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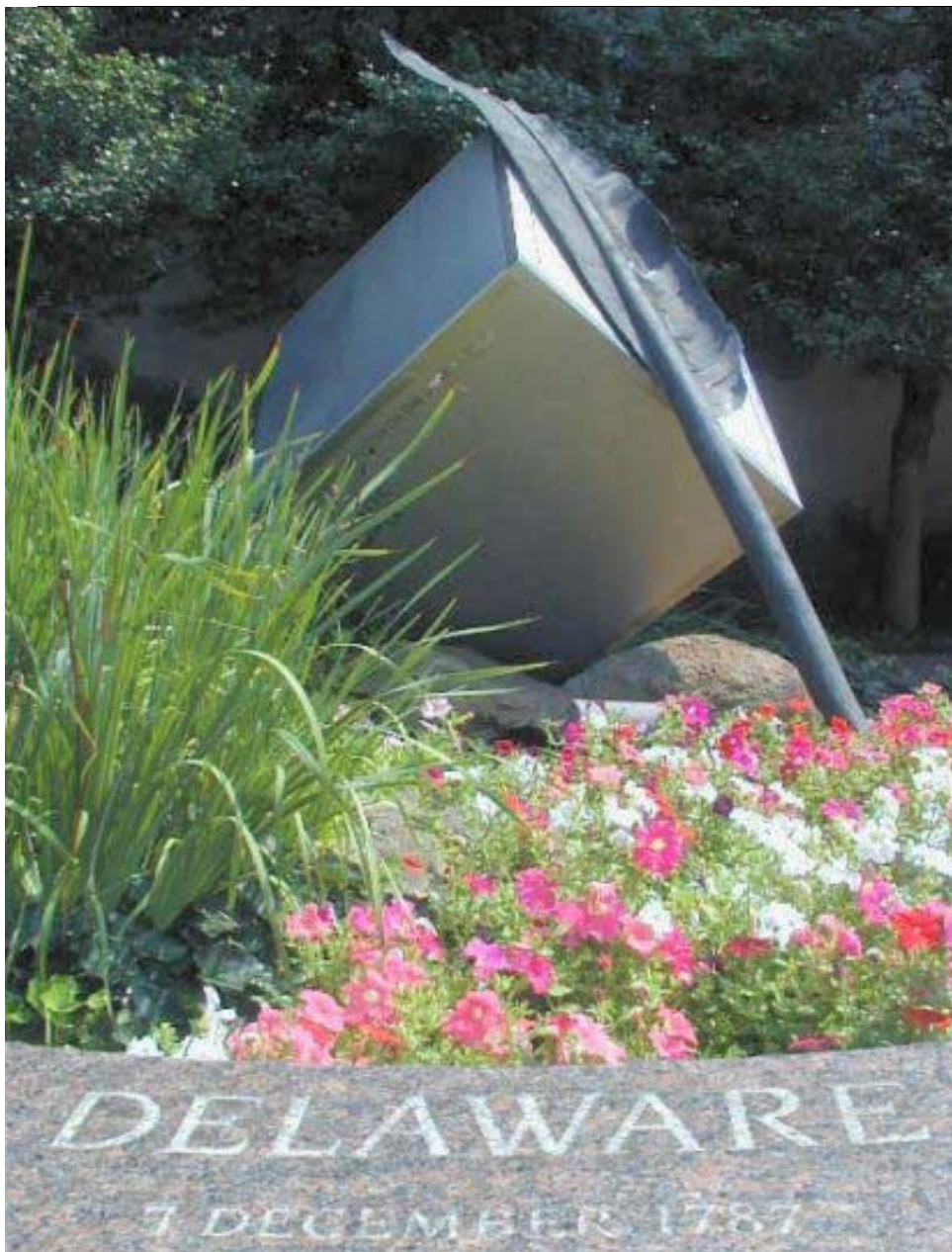
# Delaware Register of Regulations

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Volume 20 - Issue 3, Pages 134 - 205

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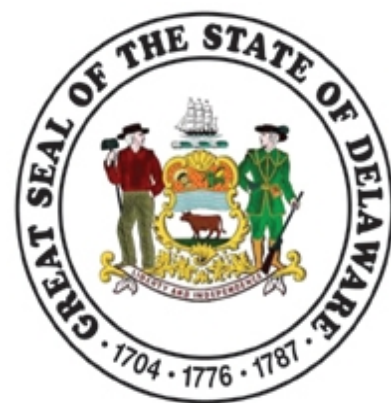


## IN THIS ISSUE:

Regulations:  
Proposed  
Final

General Notices

Calendar of Events &  
Hearing Notices



Pursuant to 29 Del.C. Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before August 15, 2016.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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## CITATION TO THE DELAWARE REGISTER

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

19 **DE Reg.** 1100 - 1102 (06/01/16)

Refers to Volume 19, pages 1100 - 1102 of the *Delaware Register* issued on June 1, 2016.

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## SUBSCRIPTION INFORMATION

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

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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

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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

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

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## DIVISION OF RESEARCH STAFF

**Lori Christiansen**, Director; **Mark J. Cutrona**, Deputy Director; **Tara Donofrio**, Administrative Specialist II; **Julie Fedele**, Joint Sunset Research Analyst; **Bethany Fiske**, Assistant Registrar of Regulations; **Deborah Gottschalk**, Legislative Attorney; **Robert Lupo**, Printer; **Deborah J. Messina**, Print Shop Supervisor; **Kathleen Morris**, Human Resources/Financials; **Georgia Roman**, Unit Operations Support Specialist; **Victoria Schultes**, Administrative Specialist II; **Don Sellers**, Printer; **Yvette W. Smallwood**, Registrar of Regulations; **Holly Vaughn Wagner**, Legislative Attorney; **Rochelle Yerkes**, Office Manager; **Sara Zimmerman**, Legislative Librarian.

