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# Delaware Register of Regulations

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Issue Date: September 1, 2015

Volume 19 - Issue 3, Pages 152 - 217

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## IN THIS ISSUE:

Regulations:  
Proposed  
Final

Calendar of Events &  
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before August 17, 2015.

Photo Courtesy of  
Dolores Michels

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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## CITATION TO THE DELAWARE REGISTER

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

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

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

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## SUBSCRIPTION INFORMATION

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

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken. When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

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

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

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

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## DIVISION OF RESEARCH STAFF

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**Symbol Key**

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

**Proposed Regulations**

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

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**DEPARTMENT OF AGRICULTURE****DELAWARE AGRICULTURAL LANDS PRESERVATION FOUNDATION**

Statutory Authority: 3 Delaware Code, Sections 904(a)(13) (3 **Del.C.** §904(a)(13)  
3 **DE Admin. Code** 701

**PUBLIC NOTICE****701 Farmland Preservation Program**

The Delaware Agricultural Lands Preservation Foundation (the "Foundation"), pursuant to 3 **Del.C.** §928, will hold a public hearing to discuss proposed regulations relating to the administration of the Delaware Agricultural Lands Preservation Program established pursuant to 3 **Del.C.** §901. The Foundation was established by the Delaware Legislature pursuant to 3 **Del.C.** §903. The Foundation is responsible for, among other things, adopting criteria for the establishment and maintenance of Agricultural Preservation Districts and Forestland Preservation Areas and establishing criteria for the purchase of Agricultural Preservation Easements and Forestland Preservation Easements. To carry out its statutory responsibilities, the Foundation has been directed to, among other things, adopt rules of practice and procedure for the acquisition of Preservation Easements, including the process and timeframe for submitting applications for the sale of Easements, the establishment of the purchase price for the easements through the use of appraisal information, the manner in which offers to sell such easements are accepted, and the basis upon which offers for sale of such easements are accepted.

Pursuant to its statutory authority, the Foundation is proposing for adoption a comprehensive set of guidelines and regulations to be used for the administration of the agricultural lands preservation program. The proposed regulations will replace all of the existing regulations set forth in 3 Delaware Administrative Code, Part 701, Sections 1.0 through and including 30.0, including Appendix A through G, and will, among other things: (a) establish eligibility criteria, (b) establish application procedures, (c) establish criteria for the purchase of Agricultural Lands Preservation Easements and methods by which the purchase price will be determined, and (d) provide for additional means of creating priority for acquisition of preservation easements in designated areas which are near or adjacent to any growth zones that may be indicated by each of the three respective counties. No changes are being proposed to the Forestland Preservation regulations set forth in 3 Delaware Administrative Code, Part 702.

The public hearing will be on Wednesday, September 23, 2015 beginning at 10:00 a.m. and ending at 12:00 p.m. at the Foundation's office located at 2320 S. DuPont Highway, Dover, Delaware 19901.

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Copies of the proposed regulations are available for review by contacting:

Rebecca Vaughn  
Delaware Agricultural Lands Preservation Foundation  
2320 S. DuPont Highway  
Dover, DE 19901  
(302) 698-4531  
Email: Rebecca.Vaughn@state.de.us

Anyone wishing to present oral comments at this public hearing should contact the designated Hearing Officer, Mr. William A. Denman at (302) 678-3262 prior to the hearing. Oral comments and written comments may be presented at the hearing, and anyone wishing to submit written comments as a supplement to, or in lieu of oral testimony, should submit such comments by October 1, 2015 to:

William A. Denman, Esquire  
Parkowski, Guerke & Swayze, P.A.  
116 W. Water Street  
Dover, DE 19904  
(302) 678-3262  
Email: wdenman@pgslegal.com

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

**701 Farmland Preservation Program**

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## **Harness Racing Commission**

### **DELAWARE STANDARDBRED BREEDERS' FUND**

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

#### **PUBLIC NOTICE**

### **502 Delaware Standardbred Breeders' Fund Regulations**

The State of Delaware, Department of Agriculture's Standardbred Breeders' Fund ("the Fund") hereby gives notice of its intention to adopt an amended regulation pursuant to the General Assembly's delegation of authority to do so found at 29 **Del.C.** §4815(b)(4)b.2 and in compliance with Delaware's Administrative Procedures Act at 29 **Del.C.** §10115. The proposed amended regulation under 13.0 defines and allows consolidation of consolation races to afford more racing opportunity to participants and fuller wagering fields.

The Fund solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty days (30) after these proposed amended regulations are published in the Delaware *Register of Regulations*. Any such submissions should be mailed or hand-delivered to Ms. Judy Davis-Wilson, Administrator, Delaware Standardbred Breeders' Fund Program whose address is State of Delaware, Department of Agriculture, 2320 South duPont Highway, Dover, Delaware 19901 by October 1, 2015.

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

#### **13.0 Races**

*(Break in Continuity Within Section)*

# PROPOSED REGULATIONS

- 13.6 Beginning in 2004, the minimum purse for elimination races for 2 and 3-year old trotters and pacers shall be \$15,000.00 and the finals shall be \$100,000.00. The Board of the Program, pursuant to a recommendation from the Administrator of the Program, may agree to increase purses should funds and other conditions permit, or decrease purses in the event of insufficient funds.
- 13.6.1 Consolation races will be held by gait and sex if at least five horses declare to start. If there are at least five horses declared, but fewer than eight horses of the same sex, horses of the other sex shall be drawn in to complete a full field of eight, provided there is no consolation race for that sex. Eligibility in a combined consolation race for that sex which did not have enough entries for a separate consolation race will be based on the point system used to determine eligibility within its own division.
- 13.6.2 If fewer than five horses declare to start in both sexes of the same gait, the sexes shall be combined provided there are at least five horses declared to start after the sexes are combined.
- 13.6.3 Horses of opposite sex shall be combined per the above unless the owner or his/her agent notes at time of declaration that the declaration be withdrawn should the sexes be combined.
- 13.6.4 Any horse qualifying for the final is not eligible for the consolation.
- 13.6.5 Consolation races shall race for the same purse as a leg.

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

**502 Delaware Standardbred Breeders' Fund Regulations**

## DEPARTMENT OF EDUCATION

### OFFICE OF THE SECRETARY

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

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

**103 Accountability for Schools, Districts and the State**

#### A. Type of Regulatory Action Required

Amendment to Existing Regulation

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

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 103 Accountability for Schools, Districts and the State. This regulation is being amended to reflect changes to the Department of Education's accountability system for schools, districts and the State, including changes as approved by the Elementary and Secondary School Elementary Education Act Flexibility application. The timing for the updates to this regulation is consistent with the FY16 Appropriations Act epilogue language.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before October 1, 2015 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed or obtained at the Department of Education, Finance Office located at the address listed above.

#### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amendment is intended to will help improve student achievement by setting up an accountability system for schools, districts and the State.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help to ensure that all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendment does not address students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation will help ensure that all students' legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.
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 due to 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 amended regulation will be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects.
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 cost to the state or local school boards to be in compliance with this regulation.

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

**103 Accountability for Schools, Districts and the State**

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## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 284

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

#### **284 Licensure and Certification of Public Education Employees in the Department of Education, in Adult Education and in Prison Education Programs Whose Work Responsibilities are Directly Related to Curriculum and Instruction**

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

Amendment to Existing Regulation

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

The Secretary of Education intends to amend 14 DE Admin. Code 284 Licensure and Certification of Public Education Employees in the Department of Education, in Adult Education and in Prison Education Programs Whose Work Responsibilities are Directly Related to Curriculum and Instruction. This regulation is being amended to reflect the revised Professional Standards Board licensure and certification regulations.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before October 1, 2015 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed or obtained at the Department of Education, Finance Office located at the address listed above.

#### **C. Impact Criteria**

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

standards? The amendment will help improve student achievement by ensuring that public education employees at DOE and in the adult prison education are properly licensed and certified.

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

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

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

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision making at the local board and school level.

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

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 due to 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 amended regulation will be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects.

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 cost to the state or local school boards to be in compliance with this regulation.

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

**284 Licensure and Certification of Public Education Employees...**

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### PUBLIC NOTICE

#### Physical Therapy, Occupational Therapy, and Services for Individuals With Speech, Hearing and Language Disorders

#### Hippotherapy

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance proposed to amend the amend the Title XIX Medicaid State Plan and the Delaware Medical Assistance Program Provider Specific Policy Manual to revise and update Independent Therapist Provider Specific Policy Manual regarding Physical Therapy, Occupational Therapy, and Services for Individuals With Speech, Hearing and Language Disorders, specifically, *to establish coverage criteria, provider qualifications, service limitations and reimbursement methodology for Hippotherapy.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning, Policy

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and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by September 30, 2015.

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

## SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services/Division of Medicaid and Medical Assistance is proposing to amend the Title XIX Medicaid State Plan and the Delaware Medical Assistance Program (DMAP) Provider Specific Policy Manual to revise and update Independent Therapist Provider Specific Policy Manual regarding Physical Therapy, Occupational Therapy, and Services for Individuals With Speech, Hearing and Language Disorders, specifically, *to establish coverage criteria, provider qualifications, service limitations and reimbursement methodology for Hippotherapy.*

### Statutory Authority

- Section 1905(a)(11) of the Social Security Act, *includes physical therapy and related services in the definition of medical assistance*
- 42 CFR §440.110 *defines physical therapy, occupational therapy, and services for individuals with speech, hearing and language disorders*
- 42 CFR §447.205, *Public notice of changes in statewide methods and standards for setting payment rates*

### Background

Physical therapy and related services under 42 Code of Federal Regulations (CFR) 440.110 is an optional service under State Medicaid Programs. Medicaid reimbursement for outpatient physical therapy, occupational therapy, and services for individuals with speech, hearing and language disorders is based on the provision of medically necessary therapy services for an illness or injury resulting in functional limitations which can respond or improve as a result of the prescribed therapy treatment plan in a reasonable, predictable period of time.

#### *Physical Therapy Services*

In accordance with 42 CFR 440.110(a), physical therapy means services prescribed by a physician or other licensed practitioner of the healing arts within the scope of his or her practice under state law and provided to a beneficiary by or under the direction of a qualified Physical Therapist. It includes any necessary supplies and equipment. Physical Therapy Services involve evaluation and treatment to prevent, alleviate, or compensate for movement dysfunction and related functional problems for maximum reduction of physical or mental disability and restoration of a beneficiary to his/her best possible functional level.

A "qualified physical therapist" is an individual who meets personnel qualifications for a physical therapist at 42 CFR §484.4.

#### *Occupational Therapy Services*

In accordance with 42 CFR 440.110(b)(1), occupational therapy means services prescribed by a physician or other licensed practitioner of the healing arts within the scope of his or her practice under state law and provided to a beneficiary by or under the direction of a qualified occupational therapist. It includes any necessary supplies and equipment. Occupational therapy services are channels to improve or restore functional abilities for maximum reduction of physical or mental disability and restoration of a beneficiary to his/her best possible functional level.

A "qualified occupational therapist" is an individual who meets personnel qualifications for an occupational therapist at 42 CFR §484.4.

#### *Services for Individuals with Speech, Hearing and Language Disorders*

In accordance with 42 CFR 440.110(c)(1), services for individuals with speech, hearing and language disorders means diagnostic, screening, preventive, or corrective services provided by or under the direction of a speech pathologist or audiologist, for which a patient is referred by a physician or other licensed practitioner of the healing arts within the scope of his or her practice under State law. It includes any necessary supplies and

equipment. Reimbursable Speech-Language Pathology Services are evaluative tests and measures utilized in the process of providing Speech-Language Pathology Services and must represent standard practice procedures.

A "speech pathologist" means an individual who meets one of the conditions defined in 42 CFR 440.110(c)(2).

A "qualified audiologist" means an individual with a master's or doctoral degree in audiology that maintains documentation to demonstrate that he or she meets one of the conditions defined in 42 CFR 440.110(c)(3).

#### *Hippotherapy*

Hippotherapy is a form of physical, occupational and speech-language therapy in which a therapist uses the multidimensional movements of a horse to provide carefully graded motor and sensory input. A foundation is established to improve neurological function and sensory processing, which can be generalized to a wide range of daily activities. Hippotherapy involves therapeutic exercise, neuromuscular education, kinetic activities, therapeutic activities, sensory integration activities and individual speech therapy. This treatment strategy utilizes the movement of the horse as part of an integrated rehabilitation plan of care to achieve functional outcomes.

Hippotherapy is specialized and is always directed by a licensed healthcare professional. Functional riding and horsemanship skills are not taught during hippotherapy. Rather, the emphasis is on the achievement of specific therapeutic goals facilitated by the movement of the horse. Despite the unusual nature of hippotherapy, its rationale is based on current theories of motor development and control and established neurophysiologic treatment principles.

#### **Summary of Proposal**

##### *Purpose*

To establish the requirements and reimbursement provisions that governs hippotherapy services.

##### *Proposal*

The Delaware Medical Assistance Program (DMAP) Provider Manual is written specifically to address the contractual and regulatory requirements of delivering health care services to Delaware Medicaid beneficiaries. From time to time the Division of Medicaid and Medical Assistance (DMMA) updates and revises these manuals as our policies or regulatory requirements change. Physical therapy and related services are those medically necessary services related to the coverage described in the Independent Therapist Provider Specific Policy Manual. The proposed rule establishes language in the designated provider manual to allow coverage for hippotherapy services.

For conditions of coverage and payment, the Division of Medicaid and Medical Assistance (DMMA) proposes to amend Attachment 4.19-B Page 21 of the Medicaid State Plan to reflect the above-referenced changes. Upon CMS approval, the proposed state plan amendment (SPA) is effective for dates of service on or after September 1, 2015.

In addition, language throughout the rule has been updated, restructured and replaced for clarity purposes.

##### *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 to the requirements and reimbursement provisions governing private duty nursing services. Comments must be received by 4:30 p.m. on September 30, 2015.

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

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

##### *Provider Manuals Update*

Also, upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals will be updated. Manual updates, revised pages or additions to the provider manual are issued,

as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. DMAP provider manuals and official notices are available on the DMAP website: <http://www.dmap.state.de.us/home/index.html>

## Fiscal Impact Statement

This revision imposes no increase in cost on the General Fund as Physical Therapy, Occupational Therapy, and Services for Individuals with Speech, Hearing and Language Disorders is already a covered benefit under the Delaware Medical Assistance Program (DMAP) to eligible beneficiaries.

DMAP's proposal involves no change in the definition of those eligible to receive physical therapy and related services under Medicaid, and the physical therapy and related services benefit to eligible beneficiaries remains the same.

## DMMA PROPOSED REGULATION #15-14a

### REVISIONS:

ATTACHMENT 4.19-B

Page 21

## STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: DELAWARE

### METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES FOR PHYSICAL THERAPY AND RELATED SERVICES

42 CFR 440.110

Physical therapy and related services are reimbursed as follows:

Physical and occupational therapists and speech/language pathologists who are individually enrolled with the Delaware Medical Assistance Program (DMAP) are reimbursed at a rate using Healthcare Common Procedure Coding System (HCPCS) procedure codes. Reimbursement rates shall be based on the Medicare Relative Value (RVU).

All necessary supplies and equipment used by the therapist in the course of treatment are included in the reimbursement visit and cannot be billed separately.

Services provided by an occupational therapy assistant, physical therapy assistance, and a speech/language pathology assistant are included in the reimbursement to the qualified therapist/pathologist.

Therapists that provide Hippotherapy must be certified by the American Hippotherapy Certification Board as a Hippotherapy Clinical Specialist (HCPS). Services provided during Hippotherapy are included in the reimbursement to the qualified therapist.

~~When billing for PT, OT, and Speech/language pathology services, providers shall use the appropriate Physical Medicine and Rehabilitation CPT Procedure codes and specify the diagnosis with accurate ICD-9-CM codes. When billing for physical therapy, occupational therapy, and services for individuals with speech, hearing, and language disorders, providers shall use the appropriate Physical Medicine and Rehabilitation Current Procedural Terminology (CPT) codes and specify the diagnosis with accurate International Classification of Diseases, Clinical Modification (ICD-CM) codes.~~

When billing for services provided by a physical therapist, providers must specify the diagnosis that is being treated. For billing purposes, providers must include the medical diagnosis that may differ from the impairment-based diagnosis described in *The Guide to Physical Therapist Practice Patient/Client Management Model*.

# PROPOSED REGULATIONS

The fee schedule and any annual/periodic adjustments to the fee schedule and effective dates are available on the Delaware Medical Assistance Program (DMAP) website at: <http://www.dmap.state.de.us/downloads/feeschedules.html>

Except as otherwise noted in the plan, payment for these services is based on State-developed fee schedule rates, which are the same for both governmental and private providers of freestanding inpatient rehabilitation hospital services.

## DMMA PROPOSED REGULATION #15-14b

### REVISIONS:

#### DELAWARE MEDICAL ASSISTANCE PROGRAM

#### Independent Therapist Provider Specific Policy Manual

#### 1.1 Applicability

- 1.1.1 This manual contains policies and procedures to be utilized by therapists who shall include the following provider types:
- Physical Therapist
  - Occupational Therapist
  - Speech/language Pathologist
- 1.1.2 All rules and regulations in the General Policy and referenced in the provider contract are applicable to these providers.
- 1.1.3 All therapy services must be medically necessary and ordered by a physician or other licensed practitioner of the healing arts within the scope of his or her practice under State law.
- 1.1.4 Group practices may enroll in the Delaware Medical Assistance Program (DMAP) and use their provider identification number to bill. However, individual therapists who are members of the group must also have individual contracts and individual DMAP provider numbers. The therapist's number must be used to identify the provider performing the service on the claim form submitted by the enrolled group.
- 1.1.5 Therapists who bill the DMAP for services provided to eligible Medicaid ~~clients~~ beneficiaries are required to verify that they actually rendered the service which is being billed. The following are the documentation requirements to verify the identity of the performing provider:
- 1.1.5.1 A therapist in a solo practice is not required to sign or initial medical records. However, a therapist who is a substitute or who is covering for a therapist in a solo practice is required to initial the medical record of the Medicaid ~~client~~ beneficiary for whom services have been provided.
- 1.1.5.2 A performing therapist in a group practice is required to initial the entry in the ~~client's~~ Medicaid beneficiary's medical record at the time of service. Any system that a particular office may have in place that identifies the performing provider for each service will be acceptable.
- 1.1.5.3 Therapists enrolled with the DMAP must countersign the services performed by the associate/assistant they oversee or supervise.
- 1.1.6 Therapists that provide Hippotherapy must be certified by the American Hippotherapy Certification Board as a Hippotherapy Professional Clinical Specialist (HCPS).
- 2.2.4 The following are the most common physical therapy modalities and procedures used in the treatment of patients and are covered services if certain conditions are met:
- 2.2.4.1 Hot packs, Hydrocollator, Infra-Red Treatments, Paraffin Baths and Whirlpool Baths - These types of therapy will be covered in cases when the skills, knowledge and judgment of a physical therapist is required or where the patient's condition is complicated by circulatory deficiency, areas of desensitization, open wounds, or other complications.
- 2.2.4.2 Gait Training - Gait evaluation and training requires the skills of a qualified physical therapist. The service is furnished to patients whose ability to walk has been impaired by neurological, muscular,

or a skeletal abnormality. Gait training is provided with the expectation that it will significantly improve the patient's ability to walk.

