
Delaware Register of Regulations

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Volume 23 - Issue 4, Pages 255 - 330



IN THIS ISSUE:

Regulations:
Proposed
Final

General Notices

Calendar of Events &
Hearing Notices



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

*Apple Basket
Cover Photo By
Dolores Michels*

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
November 1	October 15	4:30 p.m.
December 1	November 15	4:30 p.m.
January 1	December 16	4:30 p.m.
February 1	January 15	4:30 p.m.
March 1	February 17	4:30 p.m.

DIVISION OF RESEARCH STAFF

Mark Brainard, Joint Legislative Oversight Sunset Committee Analyst; **Mark J. Cutrona**, Director; **Deborah Gottschalk**, Legislative Attorney; **Robert Lupo**, Graphics and Printing Technician IV; **Colinda Marker**, Executive Assistant; **Amanda McAtee**, Joint Legislative Oversight Sunset Committee Analyst; **Kathleen Morris**, Office Manager; **Nathan Poore**, Graphics and Printing Technician I; **Victoria Schultes**, Administrative Specialist III; **Don Sellers**, Print Shop Supervisor; **Yvette W. Smallwood**, Registrar of Regulations; **Amy Tricarico**, Administrative Specialist II; **Holly Wagner**, Legislative Attorney; **Natalie White**, Administrative Specialist III; **Sara Zimmerman**, Legislative Librarian.

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

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Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF EDUCATION**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 4164(d) (14 **Del.C.** §4164(d))
14 **DE Admin. Code** 624

PUBLIC NOTICE**Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)****624 School District/Charter School Policy Prohibiting Cyberbullying****A. Type of Regulatory Action Required**

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

Pursuant to 14 **Del.C.** §4164(d), the Secretary of Education intends to amend 14 **DE Admin. Code** 624 School District/Charter School Policy Prohibiting Cyberbullying. This regulation is being amended to remove an outdated school year reference, update a statutory reference and to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 4, 2019 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, 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 the improvement of student achievement as measured against state achievement standards.

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

regulation is intended to continue to 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 do not address students' health and safety.

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

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/october2019/proposed/23 DE Reg 263RFA 10-01-19.pdf>

624 School District/Charter School Policy Prohibiting Cyberbullying

1.0 Cyberbullying Forbidden

In addition to the policy prohibiting bullying put in place by school districts and charter schools pursuant to 14 Del.C. §4112D(b)(2)§4164(d), each school district and charter school shall also prohibit cyberbullying (as defined herein) by students directed at other students. Incidents of cyberbullying shall be treated by each school district and charter school in the same manner as incidents of bullying, and notice of each school district's and charter school's policy against cyberbullying shall be provided to students, staff, and faculty in the same manner as notice of the school district's and charter school's policy against bullying.

2.0 Definition of Cyberbullying

- 2.1 Cyberbullying means the use of uninvited and unwelcome electronic communication directed at an identifiable student or group of students, through means other than face-to-face interaction, which (1) interferes with a student's physical well-being; or (2) is threatening or intimidating; or (3) is so severe, persistent, or pervasive that it is reasonably likely to limit a student's ability to participate in or benefit from the educational programs of the school district or charter school. Communication shall be considered to be directed at an identifiable student or group of students if it is sent directly to that student or group, or posted in a medium that the speaker knows is likely to be available to a broad audience within the school community.
- 2.2 Whether speech constitutes cyberbullying will be determined from the standpoint of a reasonable student of the same grade and other circumstances as the victim.
- 2.3 The place of origin of speech otherwise constituting cyberbullying is not material to whether it is considered cyberbullying under this policy, nor is the use of school district or charter school materials.
- 2.4 Upon implementation of this policy, and again at the beginning of each academic year, each school district and charter school shall inform students in writing of mediums where posting of speech will be presumed to be available to a broad audience within the school community, regardless of privacy

~~settings or other limitations on those postings. From implementation of this policy through the end of the 2013-2014 school year, postings on Facebook, Twitter, MySpace, YouTube, and Pinterest shall be included in each district's and charter school's list of mediums where posting of speech will be presumed to be available to a broad audience within the school community, regardless of privacy settings or other limitations on those postings.~~

- 2.5 Nothing in this policy shall limit in any way a school district's or charter school's ability to regulate student conduct, including bullying, in any manner provided for by existing law, regulation, or policy.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122 (14 Del.C. §122)
14 DE Admin. Code 718

PUBLIC NOTICE

Education Impact Analysis

718 Health Examinations for Employees of School Districts, Charter Schools, and Alternative Programs

A. Type of Regulatory Action Required

Repeal of Existing Regulation

B. Synopsis of Subject Matter of the Regulation

Pursuant to 14 Del.C. §122, the Secretary of Education intends to repeal 14 DE Admin. Code 718 Health Examinations for Employees of School Districts, Charter Schools and Alternative Programs. This regulation is being repealed as it is unnecessary or unduly burdensome, as these matters are covered by The Americans with Disabilities Act of 1990 as amended ("ADA").

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 4, 2019 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOERegulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary, located at the address above.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The repeal of Regulation 718 will not impact student achievement.
2. Will the amended regulation help ensure that all students receive an equitable education? The repeal of Regulation 718 will not impact students receiving an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The repeal of Regulation 718 will not impact students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The repeal of Regulation 718 will not impact students' legal rights.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The repeal of Regulation 718 will not impact 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 repeal of Regulation 718 will remove an unnecessary reporting or administrative requirement or mandate.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The repeal of Regulation 718 will not alter the authority and accountability for addressing employee health.
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 repeal of Regulation 718 will not impact state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? Yes, the ADA addresses the purposes of Regulation 718.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no material costs to repealing Regulation 718.

***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/october2019/proposed/23 DE Reg 265RFA 10-01-19.pdf>

718 Health Examinations for Employees of School Districts, Charter Schools, and Alternative Programs

4.0 ~~Required Physician's Certification~~

~~At initial employment, all employees of school districts, charter schools and alternative programs shall provide a physician's certification that he or she is free (a) from any medical condition which would prevent the applicant from performing the essential functions of the applicant's job and (b) free from any medical condition which cannot be remedied through reasonable accommodations. The physician's certification, along with any other medical information, shall be retained in an individual's file kept in accordance with any Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirement and separate from the individual's personnel file.~~

~~Non regulatory note: See 14 **DE Admin. Code** 805 The School Health Tuberculosis Control Program for TB screening and testing. Also, see 21 **Del.C.** §2708 and 14 **DE Admin. Code** 1105 for requirements for school bus drivers.~~

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 1508 and 1803 (14 **Del.C.** §§1508 & 1803)
14 **DE Admin. Code** 734

PUBLIC NOTICE

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

734 Financial Responsibility Training for District School Board, Charter School Board and Citizen Budget Oversight Committee Members

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

Pursuant to 14 **Del.C.** §§1803 and 1508, the Secretary of Education intends to amend 14 **DE Admin. Code** 734 Financial Responsibility Training for District School Board, Charter School Board and Citizen Budget Oversight Committee Members. This regulation is being amended to include school district and charter school leaders per House Bill 225 of the 150th General Assembly, to ensure that two individuals have Financial Responsibility Training at all times and to update the title of the regulation.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 4, 2019 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, 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 the improvement of student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is intended to continue to 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 do not address students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to 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.
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/october2019/proposed/23 DE Reg 266RFA 10-01-19.pdf>

734 Financial Responsibility Training ~~for District School Board, Charter School Board and Citizen Budget Oversight Committee Members~~**1.0 Purpose**

The purpose of this regulation is to outline the criteria and process for the required one-time Financial Responsibility Training for members of ~~district school boards~~ School District boards, including vocational technical school ~~boards and the boards~~, boards of charter schools pursuant to 14 ~~Del.C. §1803~~§1803, and ~~for members of the Citizen Budget Oversight Committee~~ Committees (CBOC) pursuant to 14 ~~Del.C. §1508~~, and School District and Charter School Leaders. Financial Responsibility Training provides instruction to members of school ~~boards and boards~~, CBOCs and School District and Charter School Leaders as to how to properly ensure that public funds are appropriately managed and expended, as well as to provide training on state and local funding of public education.

2.0 Definitions

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

"Certificate of Completion" means the document provided by the Department of Education indicating the individual has attended and completed the Financial Responsibility Training.

"Charter School" means a non-home based full-time public school that is operated in an approved physical plant under a charter granted by, or transferred to, the Department or other authorizing body for the personal physical attendance of all students.

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"Charter School Board" means the board of directors of a charter school that shall be a public body subject to the requirements of 29 **Del.C.** Ch. 100 and shall have the same standing and authority as a Reorganized School District Board of Education, except the power to tax.

"Charter School Leader" means the head of school or chief financial officer of a charter school.

"Citizen Budget Oversight Committee (CBOC)" means a group of parents, educators and taxpayers that oversee the financial position of a Local School District or Charter School pursuant to 14 **Del.C.** §1508.

"Department" means the Delaware Department of Education.

~~**"District School Board"** shall mean reorganized school district boards and vocational technical school district boards duly appointed or elected pursuant to Chapter 10 of Title 14 of the **Delaware Code.**~~

~~**"Local School District"** means a reorganized school district or vocational technical school district established pursuant to 14 **Del.C.** Ch. 10.~~

"School Board Member" means a District School District Board or Charter School Board member whether that person is elected, appointed, or is a volunteer.

"School District" means a reorganized school district or vocational technical school district established pursuant to 14 **Del.C.** Ch. 10.

"School District Board" means reorganized School District Board or vocational technical school district boards duly appointed or elected pursuant to 14 **Del.C.** Ch. 10.

"School District Leader" means the superintendent of a School District or the chief financial officer.

"Trainer" means an individual or organization approved by the Department of Education to provide Financial Responsibility Training.

3.0 Financial Responsibility Training Components

- 3.1 The Financial Responsibility Training shall be developed and coordinated by the Department's Finance Office. This ~~one-time~~ training may be provided in person or online at the discretion of the Department and shall cover the following topics:
 - 3.1.1 Overview of education budget process and timelines;
 - 3.1.2 Instruction in the basic rules of budgeting, including State of Delaware funds, local funds, and federal funds;
 - 3.1.3 Information regarding the State's financial management system; and
 - 3.1.4 Reporting requirements.

4.0 ~~District School Board, Charter School Board and CBOC Member~~ Requirements

- 4.1 Each member of a ~~District School~~ District Board or Charter School Board shall attend and receive a Certificate of Completion for Financial Responsibility Training within three (3) months of election, appointment, or voluntary service to a ~~District School~~ District Board or Charter School Board. Provided further, additional training may be required from time to time as determined by the Department. Notification of any additional training shall be provided to the district or charter school.
- 4.2 Each member of a CBOC shall attend and receive a Certificate of Completion for the Financial Responsibility Training within three (3) months of appointment to a CBOC. Provided further, additional training may be required from time to time as determined by the Department. Notification of any additional training shall be provided to the district or charter school.
- 4.3 Each School District Leader shall attend and receive a Certificate of Completion for the Financial Responsibility Training within three (3) months of appointment to their position. Provided further, additional training may be required from time to time as determined by the Department. Notification of any additional training shall be provided to the district.
- 4.4 Each Charter School Leader shall attend and receive a Certificate of Completion for the Financial Responsibility Training within three (3) months of appointment to their position. Provided further,

additional training may be required from time to time as determined by the Department. Notification of any additional training shall be provided to the charter school.

5.0 ~~Financial Responsibility Training Schedule~~ School District and Charter School Leaders

~~The Department shall communicate training opportunities to Local School Districts and Charter Schools as they are scheduled. The Financial Responsibility Training shall be conducted by a Trainer as defined in this regulation, and approved by the Department's Finance Office.~~

5.1 Effective July 1, 2019, each School District and Charter School Leader is required to complete Financial Responsibility Training.

5.1.1 In the event that an individual has a dual capacity such as serving as both the school leader and chief financial officer, the School District or Charter School Leader shall designate a designee, so that two (2) individuals at all times have completed Financial Responsibility Training.

5.2 Any individual employed in a School District or Charter School Leader position prior to July 1, 2019 is not required to complete Financial Responsibility Training.

6.0 ~~Notification of Attendance~~ Financial Responsibility Training Availability

6.1 The Department shall periodically, but not less than annually, provide a list of those School Board and CBOC members that have not satisfied the requirement of subsections 4.1 and 4.2 to their respective District School Board or Charter School Board President, the Office of Management and Budget, and Controller General's Office. provide the required training opportunity in a self-paced, online format as approved by the Department's Finance Office.

6.2 Financial Responsibility Training shall be available to any additional employees, volunteers or stakeholders as requested by any School District or Charter School.

7.0 Notification of Attendance

7.1 The Department shall periodically, but not less than annually, provide a list of those School Board members, CBOC members and School District and Charter School Leaders that have not satisfied the requirement of subsections 4.1 and 4.2 to their respective School District or Charter School.

7.2 The Department shall notify the School District or Charter School upon successful completion of the Financial Responsibility Training by any School District or Charter School Leader.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(2) and 131 (14 Del.C. §§122(b)(2) & 131)

14 DE Admin. Code 805

PUBLIC NOTICE

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

805 The School Health Tuberculosis (TB) Control Program

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

Pursuant to 14 Del.C. §§122(b)(2) and 131, the Secretary of Education intends to amend 14 DE Admin. Code 805 The School Health Tuberculosis (TB) Control Program. This regulation concerns the health and physical welfare of public school students in the State. This regulation is being amended to clarify the length of time a

student who is asymptomatic may remain in school as indicated by a licensed health care provider or Division of Public Health, and to comply with 29 Del.C. §10407 which requires regulations to be reviewed on a recurring basis every four years.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 4, 2019 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, located at the address listed above.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not address improving student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will 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 will help to ensure all students' health and safety are adequately protected.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to ensure that all student's legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated does not change because of the amendment.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amendment is consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is no 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 are no material costs 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/october2019/proposed/23 DE Reg 269RFA 10-01-19.pdf>

805 The School Health Tuberculosis (TB) Control Program

1.0 Definitions

"New School Enterer" means any child ~~between the ages of one year and twenty-one (21) years~~ entering or being admitted to a Delaware public school for the first time, including but not limited to, foreign exchange students, immigrants, students from other states and territories, and children entering from nonpublic schools. For purposes of this regulation, "new school enterer" shall also include any child who is re-enrolled in a Delaware public school following travel or residency of one month in a location or facility identified by the Delaware Division of Public Health as an area at risk for tuberculosis exposure.

"**School Staff and Extended Services Personnel**" means all persons hired as full or part time employees in a public school. This includes, but is not limited to teachers, administrators, substitutes, contract employees, bus drivers and student teachers whether compensated or not.

"**Tuberculosis Risk Assessment**" means a formal assessment by a healthcare professional to determine possible tuberculosis exposure through the use of a health history or questionnaire.

"**Tuberculosis Test**" means a Mantoux skin test, Quantiferon Gold blood test, or other test approved by the Delaware Division of Public Health.

"**Verification**" means a documented evaluation of the individual's disease status.

"**Volunteers**" ~~mean~~ means those persons who give their time to help others for no monetary reward and who share the same air space with public school students and staff on a regularly scheduled basis.

2.0 School Staff and Extended Services Personnel

- 2.1 School Staff and Extended Services personnel shall provide the Tuberculosis Test results from a test administered within the past ~~42~~ twelve (12) months during the first ~~45~~ fifteen (15) working days of employment.
 - 2.1.1 Tuberculosis Test requirements may be waived for public school staff and extended services personnel who present a notarized statement that tuberculosis testing is against their religious beliefs. In such cases, the individual shall complete the Delaware Department of Education TB Health Questionnaire for School Employees or provide, within two (2) weeks, verification from a licensed health care provider or the Division of Public Health that the individual does not pose a threat of transmitting tuberculosis to students or other staff.
 - 2.1.1.1 If a school staff member or extended services person, who has submitted a waiver because of religious beliefs, answers affirmatively to any of the questions in the Delaware Department of Education TB Health Questionnaire for School Employees he/she shall provide, within two (2) weeks, verification from a licensed health care provider or the Division of Public Health that the individual does not pose a threat of transmitting tuberculosis to students or other staff.
 - 2.1.2 School Staff and Extended Services Personnel need not be retested if they move, within Delaware, from district to district, district to charter school, charter school to district, or charter school to charter school within a ~~five-year~~ five (5) year period; however, a copy of the result of the latest Tuberculosis Test shall be provided to the new district or charter school within sixty (60) days.
- 2.2 Every fifth year, by October 15th, all public school staff and extended services personnel shall complete the Delaware Department of Education TB Health Questionnaire for School Employees or, within two (2) weeks, provide Tuberculosis Test results administered within the last twelve (12) months.
 - 2.2.1 If a school staff member or extended services staff member answers affirmatively to any of the questions in the *Delaware Department of Education TB Health Questionnaire for School Employees* he/she shall provide, within two (2) weeks, verification from a licensed health care provider or the Division of Public Health that the individual does not pose a threat of transmitting tuberculosis to students or other staff.
- 2.3 All documentation related to the School Health Tuberculosis (TB) Control Program shall be retained in the same manner as other confidential personnel medical information.

3.0 Volunteers

- 3.1 Volunteers shall complete the *Delaware Department of Education's TB Health Questionnaire for Volunteers in Public Schools* prior to their assignment and every fifth year thereafter.
 - 3.1.1 If the volunteer answers affirmatively to any of the questions, he/she shall provide, within two (2) weeks, verification from a licensed health care provider or the Division of Public Health that the individual does not pose a threat of transmitting tuberculosis to the students or staff.

