid agency, West Virginia, who has reimbursement rates at 69.9%. New Jersey and Connecticut Medicaid reimburse providers at 68.8% and 66.8% respectively.

In an effort to minimize Delaware's budget deficit, the Governor included a 14% reduction in dental rates, expected to take effect July 1, 2017, in the Fiscal Year (FY) 17/18 budget. This reduction aligns Delaware Medicaid more closely with other state Medicaid agencies. With this reduction in dental rates, Delaware still places among the three highest paying state Medicaid agencies, with regard to dental reimbursements. Additionally, DMMA has been working closely with this provider community to discuss the best strategy with regarding what types of services the rate reduction would be best absorbed by. With these factors in mind, Delaware does not anticipate that the 14% rate reduction in dental reimbursement will adversely affect access to dental care.

DMMA's current network includes dentists located in Delaware and the surrounding states. This network, highly concentrated in New Castle County, includes General Dentistry, Endodontics, Pediatric Dentistry, Oral and Maxillofacial Surgery, and Orthodontics and Dentofacial Orthopedics. DMMA will monitor the network for effects as a result of the rate reduction before and after the reduction is in place, and make adjustments if access to care is

likely to become impacted.

**Summary of Proposal**

*Purpose*

The purpose of this proposed regulation is to reduce Delaware Medicaid reimbursement rates for dental services.

*Summary of Proposed Changes*

Effective for services provided on and after July 1, 2017 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Title XIX Medicaid State Plan to reduce dental service rates.

*Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on August 31, 2017.

*Centers for Medicare and Medicaid Services Review and Approval*

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

*Provider Manuals Update*

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

**Fiscal Impact Statement**

Delaware pays the highest rate for Medicaid Pediatric Dental services in the country according to a Health Policy Institute Research Brief from 2013 (<http://www.aapd.org/assets/1/7/PolicyCenter-TenYearAnalysisOct2014.pdf>). A reduction of 14% will bring the dental rates more in compliance with other State Medicaid Dental Rates.

The following savings are projected:

	Federal Fiscal Year 2018	Federal Fiscal Year 2019
General (State) funds	\$2,600,649	\$2,639,659
Federal funds	\$4,147,273	\$4,209,482

**Summary of Comments Received with Agency Response and Explanation of Changes**

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

First, SCPD and GACEC indicated that there is justification for the proposed rate reduction.

**Agency Response:** DMMA thanks both councils for their support.

Second, SCPD and GACEC observed the new rates would result in a higher reimbursement than application of the same rate in a state with a low commercial/insurance rate.

**Agency Response:** DMMA thanks both councils for their support.

Third, SCPD indicated that "...it would be difficult to prompt reconsideration of the proposed Medicaid Plan amendment."

**Agency Response:** DMMA thanks the council for its support.

Fourth, SCPD and GACEC commented that the lower reimbursement rates in our sister states have not had any negative effect on access to dentists accepting Medicaid.

**Agency Response:** DMMA thanks both councils for their comments.

Fifth, SCPD and GACEC commented that DMMA projects a cost savings of \$2.6 million in state funds and \$4.1 million in federal funds in FY18. Therefore, while the State may save \$2.6 million, the value of this savings is undercut by the loss of \$4.1 million in federal dollars to the Delaware economy.

**Agency Response:** DMMA acknowledges the comment.

Sixth, SCPD and GACEC commented that while Delaware is at the forefront in supporting child dental services, it is lagged in supporting adult dental services.

**Agency Response:** While the proposal addresses dental care for children, the agency thanks both councils for the recommendation regarding adult dental.

DMMA is appreciative of the comments from The State Council for Persons with Disabilities and the Governor's Advisory Counsel for Exceptional Citizens. DMMA is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given.

#### FINDINGS OF FACT:

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

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend Title XIX Medicaid State Plan regarding specifically, *to reduce reimbursement rates for dental services* is adopted and shall be final effective November 11, 2017.

Kara Odom Walker, MD, MPH, MSHS,  
Secretary, DHSS  
10/19/17

#### FINAL REGULATION

Attachment 4.19-B  
Page 19

#### STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT STATE/TERRITORY: **DELAWARE**

#### METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES- OTHER TYPES OF CARE

#### Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services

Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services are reimbursed as follows. Except as otherwise noted in the plan, State developed fee schedule rates are the same for both government and private providers.

Dental Services - Effective for dates of service on or after ~~April~~ July 1, 2012 2017, Delaware pays for dental services at the lower of:

- the provider's billed amount that represents their usual and customary charge; or
- the Delaware Medicaid maximum allowed amount per unit per covered dental procedure code according to a published fee schedule.

The Delaware Medicaid dental fee schedule will be developed based on the National Dental Advisory Service (NDAS) annual Comprehensive Fee Report. For each covered dental procedure code, Delaware's maximum allowable amount will be computed as a percentage of the NDAS published national fee. Delaware will rebase its

dental fee schedule rates each time the NDAS publishes a new survey.

~~General Dental Services shall be paid at 84% of the NDAS 70th percentile amounts~~

~~Specialty Dental Services shall be paid at 80% of the NDAS 80th percentile amounts.~~

Preventive General Dental Services shall be paid at 50.00% of the NDAS 70th percentile amounts

Restorative General Dental Services shall be paid at 97.00% of the NDAS 70th percentile amounts

Adjunctive General Dental Services shall be paid at 72.24% of the NDAS 70th percentile amounts

Specialty Dental Services shall be paid at 68.80% of the NDAS 80th percentile amounts

Access-Based Fees for certain specialty procedure codes may be established to account for deficiencies in rates that are based on the NDAS fee schedule percentages above relating to the adequacy of access to health care services for Medicaid clients. ~~These rates will be published on the DMAP website and a state plan amendment will be submitted any time these rates change indicating the new effective date.~~

The maximum allowed amounts for procedure codes not included in the NDAS fee schedule or for new procedure codes established after the annual NDAS fee schedule is published will be based on the existing rates for similar existing services. If there are no similar services the maximum allowed amount is set at 80% of the estimated average charge until a rate can be established based on the NDAS fee schedule.