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

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## Symbol Key

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

## Proposed Regulations

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

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## DEPARTMENT OF EDUCATION

### OFFICE OF THE SECRETARY

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

## PUBLIC NOTICE

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

### 1105 Standards for School Buses Placed in Production on or after January 1, 2017

#### A. TYPE OF REGULATORY ACTION REQUIRED

New Regulation

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

The Secretary of Education intends to create 14 **DE Admin. Code** 1105 Standard for School Buses Placed in Production on or after January 1, 2017. This regulation is being created to establish new standards for buses built after January 2017, specifically as it relates to current equipment, production and safety features.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before October 5, 2016 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Register of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml), or obtained at the Department of Education, Finance Office located at the address listed above.

#### C. IMPACT CRITERIA

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation is not related to improving student achievement as measured against state achievement standards.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation is not related to ensuring all students receive an equitable education.

3. Will the new regulation help to ensure that all students' health and safety are adequately protected? The new regulation does address students' health and safety by providing standards for safe school buses.



4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation continues to ensure that all students' legal rights are respected.
5. Will the new regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The new regulation does not change the decision making at the local board and school level.
6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation does not place any unnecessary reporting or administrative requirements on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated does not change because of the new regulation.
8. Will the new 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 new regulation is consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected cost to implementing this new regulation.

**\*Please Note:**

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

<http://regulations.delaware.gov/register/september2016/proposed/20 DE Reg 141RFA 09-01-16.pdf>

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

**1105 Standards for School Buses Placed in Production on or after January 1, 2017**

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## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))  
14 DE Admin. Code 1562

### PUBLIC NOTICE

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

**1562 English to Speakers of Other Languages (ESOL) Teacher**

#### A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

#### B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1562 English to Speakers of Other Languages (ESOL) Teacher. This regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation to amend the educational requirements for obtaining this certificate including the oral and written proficiency requirements, the degree or program certification requirements, as well as the minimum coursework that is required for educators seeking this certification. This regulation sets forth the requirements for an English to Speakers of Other Languages (ESOL) Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on

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Monday October 3, 2016 to Mr. Chris Kenton, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

## C. IMPACT CRITERIA

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

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

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

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

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

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.

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

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

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

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

<http://regulations.delaware.gov/register/september2016/proposed/20 DE Reg 142RFA 09-01-16.pdf>

### ~~1562 English to Speakers of Other Languages (ESOL) Teacher~~ Teacher of English Language Learners

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

## 1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for ~~English to Speakers of Other Languages (ESOL) Teacher~~ Teacher of English Language Learners. This certification is required for grades K to 12.
- 1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

## 2.0 Definitions

- 2.1 The definitions set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.
- 2.2 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:
 

~~"Nationally recognized equivalent examination" means a standardized test which measures knowledge in a specific content area that is nationally recognized as having at a minimum the same rigor and reliability as a Praxis II examination.~~

"**Passing score**" means a minimum score as established by the Standards Board, in consultation with the Department and with the ~~concurrence~~ approval of the State Board.

## 3.0 Standard Certificate

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

## 4.0 Additional Requirements

An educator must also have met the following:

- 4.1 ~~Demonstrated oral and written proficiency in English by having completed the following:~~
  - 4.1.1 ~~Achieved a passing score on an oral proficiency examination in English; and~~
  - 4.1.2 ~~Achieved a passing score on a written proficiency examination in English; and~~
  - 4.1.3 ~~The written proficiency and oral proficiency examinations required may be a Praxis II examination if applicable and available or as specified in section 4.2.~~
- 4.2 ~~If an examination of content knowledge such as Praxis II is not applicable and available for the Standard Certificate requested, an educator must also meet the following:~~
  - 4.2.1 ~~Where no PRAXIS II examination is applicable and available, nationally recognized equivalent examinations may be substituted. The applicant shall achieve a passing score on the examination as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board.~~
  - 4.2.2 ~~For the purposes of this regulation, the following test shall be accepted as a nationally recognized equivalent examination: the American Council on the Teaching of Foreign Languages (ACTFL) Oral Proficiency Interview and the ACTFL Writing proficient test.~~
    - 4.2.2.1 ~~For purposes of this regulation the following shall be considered a passing score:-~~
      - 4.2.2.1.1 ~~For tests of English, candidates are required to achieve as a minimum score an Advanced Low level of the oral skills and an Advanced Low level on the writing skills based on the ACTFL Proficiency Guidelines.~~

- 4.3 ~~If the educator is applying for their first Standard certificate pursuant to 14 DE Admin. Code 1505 Standard Certificate 3.1.5.1 the required 15 credits or their equivalent in professional development required in 14 DE Admin. Code 3.1.5.1 that must be satisfactory completed for this standard certificate must at a minimum include the following areas;~~
- ~~4.3.1 Methods of Teaching English as a Second Language (3 credits);~~
  - ~~4.3.2 Second Language Acquisition (3 credits);~~
  - ~~4.3.3 Teaching Literacy for English Language Learners (3 credits);~~
  - ~~4.3.4 Second Language Testing (3 credits);~~
  - ~~4.3.5 Structure of the English Language (3 credits).~~
- 4.4 ~~If the educator is applying for their second standard Certificate pursuant to 14 DE Admin. Code 1505 Standard Certificate 3.1.5, the satisfactory completion of fifteen (15) credits or their equivalent in professional development in the areas of;~~
- ~~4.4.1 Methods of Teaching English as a Second Language (3 credits);~~
  - ~~4.4.2 Second Language Acquisition (3 credits);~~
  - ~~4.4.3 Teaching Literacy for English Language Learners (3 credits);~~
  - ~~4.4.4 Second Language Testing (3 credits);~~
  - ~~4.4.5 Structure of the English Language (3 credits).~~
- 4.1 An educator shall also have satisfied each of the following requirements:
- 4.1.1 Demonstrated oral and written proficiency in English by:
    - 4.1.1.1 Completion of a bachelor's, master's, or doctoral degree from a regionally accredited college or university that is located in the United States or in a permanently inhabited territory of the United States; or
    - 4.1.1.2 Achieving a minimum level of Advanced Mid based on the American Council on the Teaching of Foreign Languages (ACTFL) Proficiency Guidelines on the ACTFL Oral Proficiency Interview (OPI) in English and the ACTFL Writing Proficiency Test (WPT) in English; and
  - 4.1.2 Holding a bachelor's, master's, or doctoral degree from a regionally accredited college or university with a major or its equivalent in Teaching English Language Learners from a program approved or recognized as provided in subsection 4.1.2.1; or
    - 4.1.2.1 Required Program Approval or Recognition
      - 4.1.2.1.1 National Council for the Accreditation of Teacher Education (NCATE) recognized educator preparation program; or
      - 4.1.2.1.2 The Council for the Accreditation of Educator Preparation (CAEP) specialty organization recognized educator preparation program; or
      - 4.1.2.1.3 State-approved educator preparation program where the State approval body employed the appropriate standards.
  - 4.1.3 Completion of a minimum of fifteen (15) credits or the equivalent thereof in professional development as approved by the Department, with a focus in students who are English Language Learners in the following content areas:
    - 4.1.3.1 Methods of Teaching English as a Second Language (3 credits);
    - 4.1.3.2 Second Language Acquisition (3 credits);
    - 4.1.3.3 Teaching Literacy for English Language Learners (3 credits);
    - 4.1.3.4 Second Language Testing (3 credits); and
    - 4.1.3.5 Structure of the English Language (3 credits).