- 2.2.4.3 Ultrasound, Shortwave, and Microwave Diathermy Treatments - Modalities must be performed by or under the supervision of a qualified physical therapist.
- 2.2.4.4 Range of Motion Tests - Range of motion tests must be performed by a qualified physical therapist.
- 2.2.4.5 Therapeutic Exercises - Therapeutic exercises must be performed by or under the supervision of a qualified physical therapist. The exercises must be part of the active treatment of a specific disease or injury which has resulted in a loss or restriction of mobility.
- 2.2.4.6 Hippotherapy – is a form of physical, occupational and speech-language therapy in which a therapist uses the multidimensional movements of a horse to provide carefully graded motor and sensory input. A foundation is established to improve neurological function and sensory processing, which can be generalized to a wide range of daily activities. Hippotherapy involves therapeutic exercise, neuromuscular education, kinetic activities, therapeutic activities, sensory integration activities and individual speech therapy. This treatment strategy utilizes the movement of the horse as part of an integrated rehabilitation plan of care to achieve functional outcomes.

### 3.3 Services Not Covered

- 3.3.1 Occupational therapy services that are not covered include but are not limited to OT services which are not intended to improve functions. is not covered by the DMAP.

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## DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 2906(b) (16 Del.C. §2906(b))  
16 DE Admin. Code 4452

### PUBLIC NOTICE

#### 4452 Clean Indoor Air Act

Health Systems Protection Section (HSP), Division of Public Health, Department of Health and Social Services, is proposing revisions to the Delaware Clean Indoor Air Act. The purpose of the amendments is to add electronic smoking devices to the regulations. On September 1, 2015, HSP plans to publish as proposed the amended regulations, and hold them out for public comment per Delaware law.

### NOTICE OF PUBLIC HEARING

A public hearing will be held on Wednesday, September 30, 2015 at 10:00 a.m. in the First Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Copies of the proposed regulations are available for review in the September 1, 2015 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Jamie Mack by Friday, October 9, 2015, at:

Jamie Mack  
Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [jamie.mack@state.de.us](mailto:jamie.mack@state.de.us)  
Phone: (302) 744-4951

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# PROPOSED REGULATIONS

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## 4452 Clean Indoor Air Act (Break in Continuity of Sections)

### 2.0 Purpose

These regulations shall be construed and applied to protect the nonsmoker from involuntary exposure to environmental tobacco smoke and emissions produced by electronic smoking devices in most enclosed indoor areas to which the public is invited or in which the general public is permitted. The purpose of the Clean Indoor Air Act is to preserve and improve the health, comfort and environment of the people of this State by limiting exposure to tobacco smoke and emissions produced by electronic smoking devices.

(Break in Continuity of Sections)

### 4.0 Date of Effect

These regulations shall be effective ~~November 27, 2002~~ December 1, 2015.

(Break in Continuity of Sections)

### 7.0 Definitions

(Break in Continuity Within Section)

7.2 For the purposes of these Regulations:

“**Department**” means the Delaware Health and Social Services (DHSS) as defined in Title 29 **Del.C.** §7901.

“**Electronic Smoking Device**” means any product containing or delivering nicotine or any other similar substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

(Break in Continuity Within Section)

“**Fraternal Benefit Society**” means any incorporated society, order or supreme lodge, without capital stock, including one exempted under the provisions of 18 **Del.C.** §6237(a)(2) of this title, whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on a lodge system with ritualistic form of work, having a representative form of government and which provides benefits in accordance with this chapter, ~~is hereby declared to be a fraternal benefit society.~~

“**Private Club**” means any club or organization that does not permit the general public to access its facilities or activities. Access is denied to anyone who does not agree or adhere to the rules of membership. In order to be considered a private club or organization for purposes of the Clean Indoor Air Act, the establishment must adhere to all of, but not limited to, the following criteria:

- a. Have a permanent mechanism to carefully screen applicants for membership on subjective rather than objective factors;
- b. Limits access and use of facilities, services and activities of the organization to members and guests of the members;
- c. Is controlled by its membership and operates solely for the benefit and pleasure of its members;
- d. ~~Advertises exclusively and only to its members, excluding membership drives.~~
- e. ~~Advises~~ Advertises exclusively and only to its members, excluding membership drives.

(Break in Continuity Within Section)

“**Smoking**” means the burning of a lighted cigarette, cigar, pipe or any other matter or substance that contains tobacco; or, the use of an electronic smoking device which creates an aerosol or vapor, or in any manner or in any form.

“Vapor Establishment” means a business that: 1) generates at least 80% of its revenue from the sale of electronic smoking devices and substances for use within electronic smoking devices; and 2) does not share indoor common space with other businesses unless there are doors from the vapor establishment to the indoor common space that remain closed other than for ingress and egress.

“Volunteer Fire Company” means a fire, ambulance, or rescue company recognized as such by the Delaware State Fire Prevention Commission.

## 8.0 Smoking Prohibitions

- 8.1 Except as is provided in section 3.1 of these regulations, and in order to reduce the levels of exposure to environmental tobacco smoke and emissions produced by electronic smoking devices, smoking shall not be permitted and no person shall smoke in any of the following areas:

*(Break in Continuity Within Section)*

### 8.3 Vapor Establishments

8.3.1 Vapor establishments are permitted to have emissions produced by electronic smoking devices within their places of businesses.

8.3.2 Any vapor establishment permitted to have emissions produced by electronic smoking devices in such establishment pursuant to these regulations, and which permits such emissions, shall prohibit anyone under the age of 18 from entering.

*(Break in Continuity of Sections)*

## 10.0 Posting of Signs

- 10.1 Failure to Properly Post and Maintain Signs

10.1.1 Owners, operators, managers or other person(s) having control of enclosed indoor areas subject to the regulations of 16 Del.C. Ch. 29 shall post signs which indicate “Warning: Smoking Permitted” prominently to indicate those locations where smoking is permitted pursuant to section ~~3-4~~ 9.1. Failure to prominently post properly maintained signs with letters at least one (1) inch in height and in accord with the CLEAN INDOOR AIR ACT shall be a violation subject to administrative penalties as set forth in section ~~5-4~~ 11.1 of the Clean Indoor Air Act Regulations.

10.1.2 Any vapor establishment permitted to have emissions produced by electronic smoking devices in such establishment pursuant to these regulations, and which permits such emissions, shall display a sign at all entrances stating that no one under the age of 18 is allowed in such a vapor shop. Failure to prominently post at all entrances properly maintained signs with letters at least one (1) inch in height shall be a violation subject to administrative penalties as set forth in section 11.1 of the Clean Indoor Air Act Regulations.

## 11.0 Compliance and Enforcement Procedures

- 11.1 Administrative Penalties. Whoever violates any provision of these regulations shall be subject to an administrative penalty of \$100.00 for the first violation and not less than \$250.00 for each subsequent violation.
- 11.2 Right to Administrative Hearing. Upon due notice that the Department intends to assess an administrative penalty, as indicated in ~~5-4~~ 11.1, the entity may submit to the Division, within thirty (30) days of the date of such notice of intent, a written request for an administrative hearing.
- 11.3 Orders of the Department. Whoever refuses, fails or neglects to perform the duties required under these regulations or violates, neglects or fails to comply with the duly adopted regulations or orders of the Dept. of Health and Social Services, shall be fined not less than \$100.00 and not more than \$1,000.00, together with cost, unless otherwise provided by law.

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

**4452 Clean Indoor Air Act**

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# PROPOSED REGULATIONS

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## DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, §122(3)c (16 Del.C. §122(3)c)  
16 DE Admin. Code 4462

### PUBLIC NOTICE

#### 4462 Public Drinking Water Systems

On September 1, 2015, the Department of Health and Social Services, Division of Public Health, Office of Drinking Water, plans to republish revised Regulations Governing Public Drinking Water Systems and hold them out for public comment per Delaware law.

The purpose of the regulations is to update the regulations to align them with federal requirements and clarify the current regulations. The regulations are being revised to include:

- Revised Total Coliform Rule (RTCR) as section 7.4. This rule was finalized by EPA on April 1, 2012.
- Reorganization of the regulations by breaking up the large sections into smaller sections, allowing for easier reviews and checking of regulatory requirements. The Regulations are going from 10 sections to 20 sections.
- Section 4.1.6 on page 16 is being expanded to provide specific examples of unusual events so water system owners/operators have a more clear idea of when they need to contact DPH.
- Incorporate revisions identified by EPA when they reviewed the previous regulations.
- Sections that are no longer relevant or that have been superseded by more recent regulations have been deleted.

### NOTICE OF PUBLIC HEARING

A public hearing will be held on Wednesday September 30, 2015, at 2:00 p.m. in the Large Conference Room, Office of Drinking Water, Edgehill Shopping Center, 43 South DuPont Highway, Dover, Delaware.

Copies of the proposed regulations are available for review in the September 1, 2015 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulation should submit such comments by Thursday, October 8, 2015 to:

Jamie Mack, Executive Assistant  
Office of the Director  
Delaware Division of Public Health  
Jesse Cooper Building  
417 Federal St.  
Dover, DE 19901  
Email: [jamie.mack@state.de.us](mailto:jamie.mack@state.de.us)  
Fax: 302-739-3984

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

#### 4462 Public Drinking Water Systems

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## DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311, 2741; 21 Delaware Code, Section 2118(o) (18 **Del.C.** §§311 and 2741; 21 **Del.C.** §2118(o))  
18 **DE Admin. Code** 606

### PUBLIC NOTICE

#### 606 Proof of Automobile Insurance

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed amended Department of Insurance Regulation 606 relating to Proof of Automobile Insurance [Formerly Regulation 31]. The docket number for this proposed AMENDED regulation is 2464-2015.

The proposed amended regulation supports the established requirements to govern the form of the standardized insurance identification (ID) card for each insured vehicle pursuant to Delaware law and will follow new requirements passed under H.B. 258 HA1, for the 147<sup>th</sup> General Assembly. The Delaware Code authority for the change is 18 **Del.C.** §§311 and 2741; 21 **Del.C.** §2118(o); and 29 **Del.C.** Ch. 101.

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

[www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml](http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml)

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Wednesday, September 30, 2015. Any such requests should be directed to:

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

#### 606 Proof of Automobile Insurance

##### 1.0 Authority

- 1.1 This regulation is adopted under the authority of 18 **Del.C.** §§314 and 2741; 21 **Del.C.** §2118(o) as amended by S. B. 212, and adopted in cooperation with the Division of Motor Vehicles. This regulation is promulgated under the provisions of the Administrative Procedures Act, 29 **Del.C.**, Ch.101.

*(Break in Continuity of Sections)*

##### 4.0 Insurance Identification Card

- 4.1 All companies licensed to write automobile insurance in the State of Delaware must furnish Insurance Identification Cards. If the insured and insurance company both consent, the insurance identification card may be produced in electronic format. Acceptable electronic formats include display of electronic images on a cellular phone or any other type of portable electronic device. At least one written card or card in electronic format must be issued for each vehicle for which liability insurance is in effect. Delaware policyholders who are members of the military and are stationed outside of Delaware may be issued a card of that state provided their coverage meets Delaware requirements.

4.2 ~~If an insurance identification card is produced in written format,~~ insurers may use uniform ACORD format or may prepare the ACORD format as described below:

4.2.1 The size, weight, and color of the card shall be as below:

4.2.1.1 Size: Not smaller than 3-1/2" x 2-1/4" or larger than 3" x 5"

4.2.1.2 Weight: Optional

4.2.1.3 Color: White

4.2.1.4 ~~Each card shall be printed on paper stock which contains a clearly visible watermark, screened color, reflective ink, or laser-lock which prevents unauthorized or fraudulent reproduction. The watermark must be a company logo, or a generic insurance-specific logo which clearly identifies the watermark as issued by an insurance company. The ACORD "ghost script" anti-fraud paper with the ACORD watermark shall satisfy the watermark requirement.~~

## **5.0 Insurance Identification Cards for Personal Lines Coverage**

5.1 The Insurance Identification Card for privately owned or leased motor vehicles and/or for vehicles that are used non-commercially but covered under commercial lines policies shall contain the following information, whether the card is provided in written or electronic format:

*(Break in Continuity Within Section)*

## **6.0 Insurance Identification Cards for Commercial Lines Coverage**

6.1 Unless otherwise covered in Section 5.0 of this regulation, the ID card for each vehicle insured under each commercial lines policy, which shall include any insurance issued for fleet vehicles, shall contain the following information, whether the card is provided in written or electronic format:

*(Break in Continuity of Sections)*

## **9.0 Furnishing Motor Vehicle Liability Insurance Information to the Division of Motor Vehicles**

9.4 An insurer shall furnish within 30 days of a request by the Division of Motor Vehicles prescribed information on each motor vehicle insured in the State of Delaware. The information shall be provided in the form and manner approved by the Division of Motor Vehicles.

*(Break in Continuity of Sections)*

## **11.0 Notification of Uninsured Drivers**

11.4 Each insurer licensed to write automobile liability insurance in Delaware shall notify the Division of Motor Vehicles on a form approved by the Division of Motor Vehicles the name of any person or persons involved in an accident or filing a claim who is alleged to have been operating a Delaware registered motor vehicle without the insurance required under Delaware law. The insurer shall provide the name, address, and description of the vehicle alleged to be uninsured.

## **12.0 Additional Required Proofs of Insurance**

12.4 Each insurer licensed to write automobile liability insurance in this State shall furnish to their insureds verification of the insurance in force at the request of the Division of Motor Vehicles by use of a form approved by the Division of Motor Vehicles. Each insurer is to utilize such measures as may be necessary to assure delivery of these forms to qualified insured drivers only.

## **13.0 Severability**

13.4 If any provision of this regulation or the application thereof to any person or situation is held invalid, such invalidity shall not affect any other provision or application of the regulation which can be given effect without the invalid provision or application and to this end the provisions of this regulation are declared to be severable.

## 14.0 Effective Date

- 44.1 ~~This Regulation shall become effective September 11, 2008. This Regulation shall become effective 10 days after being published as a final regulation.~~

\*Regulation No. 31 was entitled "Insurance Identification Card" under an effective date of July 1, 1979; amended July 1, 1982; amended effective January 1, 1991 and again on May 12, 1993 under present title except for the conditions specified under § 6 and § 4 of the regulation and April 12, 1993.

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

**606 Proof of Automobile Insurance**

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## DEPARTMENT OF LABOR DIVISION OF INDUSTRIAL AFFAIRS

### OFFICE OF WORKERS' COMPENSATION

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

### PUBLIC NOTICE

### 1341 Workers' Compensation Regulations

The Workers' Compensation Oversight Panel, pursuant to 19 **Del.C.** §2322B(9), proposes to revise Regulation 1341, subsection 4.13.1 by removing references to specific percentages and dollar amounts to be used in calculating the amounts permitted to be paid for prescribed drugs. In addition, the Workers' Compensation Oversight Panel, pursuant to 19 **Del.C.** §2322B(3)(a), proposes to revise subsection 4.20.1 by removing references to specific dollar amounts to be used in calculating the amounts permitted to be paid for anesthesia services provided to employees.

The Panel will hold a public hearing on the proposed regulation changes on September 21, 2015 at 4:00 p.m., in the Department of Labor Fox Valley Annex, 19 W. Lea Blvd, Wilmington, DE 19802. Written comments should be sent to Stephanie K. Parker, Administrator for the Office of Workers' Compensation, 4425 N. Market Street, Wilmington, DE 19802. Written comments will be accepted until September 30, 2015 pursuant to 29 **Del.C.** §10118(a).

### 1341 Workers' Compensation Regulations

## 4.0 Workers' Compensation Health Care Payment Rates for Physicians, Other Qualified Health Care Professionals, Hospitals and Hospital Outpatient Facilities, as well as Ambulatory Surgery Centers (the "Fee Schedule"). Instructions and Guidelines

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

#### 4.13 Pharmacy

- 4.13.1 Prescribed drugs are capped at the lesser of the provider's usual charge; a negotiated contract amount; or the Average Wholesale Price (AWP) for the National Drug Code (NDC) for the prescription drug or medicine on the day it was dispensed ~~minus twelve percent (12%) plus a dispensing fee of four dollars (\$4.00) for brand name drugs or medicines, or minus twenty percent (20%) plus a dispensing fee of five dollars (\$5.00) for generic drugs or medicines. a percentage reduction set by the Workers' Compensation Oversight Panel plus a dispensing fee set by the Workers' Compensation Oversight Panel for brand-name drugs or medicines and generic drugs or medicines. The Workers' Compensation Oversight Panel shall be authorized to set different~~

# PROPOSED REGULATIONS

percent reductions and dispensing fees for brand drugs or medicines and generic drugs or medicines. Absent a contract, which is governed by 19 **Del.C.** §2322B(4), the actual charge is the maximum allowed, if it is less than the amount specified in this regulation. Physicians dispensing drugs from their office do not receive the dispensing fee referenced above.