The dental fee schedule is available on the Delaware Medicaid Assistance Program (DMAP) Medical Assistance Portal website at: <http://www.dmap.state.de.us/downloads.html> <https://medicaid.dhss.delaware.gov>

TN No. SPA <u>#17-020</u>	Approval Date _____
Supersedes	
TN No. SPA <u>#12-005</u>	Effective Date <u>July 1, 2017</u>

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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)  
16 DE Admin. Code 30000

### ORDER

### Prescription Assistance

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Delaware Social Services Manual (DSSM) regarding Prescription Assistance, specifically, *to eliminate the Delaware Prescription Drug Payment Assistance Program*. 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 August 2017 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 2017 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Social Services Manual (DSSM) Prescription Assistance, specifically, *to eliminate the Delaware Prescription Drug Payment Assistance Program*.

#### Statutory Authority

29 Del.C. §6502 Annual estimates of expenditures

### Background

The Delaware Prescription Assistance Program (DPAP) was established by the Delaware General Assembly on January 14, 2000, when Senate Bill 6 was passed during the 1999 Legislative Session. DPAP is funded by the Delaware Health Fund and provides prescription and over-the-counter drug coverage to qualified Delaware citizens. In 2007 the Bill was amended to allow the program to pay for the members' Medicare Part D premium. By paying for the premium, clients had access to all of the Medicare drug benefits.

Individuals with Medicare (the majority of DPAP clients) would select a Part D Prescription Drug Plan and apply for Extra Help (Low-Income Subsidy) through the Social Security Administration. The Low-Income Subsidy, or LIS, which is paid by the Centers for Medicare & Medicaid Services, would provide financial assistance (at levels of 100%, 75%, 50%, and 25%) for monthly Part D premiums, annual deductibles, and prescription coverage through the Part D coverage gap to low-income individuals. Medicare Part D would be primary to the Delaware Prescription Assistance Program.

The most recent internal Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) report indicates that all but two members have prescription coverage through Medicare Part D. The program is being eliminated due to a reduction in usage, along with an overall reduction in expenditures by DMMA.

### Summary of Proposal

#### *Purpose*

The purpose of this proposed regulation is to eliminate the Delaware Prescription Drug Payment Assistance Program.

#### *Summary of Proposed Changes*

Effective for services provided on and after July 1, 2017, Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend the Delaware Social Services Manual to eliminate the Delaware Prescription Drug Payment Assistance Program.

#### *Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on August 31, 2017.

#### *Provider Manuals Update*

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

### Fiscal Impact Statement

The following fiscal savings are projected:

	State Fiscal Year 2018	State Fiscal Year 2019
General (State) funds	\$-2,500,000	\$-0-
Federal funds	\$-0-	\$-0-

### Summary of Comments Received with Agency Response and Explanation of Changes

The State Council for Persons with Disabilities (SCPD) and the Governor's Advisory Council for Exceptional

Citizens (GACEC) offered the following summarized observations:

First, SCPD and GACEC commented that it would be informative to disclose what costs the DPAP covered which Medicare-D and the Low-Income Subsidy do not cover.

**Agency Response:** The DPAP provided coverage for certain Over-the-Counter (OTC) products that are not covered through Medicare Part D. DPAP also provided prescription drug coverage for eligible members during the Part D deductible period and coverage gap, up to the program's \$3,000.00 benefit cap per individual per year.

Second, SCPD and GACEC requested additional information on the effect of the repeal.

**Agency Response:** Effects of the program's termination will vary by individual and may include:

- Increased/new monthly Part D premium obligation;
- Increased/new out-of-pocket expenses while in the Part D deductible period; and
- Increased out-of-pocket expenses while in the Part D coverage gap (also called the "donut hole").

DMMA notified DPAP members about the potential for increased out-of-pocket expenses resulting from the termination of the program. DPAP members were encouraged to consult Medicare to explore options for Part D coverage to help reduce out-of-pocket costs whenever possible.

Third, the SCPD requested "a copy of the last three annual reports prepared pursuant to the recently-repealed 16 Del.C. §3006B."

**Agency Response:** DMMA provided the requested annual reports.

DMMA is appreciative of the comments from the State Council for Persons with Disabilities and the Governor's Advisory Council for Exceptional Citizens. DMMA is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given.

## FINDINGS OF FACT:

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

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Delaware Social Services Manual (DSSM) regarding Prescription Assistance, specifically, *to eliminate the Delaware Prescription Drug Payment Assistance Program*, is adopted and shall be final effective November 11, 2017.

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

**\*Please note that no changes were made to the regulation as originally proposed and published in the August 2017 issue of the *Register* at page 127 (21 DE Reg. 127). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**Prescription Assistance**

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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)  
16 DE Admin. Code 20620

### ORDER

#### Reasonable Limits on Care Expenses

## NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XIX Medicaid State Plan and the Delaware Social Services Manual (DSSM) regarding Reasonable Limits on Care Expenses, specifically, *to clarify remedial care deductions for pre-incurred Medical expenses*. 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 2017 Delaware *Register of Regulations*, requiring written materials and suggestions from

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the public concerning the proposed regulations to be produced by October 2, 2017 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

### SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan and the Delaware Social Services Manual (DSSM) regarding Reasonable Limits on Care Expenses, specifically, *to clarify remedial care deductions for pre-incurred Medical expenses.*

### Statutory Authority

- 42 CFR 435.725(b)

### Background

Section 1902(r)(1)(A) of the Social Security Act requires States to take into account, under the post-eligibility process, amounts for incurred medical and remedial care expenses that are not subject to payment by a third party. Section 1902(r)(1)(A)(ii) permits States to place "reasonable" limits on the amounts of necessary medical and remedial care expenses recognized under State law but not covered under the State plan. However, those reasonable limits must ensure that nursing home residents are able to use their funds to purchase necessary medical or remedial care not paid for by the State Medicaid program or another third party.

Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) will be submitting a state plan amendment to recognize incurred medical or remedial care expenses as those that are incurred during the three months preceding the month of application.