## **5.0 Past Certification Recognized**

The Department shall recognize a Standard Certificate English to Speakers of Other Languages (ESOL) Teacher issued before January 1, 2017. A teacher holding such a Standard Certificate issued by the Department before January 1, 2017 shall be considered certified as an English to Speakers of Other Languages (ESOL)

Teacher.

**6.0 Effective Date**

This regulation shall be effective on January 1, 2017.

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**DEPARTMENT OF INSURANCE****OFFICE OF THE COMMISSIONER**

Statutory Authority: 18 Delaware Code, Section 311, 519 and 520 (18 **Del.C.** §§311, 519 & 520)  
18 **DE Admin. Code** 304

**PUBLIC NOTICE****304 Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition**

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed Department of Insurance Regulation 304 relating to Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition [Formerly Regulation 70]. The docket number for this proposed regulation is 3214.

The proposed amended regulation will bring the current regulation in compliance with the National Association of Insurance Commissioners (NAIC Model Regulation 385, as revised 2008). Model Reg. 385 is needed for accreditation purposes and provides additional standards for consideration by the Insurance Commissioner to determine whether the continued operation of any insurer might be deemed to be hazardous to its policyholders, creditors or the general public. The proposed amendments give the Insurance Commissioner additional authority to issue an order requiring companies deemed to be in hazardous financial condition to take corrective action. These amendments should not pose additional burdens on insurers. The Delaware Code authority for this proposed amended regulation is 18 **Del.C.** §§311, 519, 520, 5901 and 5905; 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:

<http://www.delawareinsurance.gov/departments/documents/ProposedRegs/>

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amended regulation. Any written submission in response to this notice and relevant to the proposed amended regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Monday, October 3, 2016. 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

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

<http://regulations.delaware.gov/register/september2016/proposed/20 DE Reg 146RFA 09-01-16.pdf>

**304 Define Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition**

**1.0 Authority**

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This Regulation is adopted and promulgated by 18 **Del.C.** §§519, 520, 5901 and 5905 and 29 **Del.C.** Ch. 101.

## 2.0 Purpose

- 2.1 The purpose of this Regulation is to set forth the standards which the Commissioner may use for identifying insurers found to be in such condition as to render the continuance of their business hazardous to the public, their creditors or to holders of their policies or certificates of insurance.
- 2.2 This Regulation shall not be interpreted to limit the powers granted the Commissioner by any laws or parts of laws of this state, nor shall this Regulation be interpreted to supersede any laws or parts of laws of this state.

## 3.0 Standards

- 3.1 The following standards, either singly or a combination of two or more, may be considered by the Commissioner to determine whether the continued operation of any insurer transacting an insurance business in this state might be deemed to be hazardous to ~~the~~ its policyholders, creditors or the general public. The Commissioner may consider:
  - 3.1.1 ~~findings of adverse financial condition or adverse market conduct examination reports~~ adverse findings reported in financial condition and market conduct examination reports, audit reports, and actuarial opinions, reports or summaries;
  - 3.1.2 the National Association of Insurance Commissioners Insurance Regulatory Information System and its related other financial analysis solvency tools and reports;
  - 3.1.3 ~~the ratios of commission expense, general insurance expense, policy benefits and reserve increases as to annual premium and net investment income which could lead to an impairment of capital and surplus~~ whether the insurer has made adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the insurer, when considered in light of the assets held by the insurer with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts;
  - 3.1.4 ~~the insurer's asset portfolio when viewed in light of current economic conditions is not of sufficient value, liquidity, or diversity to assure the company's ability to meet its outstanding obligations as they mature;~~
  - 3.1.5 ~~the ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the company's insurer's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;~~
  - 3.1.65 whether the insurer's operating loss in the last twelve-month period or any shorter period of time, including but not limited to net capital gain or loss, change in non-admitted assets, and cash dividends paid to shareholders, is greater than 50% of such insurer's remaining surplus as regards policyholders in excess of the minimum required;
  - 3.1.6 whether the insurer's operating loss in the last twelve-month period or any shorter period of time, excluding net capital gains, is greater than twenty percent (20%) of the insurer's remaining surplus as regards policyholders in excess of the minimum required;
  - 3.1.7 ~~whether any affiliate, subsidiary or reinsurer is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligation~~ whether a reinsurer, obligor or any entity within the insurer's insurance holding company system is insolvent, threatened with insolvency or delinquent in payment of its monetary or other obligations, and which in the opinion of the Commissioner may affect the solvency of the insurer;
  - 3.1.8 contingent liabilities, pledges or guaranties which either individually or collectively involve a total amount which in the opinion of the Commissioner may affect the solvency of the insurer;

# PROPOSED REGULATIONS

- 3.1.9 whether any "controlling person" of an insurer is delinquent in the transmitting to, or payment of, net premiums to such insurer;
- 3.1.10 the age and collectibility of receivables;
- 3.1.11 whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of ~~such~~ the insurer, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the insurer in such position;
- 3.1.12 whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;
- 3.1.13 whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the Commissioner;
- 3.1.134 whether management of an insurer either has filed any false or misleading sworn financial statement, or has released false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer;
- 3.1.145 whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner; ~~or~~
- 3.1.156 whether the company has experienced or will experience in the foreseeable future cash flow and/or liability problems;:
- 3.1.17 whether management has established reserves that do not comply with minimum standards established by state insurance laws, regulations, statutory accounting standards, sound actuarial principles and standards of practice;
- 3.1.18 whether management persistently engages in material under reserving that results in adverse development;
- 3.1.19 whether transactions among affiliates, subsidiaries or controlling persons for which the insurer receives assets or capital gains, or both, do not provide sufficient value, liquidity or diversity to assure the insurer's ability to meet its outstanding obligations as they mature; or
- 3.1.20 any other finding determined by the Commissioner to be hazardous to the insurer's policyholders, creditors or general public.