PROPOSED REGULATIONS

- 3.2 ~~Each public school nurse shall collect and monitor all documentation related to the volunteer's School Health Tuberculosis (TB) Control Program and store them in the school nurse's office in a confidential manner. All documentation related to the School Health Tuberculosis (TB) Control Program shall be retained in the same manner as other confidential personnel medical information.~~

4.0 New School Enterers

- 4.1 New school enterers shall provide tuberculosis screening results from either a Tuberculosis Test or the results of a Tuberculosis Risk Assessment administered within the past ~~42~~ twelve (12) months prior to school entry.
- 4.1.1 If the new school enterer is in compliance with the other school entry health requirements, a school nurse who is trained in the use of the *Delaware Department of Education TB Risk Assessment Questionnaire for Students* may administer the questionnaire to the student's parent(s), guardian(s) or Relative Caregiver or to a new school enterer who has reached the statutory age of majority (18).
- 4.1.1.1 If a student's parent(s), guardian(s) or Relative Caregiver or a student 18 years or older answers affirmatively to any of the questions, he/she shall, within two (2) weeks, provide proof of tuberculosis testing results or provide verification from a licensed health care provider or the Division of Public Health that the student does not pose a threat of transmitting tuberculosis to staff or other students.
- 4.2 ~~School nurses shall record and maintain documentation relative to the School Health Tuberculosis (TB) Control Program. All documentation related to the School Health Tuberculosis (TB) Control Program shall be retained in the same manner as other confidential student medical information.~~

5.0 Tuberculosis Status Verification and Follow up

- 5.1 Tuberculosis Status shall be determined through the use of a Tuberculosis Risk Assessment, Tuberculosis Test or other testing, which may include x-ray or sputum culture. Individuals who either refuse the Tuberculosis Test or have positive reactions to the same, or give positive responses to a tuberculosis risk assessment shall provide verification from a licensed health care provider or the Division of Public Health that the individual does not pose a threat of transmitting tuberculosis to staff or other students.
- 5.1.1 Verification shall include Mantoux results recorded in millimeters (if test was administered), or other Tuberculosis Test results, current disease status (i.e. contagious or noncontagious), current treatment (or completion of preventative treatment for tuberculosis) and date when the individual may return to his/her school assignment without posing a risk to the school setting.
- 5.1.2 Verification from a health care provider or Division of Public Health shall be required only once if treatment was completed successfully.
- 5.1.3 Updated information regarding disease status and treatment shall be provided to the public school by October 15 every fifth year if treatment was previously contraindicated, incomplete or unknown.
- 5.1.4 Persons with a positive Tuberculosis Test, without active disease, who do not receive prophylactic treatment shall be excluded from school in the event of showing any signs or symptoms of active, infectious disease as described by the Division of Public Health.
- 5.2 In the event an individual shows any signs or symptoms of active tuberculosis infection, he/she shall be excluded from school until all required medical verification is received by the school. During the specified verification and follow-up an asymptomatic individual, as described by the Division of Public Health, may remain in school until testing and evaluations are completed, but no longer than ~~six (6)~~ ten (10) weeks.

Non regulatory note: See 14 DE Admin. Code 930 Supportive Instruction (Homebound)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 3126 (14 Del.C. §3126)
14 DE Admin. Code 902

PUBLIC NOTICE

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

902 Gifted or Talented Education Plan

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

Pursuant to 14 Del.C. §3126, the Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 902 Gifted or Talented Education Plan. This regulation is being amended to clarify the implementation process, make minor clarifications and to comply with 29 Del.C. §10407 which requires regulations to be reviewed on a recurring basis every four years.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 4, 2019 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOERegulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary, located at the address above.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation intends to help improve student achievement as measured against state achievement standards by clarifying the implementation of gifted or talented education plans.

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

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

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

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

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

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no 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/october2019/proposed/23 DE Reg 273RFA 10-01-19.pdf>

902 Gifted or Talented Education Plan

1.0 Purpose

The purpose of this regulation is to establish that a gifted or talented student, as identified by a professionally qualified ~~person(s)~~ person or persons, may require differentiated educational ~~program(s) or service(s)~~ programs or services beyond those normally provided by the regular school program in order to address the individual's capabilities.

2.0 Definitions

"Gifted or Talented Education Plan (Plan)" or **"Plan"** means a Delaware Department of Education approved document developed created by a school district for the development, implementation, and evaluation of an identification process and appropriate services for gifted or talented students.

"Gifted or Talented Student" means a ~~student in the chronological age group four (4) through the end of the school year in which the child attains the age of 21 or until receipt of a regular high school diploma, whichever occurs first,~~ child enrolled in a Delaware public school who has been identified by a professionally qualified ~~person(s)~~ person or persons as meeting the following definition of gifted or talented:

A child capable of high performance with demonstrated achievement and/or potential ability in any of the following areas, singularly or in combination:

- General intellectual ability;
- Specific academic aptitude;
- Creative or productive thinking;
- Leadership ability;
- Visual and performing arts ability; or
- Psychomotor ability.

"Relative Caregiver" means, pursuant to 14 **Del.C.** §202(f)~~(1)~~(2), an adult who, by blood, marriage or adoption, is the child's great grandparent, grandparent, step grandparent, great aunt, aunt, step aunt, great uncle, uncle, step uncle, step parent, brother, sister, step brother, step sister, half brother, half sister, niece, nephew, first cousin, or first cousin once removed but who does not have legal custody or legal guardianship of the student.

3.0 Development and Components of the Plan

3.1 Each school district shall have a Plan which, at a minimum, shall:

- 3.1.1 Outline goals and specific outcomes;
- 3.1.2 Be developed with input from various stakeholder groups including parents;
- 3.1.3 Provide the process for identification of gifted or talented students by professionally qualified persons;
- 3.1.4 Outline an identification process that ensures all students have an equal opportunity to be identified and participate in the program;
- 3.1.5 Provide for a communication process, which shall include procedures to inform parent(s), guardian(s), or Relative Caregiver(s) of a student's participation in the gifted or talented education program;
- 3.1.6 Establish procedures for requiring that, at a minimum, each teacher assigned to teach a student identified as gifted or talented be certified in accordance with the applicable Professional Standards Board regulations.

- 3.1.7 Establish procedures for ~~consideration~~ of the identification and placement of a student who was identified as gifted or talented in the school district from which the student transferred; and
- 3.1.8 Provide for an evaluation of the Plan provided for its gifted or talented students.
- 3.2 ~~The Plan should be provided to the Department of Education by July 1, 2016 for implementation beginning no later than August 1, 2017~~ Implementation of the gifted or talented programs and services shall be aligned to the Plan.

4.0 Department of Education Responsibilities

- 4.1 The Department of Education shall maintain a resource guide of best practices, on its website, that a school district may use in the development and implementation of its Plan.
- 4.2 Each Plan shall be reviewed periodically, but not less than every five years, by the Department of Education for compliance with this regulation, and any substantive changes to the Plan shall be provided for review for compliance with this regulation.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 1604(8) and Chapter 31 (14 **Del.C.** §1604(8) & Ch. 31)
14 **DE Admin. Code** 930

PUBLIC NOTICE

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

930 Supportive Instruction (Homebound)

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

Pursuant to 14 **Del.C.** Chapter 31 and §1604(8), the Secretary of Education intends to amend 14 **DE Admin. Code** 930 Supportive Instruction (Homebound). The Department has reviewed the regulation in order to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring bases every four years. The Department intends to update the regulation to clarify illness and chronic conditions are not limited to physical illness and includes mental illness and conditions.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 4, 2019 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, located at the address listed above.

C. Impact Criteria

1. Will the regulation help improve student achievement as measured against state achievement standards? The amended regulation does help to improve student achievement as measured against state achievement standards by providing guidelines for supportive instruction in various settings.
2. Will the regulation help ensure that all students receive an equitable education? The amended regulation is intended to help ensure all students receive an equitable education.
3. Will the regulation help to ensure that all students' health and safety are adequately protected? The amended regulation helps ensure that all student's health and safety are adequately protected.
4. Will the regulation help to ensure that all students' legal rights are respected? The amended regulation specifically helps to ensure that all student's legal rights are respected.
5. Will the 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 regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements on decision makers.

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

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no material costs 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/october2019/proposed/23 DE Reg 275RFA 10-01-19.pdf>

930 Supportive Instruction (Homebound)

1.0 Definition

“**Supportive Instruction**” means an alternative educational program provided at home, in a hospital or at a related site for a student temporarily at home or hospitalized for a sudden physical or mental illness, injury, episodic flare up of a chronic physical or mental health condition, accident, or pregnancy, childbirth, or related medical condition to pregnancy or childbirth. Subject to 14 ~~Del.C.~~, Del.C. §1604(8), this may also include an alternative educational program provided at home to a student that has been suspended, expelled or subject to expulsion based upon the student’s local school district or charter school policy.

- 1.1 Procedures for eligibility shall be limited to appropriate certification that the student cannot attend school.
- 1.2 Services for children with disabilities as defined in the Individuals with Disabilities Education Act (IDEA) (20 U.S.C 1400 ~~et seq et seq.~~), and its regulations (34 CFR parts 300 and 301), 14 ~~Del.C.~~, Del.C. Ch. 31, and the Department of Education’s regulations on Children with Disabilities (14 **DE Admin. Code** 922 through 929) shall be provided in accordance with these laws and shall be processed under the district’s or charter school’s special education authority. Nothing in this regulation shall prevent a district from providing supportive instruction to children with disabilities in a manner consistent with the Individuals with Disabilities Education Act (IDEA) and its regulations, 14 ~~Del.C.~~, Chapter Del.C. Ch. 31, and the Department of Education’s regulations on Children with Disabilities.
- 1.3 Nothing in this regulation shall alter a district’s 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 district from providing supportive instruction to such students.

2.0 Eligibility for Conditions other than Suspension, Expulsion or Subject to Expulsion

- 2.1 A student enrolled in a school district or charter school is eligible for supportive instruction when the district or charter school receives the required certification that one or more of the following conditions will prevent the student from attending school for at least ten (10) school days:
 - 2.1.1 Sudden physical or mental illness,
 - 2.1.2 Accident,
 - 2.1.3 Episodic flare up of a chronic physical or mental health condition,

- 2.1.4 Injury, or
- 2.1.5 Pregnancy, childbirth or related medical condition.
- 2.2 A physician or an advanced practice nurse, employed by or who has a collaborative agreement with a licensed physician, or a physician assistant employed by and who has a written agreement with a supervising licensed physician must certify absences due to a medical condition.
 - ~~2.2.1 A student qualifies for supportive instruction during absences because of pregnancy, childbirth, or related medical conditions, which shall be excused absences for as long as deemed medically necessary by a physician or an advanced practice nurse, employed by and who has a collaborative agreement with a licensed physician, or a physician assistant employed by and who has a written agreement with a supervising licensed physician.~~
 - ~~2.2.2~~2.2.1 A student who remains enrolled in school is eligible for supportive instruction during a postpartum period for as long as deemed medically necessary. Postpartum absences shall be certified by a physician or an advanced practice nurse, employed by and who has a collaborative agreement with a licensed physician, or a physician assistant employed by and who has a written agreement with a supervising licensed physician.
- 2.3 ~~Absences due to severe adjustment problems must be certified by a psychologist or psychiatrist and confirmed through a staff conference~~ A licensed clinical mental health provider (such as a Licensed Clinical Social Worker, psychiatric nurse practitioner, psychologist, or psychiatrist) must certify absences due to a mental illness or mental health condition.
- 2.4 Supportive instruction can be requested as an in school transitional program that follows a period of supportive instruction that was provided outside of the school setting. If the supportive instruction is provided as an in school transitional program, it must be approved through a staff conference.

3.0 Implementation

- 3.1 Supportive instruction for a student shall begin as soon as the documentation required by Section 2.0 is received. Supportive instruction may continue upon the return to school setting only in those exceptional cases where it is determined that a student needs a transitional program to guarantee a successful return to the school setting in accordance with subsection 2.4.
 - 3.1.1 Supportive instruction shall adhere to the extent possible to the student's school curriculum and shall make full use of the available technology in order to facilitate the instruction.
 - 3.1.1.1 The school shall provide a minimum of ~~3~~ three (3) hours of supportive instruction each week of eligibility for a K to 5th grade student, and a minimum of five hours each week of eligibility for a ~~6-6th~~ to 12th grade student. There is no minimum for in school transition.
 - 3.1.1.2 Nothing in this regulation shall prevent a school district or charter school from providing additional hours of supportive instruction to an eligible student from other available funding sources.
 - 3.1.2 Summer instruction is permitted for a student who is otherwise eligible for supportive instruction and, as determined by the student's teachers and principal, needs the instruction to complete course work or to maintain a level of instruction in order to continue in a school setting the following school year.

4.0 Eligibility and Implementation for Suspension, Expulsion, or Subject to Expulsion

If a local school district or charter school provides for supportive instruction (homebound) for students that have been suspended or expelled, the local school district or charter school shall have a written policy, which conforms with 14 **Del.C.** §1604(8), and any of its implementing regulations, regarding eligibility and implementation.

PROPOSED REGULATIONS

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 **Del.C.** §§1203 & 1205(b))
14 **DE Admin. Code** 1522

PUBLIC NOTICE

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

1522 Elementary School Counselor

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board (“Board”), acting in consultation and cooperation with the Delaware Department of Education (“Department”), developed amendments to 14 **DE Admin. Code** 1522 Elementary School Counselor. The regulation concerns the requirements for a Standard Certificate for Elementary School Counselor pursuant to 14 **Del.C.** §1220. The proposed amendments include striking the non-regulatory note at the beginning of the regulation; adding defined terms to Section 2.0; clarifying the requirements for issuing a standard certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a first and second or subsequent standard certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Sections 6.0 and 7.0, which concern validity and revocation of a standard certificate; adding Section 8.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 9.0, which concerns recognizing past certification.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 1, 2019 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation’s website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education’s Office of the Secretary, located at the address above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation will help to improve student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure that all students receive an equitable education.
3. Will the amended regulation help to ensure all students’ health and safety are adequately protected? The amended regulation addresses a standard certificate for educators, not students’ health and safety.
4. Will the amended regulation help to ensure that all students’ legal rights are respected? The amended regulation addresses a standard certificate for educators, not students’ legal rights.
5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation does not change authority and flexibility of decision makers at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.
7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The Department implements the rules and regulations promulgated and adopted pursuant to 14 **Del.C.** Ch. 12 relating to licensure and certification of educators.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state

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

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

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no expected cost to the state and to the local school boards of complying with 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/october2019/proposed/23 DE Reg 278RFA 10-01-19.pdf>

1522 Elementary School Counselor

~~Non-regulatory note: Passage on an examination of content knowledge may also be required to obtain this certification. Pursuant to 14 Del.C. §1220 and 14 DE Admin. Code 1505, an examination of content knowledge is required when applicable and available. An examination of content knowledge is applicable and available when approved by the Professional Standards Board with the concurrence of the State Board of Education. See the Department of Education website for additional information.~~

1.0 Content

- 4-1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Elementary School Counselor. This ~~certification~~ Certification is required for grades K to five (5), and is valid in grades six (6) to eight (8) in a ~~Middle Level~~ middle level school. A ~~Middle Level School Counselor~~ middle level school counselor must hold either an Elementary School Counselor Standard Certificate or a Secondary School Counselor Standard Certificate.
- 4-2 ~~Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

2.0 Definitions

- 2-1 The definitions set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

- 2-2 The following ~~word~~ words and ~~term~~ terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

~~“CAEP (Council for the Accreditation of Educator Preparation)” — A nonprofit and nongovernmental agency that accredits educator preparation providers (EPPs), which was created when the National Council for Accreditation of Teacher Education (NCATE) and the Teacher Education Accreditation Council (TEAC) merged in 2013.~~

“Certification” means the issuance of a Standard Certificate, which may occur regardless of a recipient’s assignment or employment status.

“Department” means the Delaware Department of Education.

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

“Employing Authority” means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, and management companies.

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“Immorality” means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator’s effectiveness by reason of the educator’s unfitness or otherwise.

“License” means a credential which authorizes the holder to engage in the practice for which the license is issued.

“Major or Its Equivalent” means a minimum of thirty (30) semester hours of coursework in a particular content area.

“Regionally Accredited” means educational accreditation by a regional accrediting agency that is recognized by the U.S. Secretary of Education as a reliable authority concerning the quality of education offered by the institutions of higher education it accredits, including Middle States Commission on Higher Education.

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

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

“Valid and Current License or Certificate from Another State” means a current full or permanent certificate or license issued by another state. This means the educator is fully credentialed by having met all of the requirements for full licensure or certification in another state. It does not include temporary, emergency, conditional certificates of eligibility or expired certificates or licenses issued from another state.

3.0 Standard Certificate

- 3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a an Elementary School Counselor Standard Certificate as an Elementary School Counselor to an educator Educator who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced ~~License;~~ License, or a Professional Status Certificate issued by the Department prior to August 31, 2003; ~~and;~~ and meets the requirements set forth in Section 4.0 of this regulation; or
 - 3.1.2 ~~Has met the requirements as set forth in 14 DE Admin. Code 1505, Standard Certificate including any subsequent amendment or revision thereto; and~~
 - 3.1.3 ~~Has satisfied the additional requirements in this regulation.~~
 - 3.1.2 Has met the requirements for licensure and holds a Valid and Current License or Certificate from Another State in elementary school counseling; or
 - 3.1.3 Has met the requirements for a Meritorious New Teacher Candidate Designation adopted pursuant to 14 Del.C. §1203.
- 3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for Certification if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the alleged conduct involves allegations of Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials, until the applicant provides evidence of the investigation’s resolution.