- 4.13.1.1 ~~Pursuant to 19 **Del.C.** §2322B(a), the calculated pharmacy fee shall be further reduced to achieve a 20% reduction in medical expenditures, as published on the Department of Labor's web site.~~

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

4.20 Anesthesia

4.20.1 Introduction

- 4.20.1.1 ~~Anesthesia services provided to employees pursuant to 19 **Del.C.** §2322B(3) shall be paid at a unit charge of one hundred dollars (\$100.00) per unit in geozip 197-198 and seventy-six dollars (\$76.00) per unit in geozip 199, with an annual CPI-U adjustment as referenced in 19 **Del.C.** §2322B(5). The formula to calculate anesthesia services provided to employees pursuant to 19 **Del.C.** §2322B(7) shall be as follows: CMS base units + time units + physical status modifier + qualifying circumstances multiplied by the Conversion Factor.~~

4.20.1.1.1 ~~The formula to calculate anesthesia services is "Anesthesia fee = Total units X Conversion factor".~~

4.20.1.1.2 ~~Total units = CMS base units + time units + physical status modifier + qualifying circumstances~~

4.20.1.1.3 ~~A time unit is a fifteen (15) minute increment.~~

4.20.1.1.3.1 ~~Partial Units are rounded — 1) five (5) minutes or less round down to the previous unit; or 2) more than five (5) minutes round up to the next unit.~~

4.20.1.1.4 ~~"Conversion Factors" are one hundred dollars (\$100) per unit for geozip 197-198 and seventy-six dollars (\$76) per unit for geozip 199. The annual CPI-U adjustment to these "Conversion Factors" will be published on the Department of Labor web site.~~

- 4.20.1.2 ~~The health care payment system as to Anesthesia will be adjusted yearly pursuant to 19 **Del.C.** §2322B for anesthesia treatment, procedures and/or services in effect in January of that year. A time unit is a fifteen (15) minute increment.~~

4.20.1.2.1 ~~Partial units are rounded: 1) five (5) minutes or less round down to the previous unit; or 2) more than five (5) minutes round up to the next unit.~~

- 4.20.1.3 ~~"Conversion Factors" shall be set by the Workers' Compensation Oversight Panel for each geozip. When applicable, the annual CPI-U adjustment to these "Conversion Factors" shall be published on the Department of Labor website.~~

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

**1341 Workers' Compensation Regulations**

## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 788, 796 and 801 (7 **Del.C.** §§788, 796 & 801)  
7 DE Admin. Code 3900

**REGISTER NOTICE #2015 - 07**

1. TITLE OF THE REGULATIONS:

3900 Wildlife – 4.0 Seasons  
3900 Wildlife – 23.0 Non-native/Invasive Wildlife

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

The purpose of this action is to establish reporting requirements for gray fox taken, killed or captured; also to ensure consistency with and to clarify the allowable timeframe and methodology for reporting coyote and nutria harvests.

## 3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

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

Title 7, Delaware Code, Chapter 7, Sections §788, §796 and §801

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

N/A

## 6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 7 **DE Admin. Code** 3900 Wildlife – 4.0 and 23.0 pertaining to Seasons and Non-native/Invasive Wildlife will be open September 1, 2015. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on September 22, 2015 beginning at 6:30 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

## 7. PREPARED BY:

Joe Rogerson (302) 735-3600  
8/14/15

### 3900 Wildlife

#### Seasons

## 4.0 Seasons

(Penalty Section 7 **Del.C.** §103(d))

### 4.1 Season Dates.

Hunting and trapping season dates will be published each year in an annual publication entitled "Delaware Hunting and Trapping Guide."

### 4.2 General.

It shall be unlawful for any person to hunt those species of wildlife for which a season is designated at any time other than during that season.

### 4.3 Protected Wildlife.

4.3.1 Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to hunt any species of protected wildlife.

4.3.2 It shall be unlawful for any person to sell, transport or possess any species of protected wildlife, except when:

4.3.2.1 Otherwise provided by law or regulation of the Department; or

4.3.2.2 The wildlife was lawfully taken outside of this State in accordance with the laws or regulations of the state or nation where the wildlife was taken.

### 4.4 Beaver.

4.4.1 Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to hunt or trap beaver during any period of the year, however, from December 1 through

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**PROPOSED REGULATIONS**

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March 20, landowners (or their agents) may take up to eight beavers from their property without a permit, provided the beavers are causing crop or property damage.

4.4.2 Beaver hides and the meat of lawfully taken beaver harvested anywhere within or outside of Delaware may be sold.

4.5 Bullfrogs.

4.5.1 Season. Bullfrogs may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of bullfrogs: from May 1 through September 30.

4.5.2 Limit. It shall be unlawful for any person to take more than twenty-four (24) bullfrogs in any one day.

4.5.3 License. A hunting or fishing license is required to take bullfrogs.

4.6 Crows.

It shall be unlawful for any person to hunt common crows during any period of the year, except Thursdays, Fridays and Saturdays between and including the fourth Thursday of June and the last Saturday of March, unless said person holds a valid depredation permit. The hunting of common crows is restricted only by the provisions of federal regulations pertaining to the taking of common crows. Crows may be taken without a permit when committing damage or about to commit damage.

4.7 Gray Squirrel.

4.7.1 Season. Gray squirrel may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of gray squirrel: from September 15 (September 14, if September 15 is a Sunday) through the first Saturday in February. Squirrel hunting shall be unlawful during the November deer firearms season. When squirrel season overlaps with a firearms deer season, squirrel may be hunted when hunter orange is displayed in accordance with § 718 of Title 7.

4.7.2 Limit. It shall be unlawful for any person to take more than six gray squirrels in any one day.

4.8 Opossum.

The opossum may only be hunted or trapped during the lawful season to hunt or trap raccoons.

4.9 Pheasant.

4.9.1 Season. Male pheasant may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of pheasant: from the Monday that immediately precedes Thanksgiving through the first Saturday in February, provided that during a deer firearms season hunter orange is displayed in accordance with § 718 of Title 7.

4.9.2 Female Pheasant. It shall be unlawful for any person to hunt or possess any female pheasant at any time, except as permitted on game preserves, by licensed game breeders or as otherwise permitted by law.

4.9.3 Male Pheasant Limit. It shall be unlawful for any person to hunt or possess more than two (2) male pheasants in any one day during the pheasant season, except as permitted by law.

4.9.4 Game Preserves. Nothing in this regulation shall be construed so as to limit the number or sex of pheasants that may be harvested by any one person on licensed game preserves.

4.10 Quail.

4.10.1 Season. Bobwhite quail may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of bobwhite quail: from the Monday that immediately precedes Thanksgiving through the first Saturday of January, provided that during a deer firearms season hunter orange is displayed in accordance with § 718 of Title 7.

4.10.2 Limit. It shall be unlawful for any person to take more than six (6) quail in any one day.

4.11 Rabbit.

4.11.1 Season. Rabbits may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of rabbits: from the Monday that immediately precedes Thanksgiving through the last day of February or the last Saturday of February if February ends on a Sunday provided that during a deer firearms season hunter orange is displayed in accordance with § 718 of Title 7.

- 4.11.2 Limit. It shall be unlawful for any person to take more than four (4) rabbits in any one day.
- 4.12 Raccoon.
- 4.12.1 Trapping Season. Raccoon may be trapped in accordance with the statutes and regulations of the State of Delaware governing the trapping of raccoon: from December 1 through March 10 (March 20 on embanked meadows) in New Castle County; and from December 15 through March 15 in Kent and Sussex counties. The season is open throughout the year on private land, except on Sundays, in eastern New Castle and Kent counties pursuant to § 786 of Title 7 and Section 4(b) of WR-2.
- 4.12.2 Hunting Season. Raccoon may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of raccoon: from September 1 (September 2, if September 1 is a Sunday) through October 31 for chase only whereby it shall be unlawful to kill raccoon and opossum; from November 1 through the last day of February; and from March 1 through March 31 for chase only whereby it shall be unlawful to kill raccoon and opossum. The season is open throughout the year on private land in eastern New Castle and Kent counties, except on Sundays, pursuant to § 786 of Title 7.
- 4.12.3 Notwithstanding subsection 4.3.2 of this section, it shall be unlawful for any person to hunt raccoon or opossum during any period when it is lawful to hunt deer with a firearm, except that it shall be lawful to hunt raccoon from 7:00 p.m. until midnight during the December and January firearm deer seasons.
- 4.13 Red Fox and Gray Fox.
- 4.13.1 Red Fox Hunting Harvest Season. Red fox may be killed in accordance with the statutes and regulations of the State of Delaware governing the hunting of red fox: from November 1 through the last day of February, excluding Sundays. Notwithstanding the foregoing, red foxes may be killed in accordance with Section 2.8 of WR-2.0 and §788 of Title 7.
- 4.13.2 Red Fox Trapping Season. Red fox may be trapped with foothold, cable restraint, or cage/box traps from December 1 through March 10.
- 4.13.3 Gray Fox Reporting. All gray fox taken, killed or captured pursuant to §796 of Title 7 must be reported to the Division of Fish and Wildlife by the next business day using its established reporting system(s).
- 4.14 Ruffed Grouse. It shall be unlawful for any person to hunt for ruffed grouse during any period of the year.
- 4.15 Snapping Turtles.
- 4.15.1 Season. It shall be unlawful for any person to hunt for snapping turtles during any period of the year, except between and including June 15 and May 15.
- 4.15.2 Size. It shall be unlawful for any person to sell, offer for sale or kill any snapping turtle with a straight-line carapace (top shell) length of less than eleven inches, measured on the curvature. This straight-line measurement is taken from the nuchal scute directly behind the turtle's head to the base of the notch where the two most posterior scutes meet over the tail.
- 4.16 Terrapin.
- 4.16.1 Season. It shall be unlawful for any person to hunt for diamondback terrapin during any period of the year, except between and including September 1 and November 15.
- 4.16.2 Limit. It shall be unlawful for any person to take more than four (4) diamondback terrapin in any one day.
- 4.17 Muskrats
- 4.17.1 7 Day Season Extension. The Department may extend the muskrat trapping season 7 days if the Department determines that the statewide muskrat population can sustain additional harvest and the average mean temperature for February was below 32<sup>0</sup>F and the total February snowfall exceeded 12 inches as determined by the National Weather Service station at Wilmington, Delaware.
- 4.17.2 14 Day Season Extension. The Department may extend the muskrat trapping season 14 days if the Department determines that the statewide muskrat population can sustain additional harvest

and the average mean temperature for February was below 28<sup>0</sup>F and the total February snowfall exceeded 24 inches as determined by the National Weather Service station at Wilmington, Delaware.

## Non-native/Invasive Wildlife

### 23.0 Non-native/Invasive Wildlife

(Penalty Section 7 Del.C. §103(d))

#### 23.1 Non-native Wildlife

##### 23.1.1 Coyotes

23.1.1.1 It shall be unlawful to possess, buy, sell, barter, trade, or transfer any live coyote to or from another person unless permitted by the Director of the Division of Fish and Wildlife.

23.1.1.2 Coyotes may be killed or trapped in accordance with the regulations found within this Section with the following: longbow, crossbow, shotgun, rimfire rifle or centerfire rifle up to .25 caliber, a muzzle-loading rifle, foothold trap, cable restraint, or box trap. Notwithstanding the foregoing, coyotes may be killed in accordance with § 802 of Title 7.

23.1.1.2.1 Notwithstanding subsection 23.1.1.2 of this section, during any deer firearms season, it shall be unlawful to hunt coyotes with any firearm that is not also legal for deer hunting.

23.1.1.3 Hunting Season. Coyotes may be hunted and harvested from September 1 through the last day of February.

23.1.1.4 Trapping Season. Coyotes may be trapped in accordance with the statutes and regulations of the State of Delaware governing the trapping coyotes: from December 1 through March 10 using foothold, cable restraints, or cage/box traps.

23.1.1.5 Reporting Harvest. After harvesting a coyote, a hunter and/or trapper must report the harvest ~~via to~~ the Division of Fish and Wildlife's by the end of the next business day using its established reporting system(s).

#### 23.2 Invasive Wildlife

##### 23.2.1 Nutria (*Myocastor coypus*)

23.2.1.1 It shall be unlawful to possess, buy, sell, barter, trade, or transfer any live nutria to or from another person unless permitted by the Director of the Division of Fish and Wildlife.

23.2.1.2 Nutria may only be trapped during the lawful season to trap muskrats. Notwithstanding the foregoing, nutria may be killed in accordance with §802 of Title 7.

23.2.1.2.1 Any nutria captured within a trap must be killed and may not be released back into the wild.

23.2.1.3 Anyone ~~capturing~~ harvesting a nutria must notify the Division of Fish & Wildlife ~~within 24 hours of the capture~~ by the end of the next business day using its established reporting system(s).

##### 23.2.2 Feral Swine

23.2.2.1 It shall be unlawful for any person to release swine into the wild. If swine kept in captivity escape and cannot be recaptured within 72 hours the Delaware Division of Fish & Wildlife and the Delaware Department of Agriculture must be contacted.

23.2.2.2 It shall be unlawful for any person to kill feral swine without first obtaining a permit from the Division.

23.2.2.2.1 It shall be unlawful to recreationally hunt feral swine.

23.2.2.2.2 It shall be unlawful for a landowner to charge a fee for the purpose of killing feral swine.

## DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

Statutory Authority: 7 Delaware Code, Chapters 60 and 63; (7 Del.C., Ch. 60 and 63)  
7 DE Admin. Code 1302

### REGISTER NOTICE SAN #2015-06

#### 1302 Regulations Governing Hazardous Waste

**1. TITLE OF THE REGULATIONS:**

Delaware's *Regulations Governing Hazardous Waste* (DRGHW)

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

To provide greater environmental protection and to reduce human health risks, the Solid and Hazardous Waste Management Section (SHWMS) proposes to adopt the federal ignitable compressed gas provisions in §261.21 and to correct clerical and typographical errors.

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

None

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

Amendments to DRGHW are proposed and amended in accordance with the provisions found at 7 Delaware Code, Chapters 60 and 63.

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

None

**6. NOTICE OF PUBLIC COMMENT:**

The public hearing on the proposed amendments to DRGHW will be held on Wednesday, September 30, 2015 at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE.

**7. PREPARED BY:**

Bethany Fiske, Environmental Scientist III, Solid and Hazardous Waste Management Section - (302) 739-9403

#### 1302 Regulations Governing Hazardous Waste

ID #	Description	Page
1	Characteristics of Ignitability- 261.21	2
2	Reference correction- 263.20	3
3	Incomplete reference- 261.6	4
4	Inaccurate preposition- 264.151	4

**NOTE:** For the purposes of this amendment package only those sections of the hazardous waste regulations shown herein are affected. The remaining sections of the DRGHW are not affected and are unchanged.

#### AMENDMENT 1:

**Background:**

Delaware proposes to modify DRGHW to mirror the federal provisions regarding characteristics of ignitability.

**Section 261.21 Characteristics of Ignitability.**

(a) A solid waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:

(1) It is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume and has

flash point less than 60°C (140°F), as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ASTM Standard D-93-79 or D-93-80 (incorporated by reference, see §260.11), or a Setaflash Closed Cup Tester, using the test method specified in ASTM Standard D-3278-78 (incorporated by reference, see §260.11).

(2) It is not a liquid and is capable, under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard.

(3) It is an ignitable compressed gas ~~as defined in 49 CFR Part 173 and as determined by the test methods described in that regulation.~~

(i) The term "compressed gas" shall designate any material or mixture having in the container an absolute pressure exceeding 40 p.s.i. at 70°F or, regardless of the pressure at 70°F, having an absolute pressure exceeding 104 p.s.i. at 130°F; or any liquid flammable material having a vapor pressure exceeding 40 p.s.i. absolute at 100°F as determined by ASTM Test D-323.

(ii) A compressed gas shall be characterized as ignitable if any one of the following occurs:

(A) Either a mixture of 13 percent or less (by volume) with air forms a flammable mixture or the flammable range with air is wider than 12 percent regardless of the lower limit. These limits shall be determined at atmospheric temperature and pressure. The method of sampling and test procedure shall be acceptable to the Bureau of Explosives and approved by the director, Pipeline and Hazardous Materials Technology, U.S. Department of Transportation (see Note 2).

(B) Using the Bureau of Explosives' Flame Projection Apparatus (see Note 1), the flame projects more than 18 inches beyond the ignition source with valve opened fully, or, the flame flashes back and burns at the valve with any degree of valve opening.

(C) Using the Bureau of Explosives' Open Drum Apparatus (see Note 1), there is any significant propagation of flame away from the ignition source.

(D) Using the Bureau of Explosives' Closed Drum Apparatus (see Note 1), there is any explosion of the vapor-air mixture in the drum.

(4) It is an oxidizer ~~as defined in 49 CFR Part 173.~~ An oxidizer for the purpose of this subchapter is a substance such as a chlorate, permanganate, inorganic peroxide, or a nitrate, that yields oxygen readily to stimulate the combustion of organic matter (see Note 4).

(i) An organic compound containing the bivalent -O-O- structure and which may be considered a derivative of hydrogen peroxide where one or more of the hydrogen atoms have been replaced by organic radicals must be classed as an organic peroxide unless:

(A) The material meets the definition of a Class A explosive or a Class B explosive, as defined in §261.23(a)(8), in which case it must be classed as an explosive.

(B) The material is forbidden to be offered for transportation according to 49 CFR 172.101 and 49 CFR 173.21.

(C) It is determined that the predominant hazard of the material containing an organic peroxide is other than that of an organic peroxide, or

(D) According to data on file with the Pipeline and Hazardous Materials Safety Administration in the U.S. Department of Transportation (see Note 3), it has been determined that the material does not present a hazard in transportation.

(b) A solid waste that exhibits the characteristic of ignitability has the EPA Hazardous Waste Number of D001.

Note 1: A description of the Bureau of Explosives' Flame Projection Apparatus, Open Drum Apparatus, Closed Drum Apparatus, and method of tests may be procured from the Bureau of Explosives.