### Summary of Proposal

The purpose of this proposed regulation is to *clarify remedial care deductions for pre-incurred Medical expenses.*

### Summary of Proposed Changes

Effective for services provided on and after July 1, 2017 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Title XIX Medicaid State Plan and Delaware Social Services Manual (DSSM) *to clarify remedial care deductions for pre-incurred Medical expenses.*

### Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on October 2, 2017.

### Centers for Medicare and Medicaid Services Review and Approval

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

### Provider Manuals Update

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

**Fiscal Impact Statement**

The following fiscal impact is projected:

	Federal Fiscal Year 2017	Federal Fiscal Year 2018
General (State) funds	\$ 5,725	\$ 22,900
Federal funds	\$ 6,775	\$ 27,100

**Summary of Comments Received with Agency Response and Explanation of Changes**

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

The SCPD and GACEC are endorsing the proposed regulation since the proposal benefits Medicaid enrollees receiving HCBS or institutional services with little fiscal impact.

**Agency Response:** DMMA appreciates both councils endorsement.

DMMA is appreciative of the comments from State Council for Persons with Disabilities and the Governor's Advisory Council For Exceptional Citizens. DMMA is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given.

**FINDINGS OF FACT:**

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

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend Title XIX Medicaid State Plan and the Delaware Social Services Manual (DSSM) regarding Reasonable Limits on Care Expenses, specifically, to clarify remedial care deductions for pre-incurred Medical expenses is adopted and shall be final effective November 11, 2017.

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

**FINAL**

Supplement 3 to  
Attachment 2.6-A  
Page 1

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
STATE/TERRITORY: **DELAWARE**

REASONABLE LIMITS IN AMOUNTS FOR NECESSARY MEDICAL OR  
REMEDIAL CARE NOT COVERED UNDER MEDICAID

Reasonable and necessary medical expense not covered by Medicaid, incurred in the three (3) months period prior to the month of application are allowable deductions. Expenses incurred prior to this three month period are not allowable deductions.

The deduction for medical and remedial care expenses that were incurred as the result of imposition of a transfer of asset penalty period is limited to zero.

TN No. SPA #07-023	Approval Date _____
Supersedes	
TN No. SPA 06-003	Effective Date July 1, 2017

**FINAL**

**20620.2.3 Prior Medical Costs**

Medical costs incurred in a prior period of ineligibility (if approved by Medicaid) may be protected from his/her income. Costs incurred in a period of ineligibility must be approved by the Medicaid State Office prior to being protected and will only be considered if incurred within ~~30 days~~ three (3) months of the beginning date of Medicaid eligibility.

The recipient's reimbursement level and patient pay amount must be identified. Medicaid will protect at the Medicaid reimbursement rate, not the private pay rate.

The period of ineligibility may be caused by excess resources or excess income.

Protections for which the individual is seeking coverage will not be granted if the ineligible period occurred during a transfer of assets penalty phase.

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**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

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

**ORDER**

**Inpatient Psychiatric Hospital Services For Individuals Under Age 21**

**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XIX Medicaid State Plan regarding Inpatient Psychiatric Hospital Services for Individuals under Age 21, specifically, *to clarify reimbursement methodology for psychiatric residential treatment facilities (PRTFs)*. 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 2017 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 2, 2017 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**SUMMARY OF PROPOSAL**

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding Inpatient Psychiatric Hospital Services for Individuals under Age 21, specifically, *to clarify reimbursement methodology for psychiatric residential treatment facilities (PRTFs)*.

**Statutory Authority**

- Section 1905(r) of the Social Security Act, *Early and Periodic Screening, Diagnostic, and Treatment Services*
- Section 1905(a)(16), *Inpatient Psychiatric Hospital Services for Individuals under Age 21*
- 42 CFR §441 Subpart B, *Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) of Individuals under Age 21*
- 42 CFR §440.60, *Medical or other remedial care provided by licensed practitioners*
- 42 CFR §440.130, *Diagnostic, screening, preventive, and rehabilitative services*
- 42 CFR §447.205, *Public notice of changes in statewide methods and standards for setting payment rates*
- State Medicaid Manual, Section 5010, *Early and Periodic Screening, Diagnostic, and Treatment Services*

**Background**

The Psychiatric Services for Individuals under Age 21 benefit at section 1905(a)(16) of the Act, is optional. The benefit must be provided in all States to those individuals who are determined during the course of an Early and

Periodic Screening, Diagnosis, and Treatment (EPSDT) screen to need this type of inpatient psychiatric care. Under the EPSDT provision, States must provide any services listed in section 1905(a) of the Act that is needed to correct or ameliorate defects and physical and mental conditions discovered by EPSDT screening, whether or not the service is covered under the State plan.

This benefit, *Inpatient Psychiatric Hospital Services for Individuals under Age 21*, hereinafter referred to as "Psych under 21," is a service most states have chosen to provide as an optional benefit. Services are provided in psychiatric hospitals or psychiatric units in a hospital, or psychiatric facilities for which states may define accreditation requirements, subject to requirements at 42 CFR 441 Subpart D. Among the requirements for this service is certification of need for inpatient care, and a plan of care for active treatment, developed by an interdisciplinary team.

This benefit is significant as a means for Medicaid to cover the cost of inpatient mental health services. The federal Medicaid program does not reimburse states for the cost of institutions for mental diseases (IMDs) except for young people, who receive this service, and individuals age 65 or older served in an IMD. No later than age 22, individuals are transitioned to community services, or non-Medicaid inpatient services.

Many states provide psych under 21 services through psychiatric residential treatment facilities (PRTFs). A PRTF provides comprehensive mental health treatment to children and adolescents (youth) who, due to mental illness, substance abuse, or severe emotional disturbance, are in need of treatment that can most effectively be provided in a residential treatment facility. All other ambulatory care resources available in the community must have been identified, and if not accessed, determined to not meet the immediate treatment needs of the youth.

PRTF programs are designed to offer a short term, intense, focused mental health treatment program to promote a successful return of the youth to the community. Specific outcomes of the mental health services include the youth returning to the family or to another less restrictive community living situation as soon as clinically possible and when treatment in a PRTF is no longer medically necessary. The residential treatment facility is expected to work actively with the family, other agencies, and the community to offer strengths-based, culturally competent, medically appropriate treatment designed to meet the individual needs of the youth including those identified with emotional and behavioral issues.