4.0 Additional Requirements Prescribed Education, Knowledge, and Skill Requirements

- 4.1 ~~Has satisfied at least one of the following additional education requirements:~~
- 4.1.1 ~~Graduated from a NCATE or CAEP educator preparation unit or from a state approved educator preparation program, where the state approval body employed the appropriate national specialty organization standards, offered by a regionally accredited college or university, with a Masters degree in Elementary School Counseling; or~~

- 4.1.2 ~~Graduated from a regionally accredited college or university with a Master's degree in any content area and satisfactorily completed thirty-nine (39) credits of graduate course work or the equivalent in professional development as approved by the Department in the areas of:~~
- 4.1.2.1 ~~Introduction to School Counseling & Theories (3 credits);~~
 - 4.1.2.2 ~~Human Behavior and Child Development (3 credits);~~
 - 4.1.2.3 ~~Ethical Issues in School Counseling (3 credits);~~
 - 4.1.2.4 ~~College & Career Readiness K-12 (3 credits);~~
 - 4.1.2.5 ~~Testing, Measurements, and Research in School Counseling (3 credits);~~
 - 4.1.2.6 ~~The Counselor as Consultant (3 credits);~~
 - 4.1.2.7 ~~Special Education Law & the School Counselor's Role (3 credits);~~
 - 4.1.2.8 ~~Group Counseling (3 credits);~~
 - 4.1.2.9 ~~Individual Counseling Skills & Strategies (6 credits);~~
 - 4.1.2.10 ~~Family Counseling (3 credits);~~
 - 4.1.2.11 ~~Principles and Practices of a School Counseling Program (6 Credits); and~~
- 4.2 ~~Has completed one of the following:~~
- 4.2.1 ~~Educators not holding a Standard Certificate Secondary School Counselor must complete a supervised school counseling clinical experience under the direct supervision of a State Department of Education certified Elementary School Counselor of 700 hours in an elementary school setting which is part of a graduate degree program in Elementary School Counseling.~~
 - 4.2.2 ~~Educators holding Standard Certificate Secondary School Counselor, who are seeking Elementary School Counselor certification, must complete 350 hours of additional clinical experience in an elementary school setting, under the direct supervision of a State Department of Education certified Elementary School Counselor; or~~
 - 4.2.3 ~~Educators seeking initial certification of both a Standard Certificate Elementary School Counselor and a Standard Certificate Secondary School Counselor simultaneously, must complete 350 hours of clinical experience in an elementary school setting under the direct supervision of a State Department of Education certified Elementary School Counselor and 350 hours of clinical experience in a secondary school setting under the direct supervision of a State Department of Education certified Secondary School Counselor.~~
- 4.1 For an applicant who is applying for the applicant's first Standard Certificate, the applicant shall have satisfied the requirements in subsections 4.1.1, 4.1.2, and 4.1.3.
- 4.1.1 The applicant shall have:
- 4.1.1.1 Earned and currently maintain the School Counseling certificate from the National Board for Professional Teaching Standards; or
 - 4.1.1.2 Completed a master's degree from a Regionally Accredited college or university with a Major or Its Equivalent in elementary school counseling from an educator preparation program approved or recognized by the Council for Accreditation of Counseling and Related Educational Programs (CACREP) or a state where the state approval body employed the appropriate standards; or
 - 4.1.1.3 Satisfactorily completed a Department-approved educator preparation program in elementary school counseling; or
 - 4.1.1.4 Completed a master's degree from a Regionally Accredited college or university in any content area and satisfactory completed 39 credits of graduate level coursework related to school counseling in the areas provided in subsection 4.1.1.4.1 that is taken either as part of a degree program or in addition to a degree program from a Regionally Accredited college or university.
 - 4.1.1.4.1 The areas for the 39 credits of graduate coursework related to school counseling shall include:
 - 4.1.1.4.1.1 Introduction to School Counseling & Theories (3 credits);
 - 4.1.1.4.1.2 Human Behavior and Child Development (3 credits);
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- 4.1.1.4.1.3 Ethical Issues in School Counseling (3 credits);
- 4.1.1.4.1.4 College & Career Readiness K-12 (3 credits);
- 4.1.1.4.1.5 Testing, Measurements, and Research in School Counseling (3 credits);
- 4.1.1.4.1.6 The Counselor as Consultant (3 credits);
- 4.1.1.4.1.7 Special Education Law & the School Counselor's Role (3 credits);
- 4.1.1.4.1.8 Group Counseling (3 credits);
- 4.1.1.4.1.9 Individual Counseling Skills & Strategies (6 credits);
- 4.1.1.4.1.10 Family Counseling (3 credits); and
- 4.1.1.4.1.11 Principles and Practices of a School Counseling Program (6 Credits).
- 4.1.2 The applicant shall have achieved on the Praxis Subject Assessment – Professional School Counselor (ETS Test Code # 5421) a Passing Score of 156.
- 4.1.3 The applicant shall have completed one of the following:
 - 4.1.3.1 An applicant shall complete a supervised school counseling clinical experience under the direct supervision of a state department of education certified elementary school counselor of 700 hours in an elementary school setting (grades K-8) which is part of a graduate degree program in elementary school counseling; or
 - 4.1.3.2 An applicant who is seeking initial certification of both an Elementary School Counselor Standard Certificate and a Secondary School Counselor Standard Certificate simultaneously, must complete 350 hours of clinical experience in an elementary school setting (grades K-8) under the direct supervision of a state department of education certified elementary school counselor and 350 hours of clinical experience in a secondary school setting (grades 6-12) under the direct supervision of a state department of education certified secondary school counselor.
 - 4.1.3.2.1 For an applicant seeking dual certification, clinical hours in grades 6-8 shall only be used in one setting.
- 4.2 For an applicant who is applying for the applicant's second or subsequent Standard Certificate and who does not hold a Secondary School Counselor Standard Certificate, the applicant shall have satisfied the requirements in subsections 4.2.1, 4.2.2, and 4.2.3.
 - 4.2.1 The applicant shall have:
 - 4.2.1.1 Earned and currently maintain the School Counseling certificate from the National Board for Professional Teaching Standards; or
 - 4.2.1.2 Completed a master's degree from a Regionally Accredited college or university with a Major or Its Equivalent in elementary school counseling from an educator preparation program approved or recognized by the Council for Accreditation of Counseling and Related Educational Programs (CACREP) or a state where the state approval body employed the appropriate standards; or
 - 4.2.1.3 Satisfactorily completed a Department-approved educator preparation program in elementary school counseling; or
 - 4.2.1.4 Completed a master's degree from a Regionally Accredited college or university in any content area and satisfactorily completed 39 credits of graduate level coursework related to school counseling in the areas provided in subsection 4.2.1.4.1 that is taken either as part of a degree program or in addition to a degree program from a Regionally Accredited college or university.
 - 4.2.1.4.1 The areas for the 39 credits of graduate coursework related to school counseling shall include:
 - 4.2.1.4.1.1 Introduction to School Counseling & Theories (3 credits);
 - 4.2.1.4.1.2 Human Behavior and Child Development (3 credits);
 - 4.2.1.4.1.3 Ethical Issues in School Counseling (3 credits);
 - 4.2.1.4.1.4 College & Career Readiness K-12 (3 credits);
 - 4.2.1.4.1.5 Testing, Measurements, and Research in School Counseling (3 credits);

4.2.1.4.1.6 The Counselor as Consultant (3 credits);

4.2.1.4.1.7 Special Education Law & the School Counselor's Role (3 credits);

4.2.1.4.1.8 Group Counseling (3 credits);

4.2.1.4.1.9 Individual Counseling Skills & Strategies (6 credits);

4.2.1.4.1.10 Family Counseling (3 credits); and

4.2.1.4.1.11 Principles and Practices of a School Counseling Program (6 Credits).

4.2.2 The applicant shall have achieved on the *Praxis* Subject Assessment – Professional School Counselor (ETS Test Code # 5421) a Passing Score of 156.

4.2.3 The applicant shall have completed one of the following:

4.2.3.1 An applicant shall complete a supervised school counseling clinical experience under the direct supervision of a state department of education certified elementary school counselor of 700 hours in an elementary school setting (grades K-8) which is part of a graduate degree program in elementary school counseling; or

4.2.3.2 An applicant who is seeking initial certification of both an Elementary School Counselor Standard Certificate and a Secondary School Counselor Standard Certificate simultaneously, must complete 350 hours of clinical experience in an elementary school setting (grades K-8) under the direct supervision of a state department of education certified elementary school counselor and 350 hours of clinical experience in a secondary school setting (grades 6-12) under the direct supervision of a state department of education certified secondary school counselor.

4.2.3.2.1 For an applicant seeking dual certification, clinical hours in grades 6-8 shall only be used in one setting.

4.3 For an applicant who holds a Secondary School Counselor Standard Certificate and is seeking an Elementary School Counselor Standard Certificate, the applicant shall have satisfied the requirements in subsections 4.3.1 and 4.3.2.

4.3.1 The applicant shall have achieved on the *Praxis* Subject Assessment – Professional School Counselor (ETS Test Code # 5421) a Passing Score of 156.

4.3.2 The applicant shall have completed 350 hours of additional clinical experience in an elementary school setting (grades K-5) under the direct supervision of a state department of education certified elementary school counselor.

5.0 Effective Date of Section 4.0

Section 4.0 of this regulation shall be effective on January 1, 2017.

5.0 Application Requirements

5.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with application for an Initial License, and the applicant shall also provide all required documentation for the License.

5.2 For applicants who are applying for their first Standard Certificate, the following documentation is required with the application for an Elementary School Counselor Standard Certificate:

5.2.1 Evidence of obtaining a School Counseling certificate from the National Board for Professional Teaching Standards, if applicable; and

5.2.2 Official transcript from the applicant's Regionally Accredited college or university.

5.2.2.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or

5.2.2.2 Sealed paper transcripts may be submitted.

5.2.2.3 The Department will not accept copies of transcripts; and

5.2.3 Official score on the *Praxis* Subject Assessment as provided in subsection 4.1.2; and

5.2.4 If applicable, an experience form must be completed in full and signed by the applicant; and

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- 5.2.5 The Department-approved form verifying the applicant's completion of the clinical experience as provided in subsection 4.1.3; and
- 5.2.6 Additional documentation as required by the Department.
- 5.3 For applicants who are applying for their second or subsequent Standard Certificate and who do not hold a Secondary School Counselor Standard Certificate, the following documentation is required in the application for an Elementary School Counselor Standard Certificate:
 - 5.3.1 Evidence of obtaining a School Counseling certificate from the National Board for Professional Teaching Standards, if applicable; and
 - 5.3.2 Official transcript from the applicant's Regionally Accredited college or university.
 - 5.3.2.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or
 - 5.3.2.2 Sealed paper transcripts may be submitted.
 - 5.3.2.3 The Department will not accept copies of transcripts; and
 - 5.3.3 Official score on the *Praxis* Subject Assessment as provided in subsection 4.2.2; and
 - 5.3.4 If applicable, an experience form must be completed in full and signed by the applicant; and
 - 5.3.5 The Department-approved form verifying the applicant's completion of the clinical experience as provided in subsection 4.2.3; and
 - 5.3.6 Additional documentation as required by the Department.
- 5.4 For applicants who hold a Secondary School Counselor Standard Certificate, the following documentation is required in the application for an Elementary School Counselor Standard Certificate:
 - 5.4.1 Official score on the *Praxis* Subject Assessment as provided in subsection 4.3.1; and
 - 5.4.2 The Department-approved form verifying the applicant's completion of the clinical experience as provided in subsection 4.3.2; and
 - 5.4.3 Additional documentation as required by the Department.
- 5.5 For applicants who have met the requirements for licensure and hold a Valid and Current License or Certificate from Another State in elementary school counseling, the following documentation is required in the application for an Elementary School Counselor Standard Certificate:
 - 5.5.1 An official copy of the valid and current educator license or certificate from another state or professional license.

6.0 Validity of a Standard Certificate

- 6.1 An Elementary School Counselor Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.
- 6.2 An Elementary School Counselor Standard Certificate is not subject to renewal.

7.0 Revocation of a Standard Certificate

- 7.1 An Educator's Elementary School Counselor Standard Certificate shall be revoked in the event the Educator's Initial, Continuing, or Advanced License or Standard or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's Standard Certificate application in accordance with 14 **Del.C.** §1222.
- 7.2 An Educator whose Standard Certificate is noticed for revocation is entitled to a full and fair hearing before the Standards Board.
 - 7.2.1 Hearings shall be conducted in accordance with 14 **DE Admin. Code** 1515 Hearing Procedures and Rules.

8.0 Secretary of Education Review

The Secretary of Education may, upon the written request of a local school district or charter school, review credentials submitted in an application for an Elementary School Counselor Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for an

Elementary School Counselor Standard Certificate but whose effectiveness is documented by the local school district or charter school.

9.0 Past Certificate Recognized

The Department shall recognize an Elementary School Counselor Standard Certificate that was issued prior to the effective date of this regulation. An educator holding such a Standard Certificate issued by the Department before the effective date of this regulation shall be considered certified in elementary school counseling.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 Del.C. §§1203 & 1205(b))
14 DE Admin. Code 1545

PUBLIC NOTICE

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

1545 Secondary School Counselor

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1545 Secondary School Counselor. The regulation concerns the requirements for a Standard Certificate for Secondary School Counselor pursuant to 14 Del.C. §1220. The proposed amendments include striking the non-regulatory note at the beginning of the regulation; adding defined terms to Section 2.0; clarifying the requirements for issuing a standard certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a first and second or subsequent standard certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Sections 6.0 and 7.0, which concern validity and revocation of a standard certificate; adding Section 8.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 9.0, which concerns recognizing past certification.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 1, 2019 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary, located at the address above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation will help to improve student achievement as measured against state achievement standards.

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

3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The amended regulation addresses a standard certificate for educators, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses a standard certificate for educators, not students' legal rights.

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

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The Department implements the rules and regulations promulgated and adopted pursuant to 14 **Del.C.** Ch. 12 relating to licensure and certification of educators.

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

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

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

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1545 Secondary School Counselor

~~Non-regulatory note: Passage on an examination of content knowledge may also be required to obtain this certification. Pursuant to 14 **Del.C.** §1220 and 14 **DE Admin. Code** 1505, an examination of content knowledge is required when applicable and available. An examination of content knowledge is applicable and available when approved by the Professional Standards Board with the concurrence of the State Board of Education. See the Department of Education website for additional information.~~

1.0 Content

- 4.4 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Secondary School Counselor. This ~~certification~~ Certification is required for grades nine (9) to twelve (12) and is valid in grades six (6) to eight (8) in a ~~Middle-Level~~ middle level school. A ~~Middle-Level School Counselor~~ middle level school counselor must hold either an Elementary School Counselor Standard Certificate or a Secondary School Counselor Standard Certificate.
- 4.2 ~~Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505, Standard Certificate including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

2.0 Definitions

- 2.1 The definitions set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.
- 2.2 The following ~~word~~ words and ~~term~~ terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:
~~“CAEP (Council for the Accreditation of Educator Preparation)”~~ — A nonprofit and nongovernmental agency that accredits educator preparation providers (EPPs), which was created when the National Council for Accreditation of Teacher Education (NCATE) and the Teacher Education Accreditation Council (TEAC) merged in 2013.

“**Certification**” means the issuance of a Standard Certificate, which may occur regardless of a recipient’s assignment or employment status.

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

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

“**Employing Authority**” means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, and management companies.

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

“**License**” means a credential which authorizes the holder to engage in the practice for which the license is issued.

“**Major or Its Equivalent**” means a minimum of thirty (30) semester hours of coursework in a particular content area.

“**Regionally Accredited**” means educational accreditation by a regional accrediting agency that is recognized by the U.S. Secretary of Education as a reliable authority concerning the quality of education offered by the institutions of higher education it accredits, including Middle States Commission on Higher Education.

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

“**Standards Board**” means the Professional Standards Board established pursuant to 14 **Del.C.** §1201.

“**Valid and Current License or Certificate from Another State**” means a current full or permanent certificate or license issued by another state. This means the educator is fully credentialed by having met all of the requirements for full licensure or certification in another state. It does not include temporary, emergency, conditional certificates of eligibility or expired certificates or licenses issued from another state.

3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Secondary School Counselor Standard Certificate as a Secondary School Counselor to an educator Educator who has met the following:
- 3.1.1 ~~Holds a valid Delaware Initial, Continuing, or Advanced License; License, or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and, and meets the requirements set forth in Section 4.0 of this regulation; or~~
 - 3.1.2 ~~Has met the requirements as set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto; and,~~
 - 3.1.3 ~~Has satisfied the additional requirements in this regulation.~~
 - 3.1.2 Has met the requirements for licensure and holds a Valid and Current License or Certificate from Another State in secondary school counseling; or
 - 3.1.3 Has met the requirements for a Meritorious New Teacher Candidate Designation adopted pursuant to 14 **Del.C.** §1203.
- 3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for Certification if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the alleged conduct involves allegations of Immorality, misconduct in office, incompetence, willful neglect of duty,

PROPOSED REGULATIONS

disloyalty, or falsification of credentials, until the applicant provides evidence of the investigation's resolution.

4.0 **Additional Requirements Prescribed Education, Knowledge, and Skill Requirements**

- 4.1 ~~Has satisfied at least one of the following additional education requirements:~~
- 4.1.1 ~~Graduated from a NCATE or CAEP educator preparation unit or from a state approved educator preparation program, where the state approval body employed the appropriate national specialty organization standards, offered by a regionally accredited college or university, with a Masters degree in Secondary School Counseling; or~~
 - 4.1.2 ~~Graduated from a regionally accredited college or university with a Masters degree in any content area and satisfactorily completed 39 credits of graduate course work or the equivalent in professional development as approved by the Department in the areas of:~~
 - 4.1.2.1 ~~Introduction to School Counseling & Theories (3 credits);~~
 - 4.1.2.2 ~~Human Behavior and Child Development (3 credits);~~
 - 4.1.2.3 ~~Ethical Issues in School Counseling (3 credits);~~
 - 4.1.2.4 ~~College & Career Readiness K-12 (3 credits);~~
 - 4.1.2.5 ~~Testing, Measurements, and Research in School Counseling (3 credits);~~
 - 4.1.2.6 ~~The Counselor as Consultant (3 credits);~~
 - 4.1.2.7 ~~Special Education Law & the School Counselor's Role (3 credits);~~
 - 4.1.2.8 ~~Group Counseling (3 credits);~~
 - 4.1.2.9 ~~Individual Counseling Skills & Strategies (6 credits);~~
 - 4.1.2.10 ~~Family Counseling (3 credits);~~
 - 4.1.2.11 ~~Principles and Practices of a School Counseling Program (6 Credits); and~~
- 4.2 ~~Has completed one of the following:~~
- 4.2.1 ~~Educators not holding a Standard Certificate Elementary School Counselor must complete a supervised school counseling clinical experience under the direct supervision of a State Department of Education certified Secondary School Counselor of 700 hours in a secondary school setting which is part of a graduate degree program in Secondary School Counseling;~~
 - 4.2.2 ~~Educators holding Standard Certificate Elementary School Counselor, who are seeking Secondary School Counselor certification, must complete 350 hours of additional clinical experience in a secondary school setting, under the direct supervision of a State Department of Education certified Secondary School Counselor; or~~
 - 4.2.3 ~~Educators seeking initial certification of both a Standard Certificate Elementary School Counselor and a Standard Certificate Secondary School Counselor simultaneously, must complete 350 hours of clinical experience in an elementary school setting under the direct supervision of a State Department of Education certified Elementary School Counselor and 350 hours of clinical experience in a secondary school setting under the direct supervision of a State Department of Education certified Secondary School Counselor.~~
- 4.1 For an applicant who is applying for the applicant's first Standard Certificate, the applicant shall have satisfied the requirements in subsections 4.1.1, 4.1.2, and 4.1.3.
- 4.1.1 The applicant shall have:
- 4.1.1.1 Earned and currently maintain the School Counseling certificate from the National Board for Professional Teaching Standards; or
 - 4.1.1.2 Completed a master's degree from a Regionally Accredited college or university with a Major or Its Equivalent in secondary school counseling from an educator preparation program approved or recognized by the Council for Accreditation of Counseling and Related Educational Programs (CACREP) or a state where the state approval body employed the appropriate standards; or