Note 2: As part of a U.S. Department of Transportation (DOT) reorganization, the Office of Hazardous Materials Technology (OHMT), which was the office listed in the 1980 publication of 49 CFR 173.300 for the purposes of approving sampling and test procedures for a flammable gas, ceased operations on February 20, 2005. OHMT programs have moved to the Pipeline and Hazardous Materials Safety Administration (PHMSA) in the DOT.

Note 3: As part of a U.S. Department of Transportation (DOT) reorganization, the Research and Special Programs Administration (RSPA), which was the office listed in the 1980 publication of 49 CFR 173.151a for the purposes of determining that a material does not present a hazard in transport, ceased operations on February 20, 2005. RSPA programs have moved to the Pipeline and Hazardous Materials Safety Administration (PHMSA) in the DOT.

Note 4: The DOT regulatory definition of an oxidizer was contained in §173.151 of 49 CFR, and the definition of an

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organic peroxide was contained in paragraph 173.151a. An organic peroxide is a type of oxidizer.

## AMENDMENT 2:

### Background:

Delaware proposes to modify DRGHW to correct an incorrect reference and to mirror the federal provisions.

### Section 263.20 The Manifest System.

(a) (1) ...

(2) *Exports.* In the case of exports other than those subject to Subpart H of ~~DRGHW 40 CFR~~ part 262, a transporter may not accept such waste from a primary exporter or other person if he knows the shipment does not conform to the EPA Acknowledgment of Consent; and unless, in addition to a manifest signed by the generator as provided in this section, the transporter shall also be provided with an EPA Acknowledgment of Consent which, except for shipments by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment)). For exports of hazardous waste subject to the requirements of Subpart H of ~~DRGHW 40 CFR~~ part 262, a transporter may not accept hazardous waste without a tracking document that includes all information required by ~~DRGHW 40 CFR~~ 262.84.

## AMENDMENT 3:

### Background:

Delaware proposes to modify DRGHW to correct an incomplete reference.

### Section 261.6 Special requirements for hazardous waste which is used, re-used, recycled or reclaimed.

(a) (1) ...

(2) The following recyclable materials are not subject to the requirements of this section but are regulated under Subparts C through N of Part 266 of these regulations, Subpart E of Part 263, and all applicable provisions in Parts 268, 122 and 124 of these regulations:

(i) Recyclable materials used in a manner constituting disposal (Part 266, Subpart C);

(ii) Hazardous wastes burned (as defined in section 266.100(a)) in boilers and industrial furnaces that are not regulated under Subpart O of Part 264 or 265 of these regulations (Part 266, Subpart H);

(iii) Recyclable materials from which precious metals are reclaimed (Part 266, Subpart F);

(iv) Spent lead-acid batteries that are being reclaimed (Part 266, Subpart G). Note: Spent lead-acid batteries destined for reclamation are not subject to the transporter permitting requirements of Part 263.

## AMENDMENT 4:

### Background:

Delaware proposes to modify DRGHW to change an incorrect preposition and mirror the federal regulations.

### Section 264.151 Wording of Instruments.

...

(n) (1) ... STANDBY TRUST AGREEMENT

...

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a standby trust fund,... except that the Fund is not established for the benefit of third parties for the following:

...

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Grantor];

(2) Premises that are sold, given away or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;

(3) Property loaned ~~to~~ by [insert Grantor];

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# PROPOSED REGULATIONS

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## DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

### 1725 POLYSOMNOGRAPHY ADVISORY COUNCIL

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

#### PUBLIC NOTICE

#### 1725 Polysomnography Advisory Council

The Delaware Polysomnography Council of the Board of Medical Licensure and Discipline, pursuant to 24 Del.C. §1799W(c), proposes to amend its rules and regulations. The proposed regulation change clarifies that polysomnographic trainees are limited to a total of two years of training before they are required to either obtain a license or cease practicing.

The Council will hold a public hearing on the proposed regulation change on September 28, 2015 at 9:00 a.m., Second Floor Conference Room C, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Shauna Slaughter, Executive Director of the Delaware Board of Medical Licensure and Discipline, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until October 13, 2015 pursuant to 29 Del.C. §10118(a).

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

#### 6.0 Polysomnographic Students and Polysomnographic Trainees

- 6.1 A polysomnographic student may only practice under the direct supervision of a licensed polysomnographer.
- 6.2 Direct supervision means that a licensed polysomnographer will be personally present and immediately available within the treatment area to provide aid, direction, and instruction when procedures are performed. All evaluations, progress notes, and/or chart entries must be co-signed by a licensed polysomnographer.
- 6.3 A polysomnographic trainee may provide sleep-related services under the direct supervision of a licensed polysomnographer as part of the trainee's clinical experience for no more than two years following his/her completion of an approved accredited educational program.

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

#### 1725 Polysomnography Advisory Council

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## DIVISION OF PROFESSIONAL REGULATION 4100 BOARD OF HOME INSPECTORS

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

#### PUBLIC NOTICE

#### 4100 Board of Home Inspectors

The Delaware Board of Home Inspectors, pursuant to 24 Del.C. §4106(a)(1), proposes to amend its rules and regulations. The proposed regulation changes reiterate that a trainee home inspector must obtain his/her trainee registration prior to performing any supervised home inspections. The Home Inspector Practice Act mandates that

anyone who performs inspections, even if supervised by a Delaware licensed home inspector, must first obtain a trainee registration. Board Regulation 10.1 requires trainees to complete 75 supervised home inspections before becoming eligible for full licensure, and, under 24 **Del.C.** §4107(c) a trainee can only begin to accumulate such inspections after his/her application for registration as a trainee is approved and granted by the Board.

The Board will hold a public hearing on the proposed regulation change on October 13, 2015 at 9:00 a.m., Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Amanda McAtee, Administrative Specialist of the Delaware Board of Home Inspectors, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until October 28, 2015 pursuant to 29 **Del.C.** §10118(a).

A hearing for the proposed regulation change was originally scheduled to take place on July 14, 2015 in Conference Room B of the Cannon Building; however, the regularly scheduled Board of Home Inspectors meeting was canceled on that date. As such, the proposed regulation is being republished without change in order to change the hearing date to October 13, 2015 as set forth above.

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

**4.0 Licensure Requirements**

Each applicant, other than endorsement applicants, for a home inspector license must provide the Board with the following, or have this information provided from the appropriate source, where indicated:

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

**4.4 For trainee applicants:**

- 4.4.1 Evidence in a form satisfactory to the Board that the applicant has completed the trainee requirements. The applicant shall submit a log on a Board-approved form documenting the experience. The applicant will not receive credit for supervised home inspections performed prior to the date the trainee registration was granted. The Board retains the discretion to request copies of sample home inspection reports for review to verify experience.

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

**9.0 Responsibilities of supervising home inspector**

- 9.1 To qualify as a supervisor, a home inspector shall hold a Delaware home inspector's license in good standing.
- 9.2 The supervising home inspector shall only supervise registered home inspection trainees and supervise no more than two trainees for each inspection. The supervising home inspector shall notify the Board in writing when the inspector is no longer supervising the trainee.

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

**10.0 Responsibilities of registered home inspector trainee**

- 10.1 The trainee shall complete at least 75 home inspections under the active oversight of a licensed home inspector(s). The trainee may not begin performing supervised home inspections until his/her application for registration as a home inspector trainee is granted by the Board.

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

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

**4100 Board of Home Inspectors**

## 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.

## ADMINISTRATIVE OFFICES OF THE COURTS

## CHILD PLACEMENT REVIEW BOARD

Statutory Authority: 14 Delaware Code, Section 3445 (14 Del.C. §3445)

## ORDER

## 1401 Regulations Governing the Ivyane D.F. Davis Scholarship

The proposed regulations for the Ivyane D.F. Davis Memorial Scholarship were published in the May 2015 edition of the Delaware *Register of Regulations*. The opportunity for comment from the public ended on June 15, 2015. At their meeting on July 17, 2015, a quorum of the Executive Committee of the Child Placement Review Board (CPRB) voted in the affirmative that the regulations should be adopted as submitted with no modifications or additions.

In accordance with 29 Delaware Code, Section 10118, the following additional information is provided:

## 1. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

No comments were received by the CPRB that recommended any changes to the proposed regulations.

## 2. FINDINGS OF FACT AND CONCLUSIONS

Pursuant to 14 Del.C. §3445, CPRB has the statutory authority to adopt such rules and regulations it deems necessary and proper to administer the Ivyane D.F. Davis Memorial Scholarship. Because no comments were received, the Executive Committee of the CPRB does not propose any modifications to their original submission.

## 3. DECISION AND ORDER CONCERNING THE REGULATIONS

At the CPRB Executive Committee meeting on July 17, 2015, a quorum of that committee ordered that the regulations be adopted as set forth in the Delaware *Register of Regulations* on May 1, 2015.

## 4. EFFECTIVE DATE OF THE ORDER

The effective date for this final order is September 11, 2015, ten days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 Del.C. §10118(g).

IT IS SO ORDERED this 17<sup>th</sup> day of July, 2015.

## EXECUTIVE COMMITTEE OF THE CHILD PLACEMENT REVIEW BOARD (CPRB)

Barbara H. Blair	Cindy Montejo
Joe Dell'Olio	John Michael Norton
Robert Hamilton	Neal Edward Tash
Judith Mellen	Carolyn Walker

### Foreword

Ivyane Davis was a woman who believed in children and was committed to helping them succeed. Mrs. Davis was a charter member of the Child Placement Review Board, serving as a Review Board member from the founding of the Board in 1979 until her death in 1989. First and foremost, Mrs. Davis was a mother of five children and a foster parent. In addition, she served as a Court Appointed Special Advocate in the Family Court system and was the chairman of the Fresh Air Program in Delaware. Ivyane Davis was a woman of impressive accomplishments, but she is best remembered for her advocacy work for the well-being of every child. In the nurturing of individuality, the development of talent, and the daily care of children, Mrs. Davis found her life's work.

The Ivyane D. F. Davis Memorial Scholarship honors a remarkable woman by continuing her heritage of offering opportunity to children. The Ivyane D. F. Davis Memorial Scholarship fund was established by the General Assembly of the State of Delaware in June 1989 to provide scholarships for post-secondary education to Delaware residents who have been in foster care in this State. This scholarship fund addresses the particular financial needs of many children who have been in foster care and offers them the opportunity for higher education.

The Fund awards several scholarships annually in honor of Mrs. Davis, who had a lifelong interest in the welfare of children. Ivyane D. F. Davis Scholarships are administered by the State of Delaware and are awarded to recipients selected by the Child Placement Review Board of Delaware. Scholarships are renewable.

### 1401 Regulations Governing the Ivyane D.F. Davis Scholarship

#### **1.0** Legal Base and Purpose

As authorized by Delaware Code, Title 14, Chapter 34, it is the intent and purpose of the General Assembly to provide scholarships in memory of Ivyane D.F. Davis, who died February 7, 1989, to deserving Delaware residents who have been placed under foster care in Delaware. This Scholarship is administered by the Child Placement Review Board.

#### **2.0** General Provisions

##### **2.1** Definition of Terms

"Child Placement Review Board" means the citizen review board established under Title 31, Chapter 38 of the Delaware Code and will be referred to as the "Board" in these regulations.

The "CPRB Staff" are the employees of the Board designated by the Executive Director of the Board to provide administrative support to the Committee.

The "Executive Committee" is the oversight body for the Board as established in Title 31, Chapter 38, Section 3808 of the Delaware Code.

An "Institution of Higher Learning" is an accredited school that:

- Awards a bachelor's degree or not less than a 2 year program that provides credit towards a degree, or
- Provides not less than 1 year of training towards gainful employment, or
- Is a vocational program that provides training for gainful employment and has been in existence for at least two years.

The "Ivyane D.F. Davis Memorial Scholarship", hence forth referred to in these regulations as the "Scholarship", is established by state law in Title 14, Part I, Chapter 34, Section 3445 of the state code.

The "Scholarship Committee" is established by the Executive Committee to administer the Scholarship and will be referred to as the "Committee" in these regulations.

## 2.2 Partnerships and Fund Raising

2.2.1 The Board may accept donations from private individuals and organizations for deposit in the fund.

2.2.2 Chaffee Education and Training Vouchers. A portion of the fund, not to exceed one-half of the fund's principle and interest, may be used to assist the Division of Family Services in obtaining Chafee Educational and Training Vouchers funding; provided, that the Board is authorized, by regulation, contract, or memorandum of understanding with the Division of Family Services, to administer the funding obtained. The portion of the Scholarship used as the state match is subject to the eligibility criteria established under the Chaffee Education and Training Vouchers.

## 3.0 Provisions for Scholarship Administration

3.1 Scholarship Committee. The membership of the Scholarship Committee will be established by the Executive Committee annually and will not exceed 4 members. Members shall include at least one active board member, but may also include former board members and other members of the community with expertise that would enhance the expertise of the committee.

3.2 Eligibility. Applicants shall meet the following criteria in order to be eligible for award consideration:

3.2.1 Individuals who were at any time under foster care in the State of Delaware, and

3.2.2 Individuals who have been residents of Delaware for at least 1 year immediately preceding the application for funds, and

3.2.3 Individuals who have been accepted at or who are attending an accredited institution of higher learning or trade school, and

3.2.4 Individuals who are not pursuing a degree higher than a Bachelors.

3.3 Award Criteria. The committee has the discretion to set the award amount annually based on the students' financial need, their likelihood of success, and the number of applicants to ensure a fair distribution of the available funds.

3.3.1 When determining the award amounts, the Committee will consider the following:

3.3.1.1 Documentation of financial need

3.3.1.2 Previous academic achievements

3.3.1.3 Level and involvement in community service

3.3.1.4 Anticipated academic success in their educational endeavor.

3.3.2 The amount of an award may not exceed the amount of the applicant's school related expenses such as tuition, required fees, room, board, and books at the institution specified.

3.3.3 Adjustments to the award may be made after an award letter has been issued if the student changes their educational plans or enrollment status (i.e. the student enrolls only part-time rather than full time) after the award letter is issued.

## 3.4 Award Process

3.4.1 Completed Application Packet. All applicants must complete a scholarship application packet which includes forms and documents designated by the Committee. The required forms and instructions will be available to the public via the Board's web page.

3.4.2 Application Due Date. Completed application packets are due June 1<sup>st</sup> for award consideration beginning the following school year and by November 15 to be considered for a mid-year award if funds are available.

3.4.3 Interview. The Committee conducts personal interview of the applicant in the summer prior to the start of each school year. The preference is to interview all applicants, however, it is only required of the first year applicants. Interviews may also be held at other times as necessary. A face to face interview is standard, although teleconferences and video-conferencing may be utilized.

3.4.4 Award Allocation. There is no fixed award amount. The Committee determines the amounts of the award each year based on the available funds and financial needs of the applicants.

## 3.5 Award Distribution

3.5.1 Award letters that reflect the amount of award determined by the Committee are issued to the student by CPRB staff.

3.5.2 Awards shall be dispersed directly to the school or institution and not directly to the student.

3.5.3 Funds are dispersed based on the type of school or institution in which the student is enrolled. Whenever it is reasonable, the funds are distributed in conjunction with the institutions assessment period (i.e. semesters, terms) so that an assessment of the student's progress may be made prior to subsequent disbursement of the award.

## 3.6 Reporting Requirements. The Board shall report annually to the General Assembly the following:

3.6.1 The number of recipients of scholarships.

3.6.2 The institutions attended by said recipients.

3.6.3 The total of expenditures made under this scholarship fund, and

3.6.4 Other information as it deems useful for the members of the General Assembly.

## 3.7 Educational Progress Expectations.

3.7.1 To remain eligible for the scholarship, the student must maintain a G.P.A of 2.0 or higher or, earn a "meets expectations" rating or better during job training, required remedial courses (i.e. Basic or Pre-Tech courses) or certificate program established assessment period.

3.7.2 The Board will maintain and distribute a policy that outlines the consequences of failure to meet this standard. This policy is an appendix to these regulations; it will be distributed with the student's award letter each year and will be available to the public via the CPRB web page.

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## DEPARTMENT OF AGRICULTURE HARNES RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 10005 (3 Del.C. §10005)  
3 DE Admin. Code 501

### ORDER

### 501 Harness Racing Rules and Regulations

Pursuant to 29 Del.C. §10118 and 3 Del.C. §10005, the Delaware Harness Racing Commission issues this Order adopting proposed amendments to the Commission's Rules. Following notice and a public hearing on August 11, 2015, the Commission makes the following findings and conclusions:

#### SUMMARY OF THE EVIDENCE

1. The Commission posted public notice of the proposed amendments to DHRC Rule 8.3.1.5, 8.3.2.5.1 and 8.3.2.5.2 in the July 1, 2015 *Register of Regulations*.

2. The Commission received no written comments. The Commission held the public comment period open until close of business on August 10, 2015. The Delaware Harness Racing Commission finalized the regulations at its regularly scheduled monthly meeting on August 11, 2015. Monthly meetings are noticed public meetings. At the August 11, 2015 DHRC meeting, an error in the scientific measurement quoted in the proposed regulations was noted. The measurement which should be used is ppb (parts per billion). The ng/kg measurement quoted is actually ppt (parts per trillion). The correction has been made in this final publication of the proposed regulatory amendments. With correction included, the DHRC voted unanimously to approve this amendment package. These amendments will be published September 1, 2015 and become effective September 11, 2015.

#### FINDINGS OF FACT AND CONCLUSIONS

3. The public was given notice and an opportunity to provide the Commission with comments in writing and

by testimony at the public hearing on the proposed amendments to the Commission's Rules.

4. After considering the rule changes as proposed, the Commission hereby adopts the rule changes. The Commission believes that these rule changes will allow the Delaware Harness racing Commission rules to more accurately reflect current policy and procedures.

5. The effective date of this Order will be ten (10) days from publication of this Order in the *Register of Regulations* on September 1, 2015.