To view the Centers for Medicare & Medicaid Services (CMS) Informational Bulletin regarding Inpatient Psychiatric Hospital Services for Individuals under age 21, use the following link:

<https://www.medicaid.gov/Federal-Policy-Guidance/downloads/CIB-11-28-12.pdf>

## **Summary of Proposal**

### *Purpose*

The purpose of this proposed regulation is to ensure coverage for Inpatient Psychiatric Hospital Services for Individuals under Age 21 by clarifying reimbursement methodologies.

### *Summary of Proposed Changes*

Effective for services provided on and after October 1, 2017 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Title XIX Medicaid State Plan to clarify the reimbursement methodologies for Inpatient Psychiatric Hospital Services for Individuals under Age 21.

### *Public Notice*

In accordance with the federal public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on October 2, 2017.

### *Centers for Medicare and Medicaid Services Review and Approval*

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

### *Provider Manuals Update*

Also, there may be additional provider manuals that will require small updates as a result of these changes.

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

#### Fiscal Impact Statement

There are no intended content changes other than revised reimbursement methodology. The proposed amendment imposes no increase in cost on the General Fund as the proposed services in this State plan amendment will be budget neutral. The federal fiscal impact associated with this amendment will be zero dollars.

#### Summary of Comments Received with Agency Response and Explanation of Changes

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

First, both commenters offered grammatical suggestions.

**Agency Response:** DMMA has revised the policy to include the suggested changes.

Second, both commenters referenced that the deletion of the "add on" for "activities in the plan of care but not in the per diem" is not revenue neutral. And if new third bullet only applied to out-of-state facilities, the deletion creates a lower reimbursement methodology for out-of-state facilities versus in-state facilities. The suggestion was made to amend the new third bullet to authorize an "add on" for "activities in the plan of care but not in the per diem".

**Agency Response:** DMMA appreciates the comment and agrees with the commenters. The third bullet was revised to include the "add on" for "activities in the plan of care but not in the per diem".

#### FINDINGS OF FACT:

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

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend Title XIX Medicaid State Plan regarding Inpatient Psychiatric Hospital Services for Individuals under Age 21, specifically, to clarify reimbursement methodology for psychiatric residential treatment facilities (PRTFs), is adopted and shall be final effective November 11, 2017.

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

FINAL

ATTACHMENT 4.9-A.3

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: **DELAWARE**

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES  
INPATIENT PSYCHIATRIC HOSPITAL SERVICES FOR UNDER **[AGE]** 21

#### 1. Psychiatric Residential Treatment Facility (PRTF) Reimbursement

Reimbursement for services are based upon a Medicaid fee schedule established by the State of Delaware. Psychiatric

residential treatment facilities will be reimbursed the lesser of:

- The Delaware Medicaid per diem reimbursement rate for activities in the per diem plus additional fee-for-service reimbursement using the Delaware Medicaid fee schedule for activities on the plan of care but not in the per diem;
- The **[facilities facility's]** usual and customary charge to privately insured or private-pay beneficiaries; or

- ~~If an out of state facility, the specific in-state PRTF interim Medicaid per diem reimbursement rate for the activities included in that state's per diem rate with additional fee for service reimbursement using the Delaware Medicaid fee schedule for activities on the plan of care but not in that state's per diem reimbursement.~~
- **[If an out of state facility, ~~It~~the lesser of a negotiated per diem reimbursement rate, the [facilities facility's] usual and customary charge, or the Delaware Medicaid per diem rate. [For plan of care activities not included in the per diem, additional fee-for-service reimbursement using the Delaware Medicaid fee schedule is available.]**

Except as otherwise noted in the State Plan, the State-developed fee schedule is the same for both governmental and private individual providers and the fee schedule and any annual/periodic adjustments to the fee schedule are published in the Delaware Register of Regulations. The Agency's fee schedule rate was set as of July 1, 2016 and is effective for services provided on or after that date. All rates are published on the Delaware Medical Assistance Program (DMAP) website at [www.dmap.state.de.us/downloads/hcpcs.html](http://www.dmap.state.de.us/downloads/hcpcs.html).

- A. Delaware Medicaid per diem PRTF reimbursement rate includes the following covered inpatient psychiatric residential treatment facility (PRTF) activities for individuals under twenty-one years of age when included on the patient's inpatient psychiatric active treatment plan of care:
- a. Behavioral Health care by staff who are not physicians
  - b. Occupational Therapy / Physical Therapy / Speech Therapy
  - c. Laboratory
  - d. Transportation
  - e. Dental
  - f. Vision
  - g. Diagnostics/radiology (x-ray)

Starting on 1/1/2019, dental, vision, laboratory, and diagnostics/radiology are excluded from this rate and paid through EPSDT under authority of the 21st Century Cures Act.

TN No. SPA <u>#17-025</u>	Approval Date _____
Supersedes	
TN No. SPA <u>16-004</u>	Effective Date <u>October 1, 2017</u>

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## DEPARTMENT OF INSURANCE OFFICE OF LEGAL AND SPECIAL PROJECTS

Statutory Authority: 18 Delaware Code, Sections 311 and 526 (18 **Del.C.** §§311 & 526)  
18 **DE Admin. Code** 301

### REGULATORY IMPLEMENTING ORDER

#### 301 Audited Financial Reports

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Department of Insurance gave notice in the Delaware *Register of Regulations* at 21 **DE Reg.** 191 (09/01/2017) of its proposal to amend Department of Insurance Regulation 301 relating to audited financial reports and financial statements of insurance companies. The Department's internal docket number for this regulatory project is 3575-2017.

The purpose of the proposed amendment to Regulation 301 is to update the existing financial report and audit requirements to conform to the Model Regulation published by the National Association of Insurance

Commissioners (NAIC), by adding new section 15, recodifying sections 15 through 19 as 16 through 20 with no change in text, and updating definitions and internal cross references. The model regulation can be viewed on the NAIC's website at

[http://www.naic.org/documents/cmte\\_f\\_materials\\_%20annual\\_financial\\_reporting\\_model\\_reg\\_205.pdf](http://www.naic.org/documents/cmte_f_materials_%20annual_financial_reporting_model_reg_205.pdf).