- 4.1.1.3 Satisfactorily completed a Department-approved educator preparation program in secondary school counseling; or
- 4.1.1.4 Completed a master's degree from a Regionally Accredited college or university in any content area and satisfactorily completed 39 credits of graduate level coursework related to school counseling in the areas provided in subsection 4.1.1.4.1 that is taken either as part of a degree program or in addition to a degree program from a Regionally Accredited college or university.
 - 4.1.1.4.1 The areas for the 39 credits of graduate coursework related to school counseling shall include:
 - 4.1.1.4.1.1 Introduction to School Counseling & Theories (3 credits);
 - 4.1.1.4.1.2 Human Behavior and Child Development (3 credits);
 - 4.1.1.4.1.3 Ethical Issues in School Counseling (3 credits);
 - 4.1.1.4.1.4 College & Career Readiness K-12 (3 credits);
 - 4.1.1.4.1.5 Testing, Measurements, and Research in School Counseling (3 credits);
 - 4.1.1.4.1.6 The Counselor as Consultant (3 credits);
 - 4.1.1.4.1.7 Special Education Law & the School Counselor's Role (3 credits);
 - 4.1.1.4.1.8 Group Counseling (3 credits);
 - 4.1.1.4.1.9 Individual Counseling Skills & Strategies (6 credits);
 - 4.1.1.4.1.10 Family Counseling (3 credits); and
 - 4.1.1.4.1.11 Principles and Practices of a School Counseling Program (6 Credits).
- 4.1.2 The applicant shall have achieved on the *Praxis* Subject Assessment – Professional School Counselor (ETS Test Code # 5421) a Passing Score of 156.
- 4.1.3 The applicant shall have completed one of the following:
 - 4.1.3.1 An applicant shall complete a supervised school counseling clinical experience under the direct supervision of a state department of education certified secondary school counselor of 700 hours in a secondary school setting (grades 6-12) which is part of a graduate degree program in secondary school counseling; or
 - 4.1.3.2 An applicant who is seeking initial certification of both an Elementary School Counselor Standard Certificate and a Secondary School Counselor Standard Certificate simultaneously, must complete 350 hours of clinical experience in an elementary school setting (grades K-8) under the direct supervision of a state department of education certified elementary school counselor and 350 hours of clinical experience in a secondary school setting (grades 6-12) under the direct supervision of a state department of education certified secondary school counselor.
 - 4.1.3.2.1 For an applicant seeking dual certification, clinical hours in grades 6-8 shall only be used in one setting.
- 4.2 For an applicant who is applying for the applicant's second or subsequent Standard Certificate and who does not hold an Elementary School Counselor Standard Certificate, the applicant shall have satisfied the requirements in subsections 4.2.1, 4.2.2, and 4.2.3.
 - 4.2.1 The applicant shall have:
 - 4.2.1.1 Earned and currently maintain the School Counseling certificate from the National Board for Professional Teaching Standards; or
 - 4.2.1.2 Completed a master's degree from a Regionally Accredited college or university with a Major or Its Equivalent in secondary school counseling from an educator preparation program approved or recognized by the Council for Accreditation of Counseling and Related Educational Programs (CACREP) or a state where the state approval body employed the appropriate standards; or
 - 4.2.1.3 Satisfactorily completed a Department-approved educator preparation program in secondary school counseling; or

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4.2.1.4 Completed a master's degree from a Regionally Accredited college or university in any content area and satisfactory completed 39 credits of graduate level coursework related to school counseling in the areas provided in subsection 4.2.1.4.1 that is taken either as part of a degree program or in addition to a degree program from a Regionally Accredited college or university.

4.2.1.4.1 The areas for the 39 credits of graduate coursework related to school counseling shall include:

4.2.1.4.1.1 Introduction to School Counseling & Theories (3 credits);

4.2.1.4.1.2 Human Behavior and Child Development (3 credits);

4.2.1.4.1.3 Ethical Issues in School Counseling (3 credits);

4.2.1.4.1.4 College & Career Readiness K-12 (3 credits);

4.2.1.4.1.5 Testing, Measurements, and Research in School Counseling (3 credits);

4.2.1.4.1.6 The Counselor as Consultant (3 credits);

4.2.1.4.1.7 Special Education Law & the School Counselor's Role (3 credits);

4.2.1.4.1.8 Group Counseling (3 credits);

4.2.1.4.1.9 Individual Counseling Skills & Strategies (6 credits);

4.2.1.4.1.10 Family Counseling (3 credits); and

4.2.1.4.1.11 Principles and Practices of a School Counseling Program (6 Credits).

4.2.2 The applicant shall have achieved on the *Praxis* Subject Assessment – Professional School Counselor (ETS Test Code # 5421) a Passing Score of 156.

4.2.3 The applicant shall have completed one of the following:

4.2.3.1 An applicant shall complete a supervised school counseling clinical experience under the direct supervision of a state department of education certified secondary school counselor of 700 hours in a secondary school setting (grades 6-12) which is part of a graduate degree program in secondary school counseling; or

4.2.3.2 An applicant who is seeking initial certification of both an Elementary School Counselor Standard Certificate and a Secondary School Counselor Standard Certificate simultaneously, must complete 350 hours of clinical experience in an elementary school setting (grades K-8) under the direct supervision of a state department of education certified elementary school counselor and 350 hours of clinical experience in a secondary school setting (grades 6-12) under the direct supervision of a state department of education certified secondary school counselor.

4.2.3.2.1 For an applicant seeking dual certification, clinical hours in grades 6-8 shall only be used in one setting.

4.3 For an applicant who holds an Elementary School Counselor Standard Certificate and is seeking a Secondary School Counselor Standard Certificate, the applicant shall have satisfied the requirements in subsections 4.3.1 and 4.3.2.

4.3.1 The applicant shall have achieved on the *Praxis* Subject Assessment – Professional School Counselor (ETS Test Code # 5421) a Passing Score of 156.

4.3.2 The applicant shall have completed 350 hours of additional clinical experience in a secondary school setting (grades 6-12) under the direct supervision of a state department of education certified secondary school counselor.

5.0 Effective Date of Section 4.0

Section 4.0 of this regulation shall be effective on January 1, 2017.

5.0 Application Requirements

5.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with application for an Initial License, and the applicant shall also provide all required documentation for the License.

- 5.2 For applicants who are applying for their first Standard Certificate, the following documentation is required with the application for a Secondary School Counselor Standard Certificate:
- 5.2.1 Evidence of obtaining a School Counseling certificate from the National Board for Professional Teaching Standards, if applicable; and
 - 5.2.2 Official transcript from the applicant's Regionally Accredited college or university.
 - 5.2.2.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or
 - 5.2.2.2 Sealed paper transcripts may be submitted.
 - 5.2.2.3 The Department will not accept copies of transcripts; and
 - 5.2.3 Official score on the *Praxis* Subject Assessment as provided in subsection 4.1.2; and
 - 5.2.4 If applicable, an experience form must be completed in full and signed by the applicant; and
 - 5.2.5 The Department-approved form verifying the applicant's completion of the clinical experience as provided in subsection 4.1.3; and
 - 5.2.6 Additional documentation as required by the Department.
- 5.3 For applicants who are applying for their second or subsequent Standard Certificate and who do not hold an Elementary School Counselor Standard Certificate, the following documentation is required in the application for a Secondary School Counselor Standard Certificate:
- 5.3.1 Evidence of obtaining a School Counseling certificate from the National Board for Professional Teaching Standards, if applicable; and
 - 5.3.2 Official transcript from the applicant's Regionally Accredited college or university.
 - 5.3.2.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or
 - 5.3.2.2 Sealed paper transcripts may be submitted.
 - 5.3.2.3 The Department will not accept copies of transcripts; and
 - 5.3.3 Official score on the *Praxis* Subject Assessment as provided in subsection 4.2.2; and
 - 5.3.4 If applicable, an experience form must be completed in full and signed by the applicant; and
 - 5.3.5 The Department-approved form verifying the applicant's completion of the clinical experience as provided in subsection 4.2.3; and
 - 5.3.6 Additional documentation as required by the Department.
- 5.4 For applicants who hold an Elementary School Counselor Standard Certificate, the following documentation is required in the application for a Secondary School Counselor Standard Certificate:
- 5.4.1 Official score on the *Praxis* Subject Assessment as provided in subsection 4.3.1; and
 - 5.4.2 The Department-approved form verifying the applicant's completion of the clinical experience as provided in subsection 4.3.2; and
 - 5.4.3 Additional documentation as required by the Department.
- 5.5 For applicants who have met the requirements for licensure and hold a Valid and Current License or Certificate from Another State in secondary school counseling, the following documentation is required in the application for a Secondary School Counselor Standard Certificate:
- 5.5.1 An official copy of the valid and current educator license or certificate from another state or professional license.
- 6.0 Validity of a Standard Certificate**
- 6.1 A Secondary School Counselor Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.
 - 6.2 A Secondary School Counselor Standard Certificate is not subject to renewal.

7.0 Revocation of a Standard Certificate

PROPOSED REGULATIONS

- 7.1 An Educator's Secondary School Counselor Standard Certificate shall be revoked in the event the Educator's Initial, Continuing, or Advanced License or Standard or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's Standard Certificate application in accordance with 14 Del.C. §1222.
- 7.2 An Educator whose Standard Certificate is noticed for revocation is entitled to a full and fair hearing before the Standards Board.
- 7.2.1 Hearings shall be conducted in accordance with 14 DE Admin. Code 1515 Hearing Procedures and Rules.

8.0 **Secretary of Education Review**

The Secretary of Education may, upon the written request of a local school district or charter school, review credentials submitted in an application for a Secondary School Counselor Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a Secondary School Counselor Standard Certificate but whose effectiveness is documented by the local school district or charter school.

9.0 **Past Certificate Recognized**

The Department shall recognize a Secondary School Counselor Standard Certificate that was issued prior to the effective date of this regulation. An educator holding such a Standard Certificate issued by the Department before the effective date of this regulation shall be considered certified in secondary school counseling.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

Determination of Child Care - Parents Under Age 18

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 Social Services (DSS) is proposing to amend Child Care, specifically, to update policy regarding minor parents who are under the age of 18 and residing with their legal guardians or parents.

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@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on October 31, 2019. Please identify in the subject line: Determination of Child Care - Parents Under Age 18.

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 proposed regulation is being amended to improve the formatting of the regulation and to provide clear instructions to DSS eligibility staff on determining child care eligibility for minor parents.

Statutory Authority

45 CFR 98.20 (3)(i)(ii)

Background

Child Care is provided by the Division of Social Services as a support for families with children to enable the caretaker to hold a job, obtain training or meet special needs of the parent or child. Child care may also be provided in child abuse cases to help protect the child.

Summary of Proposal

Summary of Proposed Changes

Effective for services provided on and after December 11, 2019 Delaware Health and Social Services/Division of Social Services proposes to amend the Division of Social Service Manual section 11003.9.4 regarding Child Care, specifically, to update policy regarding minor parents who are under the age of 18 and residing with their legal guardians or parents.

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/Division of Social Services (DHSS/DSS) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on October 31, 2019.

Fiscal Impact

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

***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/october2019/proposed/23 DE Reg 292RFA 10-01-19.pdf>

POLICY – AMENDMENT

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

11003.9.4 Determining Child Care for Parents Who Are Under Age 18 and Family Size

45 CFR 98.20 (3)(i)(ii)

~~Consider minor parents (under 18) for child care services separately from their legal guardian or parents. This means that minor parents can apply for child care services on their own even if they live with their legal guardian or parents. In this case, need for care and financial eligibility is based on the minor parents' circumstances and not that of their parents or legal guardian.~~

~~EXAMPLE: A 17 year old, who lives with mom, has a child of her own and she needs child care to continue high school. Completing high school is her need. If she seeks child care as a Category 31 case, financial eligibility is based on her income. She and her child are a family of two.~~

~~Even though minor parents who are living with a legal guardian or their parents can apply on their own, still seek the signature of the legal guardian or parents on the minor parent's application for child care. However, if the legal guardian or parents refuse to sign the application, deny service.~~

~~The legal guardian or parents of the minor parent could apply for child care as caretakers if they demonstrate~~

PROPOSED REGULATIONS

that they provide for the primary support and care of the minor parent's child.

This policy applies to minor parents who are under the age of 18 and residing with their legal guardians or parents.

1. A minor parent who is applying for child care services must:

- Have a need for child care;
- Meet financial eligibility requirements based on the minor parent's income;
- Provide a referral from the Division of Family Services (DFS) if the family has an active DFS case; and
- Provide a medical form or statement of a special need, if applicable.

2. The legal guardian or parent of a minor parent must:

- Sign the child care application of the minor parent. DSS will deny child care if the legal guardian or parent of the minor parent does not sign the application.
- Verify legal guardianship of the minor parent's child if:
 - i. The legal guardian or parent provides primary support for the minor's child; and
 - ii. The legal guardian or parent is applying for child care services.

Note: An agency that has custody of a minor parent must apply on behalf of the minor requesting child care services.

DEPARTMENT OF STATE

DIVISION OF HISTORICAL AND CULTURAL AFFAIRS

Statutory Authority: 30 Delaware Code, Section 1815(b) (30 **Del.C.** §1815(b))
1 DE Admin. Code 901

PUBLIC NOTICE

901 Historic Preservation Tax Credit Program

Title:

Amendments to the Regulations Governing the Historic Preservation Tax Credit Program

Brief Synopsis:

The Historic Preservation Tax Credit Act (30 **Del.C.** Ch. 18, Subch. II) was first enacted by the General Assembly in 2001 and was amended in 2002, 2003, 2004, 2005, 2010 and 2014. Program regulations were adopted on July 11, 2002 (**6 DE Reg. 108** published 07/01/02), and were amended on July 11, 2004 (**8 DE Reg. 194** published 07/01/04), on January 11, 2005 (**8 DE Reg. 1031** published 01/01/05), on October 11, 2010 (**14 DE Reg. 485**, published 11/01/2010), on September 11, 2014 (**18 DE Reg. 237** published 09/01/14), and on November 11, 2018 (**22 DE Reg. 409** published 11/1/18). The purpose of this proposed regulatory amendment is to eliminate section 7.4 which allows applicants to request an increase in their credit award. The intent of the provision, added to the regulation in 2010, was to take into consideration changes in project costs that can occur during construction. However the provision is not included in the enabling legislation or Delaware Code, and as written is open to interpretation and therefore vulnerable to challenges. Section 8.1.2 regarding fees for increased awards would also be eliminated from the regulation, as the removal of section 7.4 will render that subsection irrelevant. An amendment to section 7.6 of the regulation is also proposed to reflect changes to the program made in the 149th and 150th General Assembly of Delaware. The Bond and Capital Improvements Acts increased the total amount of credits available in each state fiscal year, through state fiscal year 2025 (81 Del. Laws c. 303 and 82 Del. Laws c.

86), but did not specifically allocate credits to a type of project. The amendment will establish the process for distributing unallocated credits in accordance with Delaware Code.

Statutory Basis or Legal Authority to Act:

30 **Del.C.** Ch. 18, Subch. II, §1815(b)

Other Regulations that may be affected by the Proposal:

The State Bank Commissioner and the Division of Revenue may adopt regulations or issue guidelines for tax elements of the Historic Preservation Tax Credit Act.

Notice of Public Comment:

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Ch. 101, the Division of Historical and Cultural Affairs proposes to amend rules and regulations pursuant to its authority under 30 **Del.C.** §1815(b). The Division will receive and consider all written comments on the proposed rules and regulations related to implementation of amendments to the Historic Preservation Tax Credit Act. Submit comments to the Division in care of Timothy A. Slavin, Director, Division of Historical and Cultural Affairs, 21 The Green, Dover, DE 19901. The final date to submit comments is October 31, 2019. Anyone wishing to obtain a copy of the proposed amendments to the rules and regulations should notify Timothy A. Slavin at the above address or call 302-736-7400. This notice will be published in two newspapers of general circulation.

***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/october2019/proposed/23 DE Reg 294RFA 10-01-19.pdf>

901 Historic Preservation Tax Credit Program
(Break in Continuity of Sections)

6.0 Procedures for Certification of Completion

(Break in Continuity Within Section)

- 6.5 After issuing a Certificate of Completion for a project, or an approved phase, the State Office shall submit the documentation of qualified expenditures and an 1811AC 0905 form to the Division of Revenue, and request a determination of the value of the documented expenditures and assignment of the calculated tax credits to the applicant ~~in accordance with subsection 7.4 of these regulations~~ for the completed project or an approved phase. For all projects in which the tax credits are to be applied against franchise taxes, and at other times as requested by the Division of Revenue, the forms and documentation will also be submitted to the State Bank Commissioner's Office.

7.0 Procedures for Requesting a Credit Award

(Break in Continuity Within Section)

- ~~7.4 The Delaware State Historic Preservation Officer may consider an increase in a credit award where there has been an increase in qualified costs of greater than 5% of the total.~~
- ~~7.5~~7.4 Despite having been assigned a certain credit award, an applicant may only claim the amount of tax credits which are supported by their actual rehabilitation costs.
- ~~7.6~~7.5 Each fiscal year, \$5 million of the total that is allocated for Credit Awards is to be distributed as follows:
- ~~7.6.1~~7.5.1 \$100,000 is reserved for distribution to qualified resident curators. If, in any fiscal year, there are insufficient qualified resident curators to exhaust this allotment, the unused credit amount will be available in the next fiscal year for award to any eligible project.
- ~~7.6.2~~7.5.2 \$1.5 million is reserved for projects receiving a credit award of not more than \$300,000. After April 1, any unassigned portion of the \$1.5 million is released to be available for credit awards to any eligible project.

PROPOSED REGULATIONS

~~7.6-37.5.3~~ 7.5.3 \$1.5 million is reserved for projects located in Downtown Development Districts, of which \$500,000 is reserved for projects in DDDs receiving tax credits of not more than \$300,000. After April 1, any unassigned portion of the \$1.5 million is released to be available for credit awards to any eligible project.

7.5.4 Any credits authorized by the legislature that are not allocated by Delaware Code to a specific type of project shall be reserved for distribution in accordance with the methods established by Delaware Code.