**IT IS SO ORDERED this 11<sup>th</sup> day of August 2015.**

Beverly H. (Beth) Steele, Chairman  
Jack Berberian, Commissioner  
Stephanie Liguori, Commissioner

George P. Staats, Commissioner  
Patt Wagner, Vice Chairman

**501 Harness Racing Rules and Regulations  
(Break in Continuity of Sections)**

**8.0 Veterinary Practices, Equine Health Medication**

**(Break of Continuity Within Section)**

8.3 Medications and Foreign Substances. Foreign substances shall mean all substances, except those which exist naturally in the untreated horse at normal physiological concentration, and shall include all narcotics, stimulants, depressants or other drugs or medications of any type. Except as specifically permitted by these rules, no foreign substance shall be carried in the body of the horse at the time of the running of the race. Upon a finding of a violation of these medication and prohibited substances rules, the Presiding Judge or other designee of the Commission shall consider the classification level of the violation as listed at the time of the violation by the DHRC Uniform Classification Guidelines found in subsection 8.3.1 of this section, and may consider the most recent recommendations by the Uniform Classification Guidelines of Foreign Substances as promulgated by the Association of Racing Commissioners International. In addition, the Presiding Judge or other designee of the Commission shall consider all other relevant available evidence including but not limited to: i) whether the violation created a risk of injury to the horse or driver; ii) whether the violation undermined or corrupted the integrity of the sport of harness racing; iii) whether the violation misled the wagering public and those desiring to claim the horse as to the condition and ability of the horse; iv) whether the violation permitted the trainer or licensee to alter the performance of the horse or permitted the trainer or licensee to gain an advantage over other horses entered in the race; v) the amount of the purse involved in the race in which the violation occurred. The Presiding Judge may impose penalties and disciplinary measures consistent with the recommendations contained in subsection 8.3.2 of this section.

**(Break in Continuity Within Section)**

8.3.2 Penalty Recommendations. The following penalties and disciplinary measures may be imposed for violations of these medication and prohibited substances rules:

**(Break in Continuity Within Section)**

8.3.2.5 Class 5 - Zero to 15 days suspension with a possible loss of purse and/or fine and assessment for the cost of the drug testing.

8.3.2.5.1 Cobalt detected at or above 25 [ng/kg (ppb)], but below 50 ppb in blood or serum will result in placement of the effected horse on the "Vet's List" until blood or serum test results are below 25 ppb. Testing will be administered at no less than seven (7) day intervals. The cost of subsequent testing after initial finding will be conducted at owner's expense.

8.3.2.5.2 Cobalt detected at or above 50 [ng/kg (ppb)] in blood or serum will result in a minimum: \$500 fine and 15-day suspension for the trainer; the owner would loss any purse money gained; and, the horse would be placed on the "Vet's List" in accordance with the protocol detailed in 8.3.2.5.1 above.

\*Please note that no additional changes were made to the regulation as originally proposed and published in the July 2015 issue of the *Register* at page 10 (19 DE Reg. 10). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**501 Harness Racing Rules and Regulations**

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

#### ORDER

#### Telemedicine Services

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to submit a state plan amendment regarding telemedicine services specifically, *to recognize the Medicaid beneficiary's place of residence as an originating site*. 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 July 2015 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2015 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### SUMMARY OF PROPOSAL

The proposed provides notice to the public that Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) intends to submit a state plan amendment to the Centers for Medicare and Medicaid Services (CMS) regarding telemedicine services, specifically, *to recognize the Medicaid beneficiary's place of residence as an originating site*.

#### Statutory Authority

- 42 CFR 410.78, *Telehealth services*
- 42 CFR Part 440, *Services*

#### Background

For the purposes of Medicaid, telemedicine seeks to improve a patient's health by permitting two-way, real time interactive communication between the patient, and the physician or practitioner at the distant site. This electronic communication means the use of interactive telecommunications equipment that includes, at a minimum, audio and visual equipment. This definition is modeled on Medicare's definition of telehealth services (42 CFR §410.78).

According to the Centers for Medicare and Medicaid Services (CMS), the Medicaid program and the federal Medicaid statute (Title XIX of the Social Security Act) does not recognize telemedicine as a distinct service. CMS does note, however, that "telemedicine is viewed as a cost-effective alternative to the more traditional face-to-face way of providing medical care" (e.g., face-to-face consultations or examinations between provider and patient) that states can choose to cover under Medicaid and that there is "flexibility inherent in federal law to create innovative payment methodologies for services that incorporate telemedicine technology."

#### *Coverage of Telemedicine in the Delaware Medical Assistance Program*

Telemedicine is the real-time or near real-time two-way transfer of medical data and information using an interactive audio/video connection for the purposes of medical diagnosis and treatment. The Medicaid member is located with a provider at the originating site, while the "remote" provider renders services via the audio/video

connection at the distant site. The Delaware Medical Assistance Program (DMAP) has covered telemedicine on a statewide basis since July 2012. Consistent with guidance from the Centers for Medicare and Medicaid Services (CMS), DMAP considers telemedicine as a cost-effective alternative for delivering covered services to the Medicaid-eligible populations.

The following are DMAP objectives for reimbursing providers for services delivered via telemedicine:

- Improved access to health care services;
- Improved member compliance with treatment plans;
- Medical services rendered at an earlier stage of disease, thereby improving long-term patient outcomes; and,
- Reduced DMAP costs for covered services such as hospitalization and transportation.

#### *Originating Site and Distant Site*

CMS defines the originating site as the location of the Medicaid patient at the time the service being furnished via a telecommunications system occurs; and, the distant site as the site at which the physician or other licensed practitioner delivering the service is located at the time the service is provided via telecommunications system.

#### **Summary of Proposal**

Traditional approaches to telemedicine coverage require that the patient be served from a specific type of healthcare facility, such as a hospital or physician's office. Not included are sites where people spend much of their time, such as homes. With advances in decentralized computing power, such as cloud processing, and mobile telecommunications, such as 4G wireless, the current approach is to cover health services to patients wherever they are.

For conditions of coverage and payment, the Division of Medicaid and Medical Assistance (DMMA) proposes to amend Attachment 3.1-A of the Medicaid State Plan to recognize the Medicaid beneficiary's place of residence as an originating site. Upon CMS approval, the proposed state plan amendment (SPA) is effective for dates of service on or after July 1, 2015.

#### *Public Notice*

In accordance with the 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 to the proposed state plan amendment. Comments must be received by 4:30 p.m. on July 31, 2015.

#### *CMS Review and Approval*

The provisions of this state plan amendment relating to eligible originating sites for telemedicine services are subject to approval by CMS. The draft SPA page(s) may undergo further revisions before and after submittal to CMS based upon public comment and/or CMS feedback. The final version may be subject to significant change.

#### *Federal Financial Participation*

Federal financial participation (FFP) means the federal government's share of expenditures made by a state agency in implementing a medical assistance program. CMS will not provide FFP for any State plan amendment until it is approved.

#### *Provider Manuals Update*

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

#### **Fiscal Impact Statement**

Current policy allows for the use of telemedicine. The Delaware Medical Assistance Program could potentially achieve savings by reducing transportation expenses, increasing treatment compliance and monitoring for patients with chronic conditions, and other delivery improvements.

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## SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

Teladoc, Inc; the Governor's Advisory Council for Exceptional Citizens (GACEC) and, the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

### Teladoc

After providing background information on Teladoc including the Teladoc Delivery Model and noting the company's work with Delaware legislators on House Bill (HB) 69, *An Act to Amend Title 18 and 24 of the Delaware Code Relating to Telemedicine Services*, Teladoc, Inc. offered the following comments:

Teladoc applauds the initiative that the Department has taken in removing the healthcare facility requirement as the originating site and allowing the patient to access healthcare from their home. We suggest that the State also consider that not all patients have access to broadband technology or are skilled in the use of computers or smart phones. You appropriately noted that technology moves at a much faster pace than regulation and legislation. Further, it is understood that electronic communication "means the use of interactive telecommunications equipment that includes, at minimum audio and visual equipment" and that "telemedicine is the real-time or near real-time two way transfer of medical data and information..."

Therefore, we suggest that the State clarify that the intent is to remain "technology neutral", and that video and interactive audio using store and forward technologies are appropriate in telemedicine. By remaining technology, the state is able to incorporate new advances [which] can be applied as they are proven and available. As HB 69 points out, the standard of care should be the same, whether in a traditional office visit or a telemedicine visit.

**Agency Response:** Your comments raised policy or operational issues that are outside the scope of the proposed rule. Store and forward technologies will be addressed in a future rulemaking. Thank you for your comments.

No change to the regulation was made as a result of these comments.

### SCPD and GACEC

As background, DMMA has covered telemedicine in its Medicaid program on a statewide basis since July, 2012. The State has generally been expanding use of telemedicine in recent years. For example, the Legislature passed House Bill (H.B.) 69 in the Spring of 2015 to promote health insurer support of telemedicine. The synopsis to the bill suggests that it is also intended to "encourage all state agencies to evaluate and amend their policies and rules to foster and promote telemedicine services". SCPD endorses and GACEC supports this initiative (subject to amendments referenced below) since it clarifies that an approved originating site can include a patient's place of residence. We recommend the following amendments.

First, the reference to place of residence could be construed to mean that other non-traditional sites are excluded. By solely citing "place of residence", application of interpretive guidance could result in limiting the scope of other settings. At a minimum, it would therefore be preferable to amend the reference as follows: "Without limitation, (A)an approved originating site may include the Delaware Medical Assistance Program (DMAP) member's place of residence."

Second, H.B. 69 broadly defines "originating site" to include "a site in Delaware at which a patient is located at the time health care services are provided....". This would include anywhere the patient is physically present, including non-residential settings such as day programs (e.g. Easter Seal; Elwyn). DMMA could consider the following more expansive standard: "An approved originating site may include the DMAP member's place of residence, day program, or alternate location in which the member is physically present and telemedicine can be effectively utilized."

**Agency Response:** DMMA agrees. The revision appears in **[bracketed bold type]**.

### FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the July 1, 2015 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation regarding telemedicine services, specifically, *to recognize the Medicaid beneficiary's place of residence as an originating site*, is adopted and shall be final effective September 10, 2015.

Rita M. Landgraf, Secretary, DHSS

**DMMA FINAL ORDER REGULATION #15-16  
REVISION:**

ATTACHMENT 3.1-A  
Introductory Page 1

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

TELEMEDICINE

The Delaware Medical Assistance Program (DMAP) covers medically necessary health services furnished to eligible DMAP members as specified in the Medicaid State Plan. To facilitate the ability of recipients to receive medically necessary services, DMAP allows for the use of a telemedicine delivery system for providers enrolled under Delaware Medicaid.

Telemedicine services under DMAP are subject to the specifications, conditions, and limitations set by the State. Telemedicine is the practice of health care delivery by a practitioner who is located at a site, known as the distant site, other than the site where the patient is located, known as the originating site, for the purposes of consultation, evaluation, diagnosis, or recommendation of treatment. An approved originating site may include the DMAP member's place of residence[, day program, or alternate location in which the member is physically present and telemedicine can be effectively utilized].

Providers rendering telemedicine must be able to use interactive telecommunications equipment that includes, at a minimum, audio and video equipment permitting two-way, real time, interactive communication between the recipient and the practitioner to provide and support care when distance separates participants who are in different geographical locations.

The provision of services through telemedicine must include accommodations, including interpreter and audio-visual modification, where required under the Americans with Disabilities Act (ADA), to ensure effective communication.

Telephone conversations, chart reviews, electronic mail messages, facsimile transmissions or internet services for online medical evaluations are not considered telemedicine.

All equipment required to provide telemedicine services is the responsibility of the providers.

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**DEPARTMENT OF LABOR  
DIVISION OF INDUSTRIAL AFFAIRS**

Statutory Authority: 19 Delaware Code, Section 202(a) (19 **Del.C.** §202(a))  
19 **DE Admin. Code** 1101

**ORDER**

**1101 Apprenticeship and Training Regulations**

**I. NATURE OF PROCEEDINGS**

Pursuant to its authority under 29 **Del.C.** §10111(1), the Delaware Division of Industrial Affairs of the State of Delaware, Department of Labor ("the Department") proposed to amend its apprenticeship regulations. The Department's purpose in proposing these amendments was to bring its regulations into legal conformity with the Third Circuit decision in *Tri-M Group, LLC v. Sharp*, 638 F.3d 406 (3<sup>rd</sup> Cir. 2011). The Department's proceedings to adopt its regulations were initiated pursuant to 29 **Del.C.** §10113(6), with authority prescribed by 19 **Del.C.** §202(a)(2). **These regulations are exempt from the standard Administrative Procedures Act process and may therefore be adopted informally.**

## II. ORDER

**AND NOW this 1st day of September, 2015**, it is hereby ordered that:

1. The proposed amendments to the Division's regulations are adopted;
2. The text of the regulations shall be in the form attached hereto;
3. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations* in accordance with 29 **Del.C.** §10118(e); and
4. The Division reserves to itself the authority to issue such order and further orders in this matter as may be just and proper.

**IT IS SO ORDERED.**

The Honorable John McMahon

### 1101 Apprenticeship and Training Regulations

#### 1.0 Purpose and Scope

*(Break in Continuity Within Section)*

- 1.3 These labor standards and procedures cover the Registration and Cancellation of Apprenticeship Agreements and of Apprenticeship Programs; and matters relating thereto. Any questions [and/or] to request a copy of Delaware's Prevailing Wage Regulations regarding the employment of apprentices on state-funded construction projects must be referred to:

Delaware Department of Labor  
Office of Labor Law Enforcement  
~~4425 North Market Street~~ 225 Corporate Blvd.  
~~Wilmington, DE 19802~~ Newark, DE. 19702  
~~(302) 764-8200~~ 451-3423

*(Break in Continuity of Sections)*

#### 3.0 Definitions

- 3.1 As used in this part:

*(Break in Continuity Within Section)*

**"On-site Visit"** refers to a visit from a representative of the State of Delaware, Department of Labor, Division of Industrial Affairs to the office and/or the actual field job-site of the Sponsor, for the purposes of inspecting and/or monitoring the progress and training of the Registered Apprentice. This monitoring may include but is not limited to interviewing the Apprentice and the auditing of pertinent documents relative to the maintenance and enforcement of the terms of the Apprenticeship Agreement. On-site visits to the Sponsor's office may occur at the discretion of the Department of Labor. The Sponsor will reimburse any travel-related expenses over \$500 associated with on-site visits within sixty (60) days of their completion, or will face program deregistration following a hearing held in accordance with the procedures established in these regulations.

**"Program"** refers to an executed apprenticeship plan which contains all terms and conditions for the qualifications, recruitment, selection, employment and training of Apprentices, including such matters as the requirements for a written Apprenticeship Agreement.

**"Registrant or Sponsor"** refers to any person, association, committee or organization in whose name or title the Program is (or is to be) registered or approved regardless of whether or not such entity is an Employer. To be eligible, the Registrant or Sponsor must be a "Delaware Resident Contractor" or hold and maintain a "Delaware Resident Business License" or register their business with the Delaware Secretary of State. ~~The Registrant or Sponsor must hold and maintain a permanent place of business, not to include site trailers or other facilities serving only one contract or related set of contracts.~~ To be eligible to be a Registrant or Sponsor, Employer/Business, association, committee or organization

must have the training program and an adequate number of Journey persons to meet the ratio requirements as stated for that particular apprenticeable occupation.

**"Registration"** refers to the acceptance and recording of an Apprenticeship Program by the Delaware Department of Labor, Office of Apprenticeship and Training, as meeting the basic standards and requirements of the Division for approval of such Program. Approval is evidenced by a Certificate or other written indicia documentation. Registration also refers to the acceptance and recording of Apprenticeship Agreements thereof, by the Delaware Department of Labor, Office of Apprenticeship and Training, as evidence of the participation of the Apprentice in a particular Registered apprenticeship Program. In no event shall the State of Delaware subsidize the instruction of any apprentice whose employment is not associated with the payment of income taxes to the State of Delaware, which finances such educational subsidies.

**"Registration Agency"** means the Office of Apprenticeship or a recognized State Apprenticeship Agency that has responsibility for registering apprenticeship programs and apprentices; providing technical assistance and quality assurance assessments.

**"Related Instruction"** refers to a formal and systematic form of instruction designed to provide the Apprentice with knowledge of the theoretical and technical subjects related to his/her trade.

**"Secretary"** refers to the Secretary of Labor.

**"Sponsor"** means any person, association, committee, or organization operating an apprenticeship program and in whose name the program is (or is to be) registered or approved.

**"State"** refers to the State of Delaware

**"Supervisory Inspection"** shall mean the same as "ON SITE VISIT".

#### 4.0 Eligibility and Procedure for State Registration

- 4.1 No Program or Agreement shall be eligible for State Registration unless it is in conformity with the requirements of this chapter, and the training is in an apprenticeable occupation having the characteristics set forth in section 5.0 herein.
- 4.2 Apprentices must be individually registered under a Registered Program with the State of Delaware, Department of Labor, Division of Industrial Affairs. ~~Such registration shall be effective when the completed agreement is submitted to and signed by the Administrator. Sponsors registered with states other than the State of Delaware shall not be construed as being registered for State of Delaware Apprenticeship Program Registration purposes.~~ Reciprocal approval for Federal purposes will be accorded to apprentices, apprenticeship programs and standards that are registered in other States by the Office of Apprenticeship or a Registration Agency if such reciprocity is requested by the apprenticeship program sponsor. Program sponsors seeking reciprocal approval must meet wage and hour provisions and apprentice ratio requirements of Delaware. Programs seeking reciprocal approval must also provide notice to the Department of Labor, Division of Industrial Affairs, Office of Apprenticeship & Training of their arrival prior to commencing work in the State of Delaware, so that the Office of Apprenticeship & Training may investigate their apprenticeship program to ensure that it conforms with the standards of the State in which it is registered. Such investigations may include on-site visits at the discretion of the Office of Apprenticeship & Training. The Sponsor will reimburse any expenses over \$500 associated with on-site visits within thirty (30) days of their completion, or will lose the ability to have its apprenticeship program recognized within the State of Delaware. This sanction will occur following a deregistration hearing held in accordance with the procedures established in these regulations.