The Department did not hold a public hearing on the proposed regulation. The Department accepted written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment until the 2nd day of October, 2017, which was thirty days from the date of publication.

The Department received the same comment from Highmark Blue Cross/Blue Shield of Delaware and from the American Council of Life Insurers. Both commenters pointed out that in revising and recodifying Section 16.5.1 to 17.5.2, the Department struck out the requirement that it keep all records submitted to it under this provision confidential. The confidentiality requirement is a part of the model rule that the Department proposed to codify, and should therefore be added back in on adoption.

The Department agrees with the commenters. Removing the word "confidential" is a technical error that can be addressed in this order without the need for re-proposal. See 29 **Del.C.** §10113(b)(4).

## II. FINDINGS OF FACTS

The Commissioner finds that it is appropriate to amend 18 **DE Admin. Code** 301 to conform this regulation to the Model Regulation published by the NAIC.

The Commissioner further finds that the word "confidential" should be restored to Section 16.5.1, as recodified at Section 17.5.2, as indicated in the attached version of the regulation.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Commissioner concludes that it is appropriate to amend 18 **DE Admin. Code** 301, with the correction of the technical error at Section 16.5.1 recodified at 17.5.2.

## V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Commissioner pursuant to 18 **Del.C.** §§311 and 526, and 29 **Del.C.** Ch. 101 on October 16, 2017. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

**IT IS SO ORDERED.** The 16<sup>th</sup> day of October, 2017

Trinidad Navarro  
Commissioner

### 301 Audited Financial Reports

#### 1.0 Authority

~~[4.4]~~ This regulation is promulgated and adopted pursuant to 18 **Del.C.** §§~~314, 322(a), 324~~ 311 and 526 and 29 **Del.C.** §~~10117~~ Ch. 101.

*(Break in Continuity of Sections)*

#### ~~46.0~~ 17.0 Management's Report of Internal Control over Financial Reporting

*(Break in Continuity Within Section)*

~~46.5~~ 17.5 Management shall document and make available upon financial condition examination the basis upon which its assertions, required in ~~Section 46.4 subsection 17.4~~ above, are made. Management may base its assertions, in part, upon its review, monitoring and testing of internal controls undertaken in the normal course of its activities; and shall be subject to the following:

*(Break in Continuity Within Section)*

~~46.5-2~~ 17.5.2 The Department shall keep **[confidential]** Management's Report on Internal Control over Financial Reporting, required by ~~Section 46.4 subsection 17.1~~, and any documentation provided in support thereof during the course of a financial condition examination, ~~shall be kept confidential by the Insurance Department.~~

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**\*Please note that no additional changes were made to the regulation as originally proposed and published in the September 2017 issue of the *Register* at page 191 (21 DE Reg. 191). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

**301 Audited Financial Reports**

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## OFFICE OF LEGAL AND SPECIAL PROJECTS

Statutory Authority: 18 Delaware Code, Sections 311 and 915 (18 **Del.C.** §§311 & 915)  
18 **DE Admin. Code** 1003

### ORDER

#### 1003 Credit for Reinsurance

Regulation 1003, Credit for Reinsurance, sets forth the rules and procedural requirements that the Commissioner of the Delaware Department of Insurance deems necessary to carry out the provisions of the Reinsurance Act, 18 **Del.C.** §§910-916. Section 14.0 of Regulation 1003 governs the reinsurance contract. Subsection 14.1 provides that "credit will not be granted to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of Sections 4.0, 5.0, 6.0, 7.0, 8.0 or 9.0." However, the cross reference to Section 9.0 should be to Section 10.0.

By way of this notice, the Department is updating Subsection 14.1 to delete the cross reference to Section 9.0 and add the cross reference to Section 10.0.

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

It is so ordered. This 12<sup>th</sup> day of October, 2017.

Trinidad Navarro  
Commissioner, Delaware Department of Insurance

#### 1003 Credit for Reinsurance (*Break in Continuity of Sections*)

#### 14.0 Reinsurance Contract

- 14.1 Credit will not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of Sections 4.0, 5.0, 6.0, 7.0, 8.0 or ~~9.0~~ 10.0 of this regulation or otherwise in compliance with §911 of the Reinsurance Act after the adoption of this regulation unless the reinsurance agreement:

**\*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**

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

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

**NOTICE****Delaware Diamond State Health Plan**  
**1115 Demonstration Waiver Extension Request**

In compliance with federal public notice requirements of 42 U.S.C. §1315(d) and 42 CFR Part 431, Subpart G, as well as 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 Medicaid and Medical Assistance (DMMA) gives notice of its intent to file an application with the Centers for Medicare and Medicaid Services (CMS) to request an 18-month extension of the Diamond State Health Plan (DSHP) 1115 Demonstration Waiver, which is currently approved through December 31, 2018. The requested extension period is from January 1, 2019 through June 30, 2020. DHSS/DMMA is not requesting any changes to the DSHP 1115 Demonstration Waiver for the 18-month extension period.

**Purpose**

The purpose of this posting is to provide public notice and receive public input for consideration regarding Delaware's Diamond State Health Plan (DSHP) 1115 Waiver extension request.

**DSHP 1115 Waiver Program Description, Goals and Objectives**

Delaware's DSHP 1115 Demonstration Waiver was initially approved in 1995, and implemented on January 1, 1996. The original goal of DSHP 1115 Waiver was to improve the health status of low-income Delawareans by expanding access to healthcare to more individuals throughout the state; creating and maintaining a managed care delivery system with an emphasis on primary care; and controlling the growth of healthcare expenditures for the Medicaid population.