8.0 Fees for Processing Rehabilitation Certification Request

8.1 Except as provided for under Section 12.0, all applicants who seek a Credit Award for their certified rehabilitation are subject to a fee.

(Break in Continuity Within Section)

8.1.2 The fee for all other applicants is as follows: \$250 due at the time the applicant submits their Request for Certification of Historic Property Application; 1.5% of the credit reservation requested in the Part 2 Certification of Rehabilitation; and 1.5% of the credit reservation or credit award (whichever is more) in the Part 3 Certification of Completion. The fee will be calculated by the Delaware State Historic Preservation Office based on the qualified expenditures indicated in the Part 2 Certification of Rehabilitation and its associated documentation. ~~If the applicant requests an increase the amount of tax credits to be awarded to a project, this will result in a supplemental fee.~~ All fees are non-refundable.

***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 Historic Preservation Tax Credit Program

DIVISION OF PROFESSIONAL REGULATION

1900 BOARD OF NURSING

Statutory Authority: 24 Delaware Code, Sections 1904(c) and 1934(a)(1) (24 **Del.C.** §§1904(c) & 1934(a)(1))
24 **DE Admin. Code** 1900

PUBLIC NOTICE

1900 Board of Nursing

The Delaware Board of Nursing, pursuant to 24 **Del.C.** §1904(c) and 1934(a)(1), proposes to revise its regulations to update its regulations pertaining to internationally educated nursing applicants and advanced practice registered nurses. The proposed changes to Regulation 2 seek to clarify the requirements for clinical and didactic preceptors for online nursing education programs and the requirements to obtain Board approval to establish a new nursing school in Delaware. The changes to Regulation 6 clarify the requirements for licensure for internationally or Puerto Rican educated nurses to make them consistent with US educated nurses. The proposed changes to Regulation 8 clean up redundant or inaccurate regulations pertaining to advanced practice registered nurses. More specifically, the definition of audit will be stricken to clarify they are audited along with the registered nurse audit; regulations pertaining to internationally educated APRNs will be added as there currently are none, despite such language existing in the national model rules; the procedure for renewal audits will be clarified to comport with the procedure utilized by the Division of Professional Regulation; and the definition of active practice for APRNs will be added to comply with the statute regarding prescriptive authority.

The Board will hold a public hearing on the proposed regulation changes on November 13, 2019 at 9:00 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments

should be sent to Dr. Pamela Zickafoose, Executive Director of the Delaware Board of Nursing, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until December 2, 2019 pursuant to 29 Del.C. §10118(a).

***Please Note:**

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

<http://regulations.delaware.gov/register/october2019/proposed/23 DE Reg 296RFA 10-01-19.pdf>

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

1900 Board of Nursing

OFFICE OF THE STATE TREASURER DIVISION OF DEBT AND CASH MANAGEMENT

Statutory Authority: 29 Delaware Code, Section 2716 (29 Del.C. §2716)
1 DE Admin. Code 1201

PUBLIC NOTICE

1201 Statement of Objectives and Guidelines for the Investment of State of Delaware Funds

NATURE OF PROCEEDINGS; SYNOPSIS OF THE SUBJECT AND SUBSTANCE OF THE PROPOSED REGULATION

In accordance with the procedures set forth in 29 Del.C. Ch. 11, Subch. III, and 29 Del.C. Ch. 101, the Cash Management Policy Board (the "Board") is proposing to amend previously adopted regulations governing the deposit and investment of State funds, as permitted by 29 Del.C. §2716.

STATUTORY BASIS AND LEGAL AUTHORITY TO ACT

29 Del.C. §2716.

OTHER REGULATIONS AFFECTED

None.

HOW TO COMMENT ON THE PROPOSED REGULATION

Members of the public may receive a copy of the proposed regulations at no charge by U.S. Mail by writing or calling Mr. Joshua Berkow at the Office of the State Treasurer, 820 Silver Lake Boulevard, Suite 100, Dover, DE 19904, (302) 672-6728. Members of the public may present written comments on the proposed regulations by submitting such written comments to Mr. Joshua Berkow at the address above. Written comments must be received on or before November 1, 2019.

SUMMARY OF PROPOSED REGULATION

The Board is authorized to establish policies (a) for the investment of all money belonging to the State or on deposit from its political subdivisions, except money deposited in any State pension fund or the State deferred compensation program, and (b) to determine the terms, conditions, and other matters relating to those investments including the designation of permissible investments. See 29 Del.C. §2716(a). The Board is required to approve by majority vote all financial institutions that are selected to provide banking and investment services to the State. See 29 Del.C. § 2716(a)(2).

The existing regulations, among other things, establish requirements related to the deposit of State funds in demand deposit accounts and establish permissible investments and percentage limits for State funds held for investment. See 1 DE Admin. Code 1201. The proposed amendments (a) add deposit requirements for demand

deposit accounts that receive proceeds of debit or credit card transactions; (b) update the list of permissible liquidity and reserve account investments to include Federal National Mortgage Association obligations and securities, and supranational organizations or international agency obligations; (c) remove the minimum percentage limit on cash or cash equivalents for endowment accounts; (d) restrict investment of any State funds in private placement securities, unless otherwise authorized under applicable U.S. Securities and Exchange Commission rules and regulations, and (e) include non-substantive changes, including the deletion of duplicative language. The regulations apply to and govern the conduct of the State's approved depository banks, custodians and investment managers and will have no direct impact on individuals or businesses that do not serve in one of those capacities for the State. The Board believes that it has authority to promulgate deposit and investment policies without complying with the formal requirements of Delaware's Administrative Procedures Act, 29 Del.C. Ch. 101 (the "APA"). The Board is promulgating amended regulations under the APA out of an abundance of caution, consistent with prior practices.

***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/october2019/proposed/23 DE Reg 297RFA 10-01-19.pdf>

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

[1201 Statement of Objectives and Guidelines for the Investment of State of Delaware Funds](#)

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(a) (14 **Del.C.** §122(a))
14 **DE Admin. Code** 545

REGULATORY IMPLEMENTING ORDER

545 K to 12 School Counseling Programs

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §122(a), the Secretary of Education seeks the consent of the State Board of Education to reauthorize 14 **DE Admin. Code** 545 K to 12 School Counseling Programs. The Department has reviewed the regulation in order to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on June 1, 2019, in the form hereto attached as *Exhibit "A"*. No comments were received. However, the Department of Education made changes to the names of the components to align with the recently released 4th edition of the American School Counselor Association National Model. The Secretary deems these changes to be non-substantive and therefore the regulation does not require republication based on 29 **Del.C.** §10118(c).

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to reauthorize 14 **DE Admin. Code** 545 K to 12 School Counseling Programs in order to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years and notes that changes were made to the names of the components to align with the recently released 4th edition of the American School Counselor Association National Model. The Secretary deems these changes to be non-substantive and therefore the regulation does not require republication based on 29 **Del.C.**

§10118(c).

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to reauthorize 14 **DE Admin. Code** 545 K to 12 School Counseling Programs. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 545 K to 12 School Counseling Programs attached hereto as *Exhibit "B"* is hereby reauthorized. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 545 K to 12 School Counseling Programs hereby reauthorized 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** 545 K to 12 School Counseling Programs reauthorized hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 545 K to 12 School Counseling Programs in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on September 19, 2019. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 19th day of September 2019.

Department of Education

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

Approved this 19th day of September 2019

State Board of Education

Whitney Townsend Sweeney, President (absent)

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

Candace Fifer

Vincent Lofink

Nina Lou Bunting (absent)

Wali W. Rushdan, II

Provey Powell, Jr.

545 K to 12 School Counseling Programs

1.0 Definitions

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

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

2.0 School District Counseling Programs and Written Plans

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

- 2.2 Every school in each district shall have a written plan, using the model templates provided by the Department, for the school counseling program that:
- 2.2.1 Is implemented by a school counselor certified in accordance with the applicable Professional Standards Board regulations.
 - 2.2.2 Utilizes nationally recognized student standards as defined by the ASCA National Model.
 - 2.2.3 Aligns vertically K-12 within the district.
 - 2.2.4 Contains all four components of the ASCA National Model:
 - 2.2.4.1 The ~~[Foundation Define]~~ component, which consists of ~~[vision and mission statements, program goals and student and professional competencies]~~ the ASCA Mindsets and Behavior Standards for Student Success, ASCA Ethical Standards for School Counselors and the ASCA School Counselor Professional Standards and Competencies].
 - 2.2.4.2 The ~~[Management Manage]~~ component, which ~~[utilizes assessments and tools to develop, implement and evaluate the school counseling program]~~ provides organizational tools and assessments designed to guide, target, structure and construct a school counseling program to get results].
 - 2.2.4.3 The ~~[Delivery Deliver]~~ component, which ~~[focuses on the implementation of the school counseling program through direct and indirect student services]~~ defines the methods school counselors use to provide activities and services to students and for students through the two broad categories of direct and indirect services].
 - 2.2.4.4 The ~~[Accountability Assess]~~ component, which ensures regular analysis of data to determine program effectiveness in measureable terms and inform program decisions.
 - 2.2.5 Is on file at the district office and in the school.
 - 2.2.6 Is reviewed annually and updated as needed by the school counselor in collaboration with the building administrator and district supervisor.

3.0 Reporting Requirements and Timelines

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

OFFICE OF THE SECRETARY

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

REGULATORY IMPLEMENTING ORDER

917 Accelerated Academic Programs

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

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

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to reauthorize 14 **DE Admin. Code** 917 Accelerated Academic Programs in order to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years and concluded that the regulation should be reauthorized without any changes.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to reauthorize 14 **DE Admin. Code** 917 Accelerated Academic Programs. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 917 Accelerated Academic Programs attached hereto as *Exhibit "B"* is hereby reauthorized. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 917 Accelerated Academic Programs hereby reauthorized 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** 917 Accelerated Academic Programs reauthorized hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 917 Accelerated Academic Programs in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on September 19, 2019. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 19th day of September 2019.

Department of Education

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

Approved this 19th day of September 2019

State Board of Education

Whitney Townsend Sweeney, President (absent)

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

Candace Fifer

Vincent Lofink

Nina Lou Bunting (absent)

Wali W. Rushdan, II

Provey Powell, Jr.

*Please note that no changes were made to the regulation as originally proposed and published in the June 2019 issue of the *Register* at page 982 (22 DE Reg. 982). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

917 Accelerated Academic 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** 14110 and 14340

ORDER

Documentation of State Residency

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Division of Social Services Manual (DSSM) regarding state residency documentation requirements, specifically, to align policy with current practice. 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 2019 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 3, 2019 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after October 11, 2019 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend the Division of Social Services Manual (DSSM) sections 14340, 14340.1, 14110.1, 14110.2, 14110.3, 14110.4, 14110.5, 14110.6, 14110.7, 14110.8, 14110.8.1, and 14110.8.2 regarding state residency documentation requirements, specifically, to align policy with current practice.

Background

Each state must provide Medicaid to eligible residents including residents who are absent from the State. Additionally, evidence of immigration status may not be used to determine that an individual is not a State resident. The proposed amendment incorporates the current residency requirements at 42 Code of Federal Regulations §435.403 into the Delaware Division of Social Services Manual (DSSM).

Statutory Authority

42 CFR 435.403

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 September 3, 2019.

Provider Manuals and Communications Update

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

Fiscal Impact Statement

There is no anticipated fiscal impact to the agency.

Summary of Comments Received with Agency Response and Explanation of Changes

The following summarized comments were received:

Comment: Two commenters indicated that the federal citations for 14110.6, 14110.7 and 14110.9 are incorrect.

Agency Response: DMMA corrected the error.

Comment: Two commenters suggested in Section 14110.8(c) it would be more clear to add another "or" between the first two bullet points. The addition would clarify that for an institutionalized individual who is neither married nor emancipated, the state of residence is the state of residence of the parent/legal guardian at the time of placement; OR the current state of residence of the parent/legal guardian.

Agency Response: DMMA agreed and the change was made.

Comment: Two commenters suggested in Section 14110.9(c) it would be clearer to add another "or" between the first two bullet points. The addition would clarify that for any institutionalized individual who became incapable of indicating intent before age 21, the state of residence is that of the parent applying for Medicaid on behalf of the individual; OR the state of residence of the parent/legal guardian at the time of placement.

Agency Response: DMMA agreed and the change was made.

Comment: Two commenters questioned if in Section 14110.11(b) on institutionalized individuals capable of indicating intent, the agency should clarify whether this policy only applies to institutionalized individuals age 21 or over. The commenters also suggested adding a citation to the applicable federal regulation.

Agency Response: DMMA appreciates the comment and after reviewing the federal regulations at 42 CFR 435.403 State Residency, DMMA is withdrawing this section and finds no federal guidance for Delaware related to this issue.

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

- Governor's Advisory Council For Exceptional Citizens
- State Council for Persons with Disabilities

FINDINGS OF FACT:

The Department finds the proposed changes as set forth in the August 2019 *Register of Regulations* should be adopted with additions. The Department finds that the proposed does not require further public notice or comment under the APA because the amendments are non-substantive pursuant to 29 **Del.C.** §10118(c).

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Division of Social Services Manual (DSSM) regarding state residency documentation requirements, specifically, to align policy with current practice, is adopted and shall be final effective October 11, 2019.

9/12/19

Date of Signature

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

14110 State Residency

An applicant or beneficiary must be a Delaware resident.

(Break in Continuity of Sections)

14110.6 Individuals Receiving a State supplementary payment (SSP)

Per 42 CFR [~~438.403(f)~~ 435.403(f)]

Individuals of any age who are receiving an SSP, the State of residence is the State paying the SSP.

14110.7 Individuals Receiving Title IV-E Payments

Per 42 CFR [~~438.403(g)~~ 435.403(g)]

Individuals of any age who are receiving Federal payments for foster care or adoption assistance under title IV-E of the Social Security Act, the State of residence is the State where the child lives.

44110.5 [~~44100.8~~ 14110.8] Individuals Under Age 21

42 CFR 435.403(i)

For an individual under age 21 who is not eligible for Medicaid based on receipt of assistance under title IV-E of the Act, as addressed 14110.7 of this section, and is not receiving a State supplementary payment, as addressed in paragraph 14110.6 of this section, the State of residence is as follows:

(Break in Continuity Within Section)

- c) For an institutionalized individual who is neither married nor emancipated, the State of residence is:
 - the parent's or legal guardian's State of residence at the time of placement (if a legal guardian has been appointed and parental rights are terminated, the State of residence of the guardian is used instead of the parent's); **[or]**

(Break in Continuity Within Section)

- the State of residence of the individual who files an application is used if the individual has been abandoned by the parents (including deceased parents)[,] ~~and~~ there is no legal guardian, and is institutionalized in that state.

44110.6 [~~44100.9~~ 14110.9] Individuals Age 21 and Over

42 CFR [~~435.503(h)~~ 435.403(h)]

For an individual over age 21 who is not eligible for Medicaid based on receipt of assistance under title IV-E of the Act, as addressed 14110.7 of this section, and is not receiving a State supplementary payment, as addressed in paragraph 14110.6 of this section, the State of residence is as follows:

(Break in Continuity Within Section)

- c) For any institutionalized individual who became incapable of indicating intent before age 21, the State of residence is: ~~the parent's or legal guardian's State of residence at the time of placement or if a legal guardian is appointed and parental rights are terminated, the State of residence of the guardian is used.~~

- That of the parent applying for Medicaid on the individual's behalf, if the parents reside in separate States (if a legal guardian has been appointed and parental rights are terminated, the State of residence of the guardian is used instead of the parent's); **[or]**

(Break in Continuity of Sections)

44110.8/14110.11 Exceptions to General Residency Rules

When ~~[one of]~~ the following exists, it supersedes the general residency rules:

- ~~a) An individual receiving a State Supplementary Payment is a resident of the State making the payment.~~
- ~~b) An individual receiving Federal payments for foster care under title IV-E of the Social Security Act, and an individual for whom there is an adoption assistance agreement in effect under title IV-E of the Social Security Act, is a resident of the State where the individual is living.~~

- ~~e) An individual to be placed in an institution in another state is a resident of the State that arranges the placement.~~

- ~~d)a) When two or more States cannot resolve which State is the State of residence, the State in which the individual is physically located is the State of residence.~~

- ~~e)[b)] An institutionalized individual capable of indicating their intent to return home to their principal place of residence is a resident of the State where their principal place of residence is located. **[When an institutionalized individual is capable of indicating their intent to return home to their principal place of residence located in another state, the individual will not be considered a Delaware resident since their intent is not to remain in Delaware.]**~~

*Please note that no additional changes were made to the regulation as originally proposed and published in the August 2019 issue of the *Register* at page 83 (23 DE Reg. 83). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

Documentation of State Residency

FINAL REGULATIONS

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 7406 (16 Del.C. §7406)
16 DE Admin. Code 4465

ORDER

4465 Delaware Radiation Control Regulations

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“DHSS”) initiated proceedings to adopt the State of Delaware Regulations Governing Radiation Control. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, subsection 7406.

On August 1, 2019 (Volume 23, Issue 2), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by September 3, 2019, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

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

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Radiation Control were published in the Delaware *Register of Regulations*. Written comments were received on the proposed regulations during the public comment period (August 1, 2019 through September 3, 2019).

Entities offering written comments include:

- American Society of Radiologic Technologists, Greg Morrison, Deputy Chief Executive Officer
- Delaware Association of Nurse Anesthetists, Rebecca Kidner
- Medical Society of Delaware, Andrew Dahlke, M.D., President

Comments from the American Society of Radiologic Technologists (ASRT)

ASRT is committed to the belief that only health care practitioners who are educationally prepared and clinically competent shall be authorized to perform fluoroscopy, and that specific educational content and competency assessment related to fluoroscopy must be successfully completed before a physician assistant or advanced practice registered nurse can safely operate any fluoroscopy equipment.

5.13 Operator Qualifications

As proposed:

5.13.1.3 A licensed physician’s assistant who passed the state-level American Registry of Radiologic Technologists (ARRT) Fluoroscopy Exam (or equivalent) and only under the direct supervision of the licensed practitioner who is also a physician, working within his or her scope of practice. ~~This operator qualification is limited to physician’s assistants, and does not include Advanced Practice Registered Nurses (APRNs).~~

Suggested revision:

5.13.1.3 A licensed physician’s assistant who successfully completed the American Academy of Physician Assistants and American Society of Radiologic Technologists Educational Framework for the Physician Assistant and passed the state-level American Registry of Radiologic Technologists (ARRT) Fluoroscopy Exam (or equivalent) and only under the direct supervision of the licensed practitioner who is also a physician, working within his or her scope of practice. This operator qualification is limited to physician’s assistants, and ~~does not include~~ Advanced Practice Registered Nurses (APRNs).