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

- 4.6 Under a Program proposed for Registration by an Employer or Employer's Association, where the standards, collective bargaining agreement or other instrument provides for participation by a union in any way in the operation of the Program, and such participation is exercised, written acknowledgment of a union agreement or "no objection" to the Registration is required. Where no such participation is evidenced and practiced, the Employer or Employer's Association shall simultaneously furnish to the union a copy of its Program application. In addition, upon receipt of the application for the Program, the State shall promptly send by certified mail to such local union another copy of the Program application

and together with a notice that union comments will be accepted for thirty (30) days after the date of the agency transmittal.

*(Break in Continuity Within Section)*

## 5.0 Criteria for Apprenticeable Occupations

- 5.1 An Apprenticeable occupation is a skilled trade which possesses all of the following characteristics:
- 5.1.1 It is customarily learned in a practical way through training and ~~work on the job~~ a structured, systematic program of on-the-job supervised learning.

*(Break in Continuity Within Section)*

## 6.0 Standards of Apprenticeship

*(Break in Continuity Within Section)*

- 6.2 The standards must contain provisions concerning the following:
- 6.2.1 The employment and training of the Apprentice in a skilled occupation;\_
- 6.2.2 an equal opportunity pledge stating the recruitment, selection, employment and training of Apprentices during their apprenticeships shall be without discrimination based on: race, color, religion, national origin or sex. When applicable, an affirmative action plan in accordance with the State's requirements for federal purposes must be instituted;\_
- 6.2.3 the existence of a term of apprenticeship, not less than one year or two thousand (2,000) hours consistent with training requirements as established by industry practice - the Delaware Department of Labor intends to continue to use the time based method of determining completion of an Apprenticeship Program;\_
- 6.2.4 an outline of the work processes in which the Apprentice will receive supervised work experience and on-the-job training, and the allocation of the approximate time to be spent in each major process;\_
- 6.2.5 provision for organized related and supplemental instruction in technical subjects related to the trade. A minimum of one hundred forty-four (144) hours for each year of apprenticeship is required recommended. Such instruction may be given in a classroom, through trade, industrial or approved correspondence courses of equivalent value or in other forms approved by the State Department of Labor, Office of Apprenticeship and Training;\_ Every apprenticeship instructor must:
- 6.2.5.1 Meet the State Department of Education's requirements for a vocational-technical instructor in the State of registration, or be a subject matter expert, which is an individual, such as a journeyworker, who is recognized within an industry as having expertise in a specific occupation; and
- 6.2.5.2 Have training in teaching techniques and adult learning styles, which may occur before or after the apprenticeship instructor has started to provide the related technical instruction.
- 6.2.6 a progressively increasing schedule of wage rates to be paid the Apprentice, consistent with the skill acquired which shall be expressed in percentages of the established Journeyperson's hourly wage;\_

*(Break in Continuity Within Section)*

- 6.2.8 that the entry Apprentice wage rate shall not be less than the minimum prescribed by State statute or by the Fair Labor Standards Act, where applicable;\_
- 6.2.9 That the established Journeyperson's hourly rate applicable among all participating Employers be stated in dollars and cents. No Apprentice shall receive an hourly rate less than the percentage for the period in which he/she is serving applied to the established Journeyperson's rate unless the Sponsor has documented the reason for same in the individual Apprentice's progress report and has explained the reason for said action to the Apprentice and Registration Agency.
- 6.2.9.1 In no case other than sickness or injury on the part of the Apprentice, shall a Sponsor hold back an Apprentice's progression more than one period or wage increment without the written consent of the Administrator;\_

*(Break in Continuity Within Section)*

- 6.4 The ratio of Apprentices to Journeypersons should be consistent with proper supervision, training and continuity of employment or applicable provisions in collective bargaining agreements.
- 6.4.1 The ratio of Apprentices to Journeypersons shall be one Apprentice up to each five (5) Journeypersons employed by the prospective Sponsor unless a different ratio based on an industry standard is contained in the signed Standards of Apprenticeship Agreement or in these regulations. When Apprentices registered in a Delaware Apprenticeship program are employed in other states, the ratio of Apprentices to Journeypersons shall be determined by the ratios established in those other states.

*(Break in Continuity Within Section)*

- 6.6 Adequate and safe equipment facilities for training and supervision and safety training for Apprentices on the job and in Related Instruction are required. On-site visits may verify compliance with this section prior to the registration of any sponsor for a Delaware apprenticeship program.

*(Break in Continuity Within Section)*

- 6.11 Transfer of Employer's training obligation through the sponsoring Committee if one exists and as warranted, to another Employer with consent of the Apprentice and the Committee or Program Sponsors, with full credit to the Apprentice for satisfactory time and training earned, may be afforded with written notice to, and approval of, the Registration Agency and is evidenced by a new apprenticeship agreement.

*(Break in Continuity Within Section)*

- ~~6.24 Programs and Standards of Employers and unions in other than the building and construction industry which jointly form a sponsoring entity on a multi-state basis and are registered pursuant to all requirements of this part by any recognized State apprenticeship agency shall be accorded Registration of approval reciprocity by the Delaware Department of Labor if such reciprocity is requested by the sponsoring entity. However, reciprocity will not be granted in the Building and Construction industry based on Title 29 CFR 29 Section 12(b) unless a "memorandum of understanding" has been signed by an individual state and the state of Delaware.~~

*(Break in Continuity of Sections)***12.0 Reinstatement of Program Registration**

- ~~12.4~~ Program deregistered pursuant to this chapter may be reinstated upon presentation of adequate evidence that the Program is operating in accordance with this chapter. Such evidence shall be presented to the Apprenticeship and Training Council, which shall make a recommendation based on said evidence, past records and any other data deemed appropriate. After such presentation, the Council shall make a recommendation to the Secretary as to whether the Program should be reinstated. The Secretary's decision shall be final and binding.

**13.0 Program Registration Denial**

- 13.1 Grounds for denial of program registration include, but are not limited to, violations of apprenticeship standards or of federal or state labor laws in any state by the applicant; failure to comply with on-site visit requests; and failure to reimburse for the costs of on-site visits.

*(Break in Continuity Within Section)***14.0 Amendment to the Regulations in this Part**

- 14.4 The Secretary may, at any time upon his/her own motion or upon written request of any interested person setting forth reasonable grounds therefore, and after opportunity has been given to interested persons to present their views, amend or revoke any of the terms of the regulations contained in this part.

**\*Please note that no additional changes were made to the regulation. Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

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## 1101 Apprenticeship and Training Regulations

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### DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

#### DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60; (7 **Del.C.**, Ch. 60)  
7 **DE Admin. Code** 1124

Secretary's Order No. 2015-A-0030

#### 1124 Control of Volatile Organic Compound Emissions

Date of Issuance: August 17, 2015

Effective Date: September 11, 2015

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

#### Background, Procedural History and Findings of Fact

This Order considers the Department's Division of Air Quality ("DAQ") proposal to amend Section 36 "Stage II Vapor Recovery" of 7 **DE Admin. Code** 1124, which is entitled "Control of Volatile Organic Compound Emissions" within the Department's *Regulations Governing the Control of Air Pollution, 7 DE Admin Code 1100 et seq.* ("Air Quality Regulations").

DAQ prepared a proposed amendment, which was published in the June 1, 2015 *Delaware Register of Regulations* ("Amendment"). The Department received public comments on the proposed amendment during a June 25, 2015 public hearing before Department's presiding hearing officer, Robert P. Haynes, who prepared the attached Hearing Officer's Report ("Report") that reviews the record, considers the public comments and recommends approval of the Amendment, as set forth in Appendix "A" of this Order.

DAQ prepared the Amendment to modify the regulation of Volatile Organic Compound ("VOC") emissions from gas dispensing facilities ("GDFs"). The VOC emissions are from the gasoline vapor released by GDFs when their storage tanks are filled or when pumps are used to re-fuel vehicles. The Department finds that GDFs release of gasoline vapor should be controlled as much as reasonably possible because of the adverse impact such emissions have on air quality and human health.

DAQ's expert, Ron Amirikian, explained that gasoline vapors, if allowed to escape into the air, can contribute significantly to ground-level ozone, a pollutant known as 'smog.' The Department finds that reducing VOC emissions from all sources that contribute to the formation of ozone is critical to Delaware, which does not meet federal air quality standards for ozone. The federal standards are based on the adverse health consequences of breathing air that does not meet the ozone standards. Consequently, Delaware residents are at risk from air quality with excessive levels of ozone, which may cause them to suffer reduced lung function and to experience increased respiratory problems such as asthma attacks or difficulty breathing.

DAQ provided for the record the adverse consequence from gasoline vapor emissions in addition to impairing air quality by increasing ozone pollution. DAQ also seeks to reduce gasoline vapor emissions from GDFs because they contain toxic air pollutants associated with a variety of adverse health conditions and illnesses. One pollutant in gasoline vapors is benzene, which is a human carcinogen that any exposure over time can increase the risk of developing cancers such as leukemia. Benzene also can affect the central nervous system, the respiratory tract and the immune system. Ethylbenzene, another chemical found in gasoline vapor, may also cause cancer, as well as developmental problems, and harm the kidney and liver. Other pollutants are toluene and xylenes, which can affect the central nervous system, liver and kidneys, and have the potential to affect fetal development. Thus, the Department's action to amend its Air Quality Regulations to reduce the harmful emissions of gasoline vapors from GDFs is well-documented and rationally related to the Department's statutory purposes to "control of pollution of

the land, water, underwater and air resources of the State to protect the public health, safety and welfare.” 7 Del.C. §6001(c)(2).

The Department finds that DAQ’s research, as provided in the record, is extensive and reasonable, and adequate to support the Amendment. DAQ experts relied on work developed for the California Air Resource Board (“CARB”), which is a leader in regulation for GDFs’ gasoline vapor emissions. CARB regulations are used by many states as a model for air quality regulations. Indeed, the CARB regulations provided some of the regulatory basis for the current regulation. The proposed amendment is well-supported by over two hundred pages of regulatory documents from CARB proceedings that established regulations for GDF gasoline vapor emissions. The Department finds that it is reasonable and prudent to rely of CARB regulations that DAQ’s experts have determined are appropriate for use in Delaware.

Delaware’s current regulation of gasoline vapor emissions by GDFs is similar to other states and is based upon federal regulation. The current Section 36 requires GDFs to use “Stage II” vapor control equipment for controlling emissions from GDFs’ pumps during the re-fueling of vehicles. The Amendment will allow new GDF or GDF that are being modified the option to not install and use Stage II vapor control equipment (“Stage II equipment”). The Amendment will further require these GDFs that will not use Stage II equipment to install and use enhanced Stage I vapor control equipment for the control of emissions during the filling of the GDFs’ underground storage tanks. The Amendment also allows these GDFs to elect to participate in a one year trial demonstration of CARB approved continuous pressure monitoring (“CPM”) systems for their storage tanks, or to submit to the Amendment’s monitoring and testing requirements for the storage tanks. The data collected from the CPM system trial demonstration participating GDFs will be used by the Department to determine future changes to the Air Quality Regulations.

The Department finds that Section 36 should be changed because Stage II equipment, as it currently exists, is not compatible with on-board refueling vapor recovery (“ORVR”) systems, which are installed on most gasoline powered motor vehicles.<sup>1</sup> Gasoline vapors that otherwise would be emitted during re-fueling operation are now controlled in most cars by ORVR systems. Thus, the Amendment recognizes this change in the control of the gasoline vapor emissions now regulated by Stage II equipment.

The Department finds that the Amendment provides a reasonable path to remove the requirement that new GDFs install Stage II equipment. In addition, if an existing GDF undergoes a modification of its pumps as defined by the Amendment, then the modified GDF could elect not to install Stage II equipment. The new and modified GDFs electing not to use Stage II equipment would be subject to the Amendment’s requirement to install CARB certified enhanced Stage I equipment, which will provide improved control of gasoline vapor emissions. In addition, the Amendment would require these GDFs also to elect to be either comply with the Amendment’s testing and monitoring procedures, or participate in a trial demonstration of a CARB certified CPM system for its storage tanks. The Department finds that the Amendment provides a reasonable approach to allow GDFs to no longer use Stage II equipment under certain circumstance (new or modified GDF) and imposes a requirement to install newer and better Stage I equipment, and to subject their storage tanks to either a trial use of a CPM system or the testing procedures in the Amendment.

The Amendment will allow the use of CPM systems by GDFs, and this usage will allow for prompt detection of leaks and other problems that may cause gasoline vapor emissions. The one year trial use of CPM will also allow useful information to be collected on the storage tanks. DAQ has indicated that at least four GDFs have agreed to participate in the trial and this is an encouraging sign that GDFs are willing to install CPM systems when they no longer have Stage II equipment. The trial demonstration will assess how the CPM systems operate in Delaware, which was the concern raised when the 2014 amendment was proposed.

In sum, the Department finds that the record supports the adoption of the proposed amendment set forth in Appendix “A” as well-supported, reasonable, and consistent with the Department’s purposes to reduce air pollution and improve public health.

### Reasons and Conclusions

1. The small engines, motorcycles and power boats do not have ORVR systems, as noted by Green Delaware’s comments, but this represents a small portion of GDF users in Delaware because beginning with the 1998 model year, federal regulation mandated ORVR systems be phased-in most motor vehicles. DAQ estimates that by 2016 90% of Delaware cars will use ORVR systems.

As the above findings clearly demonstrate that the Department's experts have provided ample support in the record for adopting the proposed amendment as a final regulation. The Report also recommends that the proposed amendment be adopted with minor changes recommended by DAQ. I agree that the proposed amendment recommended by the Report and by DAQ be adopted. Moreover, this Order adopts the Report's reasoning to supplement this Order.

DAQ also provided reasons why the public comment should not be adopted by making any substantive changes to the proposed amendment. The Report also agrees that the public comments did not warrant any change to the proposed amendment at this time, particularly before the examination of data from the trial use of CPM systems. I agree that the proposed amendment should be adopted now and any further changes should wait until the trial demonstration provides information on the effectiveness of CPM systems in Delaware. Thus, the reasons for adopting the Amendment are that it is well-supported by technical and scientific information, and it provides a reasonable method towards a regulatory transition from continued use of State II equipment and towards the use of new, improved control of gasoline vapor emissions from GDFs, including the use of enhanced Stage I equipment and CPM systems.

In conclusion, the Department enters the following reasons and conclusions:

1. The Department has the statutory authority in 7 **Del.C.** §6010 to promulgate regulations to administer its statutory duties;
2. The Department is empowered in 7 **Del.C.** Ch. 60 to regulate air emissions of air toxics and the pollutant VOC in order to protect the environment and public health from harm;
3. GDFs emit air toxics and the pollutant VOC during the fueling of motor vehicles and the filling of storage tanks;
4. The Department has determined that the emission of air toxics and VOC from GDFs poses a risk of harm to the environment and public health that should be regulated by a regulation requiring the option to install enhanced approved Stage I equipment to reduce GDFs' gasoline vapor emissions;
5. The proposed amendment to Section 36 of Regulation should be adopted as a reasonable and well-supported regulatory method to improve the air quality in Delaware by reducing GDFs' emissions of air toxics and VOC;
6. The Department conducted a proceeding consistent with the Department procedures, laws and regulations;
7. The Department provided public notice of the Amendment and the public hearing consistent with the law and Department regulations, and fully considered the public comments in the record;
8. The Department's proposed amendment, as published in the June 1, 2015 *Delaware Register of Regulations* and as revised for a non-substantial change in Appendix "A" hereto, is adequately supported by the record, is reasonable and not arbitrary or capricious exercise of the Department's authority to promulgate regulations, and is consistent with the applicable laws and regulations; and
9. The Department shall submit this Order approving as final the proposed amendment to Section 36 of Air Quality Regulation 1124, 7 **DE Admin. Code** 1124 to the *Delaware Register of Regulations* for publication in the next available issue and shall go into effect ten days after such publication, and shall provide such other notice as the law and regulation require and the Department determines is appropriate.

David S. Small, Secretary

**1124 Control of Volatile Organic Compound Emissions**  
*(Break in Continuity of Sections)*

**36.0 ~~Stage II Vapor Recovery~~ Vapor Emission Control at Gasoline Dispensing Facilities**

~~01/11/2002~~ 09/11/2015

*(Break in Continuity Within Section)*

36.46 Testing Requirements

36.46.1 Any gasoline dispensing facility subject to the requirements of 36.3.4.4 of this regulation shall perform and pass the following tests in accordance with the test methods and procedures stated, or as otherwise approved by the Department and the Administrator of the EPA. Where any of the following test methods and procedures, in the opinion of the Department, conflict or are redundant with those specified in any CARB Executive Order adopted by reference in 36.710 of this regulation, the following test methods and procedures shall apply.

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

36.46.1.2 The following tests shall be performed and passed annually for each Stage II vapor recovery system according to the test procedures stated in 36.46.1.1 of this regulation:

36.46.1.2.1 A Pressure Decay/Leak Test, as specified in 36.6.1.1.1 of this regulation.

36.46.1.2.2 For Balance Systems, A Dynamic Backpressure and Liquid Blockage Test as specified in 36.[6.]1.1.2 of this regulation.

36.46.1.2.3 For Assist Systems, An Air to Liquid Volume Ratio Test as specified in 36.[6.]1.1.3 of this regulation.

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

36.4.26.3 The Department may require the performance of any of the tests identified in 36.46.1 or 36.6.2 of this regulation at anytime at the owner's expense **[when the Department determines that the performance of such tests are necessary to ensure the proper operation of the facility or emission control equipment].**

**\*Please note that no additional changes were made to the regulation as originally proposed and published in the June 2015 issue of the *Register* at page 939 (18 DE Reg. 939). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

**1124 Control of Volatile Organic Compound Emissions**

## DEPARTMENT OF SAFETY AND HOMELAND SECURITY

### DIVISION OF STATE POLICE

#### 1300 BOARD OF EXAMINERS OF PRIVATE INVESTIGATORS & PRIVATE SECURITY AGENCIES

Statutory Authority: 24 Delaware Code, Section 1304 (24 Del.C. §1304)

24 DE Admin. Code 1300

#### ORDER

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

Pursuant to the Guidelines in 29 Del.C. Section 10118(a)(1)-(7), the Board of Examiners of Private Investigators and Private Security Agencies ("Board") hereby issues this Order. Following notice and a public hearing on the proposed adoption of amendments to:

- Rule 1.0 – Firearms Policy;
- Rule 6.0 – Criminal Offenses;
- Rule 9.0 - Delaware Manager/License Holder, and
- Rule 11.0 – Personnel Rosters and Job Assignments

the Board makes the following Findings and Conclusions:

#### Summary of Evidence and Information Submitted

1. The Board did not receive written evidence or information pertaining to the proposed adoption.
2. The Board expressed its desire to adopt the amendment to:
  - clarify the initial course of instruction, the re-qualifications and making provisions for armored card guards;

- give the Director the authority to take action when necessary and changes the title names to match the Delaware Code changes;
- clarify what agencies the Delaware manager may work for and gives the minimum law enforcement experience requirement, and
- require the private investigative agencies to submit rosters every three months as listed and requires every agency to submit a roster even if there are no employees working in Delaware

### **Findings of Fact**

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on proposed amendments. The written comments and oral testimony received are described in paragraph 1.