In order to achieve this goal, the DSHP 1115 Waiver was designed to mandatorily enroll eligible Medicaid recipients into managed care organizations (MCOs) and create efficiencies in the Medicaid program. Initial savings achieved under managed care enabled the expansion of coverage to certain individuals who would otherwise not be eligible for Medicaid, leading up to Medicaid expansion under the Affordable Care Act in 2014. Since 2012, the DSHP 1115 Waiver provides long-term services and support (LTSS) to eligible individuals through DSHP-Plus, as well as enhanced behavioral health services and supports for targeted Medicaid beneficiaries through a voluntary program begun in 2015 called Promoting Optimal Mental Health for Individuals through Supports and Empowerment (PROMISE). Most individuals enrolled in Medicaid and CHIP are enrolled in the DSHP 1115 Waiver and in MCOs. A limited number of benefits, such as children's dental and non-emergency transportation, are delivered through fee-for-service. PROMISE benefits are delivered through the fee-for-service PROMISE program administered through the Division of Substance Abuse and Mental Health (DSAMH). A complete description of the current DSHP 1115 Waiver is available at: <http://dhss.delaware.gov/dhss/dmma/medicaid.html>

Delaware's goal today in operating the DSHP 1115 Waiver demonstration is to improve the health status of low-income Delawareans by:

- Improving access to health care for the Medicaid population, including increasing options for those who need long-term care (LTC) by expanding access to HCBS;
- Rebalancing Delaware's LTC system in favor of HCBS;
- Promoting early intervention for individuals with, or at-risk, for having, LTC needs;
- Increasing coordination of care and supports;
- Expanding consumer choices;
- Improving the quality of health services, including LTC services, delivered to all Delawareans;

- Creating a payment structure that provides incentives for resources to shift from institutions to community-based LTSS services where appropriate;
- Improving coordination and integration of Medicare and Medicaid benefits for full-benefit dual eligibles;
- Expanding coverage to additional low-income Delawareans; and
- Improving overall health status and quality of life of individuals enrolled in PROMISE.

Delaware will continue working towards this goal to improve the health status of low-income Delawareans during the DSHP 1115 Waiver extension. Delaware is not proposing any changes to the DSHP 1115 Waiver eligibility, benefits, delivery system, cost-sharing, hypotheses, evaluation parameters, or waiver and expenditure authorities during the extension period. Delaware is requesting continuation of the existing DSHP 1115 Waiver special terms and conditions for the extension period. The extension period will permit DHSS/DMMA to plan and prepare a comprehensive application for a five-year renewal of the 1115 Waiver in a manner that reflects Delaware's vision for Medicaid and CHIP in 2020.

### Public Comment Submission Process

As required by 42 CFR Part 431, Subpart G, DHSS/DMMA must provide opportunity for public comment on the DSHP 1115 Waiver extension request. Per Del. Code, Title 29, Ch. 101 §10118(a), 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*.

The public is invited to review and comment on the proposed DSHP 1115 Waiver extension. Comments must be received by 4:30 p.m. on December 1, 2017. Comments may be submitted in the following ways:

This public notice is posted on the DHSS/DMMA website at: <http://dhss.delaware.gov/dhss/dmma/mc/mc.html>

Comments and input may be submitted in the following ways:

By email: [Nicole.M.Cunningham@state.de.us](mailto:Nicole.M.Cunningham@state.de.us)

By fax: 302-255-4413 to the attention of Nicole Cunningham

By mail: Nicole Cunningham

Division of Medicaid and Medical Assistance

Planning, Policy & Quality Unit

1901 North DuPont Highway

P.O. Box 906

New Castle, Delaware 19720-0906

Hardcopies of the public notice may also be obtained by contacting Nicole Cunningham at the address above.

Any public feedback received will be summarized including any changes that will be made as a result of the public comment to the proposed 1115 DSHP Waiver Extension that will be submitted to CMS.

Stephen M. Groff

10/6/17

Director

Division of Medicaid and Medical Assistance

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**CALENDAR OF EVENTS/HEARING NOTICES**

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**DELAWARE RIVER BASIN COMMISSION**  
**PUBLIC NOTICE**

The Delaware River Basin Commission will hold a public hearing on Wednesday, November 15, 2017 beginning at 1:30 p.m. A business meeting will be held the following month on Wednesday, December 13, 2017 beginning at 10:30 a.m. The hearing and meeting are open to the public and will be held at the Washington Crossing Historic Park Visitor Center, 1112 River Road, Washington Crossing, Pennsylvania. For more information, visit the DRBC web site at [www.drbc.net](http://www.drbc.net) or contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, at 609 883-9500 extension 203.

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**DEPARTMENT OF EDUCATION**  
**PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, November 16, 2017 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**  
**PUBLIC NOTICE**  
**Child Care Redetermination**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) is proposing to amend Division of Social Services Manual regarding Child Care Redetermination, specifically, *to add a graduated phase-out*.

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, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@state.de.us](mailto:Nicole.M.Cunningham@state.de.us), or by fax to 302-255-4413 by 4:30 p.m. on December 1, 2017. Please identify in the subject line: Child Care Redetermination.

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.

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**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**  
**PUBLIC NOTICE**  
**Relative Child Care**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) is proposing to amend Division of Social Services Manual regarding Relative Child Care, specifically, *to outline participation requirements, documentation and training*.

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, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@state.de.us](mailto:Nicole.M.Cunningham@state.de.us), or by fax to 302-255-4413 by 4:30 p.m. on December 1, 2017. Please identify in the subject line: Relative Child Care.

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.

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**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Targeted Case Management for Children and Youth with Serious Emotional Disturbance**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding Targeted Case Management (TCM) for Children and Youth with Serious Emotional Disturbance, specifically, *to establish coverage for targeted case management services for children and youth with serious emotional disturbance, mental health or substance use disorder or co-occurring mental health and substance use disorders meeting Department of Services to Children Youth and Their Families (DSCYF), Division of Prevention and Behavioral Health Services (DPBHS) eligibility criteria.*

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, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@state.de.us](mailto:Nicole.M.Cunningham@state.de.us), or by fax to 302-255-4413 by 4:30 p.m. on December 1, 2017. Please identify in the subject line: Targeted Case Management for Children and Youth with Serious Emotional Disturbance.

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.