## 4.0 Commissioner's Authority

- 4.1 For the purposes of making a determination of an insurer's financial condition under this Regulation, the Commissioner may:
  - 4.1.1 disregard any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired or otherwise subject to a delinquency proceeding;
  - 4.1.2 make appropriate adjustments including disallowance to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates consistent with the NAIC Accounting Practices And Procedures Manual, state laws and regulations;
  - 4.1.3 refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; or
  - 4.1.4 increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next 12-month period.
- 4.2 If the Commissioner determines that the continued operation of the insurer licensed to transact business in this state may be hazardous to the policyholders, creditors or the general public, then the Commissioner may, upon ~~his~~ a determination, issue an order requiring the insurer to:
  - 4.2.1 reduce the total amount of present and potential liability for policy benefits by reinsurance;
  - 4.2.2 reduce, suspend or limit the volume of business being accepted or renewed;
  - 4.2.3 reduce general insurance and commission expenses by specified methods;
  - 4.2.4 increase the insurer's capital and surplus;



- 4.2.5 suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policyholders;
  - 4.2.6 file reports in a form acceptable to the Commissioner concerning the market value of an insurer's assets;
  - 4.2.7 limit or withdraw from certain investments or discontinue certain investment practices to the extent the Commissioner deems necessary;
  - 4.2.8 document the adequacy of premium rates in relation to the risks insured; ~~or~~
  - 4.2.9 file, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners or ~~an~~ in such format as promulgated by the Commissioner;
  - 4.2.10 correct corporate governance practice deficiencies, and adopt and utilize governance practices acceptable to the Commissioner;
  - 4.2.11 provide a business plan to the Commissioner in order to continue to transact business in the State;  
or
  - 4.2.12 notwithstanding any other provisions of law limiting the frequency or amount of premium rate adjustments, adjust rates for any non-life insurance product written by the insurer that the Commissioner considers necessary to improve the financial condition of the insurer.
- 4.3 If the insurer is a foreign insurer, the Commissioner's order may be limited to the extent provided by statute.
- 4.4 Any insurer subject to an order under subsection 4.2 may request a hearing to review that order. The notice of hearing shall be served upon the insurer pursuant to the Delaware Administrative Procedures Act. The notice of hearing shall state the time and place of hearing, and the conduct, condition or ground upon which the Commissioner based the order. Unless mutually agreed between the Commissioner and the insurer, the hearing shall occur not less than 10 days nor more than 30 days after notice is served. The ~~e~~Commissioner shall hold all hearings under this subsection privately, unless the insurer requests a public hearing, in which case the hearing shall be public.

## **5.0 Judicial Review**

Any order or decision of the ~~e~~Commissioner shall be subject to review in accordance with the Administrative Procedures Act at the instance of any party to the proceedings whose interests are substantially affected.

## **6.0 Separability**

If any provisions of this Regulation be held invalid, the remainder shall not be affected.

## **7.0 Effective Date**

This Regulation shall become effective ~~thirty (30) days after the commissioner's signature~~ 10 days after being published as final.

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### **OFFICE OF THE COMMISSIONER**

Statutory Authority: 18 Delaware Code, Section 311 and 2503 (18 **Del.C.** §§311 & 2503)  
**18 DE Admin. Code 1214**

### **PUBLIC NOTICE**

### **1214 Senior Protection in Annuity Transactions**

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed amended Department of Insurance Regulation 1214 relating to Senior Protection in Annuity Transactions. The docket

number for this proposed regulation is 3213.

The proposed amended regulation will bring the current regulation in compliance with the National Association of Insurance Commissioners (NAIC) Model Regulation for Suitability in Annuity Transaction (NAIC Model Reg. 275, as revised December 2010). NAIC Model Reg. 275 requires insurers and producers to establish a system to supervise recommendations made in the marketing and sale of annuities, regardless of age (which standards are also consistent with the standards imposed by the Financial Industry Regulatory Authority (FINRA)). This proposed amended regulation is good for consumers and should not pose additional burdens on agents as they should already be doing this. The Delaware Code authority for this proposed amended regulation is 18 **Del.C.** §§311, 2304, and 2312; 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:

<http://www.delawareinsurance.gov/departments/documents/ProposedRegs/>

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amended regulation. Any written submission in response to this notice and relevant to the proposed amended regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Monday, October 3, 2016. 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

**\*Please Note:**

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

<http://regulations.delaware.gov/register/september2016/proposed/20 DE Reg 149RFA 09-01-16.pdf>

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

[1214 Senior Protection in Annuity Transactions](#)

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**OFFICE OF THE COMMISSIONER**

Statutory Authority: 18 Delaware Code, Sections 311, 333, 3371, and 3571S (18 **Del.C.** §§311, 333, 3371 & 3571S)

18 **DE Admin. Code** 1313

**PUBLIC NOTICE**

**1313 Arbitration of Health Insurance Disputes Between Carriers and Providers**

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed Department of Insurance **Regulation 1313** relating to **Arbitration of Health Insurance Disputes Between Carriers and Providers**. The docket number for this proposed regulation is 3253.

The proposed amended regulation amends the current regulation to make the current arbitration provisions applicable to arbitrations conducted pursuant to 18 **Del.C.** §§3371 and 3571S. The Delaware Code authority for this proposed regulation is 18 **Del.C.** §§311, 333, 3371, and 3571S; and 29 **Del.C.** Ch. 101.