Response: The Authority on Radiation Protection appreciates this concern. However, this suggestion represents a substantive change, raising the credentialing bar for the practice community, and was not incorporated into the final publication.

Comments from the Delaware Association of Nurse Anesthetists (DANA)

DANA respectfully submits that including the parenthetical reference to “PA or APRN” in these two sections [(subsections 5.13.1.1 and 5.14.1)], as it appeared in the document presented to the Authority, is desirable as it removes ambiguity regarding the definition of “advanced practitioner” as used in this voluminous regulation.

Response: The Authority on Radiation Protection acknowledges and appreciates this comment. The suggested changes were made in the final publication.

Comments from the Medical Society of Delaware

Thank you for the opportunity to comment on the proposed regulations on behalf of the Medical Society of Delaware. These regulations have had a long journey, with a lot of work from many dedicated professionals, all of whom care deeply for patient safety. This is not an easy topic - as any person who takes a moment to even scan the regulations can readily appreciate - and the risks are high. We are writing to put on the record a request for additional regulatory action.

We understand the basis for the proposed changes in the regulations: Delaware allows APRN independent practice. However, the current regulations do not account for this and an APRN practicing independently would not be able to perform radiological services or procedures.

In the physician setting, Radiologists who use the full extent of these regulations are required to undergo many, many years of training, certification and recertification. While the regulations do not preclude other types of physicians, there are safety mechanisms in place through standard of care which has evolved in physician practice over time to its current state. Our understanding is that while this process is underway for APRN's, it is distinct from APRN independent practice either in code or in culture simply due to the fact that, in Delaware, independent practice is incredibly new and much of the statutory language around the license is still subjective.

Since the risks of radiation are high, it is our hope that the Board of Nursing will create additional regulatory safety mechanisms that APRN licensees who wish to practice under the 4465 Regulations have certain training and certification that would best prepare them for delivering services that fall under these Regulations. This applies with particular emphasis on fluoroscopy, where a minimum of two years of hands-on fluoroscopy training followed by a standardized exam on radiation safety, radiation physics, and problem solving fluoroscopy cases should be a minimal prerequisite. Any less training will lead to patient harm.

If the risks of radiation were not so high - for all licensees and their patients - there would be no need for regulations at all. These risks, paired with the newness of APRN practice, we believe invoke a precautionary principle. Not as a barrier to the goal, but as a cultivation of safe practice.

Response: The Authority on Radiation Protection appreciates these comments, finds them insightful with respect to changes in the practice community, and will take them into consideration moving forward.

FINDINGS OF FACT:

Some changes were made to the regulations since publication as proposed. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Radiation Control is adopted and shall become effective October 11, 2019 (ten days), after publication of the final regulation in the Delaware *Register of Regulations*.

9/10/19

Date

Dr. Kara Odom Walker

Secretary

4465 Delaware Radiation Control Regulations

(Break in Continuity of Sections)

PART F - MEDICAL DIAGNOSTIC AND INTERVENTIONAL X-RAY AND IMAGING SYSTEMS

(Break in Continuity Within Section)

5.0 Fluoroscopic Equipment.

(Break in Continuity Within Section)

5.13 Operator Qualifications.

5.13.1 In addition to the applicable sections of these regulations, the operation of a fluoroscopic x-ray system for clinical purposes shall be limited to:

- 5.13.1.1 A licensed practitioner who is also a physician, or ~~certified radiologic technologist working within his or her scope of practice~~; an advanced practitioner [(PA or APRN)] working within their professional scope of practice per Title 24 Delaware Code, or a certified radiologic technologist working within their scope of practice per these radiation control regulations.

(Break in Continuity Within Section)

5.14 Equipment Operation.

5.14.1 All fluoroscopic images shall be viewed, directly or indirectly, and interpreted by a licensed practitioner who is also a ~~physician~~, physician or an advanced practitioner [(PA or APRN)] working within their professional scope of practice, per Title 24 Delaware Code.

***Please note that no additional changes were made to the regulation as originally proposed and published in the August 2019 issue of the Register at page 89 (23 DE Reg. 89). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

4465 Delaware Radiation Control Regulations

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Sections 503(c),(d) and 512 (31 Del.C. §§503(c),(d) & 512)
16 DE Admin. Code 4006

ORDER

TANF and GA Eligibility - Excluded Income

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend Division of Social Services Manual (DSSM) regarding Temporary Assistance for Needy Families (TANF) and General Assistance (GA), specifically, to revise eligibility policy related to excluded income. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the August 2019 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 3, 2019 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after October 11, 2019, Delaware Health and Social Services/Division of Social Services proposes to amend the Division of Social Service Manual sections 4006, 4006.1 and 4006.2 regarding TANF and GA, specifically, to revise eligibility policy related to excluded income.

Statutory Authority

- Social Security Act, Title IV, Part A
- CFR, Title 45, Subtitle B, Chapter II
- 31 Del.C. §503(c),(d)
- 31 Del.C. §512

Background

Temporary Assistance for Needy Families (TANF) is a program that provides cash assistance and supportive services to assist families with children under age 18, helping them achieve economic self-sufficiency.

General Assistance (GA) is a state-funded program designed to provide cash assistance to low-income people who do not qualify for federally funded programs, such as TANF or Social Security benefits.

There are income and resource limits that apply to both TANF and GA. Some income may be excluded when determining financial eligibility and benefit amounts for TANF and GA.

Purpose

To improve the formatting and to list all types of excluded income in one policy.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on September 3, 2019.

Fiscal Impact Statement

The policy is currently in place and there are no new financial responsibilities.

Summary of Comments Received with Agency Response and Explanation of Changes

The following summarized comments were received:

Comment: Two commenters suggested that DSS consider adding a policy of excluding small gifts from counting as income for TANF and GA recipients.

Agency Response: DSS appreciates the council's perspective on the small gifts counting as income for TANF and GA recipients, but that income would be captured in the non-reoccurring lump sum payment and it would not count towards TANF and GA eligibility because of the amount.

Comment: Two commenters suggested the DSS policy on income exclusions should cross-reference DSSM 4005.1, which explains that the first \$50 of child support received in a month is disregarded in determining financial eligibility for TANF.

Agency Response: DSS has cross referenced DSSM 4005.1 as a related policy.

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

- Governor's Advisory Council for Exceptional Citizens
- State Council for Persons with Disabilities

FINDINGS OF FACT:

The Department finds the proposed changes as set forth in the August 2019 *Register of Regulations* should be adopted with additions. The Department finds that the proposed does not require further public notice or comment under the APA because the amendments are non-substantive pursuant to 29 **Del.C.** §10118(c).

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding Temporary Assistance for Needy Families (TANF) and General Assistance (GA), specifically, to revise eligibility policy related to excluded income, is adopted and shall be final effective October 11, 2019.

9/12/19

Date of Signature

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

POLICY – AMENDMENT

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

4006 ~~Excluded~~ Excluding Income in TANF and GA Eligibility Determinations

45 CFR 233.20(a)

(Break in Continuity Within Section)

[Related policies:
 DSSM section 4005.1]

*Please note that no additional changes were made to the regulation as originally proposed and published in the August 2019 issue of the *Register* at page 92 (23 DE Reg. 92). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

TANF and GA Eligibility - Excluded Income

DEPARTMENT OF INSURANCE
OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 314 (18 Del.C. §314)
 18 DE Admin. Code 1101

REGULATORY IMPLEMENTING ORDER
1101 Listed Surplus Lines Carriers Intending to Establish an Office in Delaware
I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

In the August 1, 2019 edition of the *Register of Regulations* at **23 DE Reg. 102**, the Commissioner of the Delaware Department of Insurance (Commissioner) published a proposed public notice to repeal existing Regulation 1101, Listed Surplus Lines Carriers Intending to Establish an Office in Delaware [Formerly Regulation 4], and solicited written comments from the public for thirty (30) days as mandated by the Administrative Procedures Act at 29 Del.C. §10118(a).

As discussed in the introductory paragraphs of the proposal to repeal, prior to the surplus lines laws being amended to adopt the Nonadmitted and Reinsurance Reform Act in 2011, there was a provision in Delaware Code Title 18 at Chapter 19 that allowed an eligible surplus lines insurer to maintain a Delaware office in accordance with rules and regulations established by the Commissioner (prior 18 Del.C. §1907(c)). In accordance with former Section 1907(c), Regulation 1101 was promulgated to set forth requirements for maintaining an office in Delaware.

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

The Department received one public comment on the proposal, in which the commenter questioned whether it is accurate to say that the repeal of 18 DE Admin. Code 1101 is not expected or intended to create or eliminate any permitted activity, and whether there any possible implication on the ability of a domestic surplus lines insurer to establish/maintain an office in Delaware. The response is that the statement is accurate. There is nothing in the current Chapter 19 that addresses or would otherwise prohibit an eligible surplus lines insurer from establishing offices in this State to administer the business.

II. FINDINGS OF FACTS

1. Regulation 1101, Surplus Lines, should be repealed.
2. The Department met the public notice requirements of the Administrative Procedures Act.
3. The Department received one (1) public comment on the proposed repeal as reference above.

III. DECISION TO REPEAL REGULATION 1101

For the foregoing reasons, the Commissioner concludes that it is appropriate to repeal 18 **DE Admin. Code** 1101, as discussed in the above Findings of Fact, for the reasons set forth above and in the proposal to repeal.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Commissioner pursuant to 18 **Del.C.** §314 on the date indicated below. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED,

This 10th day of September, 2019.

Trinidad Navarro
Commissioner
Delaware Department of Insurance

1100 Reserved

~~1101 Listed Surplus Lines Carriers Intending to Establish an Office in Delaware~~

1.0 Authority and scope

~~Pursuant to 18 **Del.C.** §314, the following rules and regulations are hereby promulgated and adopted. They are applicable to all surplus lines insurers who wish to establish offices in this State.~~

2.0 ~~No surplus lines insurer may maintain an office in Delaware pursuant to 18 **Del.C. §1907(c) until:~~**

- 2.1 ~~The insurer is declared eligible to write surplus lines coverages in Delaware pursuant to 18 **Del.C.** §1907(b); and~~
- 2.2 ~~The insurer has been authorized by the Commissioner to establish a Delaware office.~~
- 2.3 ~~An eligible surplus lines insurer desiring to establish an office in Delaware shall apply to the Commissioner for authorization. In the application, the insurer shall:~~
 - 2.3.1 ~~State the address of the Delaware office and the name and residence address of the person regularly in charge of that office.~~
 - 2.3.2 ~~Specify whether the insurer's business at the Delaware office is to be managed by an independent agent or other person not directly employed by the insurer, and if so, the insurer shall state the name and address of the managing agent, and summarize the salient terms of the management agreement.~~
 - 2.3.3 ~~Describe the surplus lines coverages proposed to be offered through the Delaware office, including kinds or types of coverage or risks, and the limits of liability to be assumed under each.~~
 - 2.3.4 ~~State the ratio to be maintained between premium writings and the value of the trust funds established by the insurer for the benefit of its United States policyholders.~~
 - 2.3.5 ~~Certify that the insurer will issue insurance coverage to the public only through duly licensed surplus lines brokers in accordance with the surplus lines laws and regulations of this State, and the applicable laws and regulations of other states where the insurer may lawfully do business on a surplus lines basis.~~

- ~~2.3.6 Agree to maintain books and records at the Delaware office which accurately reflect all business affairs conducted at that office.~~
- ~~2.3.7 Authorize the Commissioner to inspect the books, records, and affairs of the insurer as often as the Commissioner reasonably deems advisable in order to determine the nature and extent of business conducted by the insurer at its Delaware office.~~
- 2.4 Upon receipt of notice that the Commissioner does not object to the application, the insurer may establish a Delaware office. However, the insurer shall not operate the office for any purpose until it deposits not less than \$50,000.00 with the Commissioner (in registered bonds, or funds in other form satisfactory to the Commissioner) for the benefit of its policyholders and creditors.
- 2.5 ~~Within sixty days after end of its fiscal year, every insurer maintaining a Delaware office pursuant to 18 Del.C. §1907(c) shall submit a report summarizing the nature and extent of business conducted during the past year by the Delaware office, and the nature and extent of business proposed to be conducted by that office during the ensuing year. In a separate section denominated "Changes," the report must specify any change or proposed change in method of operation which departs from the representations made in the application to establish the Delaware office.~~

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311 and 29 Delaware Code, Section 10113
(18 Del.C. §311 & 29 Del.C. §10113)
18 DE Admin. Code 1313

REGULATORY IMPLEMENTING ORDER

1313 Arbitration of Health Insurance Disputes Between Carriers and Providers

The purpose of this Order is to update the Department's contact information in Regulations 1313, 1319, 1410, and 1801 as follows:

Regulation 1313 – Arbitration of Health Insurance Disputes Between Carriers and Providers

Subsection 3.1 refers to: DOIarbitration@state.de.us
UPDATE: DOI-arbitration@delaware.gov

Regulation 1319 – Arbitration of Disputes Between Carriers and Primary Care and Chronic Care Management Providers

Subsection 3.2.2 refers to: DOIarbitration@state.de.us
UPDATE: DOI-arbitration@delaware.gov

Subsection 4.1.1.4 refers to: Delaware Department of Insurance
ATTN: Arbitration Secretary
841 Silver Lake Blvd.
Dover, DE 19904

UPDATE: Delaware Department of Insurance
ATTN: Arbitration Secretary
1351 West North Street, Suite 101
Dover, DE 19904

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

Subsection 6.3 refers to: Delaware Department of Insurance
Attn: Mental Health Parity Report

841 Silver Lake Blvd.
Dover, DE 19904

UPDATE: Delaware Department of Insurance
Attn: Mental Health Parity Report
1351 West North Street, Suite 101
Dover, DE 19904

Regulation 1801 – Insurance Holding Company System Regulation With Reporting Forms and Instructions

Subsection 4.2 refers to: Insurance Commissioner of the State of Delaware
841 Silver Lake Blvd.
Dover, DE 19904

UPDATE: Insurance Commissioner of the State of Delaware
1351 West North Street, Suite 101
Dover, DE 19904

These amendments are made under the Department's authority at 18 **Del.C.** §311 and are exempt from the requirement of public notice and comment because they include "nonsubstantive changes in existing regulations to alter style or form or to correct technical errors" pursuant to 29 **Del.C.** §10113(b)(4), and "descriptions of agency organization, operations and procedures for obtaining information" pursuant to 29 **Del.C.** §10113(b)(1).

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

IT IS SO ORDERED,

This 15th day of September, 2019.

Trinidad Navarro, Commissioner
Delaware Department of Insurance

1313 Arbitration of Health Insurance Disputes Between Carriers and Providers (*Break in Continuity of Sections*)

3.0 Notice

3.1 At the time a carrier provides to a health care provider written notice of a carrier's final decision regarding reimbursement for an individual claim, procedure or service, if the decision does not authorize reimbursement of the provider's charge in its entirety, the carrier shall give the provider written notice of the provider's right to arbitration. Such notice may be separate from or a part of the written notice of the carrier's decision. Any such notice given to a provider shall, at a minimum, contain the following language:

"You have the right to seek review of our decision regarding the amount of your reimbursement. The Delaware Insurance Department provides claim arbitration services which are in addition to, but do not replace, any other legal or equitable right you may have to review of this decision or any right of review based on your contract with us. You can contact the Delaware Insurance Department for information about arbitration by calling the Arbitration Secretary at 302-674-7322 or by sending an email to: DOI-arbitration@state.de.us DOI-arbitration@delaware.gov. All requests for arbitration must be filed within 60 days from the date you receive this notice; otherwise, this decision will be final."

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

[1313 Arbitration of Health Insurance Disputes Between Carriers and Providers](#)

FINAL REGULATIONS

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311 and 29 Delaware Code, Section 10113
(18 Del.C. §311 & 29 Del.C. §10113)
18 DE Admin. Code 1319

REGULATORY IMPLEMENTING ORDER

1319 Arbitration of Disputes Between Carriers and Primary Care and Chronic Care Management Providers

The purpose of this Order is to update the Department's contact information in Regulations 1313, 1319, 1410, and 1801 as follows:

Regulation 1313 – Arbitration of Health Insurance Disputes Between Carriers and Providers

Subsection 3.1 refers to: DOl Arbitration@state.de.us

UPDATE: DOI-arbitration@delaware.gov

Regulation 1319 – Arbitration of Disputes Between Carriers and Primary Care and Chronic Care Management Providers

Subsection 3.2.2 refers to: DOl Arbitration@state.de.us

UPDATE: DOI-arbitration@delaware.gov

Subsection 4.1.1.4 refers to: Delaware Department of Insurance
ATTN: Arbitration Secretary
841 Silver Lake Blvd.
Dover, DE 19904

UPDATE: Delaware Department of Insurance
ATTN: Arbitration Secretary
1351 West North Street, Suite 101
Dover, DE 19904

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

Subsection 6.3 refers to: Delaware Department of Insurance
Attn: Mental Health Parity Report
841 Silver Lake Blvd.
Dover, DE 19904

UPDATE: Delaware Department of Insurance
Attn: Mental Health Parity Report
1351 West North Street, Suite 101
Dover, DE 19904

Regulation 1801 – Insurance Holding Company System Regulation With Reporting Forms and Instructions

Subsection 4.2 refers to: Insurance Commissioner of the State of Delaware
841 Silver Lake Blvd.
Dover, DE 19904

UPDATE: Insurance Commissioner of the State of Delaware
1351 West North Street, Suite 101
Dover, DE 19904

These amendments are made under the Department's authority at 18 Del.C. §311 and are exempt from the

requirement of public notice and comment because they include “nonsubstantive changes in existing regulations to alter style or form or to correct technical errors” pursuant to 29 **Del.C.** §10113(b)(4), and “descriptions of agency organization, operations and procedures for obtaining information” pursuant to 29 **Del.C.** §10113(b)(1).

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

IT IS SO ORDERED,

This 15th day of September, 2019.