4. The Board finds that the adoption of this rule will:

- clarify the initial course of instruction, the re-qualifications and making provisions for armored card guards;
- give the Director the authority to take action when necessary and changes the title names to match the Delaware Code changes;
- clarify what agencies the Delaware manager may work for and gives the minimum law enforcement experience requirement, and
- require the private investigative agencies to submit rosters every three months as listed and requires every agency to submit a roster even if there are no employees working in Delaware

5. The Board finds that the adoption will have no adverse impact on the public.

6. The Board finds that the amendment is well written and describes its intent to adopt the rule to:

- clarify the initial course of instruction, the re-qualifications and making provisions for armored card guards;
- give the Director the authority to take action when necessary and changes the title names to match the Delaware Code changes;
- clarify what agencies the Delaware manager may work for and gives the minimum law enforcement experience requirement, and
- require the private investigative agencies to submit rosters every three months as listed and requires every agency to submit a roster even if there are no employees working in Delaware

### **Conclusion**

7. The proposed rule adoption was published by the Board in accord with the statutory duties and authority as set forth in 24 Del.C. Section 1304 et seq. and, in particular, 24 Del.C. Section 1304(b)(3).

8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 24 Del.C. Section 1304 et. seq.

9. The Board concludes that the adoption of this rule will be in the best interests of the citizens of the State of Delaware.

10. The Board therefore adopts the amendment pursuant to 24 Del.C. Section 1304(b)(3) and guidelines of 29 Del.C. Section 10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).

11. This adopted rule replaces in its entirety any former rule or regulation heretofore promulgated by the Board.

12. The effective date of this Order shall be September 11, 2015.

13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously on the 28<sup>th</sup> day of July, 2015.

Major Melissa A. Zebley, Acting Chairman  
Director Robert J. Irwin  
William G. Bush, IV, Esquire  
Mr. Michael D. Connelly

Mr. Wayne A. Keller  
Mrs. Heather M. Shupe  
Mrs. Sandra C. Taylor  
Mr. Harvey A. Woods, III

Ms. Kelly R. Jansen

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

**11.0 Personnel Rosters and Job Assignments**

- 11.1 Anyone licensed as a private security agency (Class B or C) under 24 **Del.C.** Ch. 13 shall submit an alphabetical personnel roster and a job site list to the Professional Licensing Section by the tenth of every month. Anyone licensed as a private investigative agency (Class A) under 24 Del.C. Ch. 13 shall submit an alphabetical personnel roster to the Professional Licensing Section by the tenth of January, April, July and October. Alphabetical[, **by last name,**] personnel rosters shall include the full name, DOB, race, sex, expiration date, and position code of each individual in your employ. For example:

**\*Please note that no additional changes were made to the regulation as originally proposed and published in the May 2015 issue of the *Register* at page 846 (18 DE Reg. 846). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

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

**DEPARTMENT OF STATE**

**DIVISION OF PROFESSIONAL REGULATION**

**2100 BOARD OF EXAMINERS IN OPTOMETRY**

Statutory Authority: 24 Delaware Code, Section 2104(a)(1) (24 **Del.C.** §2104(a)(1))  
24 **DE Admin. Code** 2100

**ORDER**

**2100 Board of Examiners in Optometry**

The Delaware Board of Examiners in Optometry pursuant to 24 **Del.C.** §2104(a)(1), proposed a comprehensive regulatory overhaul that seeks to bring the regulations into conformity with current law and remove outdated and inconsistent provisions. For example, the proposed changes update the ethics section to more succinctly define unprofessional conduct. In addition, the proposed changes remove several regulations which are nothing more than a verbatim recitation of the Board's practice act and thus unnecessary.

**SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

Following publication in the Delaware *Register of Regulations* on July 1, 2015 a public hearing was held on July 22, 2015. Written comment periods were held open for thirty days, and an additional fifteen days following the public hearing. At the hearing, the Board accepted as evidence and marked as the Board's Exhibits one and two documentation of publication of the notice of the public hearing in the *News Journal* and the *Delaware State News*; and Board Exhibits three and four correspondence from the Delaware Optometric Association and the Delaware Academy of Ophthalmology.

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

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

**Board Exhibit 2** – Affidavit of publication of the public hearing notice in the *Delaware State News*;

**Board Exhibit 3** – July 22, 2015 correspondence from the Delaware Optometric Association (DOA) regarding apparent contradictions in the proposed changes and suggestions regarding reciprocity, continuing education and minimum standards of practice;

**Board Exhibit 4** – July 21, 2015 correspondence from the Delaware Academy of Ophthalmology regarding the timing of the proposed regulation change and the removal of regulations pertaining to definitions and standards of practice;

**Board Exhibit 5** – August 1, 2015 correspondence from the Delaware Optometric Association (DOA) regarding continuing education and minimum standards of practice.

The Board also considered the verbal testimony of Ann Farley, a representative for the Delaware Academy of Ophthalmology. Ms. Farley simply read the comments set forth in Board Exhibit four.

## FINDINGS OF FACT AND CONCLUSIONS

Pursuant to 29 **Del.C.** §10118, the public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations. Pursuant to 24 **Del.C.** §2104(a)(1) the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.

The proposed changes seek to overhaul the regulations in order to remove outdated and inconsistent provisions; update the ethics section to more succinctly define unprofessional conduct; remove several regulations which are nothing more than a verbatim recitation of the Board's practice act and thus unnecessary; and bring the regulations into conformity with current law.

Prior to the hearing, the Delaware Optometric Association submitted written comments for the Board's review raising five concerns. The first two points raised by the DOA pointed out two technical errors in the proposed regulations regarding the total number of continuing education credits (CEs) the Board will require of licensees going forward as well as the number of practice management CEs the Board will accept going forward.

The Board found these two points from DOA prudent and noted that the Board's intent to increase the total required CEs to thirty and to increase the number of acceptable practice management CEs from zero to six was apparent in the change at proposed regulation 4.1.3, which states the following:

4.1.3 All therapeutically-licensed optometrists shall acquire ~~24~~ 30 hours of continuing education during each biennial licensure period. ~~Twelve~~ Twenty of those ~~24~~ thirty hours must be comprised of education in the areas of therapeutics and management of ocular disease. A maximum of six of the thirty may be in the area of practice management. All therapeutically-licensed optometrists must also maintain current CPR certifications for both children and adults throughout the licensure period.

As such, the Board found that the inconsistencies noted by DOA were technical errors that should be corrected via this Order pursuant to 29 **Del.C.** §10113(b)(4). See *Council 81, American Federation of State, County and Municipal Employees, Afl-Cio, v. State Personnel Commission*, 1989 WL 100473 (Del.Super. Aug. 3, 1989). To that end, regulation 10.2.1 currently states the following: “[n]o practice management courses will be accepted as satisfying the continuing education requirement” but will be changed to the following so as to correct a technical error: “~~4.2.1~~ 4.2.1 ~~No~~ Six practice management ~~courses~~ hours will be accepted ~~as satisfying toward~~ the continuing education requirement.” Similarly, regulation 10.2.2.2 currently states that “Therapeutically certified licensees - Of the 24 hour biennial requirement for therapeutically certified licensees, a maximum of 4 hours may be fulfilled by self-reported study.” The published proposed change to the regulation changed the four hour maximum to six but left the 24 total in place. Insofar as this was a technical error, the regulation will be changed to the following:

~~4.2.2.2~~ 4.2.2.2 Therapeutically certified licensees - Of the ~~24~~ 30 hour biennial requirement for therapeutically certified licensees, a maximum of 4 ~~hours~~ six hours may be fulfilled by self-reported study.

The third point raised by DOA was that the Board should not delete the requirement of five years of practice in another state from the reciprocity regulations. The Board noted that the statute currently states that the Board will “waive the internship requirement for an applicant holding a valid license to practice optometry issued by another jurisdiction **and who has practiced for a minimum of 5 years** in such other jurisdiction with standards of licensure which are equal to or greater than those of this chapter and grant a license by reciprocity to such applicant.” As such, the Board found that retaining such a requirement in the regulations would be unnecessary as all reciprocal applicants must meet the statutory requirement of five years of practice in another jurisdiction.

The DOA's fourth comment requested that the Board consider additional guidance in the continuing education regulations in regard to topics such as acceptable online courses. The Board did not dispute DOA's point, but stated that it would prefer to address such topics following the passage of the proposed regulations so as not to further delay the revision process, which began more than a year ago, particularly in light of the fact that DOA's

comment does not raise a conflict or flaw in any of the proposed regulations.

Finally, DOA recommended that the Board retain three proposed deletions in regard to optometric standards of practice. The Board disagreed with DOA's proposal that optometrists should be bound by the three suggested standards. The Board noted that DOA's proposed standards are actions that may be taken but are not required of optometrists. Further the Board noted that optometric care is more problem focused; therefore, lists are constraining and not necessary as it is up to practitioner to determine what is in the best interest of the patient. Additionally, the Board noted that the statutory definition of the practice of optometry includes an extensive but non-exhaustive list of acceptable treatments for optometrists.

During the hearing, Ann Farley, a representative of the Delaware Academy of Ophthalmology (DAO), read a statement from the DAO into the record. The written statement was then entered into the record as Board Exhibit Four. According to Board Exhibit Four, the DAO believes that the Board's proposed changes are "premature" in light of the upcoming Joint Sunset Committee (JSC) review and that the Board removed significant areas but did not replace them.

As to the DAO's first point that regulation changes at this time would be "inefficient and ineffective" as additional changes will likely be required pursuant to review by the JSC, the Board notes several reasons it disagrees with DAO's position. The Board noted that it began the process of updating the regulations several years ago following Executive Order 36, in which Governor Jack Markell advised "[e]ach Department and Agency within the Executive Branch that is subject to the Administrative Procedures Act, 29 Del. C. § 10111 et seq. ...[to] conduct, in accordance with the procedures set forth below, a periodic review of regulations promulgated by such Agency to determine whether any such regulations should be modified or eliminated." Executive Order No. 36 – Review and Reform of State Agency Regulations, (January 24, 2012). In addition, to delay changing the regulations until the JSC review is completed would not be sensible as the regulation overhaul proposed by the Board is a noteworthy accomplishment. Moreover, the current regulations are very vague and outdated; thus JSC review of the current regulations would render the review process more difficult and time-consuming. Finally, the current regulations are overly subjective; therefore, it is not in the best interest of the public for the Board to maintain such regulations any longer.

As to the DAO's second comment, the Board reiterated some of the points it raised with the DOA in that most if not all of the regulations being removed, particularly in regard to diagnostic and therapeutic drugs, minimum standards of practice and dispensing of contact lenses, are already clearly addressed in the statute and that optometry is problem based and patient dependent such that confining lists and standards in the regulations are neither clarifying nor necessary.

Following the public hearing, the DOA again submitted written public comment reiterating the association's concern that the regulations should include clarification as to online CE courses and that the regulations should establish standards of practice regarding essential equipment and components of ocular examinations.

In regard to DOA's August 1, 2015 written submission, the Board noted that the suggested changes, including adding specific standards of practice and clarification of the continuing education requirements could be added to the regulations should the Board determine that is necessary in the future. The Board does not believe that it is necessary to substantively amend the proposed regulations at this time as it is more important that the proposed regulations go forward so that the problematic regulations are eliminated and unprofessional conduct is more succinctly defined.

### DECISION AND ORDER CONCERNING THE REGULATIONS

Having found that the proposed changes to the regulations are necessary as outlined herein, the Board finds that the regulations shall be adopted as final in the form as proposed with the two noted technical error corrections. The exact text of the regulations, as amended, are attached to this order as Exhibit A. These changes will become effective ten days following publication of this order in the Delaware *Register of Regulations* on September 1, 2015.

**IT IS SO ORDERED** this 12th day of August, 2015 by the Delaware Board of Examiners in Optometry.

Jeffrey Hilovsky, O.D., President

Irvin Bowers, Public Member

Joseph Senall, O.D.

Evelyn Nestlerode, Public Member

Bryan Sterling, O.D., Secretary

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## 2100 Board of Examiners in Optometry (Break in Continuity of Sections)

### 404.0 Continuing Education Requirements

#### (Break in Continuity Within Section)

#### 404.2 Content of Mandatory Continuing Education (CE)

404.2.1 ~~[No Six]~~ practice management ~~[courses hours]~~ will be accepted ~~[as satisfying toward]~~ the continuing education requirement.

#### 404.2.2 COPE-Approved Self-Reported Study

404.2.2.1 Non-therapeutically certified licensees - Of the 12 hour biennial requirement for non-therapeutically certified licensees, a maximum of 2 hours may be fulfilled by self-reported study.

404.2.2.2 Therapeutically certified licensees - Of the ~~[24 30]~~ hour biennial requirement for therapeutically certified licensees, a maximum of 4 six hours may be fulfilled by self-reported study.

**\*Please note that no additional changes were made to the regulation as originally proposed and published in the July 2015 issue of the *Register* at page 26 (19 DE Reg. 26). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

**2100 Board of Examiners in Optometry**

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## OFFICE OF MANAGEMENT AND BUDGET DIVISION OF FACILITIES MANAGEMENT

Statutory Authority: 29 Delaware Code, Section 6908(a)(6) (29 **Del.C.** §6908(a)(6))

### ORDER

### 4104 Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects

#### NATURE OF THE PROCEEDINGS:

The Office of Management and Budget (OMB) initiated proceedings to adopt the Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects. The OMB proceedings to adopt regulations were initiated pursuant to 29 **Del.C.** Chapter 101 and authority as prescribed by 29 **Del.C.** Ch. 69, §6908(a)(6).

On January 1, 2015 (Volume 18, Issue 7), OMB published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It was requested that written materials and suggestions from the public concerning the proposed regulations be delivered to OMB by March 6, 2015 or be presented at a public hearing on February 11, 2015, after which time OMB 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." This is OMB's "conclusion" and "order" as required by 29 **Del.C.** §10118(b).

#### SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*.

Written and verbal comments were received on the proposed regulations during the public comment period

(January 1, 2015 through March 6, 2015). Individuals offering comments included:

- Dr. Brian Shinkle, DO, CIME.
- Mr. James Maravelias, President, Delaware Building & Construction Trades Council.

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

**Brian Shinkle, DO, CIME**

Comment: Studies show that blood/breath alcohol level directly correlates with impairment, but urine alcohol level has no correlation with impairment. Urine alcohol only reasonably shows that someone has used alcohol within the last few days, which is not illegal. You also cannot tell how much alcohol someone used via a urine alcohol test, due to variable urine dilution rates. A better model is to follow the DOT protocol which is to perform breath alcohol testing (which does correlate directly with blood alcohol level and impairment) and to perform this type of alcohol testing in one or all of the following scenarios: post-accident, random or reasonable suspicion.

**Agency response:** Thank you for your comment. This comment refers to Section 4.3 of the proposed regulation that reads as follows:

4.3 Employees subject to drug testing shall be tested using at a minimum a seven-panel protocol testing plus urine alcohol screening for the following:

<b>Substance</b>	<b>Common Name</b>	<b>Cutoff</b>
Marijuana metabolite		50 ng/ml
Cocaine metabolite		150 ng/ml
Opiate metabolite		2000 ng/ml
Acetylmorphine	Heroin metabolite	10 ng/ml
Phencyclidine	PCP	25 ng/ml
Amphetamines (including Methamphetamines)	Meth	500 ng/ml
MDMA	Ecstasy	250 ng/ml
Urine Alcohol		0.04% BAC

Inasmuch as the state has included testing for alcohol as a means to gauge impairment, OMB is in agreement that a urine alcohol test should not be specified. The specification has been changed to a more generic "alcohol test".

**James Maravelias, President, Delaware Building & Construction Trades Council**

Comment: The seven panel test specified in Section 4.3 of the regulation is insufficient and should be changed to require a ten panel test. Keeping in mind that the goal is to provide the safest workplace for employees, protect the general public and instill Delawareans confidence that those individuals working on state funded projects are working safely, the ten-panel protocol is necessary to capture drugs that are highly abused, extremely addictive and can cause a deadly and unsafe work environment for all those around.

**Agency response:** Thank you for your comment. This comment refers to Section 4.3 of the proposed regulation that reads as follows:

4.3 Employees subject to drug testing shall be tested using at a minimum a seven-panel protocol testing plus urine alcohol screening for the following:

<b>Substance</b>	<b>Common Name</b>	<b>Cutoff</b>
Marijuana metabolite		50 ng/ml
Cocaine metabolite		150 ng/ml
Opiate metabolite		2000 ng/ml
Acetylmorphine	Heroin metabolite	10 ng/ml
Phencyclidine	PCP	25 ng/ml

Amphetamines (including Methamphetamines)	Meth	500 ng/ml
MDMA	Ecstasy	250 ng/ml
Urine Alcohol		0.04% BAC

There are no universal standards for the optimal number of panels that must be tested in an employee drug testing program. In fact, Federal DOT standards from which much of this regulation was modeled, requires a five panel testing regimen. The proposed regulation was constructed with a measure of flexibility by mandating “.....a minimum of seven-panel protocol testing....”, therefore allowing for additional panels to be tested. Accordingly the proposed regulation will not be further amended.