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**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Special Needs Trust**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Delaware Social Services Manual (DSSM) regarding Special Needs Trust, specifically, to add the beneficiary to the list of people able to establish a trust on their behalf.

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, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@state.de.us](mailto:Nicole.M.Cunningham@state.de.us), or by fax to 302-255-4413 by 4:30 p.m. on December 1, 2017. Please identify in the subject line: Special Needs Trust.

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.

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**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Medicaid Managed Care Final Rule**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Division of Social Services Manual regarding Medicaid Managed Care Final Rule, specifically, *to align DMMA Medicaid Managed Care Policy with new Federal Requirements.*

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, Planning, Policy and Quality Unit,

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## CALENDAR OF EVENTS/HEARING NOTICES

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Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@state.de.us](mailto:Nicole.M.Cunningham@state.de.us), or by fax to 302-255-4413 by 4:30 p.m. on December 1, 2017. Please identify in the subject line: Medicaid Managed Care Final Rule.

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.

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### DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

#### PUBLIC NOTICE

#### Excluded Income

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Social Services Manual (DSSM) regarding application of Modified Adjusted Gross Income (MAGI) methodology, specifically, *to clarify excluded income*.

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, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@state.de.us](mailto:Nicole.M.Cunningham@state.de.us), or by fax to 302-255-4413 by December 1, 2017. Please identify in the subject line: Excluded income.

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.

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### DEPARTMENT OF INSURANCE

#### OFFICE OF THE COMMISSIONER

#### PUBLIC NOTICE

#### 307 Corporate Governance Annual Disclosure Regulation

The Department of Insurance hereby gives notice of proposed new Regulation 307 relating to Corporate Governance and Annual Disclosure. The proposed new regulation sets forth the procedures for filing and the required contents of the Corporate Governance Annual Disclosure (CGAD) prescribed by the Corporate Governance Annual Disclosure Act (the CGAD Act). Through the CGAD Act, the Legislature amended Title 18 of the Delaware Code by adding a new Chapter 85 (see Senate Bill No. 40 as amended by Senate Amendment No. 1, approved on August 2, 2017, effective on January 1, 2018). The CGAD Act requires that the first filing of the CGAD be in 2018. The Delaware Code authority for the new regulation is 18 **Del.C.** §311 and 18 **Del.C.** Chapter 85.

The Department of Insurance does not plan to hold a public hearing on the proposed new regulation. The proposed new regulation appears below and can also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed new regulation. Any written submission in response to this notice and relevant to the proposed new regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, the 4th day, December, 2017. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist  
Attn: Regulatory Docket No. 3608-2017  
Delaware Department of Insurance  
841 Silver Lake Drive  
Dover, DE 19904

(302) 674-7379

Email: [Leslie.Ledogar@state.de.us](mailto:Leslie.Ledogar@state.de.us)

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**OFFICE OF THE COMMISSIONER**  
**PUBLIC NOTICE**

**901 Arbitration of Automobile and Homeowners' Insurance Claims**

The Department of Insurance hereby gives notice of proposed amendments to Regulation 901, Arbitration of Automobile and Homeowners' Insurance Claims. The proposed amendments would raise the filing fees for Automobile Insurance and Homeowners' Insurance claims from \$30.00 to \$50.00. These fees have not been adjusted since the regulation was codified on March 1, 2002. The Department is also amending the regulation to update style. The Department is also proposing non-substantive amendments to correct style and subsection references.

The Department of Insurance does not plan to hold a public hearing on the proposed amendments. The proposed amendments appear below and can also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed new regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, the 4<sup>th</sup> day, December, 2017. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist  
Attn: Regulatory Docket No. 3647-2017  
Delaware Department of Insurance  
841 Silver Lake Drive  
Dover, DE 19904  
(302) 674-7379  
Email: [Leslie.Ledogar@state.de.us](mailto:Leslie.Ledogar@state.de.us)

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**OFFICE OF THE COMMISSIONER**  
**PUBLIC NOTICE**

**1301 Internal Review and Independent Utilization Review of Health Insurance Claims**

At 21 DE Reg 192 (September 1, 2017) the Department published a notice of its intent to amend Regulation 1301 and solicited written comments from the public for thirty (30) days as mandated by 29 **Del.C.** §10118(a).

In the Department's September 1 notice, the Department proposed to amend the definition of "Authorized Representative" and the content of the notice to be provided by insurance carriers to their insureds. These proposed amendments implement Section 3 of HB 100, which amended 18 **Del.C.** §332 to now require that an insurance carrier, when informing a covered person of its internal review process, must inform the covered person of the availability of assistance from the Delaware Department of Justice in the preparation of an appeal of an adverse determination involving treatment for substance abuse. HB 100 was signed into law on May 30, 2017, became effective on September 27, 2017 and sunsets on January 1, 2020 unless expressly reauthorized prior to that date. The Department also proposed non-substantive amendments to correct punctuation at subsections 3.1.6 and 9.4.6, and to correct style throughout subsections 5.7, 7.1 and 11.1, and throughout Sections 9.0 and 10.0.

In response to the comments received, the Department has determined to re-propose the amendments to Regulation 1301, with additional amendments that incorporate commenters' suggestions as noted in the above responses to comments.

The Department does not plan to hold a public hearing on the proposed amendments. The proposed amendments appear below and can also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>. The Department's docket number is DOI Docket No. 3571-

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2017. The re-proposal of companion amendments to Regulation 1315 may be viewed elsewhere in this edition of the *Register of Regulations*.

Any person may 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 new regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, on Monday, the 4<sup>th</sup> day, December, 2017. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist  
DOI Docket No. 3571-2017  
Office of Legal and Special Projects  
Delaware Department of Insurance  
841 Silver Lake Drive  
Dover, DE 19904  
(302) 674-7379  
Email: [Leslie.Ledogar@state.de.us](mailto:Leslie.Ledogar@state.de.us)

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**OFFICE OF THE COMMISSIONER**  
**PUBLIC NOTICE**

**1315 Arbitration of Health Insurance Disputes Between Individuals and Carriers**

At 21 DE Reg 196 (September 1, 2017) the Department published a notice of its intent to amend Regulation 1315 and solicited written comments from the public for thirty (30) days as mandated by 29 **Del.C.** §10118(a).