The Department of Insurance does not plan to hold a public hearing on the proposed regulation. The proposed

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regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/>.

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed regulation. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Monday, October 3, 2016. Any such requests should be directed to:

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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)

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

<http://regulations.delaware.gov/register/september2016/proposed/20 DE Reg 150RFA 09-01-16.pdf>

## 1313 Arbitration of Health Insurance Disputes Between Carriers and Providers

### 1.0 Purpose and Statutory Authority

The purpose of this Regulation is to implement 18 **Del.C.** §§333, 3371 and 3571S, which requires health insurance carriers to submit to arbitration any dispute with a health care provider regarding reimbursement for an individual claim, procedure or service upon a request for arbitration by the health care provider. This Regulation is promulgated pursuant to 18 **Del.C.** §§311, 333, 3371 and ~~6408~~ 3571S and 29 **Del.C.** Ch. 101. This Regulation should not be construed to create any cause of action not otherwise existing at law.

### 2.0 Definitions

**"Carrier"** or **"insurance carrier"** means any entity that provides health insurance in this State. Carrier includes an insurance company, health service corporation, managed care organization and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation. Carrier also includes any third-party administrator or other entity that adjusts, administers or settles claims in connection with health insurance.

**"Department"** means the Delaware Insurance Department.

**"Health care provider"** or **"provider"** shall have the same meaning as defined at 18 **Del.C.** §333(a)(1).

**"Health care services"** means any services or supplies included in the furnishing to any individual of medical care, or hospitalization or incidental to the furnishing of such care or hospitalization, as well as the furnishing to any individual of any and all other services for the purpose of preventing, alleviating, curing or healing human illness, injury, disability or disease.

**"Health insurance"** means a plan or policy issued by a carrier for the payment for, provision of, or reimbursement for health care services.

**"Petition filing"** means either each patient or each procedure code, determined by the basis of the filing.

### 3.0 Notice

- 3.1 At the time a carrier provides to a health care provider written notice of a carrier's final decision regarding reimbursement for an individual claim, procedure or service, if the decision does not authorize reimbursement of the provider's charge in its entirety, the carrier shall give the provider

written notice of the provider's right to arbitration. Such notice may be separate from or a part of the written notice of the carrier's decision. Any such notice given to a provider shall, at a minimum, contain the following language:

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

- 3.2 Such notice is not required if the Commissioner has determined, pursuant to Section 6.0 of this regulation, that the insurance carrier has a program that is substantially similar to the arbitration procedure provided pursuant to 18 **Del.C.** §333 and this Regulation.

#### **4.0 Procedure**

##### **4.1 Petition for Arbitration**

- 4.1.1 A health care provider or his authorized representative may request review of a carrier's final reimbursement decision through arbitration by delivering a Petition for Arbitration and all supporting documentation to the Department so that it is received by the Department no later than 60 days after the receipt of the carrier's final reimbursement decision. The Department shall make available, by mail and on its web site, a standardized form for a Petition for Arbitration.
- 4.1.2 A health care provider or his authorized representative must deliver to the Department an original and one copy of the Petition for Arbitration.
- 4.1.3 At the time of delivering the Petition for Arbitration to the Department, a health care provider or his authorized representative must also:
- 4.1.3.1 send a copy of the Petition and supporting documentation to the carrier by certified mail, return receipt requested;
  - 4.1.3.2 deliver to the Department a Proof of Service confirming that a copy of the Petition has been sent to the carrier by certified mail, return receipt requested; and
  - 4.1.3.3 deliver to the Department a non-refundable filing fee. The fee shall be \$50 for claims of \$1,000 or less, in all other cases the fee shall be \$100.
- 4.1.4 The Department may refuse to accept any Petition that is not timely filed or does not otherwise meet the criteria for arbitration, including the disputes described in 18 **Del.C.** §333(j)(1) - (3).

##### **4.2 Response to Petition for Arbitration**

- 4.2.1 Within 20 days of receipt of the Petition, the carrier must deliver to the Department an original and one copy of a Response with supporting documents or other evidence attached.
- 4.2.2 At the time of delivering the Response to the Department, the carrier must also:
- 4.2.2.1 send a copy of the Response and supporting documentation to the health care provider or his authorized representative by first class U.S. mail, postage prepaid; and
  - 4.2.2.2 deliver to the Department a Proof of Service confirming that a copy of the Response was mailed to the health care provider or his authorized representative.
- 4.2.3 The Department may return any non-conforming Response to the carrier.
- 4.2.4 If the carrier fails to deliver a Response to the Department in a timely fashion, the Department, after verifying proper service, and with written notice to the parties, may assign the matter to the next scheduled Arbitrator for summary disposition.
- 4.2.4.1 The Arbitrator may determine the matter in the nature of a default judgment after establishing that the Petition is properly supported and was properly served on the carrier.

4.2.4.2 The Arbitrator may allow the re-opening of the matter to prevent a manifest injustice. A request for re-opening must be made no later than fifteen (15) days after notice of the default judgment.

**4.3 Summary Dismissal of Petition by the Arbitrator**

4.3.1 If the Arbitrator determines that the subject of the Petition is not appropriate for arbitration or is meritless on its face, the Arbitrator may summarily dismiss the Petition and provide notice of such dismissal to the parties.

**4.4 Appointment of Arbitrator**

4.4.1 Upon receipt of a petition filed in proper form, the Department shall assign an Arbitrator who shall schedule the matter for a hearing so that the Arbitrator can render a written decision within 45 days of the delivery to the Department of the Petition for Arbitration.

4.4.2 The Arbitrator shall be of suitable background and experience to decide the matter in dispute and shall not be affiliated with any of the parties or with the patient whose care is at issue in the dispute.

**4.5 Arbitration Hearing**

4.5.1 The Arbitrator shall give notice of the arbitration hearing date to the parties at least 10 days prior to the hearing. The parties are not required to appear and may rely on the papers delivered to the Department.