**FINDINGS OF FACT:**

The Department finds that the proposed regulation as set forth in the January 2015 *Register of Regulations* with the one insubstantial change noted in section 4.3 should be adopted. While the Office of Management and Budget appreciates the other suggestions brought forth, it is felt the existing content of the regulation as published in the January 2015 *Register of Regulations* represents a fair balance to protect management, labor and members of the public.

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Director of the Delaware Office of Management and Budget does hereby ORDER that the Regulation be, and that it hereby is, adopted and promulgated. The effective date of this Order is for all large public works projects advertised for bid on or after January 1, 2016.

Ann Shepard Visalli, Director  
Office of Management and Budget

**4104 Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects**  
*(Break in Continuity of Sections)*

**4.0 Minimum Standards for a Mandatory Drug Testing Program**  
*(Break in Continuity Within Section)*

4.3 Employees subject to drug testing shall be tested using at a minimum a seven-panel protocol testing plus [urine] alcohol screening for the following:

<u>Substance</u>	<u>Common Name</u>	<u>Cutoff</u>
<u>Marijuana metabolite</u>		<u>50 ng/ml</u>
<u>Cocaine metabolite</u>		<u>150 ng/ml</u>
<u>Opiate metabolite</u>		<u>2000 ng/ml</u>
<u>Acetylmorphine</u>	<u>Heroin metabolite</u>	<u>10 ng/ml</u>
<u>Phencyclidine</u>	<u>PCP</u>	<u>25 ng/ml</u>
<u>Amphetamines (including Methamphetamines)</u>	<u>Meth</u>	<u>500 ng/ml</u>
<u>MDMA</u>	<u>Ecstasy</u>	<u>250 ng/ml</u>
<u>[Urine] Alcohol</u>		<u>0.04% BAC</u>

*(Break in Continuity of Sections)*

**8.0 Penalties**  
*(Break in Continuity Within Sections)*

8.2 Notwithstanding any other provision of this regulation, if any failure to comply with the requirements of this regulation are particularly flagrant or egregious, the Owner may seek a termination for cause, a temporary suspension, a determination that the Contractor or Subcontractor [are is] not responsible, debarment or bond revocation, and any other statutory, common law, or equitable remedy.

\*Please note that no additional changes were made to the regulation as originally proposed and published in the January 2015 issue of the *Register* at page 550 (18 DE Reg. 550). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

[4104 Regulations for the Drug Testing of Contractor and Subcontractor Employees...](#)

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**DELAWARE RIVER BASIN COMMISSION****PUBLIC NOTICE**

The Delaware River Basin Commission will hold a public hearing on **Tuesday, September 15, 2015** beginning at 1:30 p.m. A business meeting will be held on the following day, Wednesday, September 16, 2015 beginning at 1:30 p.m. The hearing and meeting are open to the public and will be held at the Chase Center on the Riverfront, Dravo Auditorium, 815 Justison Street, Wilmington, Delaware. For more information, visit the DRBC web site at [www.drbc.net](http://www.drbc.net) or contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, at 609-883-9500 extension 203.

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**DELAWARE STATE FIRE PREVENTION COMMISSION****PUBLIC NOTICE****701 Administration and Enforcement****702 Fire Protection in Building Construction****703 Installation, Operation, Maintenance, Testing and Sales of Signaling Systems, Fire Protection Systems and Fire Extinguishers****704 Hazardous Processes and Operations****705 General Fire Safety****706 Specific Occupancy Requirements**

The Delaware State Fire Prevention Commission, pursuant to 16 Del.C. § 6604(1), proposes to revise:

- Regulation 701 by removing the limitation that the regulations apply only to buildings modified by 50% or more following the enactment of the regulations. The revision also removes Annexes A and B and reorganizes the content into a newly created Chapter 7. Finally, the revision removes references to Appendixes that are no longer part of the regulations.
- Regulation 702 by making changes to the occupancy conversion regulation, clarifying the building rehabilitation requirements, clarifying the automatic sprinkler system, and standpipe regulations to prevent a submission for review and approval of a project in such stages that would have the effect of being less than 50% of the square footage of any building. These proposed changes also make substantive additions to the regulations regarding floor level identification and fire pumps.
- Regulation 703 by adding a definition for "major deficiency," clarifying that at the time of renewal, a certificate holder must maintain current NICET certification at the minimum level that was required at the time of original licensure. The proposed changes also remove reference to the Annexes and Appendixes which are no longer part of the regulations.
- Regulation 704 by deleting Regulation 4.3 in its entirety, eliminating the requirement that a member of a local fire department be present on the scene of any fireworks display from the time the fireworks are delivered until the termination of the display, and reverting to Regulation 4.2, leaving the level of fire protection to the discretion of the local fire department.
- Regulation 705 to clarify that one elevator car in any building must be of sufficient size to accommodate an ambulance cot in its horizontal position, and further clarifying that elevator cars existing as of September 1, 2015 are exempt from this requirement. These changes further clarify that all gates at gated communities must be either automatic or manual, and establishes guidelines for demarcating both primary and secondary entrance doors.
- Regulation 706 by removing bond requirement for electricians added to the list of installers for the hard-wired smoke detector program.

The public hearing on the proposed regulation changes originally scheduled on September 15, 2015 has been rescheduled for September 22, 2015 at 10:00 a.m., in the Commission Chamber, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, DE 19904. Written comments should be sent to Sherry Lambertson, Executive Specialist for the Delaware Fire Prevention Commission, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, DE 19904. Written comments will be accepted until fifteen days following the public hearing, pursuant to 29 Del.C. §10118(a).

**DEPARTMENT OF AGRICULTURE**  
**DELAWARE AGRICULTURAL LANDS PRESERVATION FOUNDATION**  
**PUBLIC NOTICE**  
**701 Farmland Preservation Program**

The Delaware Agricultural Lands Preservation Foundation (the "Foundation"), pursuant to 3 **Del.C.** §928, will hold a public hearing to discuss proposed regulations relating to the administration of the Delaware Agricultural Lands Preservation Program established pursuant to 3 **Del.C.** §901. The Foundation was established by the Delaware Legislature pursuant to 3 **Del.C.** §903. The Foundation is responsible for, among other things, adopting criteria for the establishment and maintenance of Agricultural Preservation Districts and Forestland Preservation Areas and establishing criteria for the purchase of Agricultural Preservation Easements and Forestland Preservation Easements. To carry out its statutory responsibilities, the Foundation has been directed to, among other things, adopt rules of practice and procedure for the acquisition of Preservation Easements, including the process and timeframe for submitting applications for the sale of Easements, the establishment of the purchase price for the easements through the use of appraisal information, the manner in which offers to sell such easements are accepted, and the basis upon which offers for sale of such easements are accepted.

Pursuant to its statutory authority, the Foundation is proposing for adoption a comprehensive set of guidelines and regulations to be used for the administration of the agricultural lands preservation program. The proposed regulations will replace all of the existing regulations set forth in 3 Delaware Administrative Code, Part 701, Sections 1.0 through and including 30.0, including Appendix A through G, and will, among other things: (a) establish eligibility criteria, (b) establish application procedures, (c) establish criteria for the purchase of Agricultural Lands Preservation Easements and methods by which the purchase price will be determined, and (d) provide for additional means of creating priority for acquisition of preservation easements in designated areas which are near or adjacent to any growth zones that may be indicated by each of the three respective counties. No changes are being proposed to the Forestland Preservation regulations set forth in 3 Delaware Administrative Code, Part 702.

The public hearing will be on Wednesday, September 23, 2015 beginning at 10:00 a.m. and ending at 12:00 p.m. at the Foundation's office located at 2320 S. DuPont Highway, Dover, Delaware 19901.

Copies of the proposed regulations are available for review by contacting:

Rebecca Vaughn  
 Delaware Agricultural Lands Preservation Foundation  
 2320 S. DuPont Highway  
 Dover, DE 19901  
 (302) 698-4531  
 Email: Rebecca.Vaughn@state.de.us

Anyone wishing to present oral comments at this public hearing should contact the designated Hearing Officer, Mr. William A. Denman at (302) 678-3262 prior to the hearing. Oral comments and written comments may be presented at the hearing, and anyone wishing to submit written comments as a supplement to, or in lieu of oral testimony, should submit such comments by October 1, 2015 to:

William A. Denman, Esquire  
 Parkowski, Guerke & Swayze, P.A.  
 116 W. Water Street  
 Dover, DE 19904  
 (302) 678-3262      Email: wdenman@pgslegal.com

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**HARNESS RACING COMMISSION**  
**DELAWARE STANDARDBRED BREEDERS' FUND**  
**PUBLIC NOTICE**  
**502 Delaware Standardbred Breeders' Fund Regulations**

The State of Delaware, Department of Agriculture's Standardbred Breeders' Fund ("the Fund") hereby gives

notice of its intention to adopt an amended regulation pursuant to the General Assembly's delegation of authority to do so found at 29 **Del.C.** §4815(b)(4)b.2 and in compliance with Delaware's Administrative Procedures Act at 29 **Del.C.** §10115. The proposed amended regulation under 13.0 defines and allows consolidation of consolation races to afford more racing opportunity to participants and fuller wagering fields.

The Fund solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty days (30) after these proposed amended regulations are promulgated in the Delaware *Register of Regulations*. Any such submissions should be mailed or hand-delivered to Ms. Judy Davis-Wilson, Administrator, Delaware Standardbred Breeders' Fund Program whose address is State of Delaware, Department of Agriculture, 2320 South duPont Highway, Dover, Delaware 19901 by October 1, 2015.

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## **DEPARTMENT OF EDUCATION**

### **PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, September 17, 2015 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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## **DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

### **DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

#### **PUBLIC NOTICE**

#### **Physical Therapy, Occupational Therapy, and Services for Individuals With Speech, Hearing and Language Disorders Hippotherapy**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance proposed to amend the amend the Title XIX Medicaid State Plan and the Delaware Medical Assistance Program Provider Specific Policy Manual to revise and update Independent Therapist Provider Specific Policy Manual regarding Physical Therapy, Occupational Therapy, and Services for Individuals With Speech, Hearing and Language Disorders, specifically, *to establish coverage criteria, provider qualifications, service limitations and reimbursement methodology for Hippotherapy.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by September 30, 2015.

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

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## **DIVISION OF PUBLIC HEALTH**

### **PUBLIC NOTICE**

#### **4452 Clean Indoor Air Act**

Health Systems Protection Section (HSP), Division of Public Health, Department of Health and Social Services, is proposing revisions to the Delaware Clean Indoor Air Act. The purpose of the amendments is to add electronic smoking devices to the regulations. On September 1, 2015, HSP plans to publish as proposed the amended regulations, and hold them out for public comment per Delaware law.

A public hearing will be held on Wednesday, September 30, 2015 at 10:00 a.m. in the First Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Copies of the proposed regulations are available for review in the September 1, 2015 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Jamie Mack by Friday, October 9, 2015, at:

Jamie Mack  
 Division of Public Health  
 417 Federal Street  
 Dover, DE 19901      Email: [jamie.mack@state.de.us](mailto:jamie.mack@state.de.us)  
 Phone: (302) 744-4951

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**DIVISION OF PUBLIC HEALTH**  
**PUBLIC NOTICE**  
**4462 Public Drinking Water Systems**

On September 1, 2015, the Department of Health and Social Services, Division of Public Health, Office of Drinking Water, plans to publish revised Regulations Governing Public Drinking Water Systems and hold them out for public comment per Delaware law.

The purpose of the regulations is to update the regulations to align them with federal requirements and clarify the current regulations. The regulations are being revised to include:

- Revised Total Coliform Rule (RTCR) as section 7.4. This rule was finalized by EPA on April 1, 2012.
- Reorganization of the regulations by breaking up the large sections into smaller sections, allowing for easier reviews and checking of regulatory requirements. The Regulations are going from 10 sections to 20 sections.
- Section 4.1.6 on page 16 is being expanded to provide specific examples of unusual events so water system owners/operators have a more clear idea of when they need to contact DPH.
- Incorporate revisions identified by EPA when they reviewed the previous regulations.
- Sections that are no longer relevant or that have been superseded by more recent regulations have been deleted.

A public hearing will be held on Wednesday September 30, 2015, at 2:00 p.m. in the Large Conference Room, Office of Drinking Water, Edgehill Shopping Center, 43 South DuPont Highway, Dover, Delaware.

Copies of the proposed regulations are available for review in the September 1, 2015 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulation should submit such comments by Thursday, October 8, 2015 to:

Jamie Mack, Executive Assistant  
 Office of the Director  
 Delaware Division of Public Health  
 Jesse Cooper Building  
 417 Federal St.  
 Dover, DE 19901      Email: [jamie.mack@state.de.us](mailto:jamie.mack@state.de.us)  
 Fax: 302-739-3984

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**DEPARTMENT OF INSURANCE**  
**OFFICE OF THE COMMISSIONER**  
**PUBLIC NOTICE**  
**606 Proof of Automobile Insurance**

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed amended Department of Insurance Regulation 606 relating to Proof of Automobile Insurance [Formerly Regulation 31]. The docket number for this proposed AMENDED regulation is 2464-2015.

The proposed amended regulation supports the established requirements to govern the form of the standardized insurance identification (ID) card for each insured vehicle pursuant to Delaware law and will follow new requirements passed under H.B. 258 HA1, for the 147<sup>th</sup> General Assembly. The Delaware Code authority for the change is 18 **Del.C.** §§311 and 2741, and 21 **Del.C.** §2118(o).

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

[www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml](http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml)

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Wednesday, September 30, 2015. Any such requests should be directed to:

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

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**DEPARTMENT OF LABOR**  
**DIVISION OF INDUSTRIAL AFFAIRS**  
**OFFICE OF WORKERS' COMPENSATION**  
**PUBLIC NOTICE**  
**1341 Workers' Compensation Regulations**

The Workers' Compensation Oversight Panel, pursuant to 19 **Del.C.** §2322B(9), proposes to revise Regulation 1341, subsection 4.13.1 by removing references to specific percentages and dollar amounts to be used in calculating the amounts permitted to be paid for prescribed drugs. In addition, the Workers' Compensation Oversight Panel, pursuant to 19 **Del.C.** §2322B(3)(a), proposes to revise subsection 4.20.1 by removing references to specific dollar amounts to be used in calculating the amounts permitted to be paid for anesthesia services provided to employees.

The Panel will hold a public hearing on the proposed regulation changes on September 21, 2015 at 4:00 p.m., in the Department of Labor Fox Valley Annex, 19 W. Lea Blvd, Wilmington, DE 19802. Written comments should be sent to Stephanie K. Parker, Administrator for the Office of Workers' Compensation, 4425 N. Market Street, Wilmington, DE 19802. Written comments will be accepted until September 30, 2015 pursuant to 29 **Del.C.** §10118(a).

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**  
**DIVISION OF FISH AND WILDLIFE**  
**PUBLIC NOTICE**  
**3900 Wildlife**

The purpose of this action is to establish reporting requirements for gray fox taken, killed or captured; also to

ensure consistency with and to clarify the allowable timeframe and methodology for reporting coyote and nutria harvests.

The hearing record on the proposed changes to 7 **DE Admin. Code** 3900 Wildlife – 4.0 and 23.0 pertaining to Seasons and Non-native/Invasive Wildlife will be open September 1, 2015. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on September 22, 2015 beginning at 6:30 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

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**DIVISION OF WASTE AND HAZARDOUS SUBSTANCES****PUBLIC NOTICE****1302 Regulations Governing Hazardous Waste**

To provide greater environmental protection and to reduce human health risks, the Solid and Hazardous Waste Management Section (SHWMS) proposes to adopt the federal ignitable compressed gas provisions in §261.21 and to correct clerical and typographical errors.

Amendments to DRGHW are proposed and amended in accordance with the provisions found at 7 Delaware Code, Chapters 60 and 63.

The public hearing on the proposed amendments to DRGHW will be held on Wednesday, September 30, 2015 at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE.

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**DEPARTMENT OF STATE****DIVISION OF PROFESSIONAL REGULATION****1725 POLYSOMNOGRAPHY ADVISORY COUNCIL****PUBLIC NOTICE**

The Delaware Polysomnography Council of the Board of Medical Licensure and Discipline, pursuant to 24 **Del.C.** §1799W(c), proposes to amend its rules and regulations. The proposed regulation change clarifies that polysomnographic trainees are limited to a total of two years of training before they are required to either obtain a license or cease practicing.

The Council will hold a public hearing on the proposed regulation change on September 28, 2015 at 9:00 a.m., Second Floor Conference Room C, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Shauna Slaughter, Executive Director of the Delaware Board of Medical Licensure and Discipline, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until October 13, 2015 pursuant to 29 **Del.C.** §10118(a).

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**DIVISION OF PROFESSIONAL REGULATION****4100 BOARD OF HOME INSPECTORS****PUBLIC NOTICE**

The Delaware Board of Home Inspectors, pursuant to 24 **Del.C.** §4106(a)(1), proposes to amend its rules and regulations. The proposed regulation changes reiterate that a trainee home inspector must obtain his/her trainee registration prior to performing any supervised home inspections. The Home Inspector Practice Act mandates that anyone who performs inspections, even if supervised by a Delaware licensed home inspector, must first obtain a trainee registration. Board Regulation 10.1 requires trainees to complete 75 supervised home inspections before becoming eligible for full licensure, and, under 24 **Del.C.** §4107(c) a trainee can only begin to accumulate such inspections after his/her application for registration as a trainee is approved and granted by the Board.

The Board will hold a public hearing on the proposed regulation change on October 13, 2015 at 9:00 a.m., Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Amanda McAtee, Administrative Specialist of the Delaware Board of Home Inspectors, Cannon

Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until October 28, 2015 pursuant to 29 **Del.C.** §10118(a).

A hearing for the proposed regulation change was originally scheduled to take place on July 14, 2015 in Conference Room B of the Cannon Building; however, the regularly scheduled Board of Home Inspectors meeting was canceled on that date. As such, the proposed regulation is being republished without change in order to change the hearing date to October 13, 2015 as set forth above.

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