In the Department's September 1 notice, the Department proposed to amend the definition of "Authorized Representative" to implement Section 3 of HB 100. Section 3 of HB 100 amended 18 **Del.C.** §332 to now require that an insurance carrier, when informing a covered person of its right to appeal an adverse coverage decision, must inform the covered person of the availability of assistance from the Delaware Department of Justice in the preparation of an appeal of an adverse determination involving treatment for substance abuse. HB 100 was signed into law on May 30, 2017, became effective on September 27, 2017 and sunsets on January 1, 2020 unless expressly reauthorized prior to that date. The Department also proposed non-substantive amendments in punctuation and grammar throughout Sections 3 and 4.

In response to the comments received, the Department has determined to re-propose the amendments to Regulation 1315, with additional amendments that incorporate commenters' suggestions as noted in the above responses to comments.

The Department does not plan to hold a public hearing on the proposed amendments. The proposed amendments appear below and can also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>. The Department's docket number is DOI Docket No. 3572-2017. The re-proposal of companion amendments to Regulation 1301 may be viewed elsewhere in this edition of the *Register of Regulations*.

Any person may 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 new regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, on Monday, the 4<sup>th</sup> day, December, 2017. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist  
DOI Docket No. 3572-2017  
Office of Legal and Special Projects  
Delaware Department of Insurance  
841 Silver Lake Drive  
Dover, DE 19904  
(302) 674-7379  
Email: [Leslie.Ledogar@state.de.us](mailto:Leslie.Ledogar@state.de.us)

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL  
CONTROL****DIVISION OF WATER****PUBLIC NOTICE****7102 Regulations Governing Underground Injection Control**

The purpose of the proposed revisions is to bring the regulations into compliance with current federal requirements, as determined by the United States Environmental Protection Agency (EPA). The EPA issued the *Revisions to the Underground Injection Control (UIC) Regulations for Class V Injection Wells*, effective April 2000 and December 2011. With this, the State of Delaware Regulations Governing Underground Injection Control is to be amended. The revised State regulations will also expand the existing regulations to include additional requirements for multiple water management activities. The regulations were published in the May 1, 2017, Delaware *Register of Regulations* and a public hearing was held on May 25, 2017. As a result of additional review and comments received, changes were made to the initial proposed UIC regulations. Since changes were made by the Department subsequent to the hearing record having closed for public comment, the decision was made to republish this revised proposed regulation and to reopen the public comment period for an additional 30 days to provide complete transparency to the public.

The hearing record on the proposed changes to State of Delaware Regulations Governing Underground Injection Control will be re-opened November 1, 2017 for a 30-day public comment period ending at the close of business on December 1, 2017. Individuals may submit written comments regarding the proposed changes via e-mail to [Lisa.Vest@state.de.us](mailto:Lisa.Vest@state.de.us) or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042.

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**DEPARTMENT OF STATE****DIVISION OF PROFESSIONAL REGULATION****1725 POLYSOMNOGRAPHY ADVISORY COUNCIL****PUBLIC NOTICE**

The Delaware Polysomnography Council of the Board of Medical Licensure and Discipline, pursuant to 24 **Del.C.** §1799W(c), proposes to amend its rules and regulations. The proposed regulation change allows respiratory therapists with specific sleep credentials to act as supervisors to polysomnographic trainees.

The Council will hold a public hearing on the proposed regulation change on November 21, 2017 at 9:00 a.m., Second Floor Conference Room C, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Devashree Brittingham, Administrative Specialist of the Delaware Board of Medical Licensure and Discipline, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until December 6, 2017 pursuant to 29 **Del.C.** §10118(a).

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**DEPARTMENT OF TRANSPORTATION****DIVISION OF TRANSPORTATION SOLUTIONS****PUBLIC NOTICE****2402 Delaware Manual on Uniform Traffic Control Devices**

Under Title 17 of the Delaware Code, Sections 134 and 141, as well as 21 Delaware Code Chapter 41, the Delaware Department of Transportation (DelDOT), adopted a Delaware version of the Federal Manual on Uniform Traffic Control Devices (MUTCD). The Department has now drafted revisions to the Delaware MUTCD. A description of the proposed changes accompanies this notice.

The Department will take written comments on the draft changes to the Delaware MUTCD from November 1, 2017 through December 1, 2017. Copies of the Draft Delaware MUTCD Revisions can be obtained by reviewing or downloading a PDF copy at the following web address: <http://regulations.delaware.gov/>

Questions or comments regarding these proposed changes should be directed to: Mark Luszcz, P.E., PTOE,

Chief Traffic Engineer, Traffic Section, Division of Transportation Solutions, Delaware Department of Transportation, 169 Brick Store Landing Road, Smyrna, DE 19977 (302) 659-4062 (telephone) (302) 653-2859 (fax) [mark.luszcz@state.de.us](mailto:mark.luszcz@state.de.us).

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**DIVISION OF TRANSPORTATION SOLUTIONS****PUBLIC NOTICE****2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual**

Pursuant to the authority provided by 21 **Del.C.** §4504, the Delaware Department of Transportation (DelDOT), adopted the Oversize/Overweight Hauling Permit Policy and Procedures Manual.

The Department, through its Division of Transportation Solutions, seeks to adopt general revisions to its existing regulation, the Oversize/Overweight Hauling Permit Policy and Procedures Manual, to address procedural changes. These collective changes are administrative in nature and serve in part to clarify the intent of the Department as enacted through these regulations.

DelDOT will take written comments on these proposed general revisions to Section 2405 of Title 2, Delaware Administrative Code, from November 1, 2017 through December 1, 2017. The public may submit their comments to:

Adam Weiser, P.E., PTOE, Safety Programs Manager, Traffic Section  
([Adam.Weiser@state.de.us](mailto:Adam.Weiser@state.de.us)) or in writing to his attention,  
Division of Transportation Solutions  
Traffic Safety Section  
Delaware Department of Transportation  
169 Brick Store Landing Road  
Smyrna, DE 19977

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