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

4.5.3 If the Arbitrator allows any brief testimony, the Arbitrator shall allow brief cross-examination or other response by the opposing party.

4.5.4 The Delaware Uniform Rules of Evidence will be used for general guidance but will not be strictly applied.

4.5.5 Because the testimony may involve evidence relating to personal health information that is confidential and protected by state or federal laws from public disclosure, the arbitration hearing shall be closed.

4.5.6 The Arbitrator may contact, with the parties' consent, individuals or entities identified in the papers by telephone in or outside of the parties' presence for information to resolve the matter.

4.5.7 The Arbitrator is to consider the matter based on the submissions of the parties and information otherwise obtained by the Arbitrator in accordance with this regulation. The Arbitrator shall not consider any matter not contained in the original or supplemental submissions of the parties that has not been provided to the opposing party with at least five days notice, except claims of a continuing nature that are set out in the filed papers.

**4.6 Arbitrator's Written Decision.**

4.6.1 The Arbitrator shall render his decision and mail a copy of the decision to the parties within 45 days of the filing of the Petition.

4.6.2 The Arbitrator's decision is binding upon the parties except as provided in 18 **Del.C.** §333(f).

**4.7 Arbitration Costs**

4.7.1 In arbitrations commenced pursuant to 18 **Del.C.** §§333, 3371 and 3571S, the Arbitrator shall allocate to each party a percentage of the costs of arbitration. The arbitrator may award to the health care provider the filing fee, if the health care provider should prevail.

**5.0 Carrier Recordkeeping Reporting Requirements**

5.1 A carrier shall maintain written or electronic records for five years, after completion of the arbitration process, documenting all Petitions for Arbitration including, at a minimum, the following information:

5.1.1 The date the petition was filed;

5.1.2 The name and identifying information of the health care provider on whose behalf the petition was filed;

- 5.1.3 A general description of the reason for the petition; and
- 5.1.4 The date and description of the Arbitration decision or other disposition of the petition.
- 5.2 A carrier shall file with its annual report to the Department the total number of Petitions for Arbitration filed, with a breakdown showing:
  - 5.2.1 The total number of final reimbursement decisions upheld through arbitration; and
  - 5.2.2 The total number of final reimbursement decisions reversed through arbitration.
- 5.3 A carrier shall make available to the Department upon request any of the information specified in the foregoing subsections 4.1 and 4.2.

## **6.0 Exemption from Arbitration Requirement**

Any carrier having a dispute resolution method established by contract with its providers which method the carrier believes to be substantially similar to the arbitration method described by this regulation may submit information regarding said method to the Insurance Commissioner for a determination as to whether the carrier should be exempted from the arbitration requirement of 18 Del.C. §333. The information submitted shall include a copy of the contractual language as well as any other information the carrier believes is relevant to the Insurance Commissioner's decision.

## **7.0 Non-Retaliation**

A carrier shall not terminate or in any way penalize a provider with whom it has a contractual relationship and who exercises the right to file a Petition for Arbitration solely on the basis of such filing.

## **8.0 Confidentiality of Health Information**

Nothing in this Regulation shall supersede any federal or state law or regulation governing the privacy of health information.

## **9.0 Additional Provisions for Arbitrations Conducted Pursuant to 18 Del.C. §§3371 and 3571S**

- 9.1 Arbitrations conducted pursuant to 18 Del.C. §§3371 and 3571S shall reflect the objectives of those statutory provisions of protecting consumers from surprise bills and not creating incentives for providers to be out-of-network.
  - 9.1.1 In addition to any other documentation required by this regulation, the parties to these arbitrations may present documentation or arguments during arbitration regarding how a particular award or request for reimbursement may incentivize providers to become out-of-network providers, and the Arbitrator shall consider such documentation and/or arguments in rendering a final decision.
  - 9.1.2 Notwithstanding anything herein to the contrary, an arbitration award in favor of a provider that exceeds the opposing carrier's in-network reimbursement rate shall not be considered prima facie evidence of an incentive for providers to be out-of-network.

## **910.0 Computation of Time**

In computing any period of time prescribed or allowed by this Regulation, the day of the act or event after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or Sunday, or other legal holiday, or other day on which the Department is closed, in which event the period shall run until the end of the next day on which the Department is open. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and other legal holidays shall be excluded in the computation. As used in this section, "legal holidays" shall be those days provided by statute or appointed by the Governor or the Chief Justice of the State of Delaware.

## **101.0 Effective Date**

This Regulation shall become effective 10 days after being published as a final regulation.

## OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311, 3371, and 3571S (18 **Del.C.** §§311, 3371 & 3571S)

### PUBLIC NOTICE

#### 1317 Network Disclosure and Transparency

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed Department of Insurance Regulation 1317 relating to Network Disclosure and Transparency. The docket number for this proposed regulation is 3252.

The proposed regulation establishes the standards for the form and content of network disclosures that are required to be made by out-of-network providers and the written consent that must be obtained by such a provider prior to balance billing an insured. The proposed regulation also requires health insurers to maintain and publish accurate, complete and up-to-date provider directories and to make those directories easily accessible to covered persons. The Delaware Code authority for this proposed regulation is 18 **Del.C.** §§3371 and 3571S; and 29 **Del.C.** Ch. 101.

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

<http://www.delawareinsurance.gov/departments/documents/ProposedRegs/>

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amended regulation. Any written submission in response to this notice and relevant to the proposed amended regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Monday, October 3, 2016. 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

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

<http://regulations.delaware.gov/register/september2016/proposed/20 DE Reg 155RFA 09-01-16.pdf>

#### 1317 Network Disclosure and Transparency

##### **1.0 Purpose and Statutory Authority**

The purpose of this Regulation is to implement 18 **Del.C.** §§3371 and 3571S, which require (1) health insurers to maintain accurate and complete provider directories, to update provider directories frequently, to audit the accuracy and completeness of such directories and make the directories easily accessible to covered persons in a variety of formats, and (2) facility-based providers and non-network providers to provide timely written out-of-network disclosures to patients that fully inform such patients of the potential that out-of-network providers may be rendering care and the associated costs thereof. This Regulation is promulgated pursuant to 18 **Del.C.** §§3371 and 3571S; and 29 **Del.C.** Ch. 101. This Regulation should not be construed to create any cause of action not otherwise existing at law.