Trinidad Navarro, Commissioner
Delaware Department of Insurance

1319 Arbitration of Disputes Between Carriers and Primary Care and Chronic Care Management Providers (Break in Continuity of Sections)

3.0 Notice of Final Reimbursement Decision

(Break in Continuity Within Section)

3.2 Any notice given to a provider pursuant to subsection 3.1 shall:

3.2.1 Be in writing; and

3.2.2 Give the provider notice of the provider's right to arbitration through the Department's arbitration program, by including, at a minimum, the following language:

"You have the right to seek review of our decision regarding the amount of your reimbursement. The Delaware Insurance Department provides claim arbitration services which are in addition to, but do not replace, any other legal or equitable right you may have to a review of this decision or any right of review based on your contract with us. You can contact the Delaware Insurance Department for information about arbitration by calling the Arbitration Secretary at 302-674-7322 or by sending an email to: DOI-arbitration@state.de.us DOI-arbitration@delaware.gov. All requests for arbitration must be filed within 60 days from the date you receive this notice; otherwise, this decision will be final."

4.0 Arbitration Procedures

4.1 Provider Petition for Arbitration.

4.1.1 A provider or his or her authorized representative may request that the Department review a carrier's final reimbursement decision through arbitration by complying with all of the following requirements:

(Break in Continuity Within Section)

4.1.1.4 File the original and one copy of Petition for Arbitration and the appropriate filing fee with the Department, at the following address:

~~Delaware Department of Insurance
ATTN: Arbitration Secretary
841 Silver Lake Blvd.
Dover, DE 19904~~

Delaware Department of Insurance
ATTN: Arbitration Secretary
1351 West North Street, Suite 101.
Dover, DE 19904

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

1319 Arbitration of Disputes Between Carriers and Primary Care and Chronic Care Management Providers

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311 and 29 Delaware Code, Section 10113
(18 Del.C. §311 & 29 Del.C. §10113)
18 DE Admin. Code 1410

REGULATORY IMPLEMENTING ORDER

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

The purpose of this Order is to update the Department's contact information in Regulations 1313, 1319, 1410, and 1801 as follows:

Regulation 1313 – Arbitration of Health Insurance Disputes Between Carriers and Providers

Subsection 3.1 refers to: DOl Arbitration@state.de.us

UPDATE: DOI-arbitration@delaware.gov

Regulation 1319 – Arbitration of Disputes Between Carriers and Primary Care and Chronic Care Management Providers

Subsection 3.2.2 refers to: DOl Arbitration@state.de.us

UPDATE: DOI-arbitration@delaware.gov

Subsection 4.1.1.4 refers to: Delaware Department of Insurance
ATTN: Arbitration Secretary
841 Silver Lake Blvd.
Dover, DE 19904

UPDATE: Delaware Department of Insurance
ATTN: Arbitration Secretary
1351 West North Street, Suite 101
Dover, DE 19904

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

Subsection 6.3 refers to: Delaware Department of Insurance
Attn: Mental Health Parity Report
841 Silver Lake Blvd.
Dover, DE 19904

UPDATE: Delaware Department of Insurance
Attn: Mental Health Parity Report
1351 West North Street, Suite 101
Dover, DE 19904

Regulation 1801 – Insurance Holding Company System Regulation With Reporting Forms and Instructions

Subsection 4.2 refers to: Insurance Commissioner of the State of Delaware
841 Silver Lake Blvd.

Dover, DE 19904

UPDATE:

Insurance Commissioner of the State of Delaware
1351 West North Street, Suite 101
Dover, DE 19904

These amendments are made under the Department's authority at 18 **Del.C.** §311 and are exempt from the requirement of public notice and comment because they include "nonsubstantive changes in existing regulations to alter style or form or to correct technical errors" pursuant to 29 **Del.C.** §10113(b)(4), and "descriptions of agency organization, operations and procedures for obtaining information" pursuant to 29 **Del.C.** §10113(b)(1).

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

IT IS SO ORDERED,

This 15th day of September, 2019.

Trinidad Navarro, Commissioner
Delaware Department of Insurance

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

6.0 Report submission deadlines and deadline extension request requirements

(Break in Continuity Within Section)

- 6.3 One copy of each report required to be prepared in accordance with this Regulation shall be submitted to each of the following addresses:

Delaware Health Information Network Attn.: Mental Health Parity Report 107 Wolf Creek Blvd. #2 Dover, DE 19901	Delaware Department of Insurance Attn.: Mental Health Parity Report 841 Silver Lake Blvd. Dover, DE 19904 Delaware Department of Insurance Attn: Mental Health Parity Report 1351 West North Street Suite 101 Dover, DE 19904
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***Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:**

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

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311 and 29 Delaware Code, Section 10113
(18 **Del.C.** §311 & 29 **Del.C.** §10113)
18 **DE Admin. Code** 1801

REGULATORY IMPLEMENTING ORDER

1801 Insurance Holding Company System Regulation With Reporting Forms and Instructions

The purpose of this Order is to update the Department's contact information in Regulations 1313, 1319, 1410,

and 1801 as follows:

Regulation 1313 – Arbitration of Health Insurance Disputes Between Carriers and Providers

Subsection 3.1 refers to: DOIarbitration@state.de.us

UPDATE: DOI-arbitration@delaware.gov

Regulation 1319 – Arbitration of Disputes Between Carriers and Primary Care and Chronic Care Management Providers

Subsection 3.2.2 refers to: DOIarbitration@state.de.us

UPDATE: DOI-arbitration@delaware.gov

Subsection 4.1.1.4 refers to: Delaware Department of Insurance
ATTN: Arbitration Secretary
841 Silver Lake Blvd.
Dover, DE 19904

UPDATE: Delaware Department of Insurance
ATTN: Arbitration Secretary
1351 West North Street, Suite 101
Dover, DE 19904

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

Subsection 6.3 refers to: Delaware Department of Insurance
Attn: Mental Health Parity Report
841 Silver Lake Blvd.
Dover, DE 19904

UPDATE: Delaware Department of Insurance
Attn: Mental Health Parity Report
1351 West North Street, Suite 101
Dover, DE 19904

Regulation 1801 – Insurance Holding Company System Regulation With Reporting Forms and Instructions

Subsection 4.2 refers to: Insurance Commissioner of the State of Delaware
841 Silver Lake Blvd.
Dover, DE 19904

UPDATE: Insurance Commissioner of the State of Delaware
1351 West North Street, Suite 101
Dover, DE 19904

These amendments are made under the Department's authority at 18 **Del.C.** §311 and are exempt from the requirement of public notice and comment because they include "nonsubstantive changes in existing regulations to alter style or form or to correct technical errors" pursuant to 29 **Del.C.** §10113(b)(4), and "descriptions of agency organization, operations and procedures for obtaining information" pursuant to 29 **Del.C.** §10113(b)(1).

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

IT IS SO ORDERED,

This 15th day of September, 2019.

Trinidad Navarro, Commissioner
Delaware Department of Insurance

1801 Insurance Holding Company System Regulation With Reporting Forms and Instructions (Break in Continuity of Sections)

4.0 Forms - General Requirements

(Break in Continuity Within Section)

- 4.2 Two complete copies of each statement including exhibits and all other papers and documents filed as a part thereof, shall be filed with the Commissioner by personal delivery or mail addressed to: Insurance Commissioner of the State of Delaware, ~~841 Silver Lake Blvd.~~ 1351 West North Street, Suite 101, Dover DE 19904. At least one of the copies shall be signed in the manner prescribed on the form. Unsigned copies shall be conformed. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of the power of attorney or other authority shall also be filed with the statement.

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

1801 Insurance Holding Company System Regulation With Reporting Forms and Instructions

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Section 6010(a) and (c) (7 Del.C. §6010(a) and (c))
7 DE Admin. Code 1150

Secretary's Order No.: 2019-A-0037

RE: Approving Final Regulations to Amend 7 DE Admin. Code 1150: *Outer Continental Shelf Air Regulations*

Date of Issuance: September 11, 2019

Effective Date of the Amendment: October 11, 2019

1150 Outer Continental Shelf Air Regulations

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), pursuant to 7 Del.C. §§6006 and 6010, and all other relevant statutory authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Background, Procedural History and Findings of Fact

This Order relates to proposed regulation amendments ("Amendments") to 7 DE Admin. Code 1150: *Outer Continental Shelf Air Regulations*. Specifically, the Department proposes to amend existing 7 DE Admin. Code 1150 to incorporate updates made to the federal Outer Continental Shelf ("OCS") regulations at 40 CFR 55. The federal regulations were updated by the Environmental Protection Agency ("EPA") subsequent to Delaware's adoption of its OCS Regulations in 2010.

The Department proposes to incorporate the provisions of 40 CFR 55, specifically, the Outer Continental Shelf ("OCS") technical changes of 81 Fed. Reg. 71613 (October 2016) and 84 Fed. Reg. 13132 (April 4, 2019), into Delaware's existing OCS Regulations. Subsequent to the federal Outer Continental Shelf Regulations Section 40 CFR 55, promulgated by the United States Environmental Protection Agency ("EPA"), Delaware adopted the OCS Regulations mandating newspaper notices as the sole source of a public notification for draft air permits, as well as certain other program actions. The Department is proposing the above Amendment to incorporate updates made to the federal Outer Continental Shelf Regulations at 40 CFR 55 in October 2016 (81 FR 71613) to include the option of e-notices as a source for public notification. For consistency purposes, the Amendment to incorporate 84

Fed. Reg. 13132 (April 4, 2019) shall ensure that the incorporation of the subsequent updates to DAQ regulations are referenced into Appendix A of Part 55 under the EPA. The Amendment to this section allows DAQ to write permits for OCS sources based upon the most recent versions of DAQ's regulations. This action is being taken by the Department to enable Delaware to effectively regulate air emissions pursuant to the EPA's regulations codified at 40 CFR 55, which were issued under Section 328(a)(1) of the federal Clean Air Act.

The EPA's regulations apply to all sources of air emissions from within the OCS. For Delaware, the OCS is the area that is within 25 miles of Delaware's coastal boundaries along the Atlantic Ocean. Air emissions from within the OCS are regulated by the Department in the same manner as if the source was located on Delaware land. This regulation authorizes the Department to issue Air Quality permits for any source regulated under 40 CFR 55, thereby effectively regulating air pollutants emitted in the OCS, consistent with all state and federal laws and regulations.

The Department has the statutory basis and legal authority to act with regard to the formal promulgation of these proposed Amendments, pursuant to 7 **Del.C.** §6010(a) and (c). The Department published its initial proposed regulation Amendments in the May 1, 2019 Delaware *Register of Regulations*. Thereafter, the public hearing regarding this matter was held on May 22, 2019. There was no public attendance at the public hearing. Pursuant to Delaware law, the hearing record ("Record") remained open for fifteen (15) additional days subsequent to the date of the public hearing for receipt of public comment. The Record formally closed with regard to public comment at close of business on June 6, 2019, with no comment having been received by the Department during any phase of this proposed regulatory promulgation.

It should be noted that all notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

Hearing Officer Theresa Newman prepared her Report dated August 28, 2019 ("Report"), which expressly incorporated the Department's proposed Amendments into the hearing record ("Record") generated in this matter. The Report documents the proper completion of the required regulatory amendment process, establishes the Record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix "A."

Reasons and Conclusions

Based on the Record developed by the Department's experts in the Division of Air Quality, and established by the Hearing Officer's Report, I find that the proposed regulatory Amendments to 7 **DE Admin. Code** 1150: *Outer Continental Shelf Air Regulations*, are well-supported. I further find that the Department's experts in the Division of Air Quality fully developed the Record to support adoption of these Amendments. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed Amendments be promulgated as final.

The following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to this regulatory promulgation, pursuant to 7 **Del.C.** §6010(a) and (c);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting these proposed Amendments as final;
3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on May 22, 2019, and during the 15 days subsequent to the hearing (through June 6, 2019), before making any final decision;
4. Promulgation of the proposed Amendments to 7 **DE Admin. Code** 1150: *Outer Continental Shelf Air Regulations*, will enable the Department to incorporate the updates made to the federal Outer Continental Shelf Regulations at 40 CFR 55, as noted above;
5. The Department has reviewed the proposed Amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104, and has selected Exemption "A" as this regulation does not apply to small business or individuals;
6. The Department's Hearing Officer's Report, including its established Record and the recommended proposed Amendments as set forth in Appendix "A," are hereby adopted to provide additional reasons and findings for this Order;
7. The Department's proposed regulatory Amendments, as initially published in the May 1, 2019 Delaware *Register of Regulations*, and as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final

regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and

8. The Department shall submit this Order approving the proposed Amendments as final regulatory amendments to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Shawn M. Garvin
Secretary

1150 Outer Continental Shelf Air Regulations

~~06/11/2010~~~~[XX/XX/2019]~~10/11/2019]

1.0 Applicability

Upon delegation of authority by the Administrator of the EPA to the Department, this regulation shall apply to the owner or operator of any OCS source for which Delaware is the corresponding onshore area (COA) as authorized under Section 328 of the federal Clean Air Act Amendments (42 U.S.C. 7627), Outer Continental Shelf technical changes of 84 Fed. Reg. 13132 (April 4, 2019), and 40 CFR Part 55 (July 1, ~~2009~~2018 ed.).

~~06/11/2010~~~~[XX/XX/2019]~~10/11/2019]

2.0 Requirements

The provisions of Part 40 CFR Part 55 (July 1, ~~2009~~2018 ed.) and the Outer Continental Shelf technical changes of 84 Fed. Reg. 13132 (April 4, 2019) are incorporated herein as 7 **DE Admin. Code** 1150. OCS sources shall comply with all requirements of 1100 **[Division of] Air Quality [Management Section]** of Title 7 of the Delaware Administrative Code to the extent that they are incorporated by EPA into 40 CFR Part 55.14.

This rule incorporates the following provisions of 40 CFR Part 55:

Outer Continental Shelf Air Regulations

55.1	Statutory authority and scope.
55.2	Definitions.
55.3	Applicability.
55.4	Requirements to submit a notice of intent.
55.6	Permit requirements.
55.7	Exemptions.
55.8	Monitoring, reporting, inspections, and compliance.
55.9	Enforcement.
55.10	Fees.
55.13	Federal requirements that apply to OCS sources.
55.14	Requirements that apply to OCS sources located within 25 miles of states' seaward boundaries, by State.
55.15	Specific designation of corresponding onshore areas.
Appendix A to 40 CFR Part 55	Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

FINAL REGULATIONS

OFFICE OF THE SECRETARY

Statutory Authority: 7 Delaware Code, Section 6010 (7 **Del.C.** §6010)
7 DE Admin. Code 101

Secretary's Order No.: 2019-CCE-0038

RE: FINAL EXEMPT ORDER: 7 DE Admin. Code 101:
Regulations Governing Delaware's Coastal Zone

Date of Issuance: September 12, 2019
Effective Date of the Amendment: October 11, 2019

101 Regulations Governing Delaware's Coastal Zone

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), pursuant to 7 **Del.C.** §6010 and 29 **Del.C.** §10113(b)(4), DNREC hereby revises Section 101 of Title 7 of the Delaware Administrative Code to correct clerical errors found subsequent to the final adoption of this regulation (as set forth previously in Secretary's Order No. 2019-CCE-0035, August 14, 2019).

Findings of Fact

Based on Delaware law and the record as reflected in the prior Secretary's Order referenced above, I make the following findings of fact:

1. The proposed regulation is not in conflict with Delaware law; and
2. The proposed regulation is an appropriate exercise of the Department's responsibilities and authority.

Decision and Order Concerning the Regulation

NOW THEREFORE, under the above-described statutory authority, and for the reasons set forth above, I hereby ORDER that the revisions to 7 **DE Admin. Code** 101: *Regulations Governing Delaware's Coastal Zone*, be adopted and promulgated as follows, to wit:

1. Section 3.0 shall be modified by removing the phrase, "as shown in Appendix E and F" from the first sentence within the existing regulatory language (as those Appendices no longer exist);
2. Subsection 7.2.4 shall be modified by changing "subsection 6.3" to "subsection 6.1.3" within the existing regulatory language;
3. Subsection 8.4.2.4 shall be modified by removing the word "the" from the following phrase within the existing regulatory language: "...including capital costs, that will be taken to ensure that ~~the~~ any facilities or infrastructures within the zone...;"
4. Subsection 8.4.4 shall be modified by adding a hyphen to the existing regulatory language as follows: "A Department-approved...;"
5. Subsection 8.5.5 shall be modified by capitalizing the word "act" in the following phrase within the existing regulatory language: "...the Secretary shall reply to the request for a Coastal Zone Act permit...;"
6. Subsection 19.1 shall be modified by changing "Section 15.0" to "Section 14.0" within the existing regulatory language;
7. Subsection 2.1 in Appendix C shall be modified by replacing the word "an" with "and" in the following phrase within the existing regulatory language: "Conversion permits are subject to special requirements as provided for in the statute ~~an~~ and as described in...;" and
8. Subsection 5.1 in Appendix C shall be modified by replacing the word "we" with "as" in the following phrase within the existing regulatory language: "As a result, a permit applicant must attempt to identify offset projects that are as geographically close as possible to the impact, ~~we~~ as well as projects that are in the same...."

The effective date of this Order is ten (10) days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 **Del.C.** §10118(g).

Shawn M. Garvin
Secretary

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

101 Regulations Governing Delaware's Coastal Zone

DEPARTMENT OF STATE DIVISION OF CORPORATIONS

Statutory Authority: 29 Delaware Code, Sections 8703 and 8704 (29 **Del.C.** §§8703 & 8704)

ORDER

102 Business Entity Name Standards and Process

Pursuant to 29 **Del.C.** § 8703(7), the Department of State (“DOS” or “the Department”) published proposed regulations to establish customer entity verification requirements for registered agents in the August 1, 2019 edition of the Delaware *Register of Regulations*. Having solicited and received public comment on the proposed regulations in accordance with the *Delaware Administrative Procedures Act*, 29 **Del.C.** Ch. 101, *et. seq.*, this is the Department’s Order adopting the proposed regulations, as modified by the public submissions outlined below.

SUMMARY OF THE EVIDENCE

1. Title 29, Sections 8703 and 8704 of the Delaware Code authorize the Department and the Division of Corporations to establish regulations in relation to all powers, duties and functions vested pursuant to the regulation of business organizations registered in Delaware, including but not limited to Titles 6 and 8 of the Delaware Code.

2. The Division of Corporations has the power to perform and shall be responsible for the performance of all the powers, duties and functions vested in the Secretary of State pursuant to Titles 6 and 8. 29 **Del.C.** §8704. Such vested powers, duties and functions including regulating the administration and operation of the Division as well as filings submitted to and accepted by the Division, for the creation and regulation of business organizations in Delaware. 8 **Del.C.** Ch. 1; 6 **Del.C.** Chs. 15, 17 and 18. As such, the Division is authorized to promulgate regulations for the administration and operation of the Division as well as for the regulation of corporations and other business entities in this State.

3. The purpose of this regulation is to clarify the standards in Delaware regarding the names of businesses, while, in a narrowly-tailored fashion, preventing the naming of a business likely to violate the law, mislead the public or to lead to a pattern and practice of abuse that might cause harm to the interests of the public or Delaware. In promulgating the regulations, DOS expressly determines that it’s Delaware Corporate Information System (“DCIS”) or successor system, which is the State’s computerized, online system for business organization filings, to be a non-public forum and not a platform for the exercise of legal rights. This regulation outlines the standards for entity names and the process of review, which carefully and narrowly tailors any alleged infringement on statutory requirements, public policies, or the rights of others, against the interests of the public and the State, including the State of Delaware’s interest in its reputation and brand in the global business world.

4. The Delaware *Register of Regulations* published the proposed regulations on August 1, 2019. Following publication in the Delaware *Register of Regulations*, DOS invited a period of thirty-seven (37) days, until September 6, 2019, for written comment from the public.

5. The public comments focused on minor, stylistic changes throughout the proposed regulations. The comments also corrected some statutory references to certain business organization statutes.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Delaware *Register of Regulations* published the proposed regulation to establish business entity name standards and procedures on August 1, 2019.
2. Following publication in the Delaware *Register of Regulations*, the DOS provided a period of thirty-seven (37) days, until September 6, 2019, for written comment from the public.
3. The public notice and opportunity to provide public comments in writing afforded by DOS complied in all respects with the *Delaware Administrative Procedures Act*, Section 10115 of Title 29 of the Delaware Code.
4. In response to the invitation for public comment, DOS received comments concerning the proposed regulation, as summarized above.
5. The Department finds that it is authorized to establish business entity name standards and procedures pursuant to 29 **Del.C.** §8704, 8 **Del.C.** Ch. 1; 6 **Del.C.** Chs. 15, 17 and 18.
6. The Department finds that it is necessary to adopt this proposed regulation to clarify the standards in Delaware regarding the names of businesses, while, in a narrowly-tailored fashion, prevent the naming of a business likely to violate the law, mislead the public or lead to a pattern and practice of abuse that might cause harm to the interests of the public or the State of Delaware.
7. The Department expressly finds that its Delaware Corporation Information System (“DCIS”) or successor system, which is the State’s computerized, online system for business organization filings, to be a non-public form and not a platform for the exercise of legal rights.
8. The Department adopts the changes to the proposed regulation as suggested by the public comment because the changes make the proposed regulation more stylistic and clearer to business entities and the general public.
9. The Department determines that the changes included in the regulation as the result of the public comment are procedural and stylistic, and not substantive in accordance with 29 **Del.C.** §10118(c). When the public notice fairly apprises the public of the issues contemplated by the agency in the rulemaking process, changes made to the proposed rule in consideration of the public comment do not require another notice period. *Collazuol v. Tulou*, 1996 WL 658966 (Del. Super. Oct. 31, 1996).
10. The Department also finds that the proposed regulation outlines the standards for entity names and the process of review, which carefully and narrowly tailors any alleged infringement on statutory requirements, public policies, or the rights of others, against the interests of the public and the State of Delaware, including Delaware’s interest in its standing in the global business community.
11. The State of Delaware is home to more than one million business entities globally that take advantage of Delaware’s complete package of business organization services. The Department reviewed and decided to clarify its policies and practices pertaining to business names in filings submitted to the Division of Corporations for its acceptance, on behalf of business entities. To establish uniform expectations for business entities with respect to filings with the Division of Corporations, the Department proposed these regulations to communicate to the public and business entities how these issues will be administered in the Department. The Department finds that the proposed regulation strikes the appropriate balance between protecting the interests of the public and the State of Delaware, without imposing illegal restrictions on business entities.

DECISION AND ORDER CONCERNING THE REGULATIONS

Having found that the proposed regulation is necessary, as outlined herein, the Department finds that the regulation shall be adopted as informed by the procedural changes offered in the public comment and adopted by this Order. The regulation changes will be effective on October 11, 2019 following publication of this Order in the Delaware *Register of Regulations* on October 1, 2019.

IT IS SO ORDERED this 24th day of September, 2019 by the Delaware Department of State.

The Honorable Kristopher Knight
Acting Secretary of State

102 Business Entity Name Standards and Process

1.0 Enabling Legislation

- 1.1 29 Del.C. [~~§§8703, 8704 enable~~ §8703 enables] the Secretary of State [~~and the Division of Corporations~~] to establish regulations [~~in relation to all powers, duties and functions vested pursuant to the regulation of business organizations registered in Delaware, including but not limited to Titles 6 and 8 of the Delaware Code~~, governing the administration and operation of the Department of State as may be deemed necessary by the Secretary of State and which are not inconsistent with the laws of this State.]]
- 1.2 The Division has the power to perform and shall be responsible for the performance of all the powers, duties and functions vested in the Secretary of State pursuant to [~~Titles Subtitle I of Title] 6 and [Title] 8. 29 Del.C. §8704. Such vested powers, duties, and functions include regulating the administration and operation of the Division as well as [~~the performance of the Secretary of State's duties and functions with respect to] filings submitted to and accepted by the Division[, for the creation and regulation of relating to] business [~~organizations~~ entities incorporated or formed] in Delaware[, pursuant to] 8 Del.C. Ch. 1; 6 Del.C. Chs. 15, 17 and 18. [~~As such, the Division is authorized to promulgate regulations for the administration and operation of the Division as well as for the regulation of corporations and other business entities in this State.~~]~~~~

2.0 Purpose

- 2.1 The purpose of this regulation is to [~~update and~~] clarify the standards in Delaware regarding the names of [~~businesses~~ Delaware business entities], while, in a narrowly-tailored fashion, preventing the naming of a business [~~entity in a manner that is] likely to violate the law, mislead the public or [~~to] lead to a pattern and practice of abuse that [~~might would] cause harm to the interests of the public or [the State of] Delaware.~~~~~~
- 2.2 The Division expressly determines that [~~it's its] Delaware Corporate Information System ("DCIS"), which is the State's computerized, online system for business organization filings, to be a non-public forum and not a platform for the exercise of legal rights. This regulation outlines the standards for entity names and the process of review, which carefully and narrowly [~~tailors balances] any alleged infringement on statutory requirements, public policies, [~~or and] the rights of others, against the interests of the public and [the State of] Delaware, including Delaware's interest in its [~~reputation and brand standing] in the global [~~business world~~ business-community].~~~~~~~~

3.0 Definitions

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

"Business Entity" means any [~~person,] partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership), [~~association,] corporation[, or limited liability] company, [~~single or jointly with others,] organized or to be organized under the Delaware Code and filing or [~~will seeking to] file the [~~requirement required] documents with the Division of Corporations in the Department of State.~~~~~~~~~~

"Corporation" means an entity that is organized or incorporated in accordance with the Delaware Code and as expressly set forth at Title 8 of the Delaware Code.

"Department" means the Delaware Department of State.

"Division" means the Division of Corporations, Delaware Department of State.

"Limited Liability Company" means an entity that is [~~organized or created formed] in accordance with the requirements of a "limited liability company" or a "series" [of a limited liability company,] as [~~set forth in the Delaware and as expressly] defined at 6 Del.C. §18-101, as amended.~~~~

"Limited Partnership" means an entity that is [~~organized or created formed] in accordance with the requirements of a "limited [~~liability] partnership" as [~~set forth in the Delaware Code and as expressly] defined at 6 Del.C. §17-101, as amended.~~~~~~

FINAL REGULATIONS

“Partnership” means an entity that is ~~organized or created~~ formed] in accordance with the requirements of a “partnership” as set forth in the Delaware Code at 6 Del.C. §15-202, as amended.

“Secretary” means the Secretary of ~~the State of the State of~~ Delaware ~~Department of State~~.

“Trust” means a statutory trust as set forth in the Delaware Code and as expressly defined in 12 Del.C. Ch. 38, as amended.

4.0 Standards

- 4.1 After receipt of a request to reserve a [business] name [for a business entity] or to accept a filing submitted on behalf ~~of an existing Delaware (or out of state)~~ of, a] business entity, the Division will review the proposed name of the business entity, subject to [any a] right of refusal by the Division, ~~to ensure it meets if the proposed name fails to meet~~ the following standards:
- 4.1.1 Does not contain words that discriminate against, disparage, or denigrate any of the protected classes, as provided under Federal Law (including the U.S. Civil Rights Act of 1964, as amended), to include but not limited to race, color, religion, sex including pregnancy, sexual orientation, national origin, disability, age (40 years or older), marital status or genetic information;
- 4.1.2 Does not contain words [that could likely to] facilitate, incite or foster any criminal act or offense as prohibited under Delaware law, as amended, to include but not be limited to those set forth in Title 11 of the Delaware Code:
- 4.1.2.1 Acts of terrorism, terroristic threatening or offensive touching (11 Del.C. Ch. 5);
- 4.1.2.2 Endanger the life or physical safety of an individual or threatening public safety (11 Del.C. Ch. 5);
- 4.1.2.3 Hate Crimes, Stalking, Cyberstalking, Bullying or Cyberbullying (11 Del.C. Ch. 5);
- 4.1.2.4 Narcotic drug, opioid or controlled substances (16 Del.C. Ch. 47) (Example: “Opioids-R-Us”);
- 4.1.2.5 Fraud (6 Del.C. Subtitle II, 11 Del.C. Ch. 5);
- 4.1.2.6 Deadly weapon or dangerous instrument (11 Del.C. Ch. 5); or
- 4.1.2.7 Obscene or libelous language (11 Del.C. Ch. 5).
- 4.1.3 Does not contain words [that could likely to] cause [potential] public deception or confusion or [result in] difficulty in administration [by the Division] (Example: five-hundred-letter entity name):
- 4.1.4 Does not contain words likely to mislead the public about the [nature business purpose] of the business entity (8 Del.C. §102; 6 Del.C. §18-102); or
- 4.1.5 Does not contain words likely to lead to a pattern and practice of abuse that [might would] cause harm to the interests of the public or Delaware (8 Del.C. §102; 6 Del.C. §18-102).

5.0 Application

This regulation shall not be interpreted or applied by the Division in any manner that conflicts with [existing public policy or] statutory provisions in the Delaware Code[, including those] regulating the inclusion of the term “bank” or “trust” in a ~~corporate (or other legal entity)~~ business entity] name. 8 Del.C. §102(a); 8 Del.C. §395[; 6 Del.C. §18-102; 6 Del.C. §17-102; 6 Del.C. §15-108].

DEPARTMENT OF TRANSPORTATION

DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 21 Delaware Code, Section 4504 (21 Del.C. §4504)

2 DE Admin. Code 2405

ORDER

2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual

Pursuant to the authority provided by 21 Del.C. §4504, the Delaware Department of Transportation proposed

to adopt changes to its regulation entitled the Oversize/Overweight Hauling Permit Policy and Procedures Manual.

The Department, through its Division of Transportation Solutions, published proposed revisions to the existing regulation, the Oversize/Overweight Hauling Permit Policy and Procedures Manual, seeking public comment through the public notice appearing in **23 DE Reg. 107 (08/01/19)**.

The Department indicated in its August 1, 2019 notice that it would accept written public comments on the proposed changes to the Oversize/Overweight Hauling Permit Policy and Procedures Manual from August 1, 2019 through September 3, 2019.

No comments were received.

Summary of the Evidence and Information Submitted

The proposed changes to the Oversize/Overweight Hauling Permit Policy and Procedures Manual intended to revise Regulation 2405 to adopt permits and fees for governmentally owned/publicly operated Electric Buses, on behalf of the Delaware Transit Corporation to promote improved air quality.

Findings of Fact

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

1. The proposed amendments to the Oversize/Overweight Hauling Permit Policy and Procedures Manual are useful and proper. The public comment period was appropriately held open for thirty days and no public comment was received.

2. The adoption of these proposed changes to the Oversize/Overweight Hauling Permit Policy and Procedures Manual is in the best interests of the State of Delaware. Having received no public comment, there is no basis upon which to further amend the regulation and it is adopted as amended.

Decision and Effective Date

Based on the provisions of Delaware law and the record in this docket, I hereby adopt the amended Oversize/Overweight Hauling Permit Policy and Procedures Manual, as set forth in the version attached hereto, to be effective on October 11, 2019.

IT IS SO ORDERED this 5th day of September, 2019.

Jennifer Cohan, Secretary
Delaware Department of Transportation

*Please note that no changes were made to the regulation as originally proposed and published in the August 2019 issue of the *Register* at page 107 (23 DE Reg. 107). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual

GENERAL NOTICES

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WATERSHED STEWARDSHIP

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

REGISTER NOTICE

Revised Regulatory Guidance Documents Supporting Regulation 5101 Sediment and Stormwater Regulations

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

The regulatory guidance documents include the following:

- BMP Standards and Specifications: Appendix 1. Soil Investigation Procedures for Stormwater Best Management Practices
- Soil Investigation Report Submittal Checklist

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

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

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

PREPARED BY:

Elaine Z. Webb

(302) 739-9921

elaine.webb@delaware.gov

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, October 24, 2019 at 5:00pm in the Townsend Building in Dover, DE (401 Federal St., Dover, DE).

Please note: Due to a conflict this meeting has been moved to the 4th Thursday of the month.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES
PUBLIC NOTICE**Determination of Child Care - Parents Under Age 18**

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 Social Services (DSS) is proposing to amend Child Care, specifically, to update policy regarding minor parents who are under the age of 18 and residing with their legal guardians or parents.

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@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on October 31, 2019. Please identify in the subject line: Determination of Child Care - Parents Under Age 18.

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

DEPARTMENT OF STATE
DIVISION OF HISTORICAL AND CULTURAL AFFAIRS
PUBLIC NOTICE**901 Historic Preservation Tax Credit Program**

The Historic Preservation Tax Credit Act (30 **Del.C.** Ch. 18, Subch. II) was first enacted by the General Assembly in 2001 and was amended in 2002, 2003, 2004, 2005, 2010 and 2014. Program regulations were adopted on July 11, 2002 (6 DE Reg. 108 published 07/01/02), and were amended on July 11, 2004 (8 DE Reg. 194 published 07/01/04), on January 11, 2005 (8 DE Reg. 1031 published 01/01/05), on October 11, 2010 (14 DE Reg. 485, published 11/01/2010), on September 11, 2014 (18 DE Reg. 237 published 09/01/14), and on November 11, 2018 (22 DE Reg. 409 published 11/1/18). The purpose of this proposed regulatory amendment is to eliminate section 7.4 which allows applicants to request an increase in their credit award. The intent of the provision, added to the regulation in 2010, was to take into consideration changes in project costs that can occur during construction. However the provision is not included in the enabling legislation or Delaware Code, and as written is open to interpretation and therefore vulnerable to challenges. Section 8.1.2 regarding fees for increased awards would also be eliminated from the regulation, as the removal of section 7.4 will render that subsection irrelevant. An amendment to section 7.6 of the regulation is also proposed to reflect changes to the program made in the 149th and 150th General Assembly of Delaware. The Bond and Capital Improvements Acts increased the total amount of credits available in each state fiscal year, through state fiscal year 2025 (81 Del. Laws c. 303 and 82 Del. Laws c. 86), but did not specifically allocate credits to a type of project. The amendment will establish the process for distributing unallocated credits in accordance with Delaware Code.

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Ch. 101, the Division of Historical and Cultural Affairs proposes to amend rules and regulations pursuant to its authority under 30 **Del.C.** §1815(b). The Division will

receive and consider all written comments on the proposed rules and regulations related to implementation of amendments to the Historic Preservation Tax Credit Act. Submit comments to the Division in care of Timothy A. Slavin, Director, Division of Historical and Cultural Affairs, 21 The Green, Dover, DE 19901. The final date to submit comments is October 31, 2019. Anyone wishing to obtain a copy of the proposed amendments to the rules and regulations should notify Timothy A. Slavin at the above address or call 302-736-7400. This notice will be published in two newspapers of general circulation.

DIVISION OF PROFESSIONAL REGULATION
1900 BOARD OF NURSING
PUBLIC NOTICE

The Delaware Board of Nursing, pursuant to 24 **Del.C.** §1904(c) and 1934(a)(1), proposes to revise its regulations to update its regulations pertaining to internationally educated nursing applicants and advanced practice registered nurses. The proposed changes to Regulation 2 seek to clarify the requirements for clinical and didactic preceptors for online nursing education programs and the requirements to obtain Board approval to establish a new nursing school in Delaware. The changes to Regulation 6 clarify the requirements for licensure for internationally or Puerto Rican educated nurses to make them consistent with US educated nurses. The proposed changes to Regulation 8 clean up redundant or inaccurate regulations pertaining to advanced practice registered nurses. More specifically, the definition of audit will be stricken to clarify they are audited along with the registered nurse audit; regulations pertaining to internationally educated APRNs will be added as there currently are none, despite such language existing in the national model rules; the procedure for renewal audits will be clarified to comport with the procedure utilized by the Division of Professional Regulation; and the definition of active practice for APRNs will be added to comply with the statute regarding prescriptive authority.

The Board will hold a public hearing on the proposed regulation changes on November 13, 2019 at 9:00 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Dr. Pamela Zickafoose, Executive Director of the Delaware Board of Nursing, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until December 2, 2019 pursuant to 29 **Del.C.** §10118(a).

OFFICE OF THE STATE TREASURER
DIVISION OF DEBT AND CASH MANAGEMENT
PUBLIC NOTICE

1201 Statement of Objectives and Guidelines for the Investment of State of Delaware Funds

In accordance with the procedures set forth in 29 **Del.C.** Ch. 11, Subch. III, and 29 **Del.C.** Ch. 101, the Cash Management Policy Board (the "Board") is proposing to amend previously adopted regulations governing the deposit and investment of State funds, as permitted by 29 **Del.C.** §2716.

Members of the public may receive a copy of the proposed regulations at no charge by U.S. Mail by writing or calling Mr. Joshua Berkow at the Office of the State Treasurer, 820 Silver Lake Boulevard, Suite 100, Dover, DE 19904, (302) 672-6728. Members of the public may present written comments on the proposed regulations by submitting such written comments to Mr. Joshua Berkow at the address above. Written comments must be received on or before November 1, 2019.