##### **2.0 Definitions**

"**Facility-based provider**" means a provider who provides health care services to covered persons who are in an in-patient or ambulatory facility, including services such as pathology, anesthesiology, or



radiology.

"Health care provider" means any provider who provides health care services to covered person who are not in a facility-based setting, and includes a provider who provides health care services to a covered person based upon a referral from another provider without the knowledge of or input from the covered person.

### **3.0 Network Disclosure Requirements by Facility-Based Providers**

- 3.1 When a facility-based provider schedules a procedure, seeks prior authorization from a health insurer for the provision of non-emergency covered services to a covered person, or prior to the provision of any non-emergency covered services, the facility shall ensure that the covered person has received a timely, written out-of-network disclosure required by 18 Del.C. §§3371 or 3571S, as applicable, in the form attached hereto as Appendix 1 (the "facility-based provider disclosure"). The provision of the facility-based provider disclosure shall be considered timely if it is provided to the covered person at least three (3) business days prior to the scheduled date of service.
- 3.2 The facility-based provider shall, prior to the provision of services, obtain from the covered person a signed copy of the written consent form included with the facility-based provider disclosure. A copy of the completed form, including the signed written consent, should be given to the covered person, and the original placed in his or her medical file.
- 3.3 The facility-based provider disclosure shall not be required if the facility and all facility-based providers participate in the covered person's network.
- 3.4 If a covered person requests from an out-of-network provider an estimate of the range of charges for any out-of-network services for which the covered person may be responsible, the out-of-network provider shall provide the estimate in writing to the covered person within three business days of the request. Failure to provide such estimate within the required timeframe shall be considered a failure to comply with the disclosure requirements set forth in this Section 3.0 and shall result in the balance billing prohibition set forth in Section 5.0.

### **4.0 Network Disclosure Requirements by Health Care Providers'**

- 4.1 When a facility-based provider schedules a procedure, seeks prior authorization from a health insurer for the provision of non-emergency covered services to a covered person, or prior to the provision of any non-emergency covered services, the facility shall ensure that the covered person has received a timely, written out-of-network disclosure required by 18 Del.C. §§3371 or 3571S, as applicable, in the form attached hereto as Appendix 2 (the "health care provider disclosure"). The provision of the health care provider disclosure shall be considered timely if it is provided to the covered person at least three (3) business days prior to the scheduled date of service.
- 4.2 The health care provider shall, prior to the provision of services, obtain from the covered person a signed copy of the written consent form included with the health care provider disclosure. A copy of the completed form, including the signed written consent, should be given to the covered person, and the original placed in his or her medical file.
- 4.3 If a covered person requests from an out-of-network provider an estimate of the range of charges for any out-of-network services for which the covered person may be responsible, the out-of-network provider shall provide the estimate in writing to the covered person within three business days of the request. Failure to provide such estimate within the required timeframe shall be considered a failure to comply with the disclosure requirements set forth in this Section 4.0 and shall result in the balance billing prohibition set forth in Section 5.0.

### **5.0 Balance Billing Prohibition**

- 5.1 A facility-based provider may not balance bill a covered person for health care services not covered by an insured's health insurance contract if the facility-based provider fails to provide the facility-based provider disclosure or fails to obtain the signed copy of the written consent form included with the facility-based provider disclosure prior to rendering services.

5.2 A health care provider may not balance bill a covered person for health care services not covered by an insured's health insurance contract if the health care provider fails to provide the health care provider disclosure or fails to obtain the signed copy of the written consent form included with the health care provider disclosure prior to rendering services.

## **6.0 Provider Directory Requirements**

- 6.1 Network provider directories shall be updated pursuant to the requirements set forth in this section. A provider directory, whether in electronic or print format, shall accommodate the communication needs of individuals with disabilities, and include a link to or information regarding available assistance for persons with limited English proficiency.
- 6.2 An insurer shall post its current network provider directory or directories on its internet website and inform its covered persons of the availability of the network provider directory or directories through its coverage materials. The information provided on the website shall be updated weekly. All network provider directories shall be available online to both covered persons and consumers shopping for coverage without requirements to log on or enter a password or a policy number.
- 6.3 An insurer shall allow insureds, potential insureds, providers, and members of the public to request a printed copy of the network provider directory or directories by contacting the insurer through the insurer's toll free telephone number, electronically, or in writing. The availability of such printed materials must be posted on the insurer's website and noticed in its coverage materials. An insurer shall update its printed network provider directory or directories on a monthly basis.
- 6.4 All provider directories shall identify providers who are currently accepting new patients.
- 6.5 An insurer must process any claim for services provided by a provider whose status has changed from in-network to out-of-network as an in-network claim if the service was provided after the network change went into effect but before the change was posted as required under this regulation unless the insurer notified the covered person of the network change prior to the service being provided. This paragraph does not apply if the insurer is able to verify that the insurer's website displayed the correct provider network status at the time the service was provided.
- 6.6 An insurer shall make it clear in both its electronic and print directories which provider directory applies to which network plan, such as including the specific name of the network plan as marketed and issued in this State.
- 6.7 Insurers shall include in both their electronic and print directories a customer service email address and telephone number or electronic link that covered persons or the general public may use to notify the insurer of inaccurate provider directory information.
- 6.8 Insurers shall, either in its provider directory or other coverage materials, inform covered persons in writing of their right not to be balanced billed by a non-network provider if the non-network provider or the facility-based provider employing non-network facility-based providers fails to provide the covered person with the network disclosures required by this regulation.

## **7.0 Computation of Time**

In computing any period of time prescribed or allowed by this Regulation, the day of the act or event after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or Sunday, or other legal holiday, or other day on which the Department is closed, in which event the period shall run until the end of the next day on which the Department is open. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and other legal holidays shall be excluded in the computation. As used in this section, "legal holidays" shall be those days provided by statute or appointed by the Governor or the Chief Justice of the State of Delaware.

## **8.0 Effective Date**

This Regulation shall become effective ten days after being published as a final regulation.

# PROPOSED REGULATIONS

## APPENDIX 1 - FORM OF FACILITY-BASED PROVIDER DISCLOSURE

Network Disclosure Statement for [Insert Facility Name]

PLEASE RETURN THIS FORM TO [INSERT FACILITY NAME] ON OR PRIOR TO YOUR DATE OF SERVICE

This Facility-Based Provider Disclosure is designed to help ensure that patients receiving medical care from [Insert Facility Name] or any of its facility-based providers have the necessary information to make an informed decision about their medical benefits and care. In connection with your upcoming scheduled appointment, [Insert Facility Name] hereby provides the following disclosures:

1. [Insert Facility Name] [is/is not] a participating provider with your current health insurance place.
2. Certain facility-based providers may be called upon to render care to you during the course of treatment.
3. Those facility-based providers may not have a contract with your health insurer and are therefore considered to be out-of-network.
4. Services that are provided by an out-of-network provider will be provided on an out-of-network basis, **which may result in additional charges for which you may be responsible.** These charges are in addition to any coinsurance, deductibles and copayments applicable under your health insurance policy.
5. The following is a list of those facility-based providers that may be called upon to render care to you during the course of treatment. You should contact your health insurer to determine the network status of these facility-based providers:
  - a. [Include list of relevant facility-based providers, including contact information]
6. An estimate of the range of charges charged by an out-of-network provider for any out-of-network services for which you may be responsible may be requested from, and will be timely provided by, the out-of-network provider.
7. You may contact your health insurer for additional assistance or may rely on whatever other rights and remedies may be available under state or federal law.
8. A facility-based provider may not balance bill you for health care services not covered by your insurance policy if the facility-based provider fails to provide you with a copy of this Facility-Based Provider Disclosure and obtain your below-printed consent prior to rendering any services.

### PATIENT ACKNOWLEDGEMENT/CONSENT

I hereby acknowledge that a provider rendering services to me may be an out-of-network provider and that the services provided by that out-of-network provider may not be covered by my insurance policy. I further acknowledge that I have been informed of my right to request from the out-of-network providers an estimate of the range of charges for any out-of-network services for which I may be responsible. **I AFFIRMATIVELY ELECT TO OBTAIN THE SERVICES AND AGREE TO ACCEPT AND PAY THE CHARGES FOR THE OUT-OF-NETWORK SERVICES NOT COVERED BY MY INSURANCE POLICY.**

Name of Patient: \_\_\_\_\_

Signature of Patient or Authorized Representative: \_\_\_\_\_

Date: \_\_\_\_\_

## APPENDIX 2 - FORM OF HEALTH CARE PROVIDER DISCLOSURE

Network Disclosure Statement for [Health Care Provider]

PLEASE RETURN THIS FORM TO [HEALTH CARE PROVIDER] ON OR PRIOR TO YOUR DATE OF SERVICE

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This Health Care Provider Disclosure is designed to help ensure that patients receiving medical care from [Insert Health Care Provider Name] have the necessary information to make an informed decision about their medical benefits and care. In connection with your upcoming scheduled appointment, [Insert Health Care Provider Name] hereby provides the following disclosures:

1. [Insert Health Care Provider Name] is not a participating provider with your current health insurance place and, therefore, the services provided to you will be provided on an out-of-network basis.
2. **Services provided on an out-of-network basis may result in additional charges for which you may be responsible.** These charges are in addition to any coinsurance, deductibles and copayments applicable under your health insurance policy.
3. The following is a list of the range of charges charged by [Insert Health Care Provider Name] for any out-of-network services for which you may be responsible:
  - a. [Insert List of Range of Charges]
4. You may contact your health insurer for additional assistance or may rely on whatever other rights and remedies may be available under state or federal law.
5. [Insert Health Care Provider Name] may not balance bill you for health care services not covered by your insurance policy if [Insert Health Care Provider Name] fails to provide you with a copy of this Health Care Provider Disclosure and obtain your below-printed consent prior to rendering any services.

## PATIENT ACKNOWLEDGEMENT/CONSENT

I hereby acknowledge that [Insert Health Care Provider Name] may be an out-of-network provider and that the services provided by [Insert Health Care Provider Name] may not be covered by my insurance policy. I further acknowledge receipt of the range of charges for any out-of-network services for which I may be responsible. I **AFFIRMATIVELY ELECT TO OBTAIN THE SERVICES AND AGREE TO ACCEPT AND PAY THE CHARGES FOR THE OUT-OF-NETWORK SERVICES NOT COVERED BY MY INSURANCE POLICY.**

Name of Patient: \_\_\_\_\_

Signature of Patient or Authorized Representative: \_\_\_\_\_

Date: \_\_\_\_\_

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## **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

#### **PUBLIC NOTICE**

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

Notice is hereby given that the Board of Examiners of Private Investigators and Private Security Agencies, in accordance with 24 Del.C. Ch. 13 proposes to amend the following adopted rule in 24 DE Admin. Code 1300 Board of Examiners of Private Investigators and Private Security Agencies: Rule 1.0 - Firearms Policy - clarifies the waiver of the 40 hour course, changing of weapons and makes firearms licenses valid for only one year; and Rule 4.0 - Training Requirements - clarifying the issue of an individual that violates the academic integrity while testing for the training and re-structures the mandatory training. If you wish to view the complete Rules, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by October 3,

2016, to Delaware State Police, Professional Licensing, P.O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Wednesday, October 19, 2016, 10:00am, at the Tatnall Building, 150 Martin Luther King, Jr. Boulevard South, Room 112, Dover, DE.

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

<http://regulations.delaware.gov/register/september2016/proposed/20 DE Reg 159RFA 09-01-16.pdf>

<http://regulations.delaware.gov/register/september2016/proposed/20 DE Reg 159aRFA 09-01-16.pdf>

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

#### 1.0 Firearm's Policy

- 1.1 Rule Section 1.0 shall apply only to individuals licensed under 24 **Del.C.** Ch. 13, while such individuals are acting in the performance of their duties as an armed security guard or armed armored car guard.
- 1.2 No individual licensed under 24 **Del.C.** Ch. 13 shall carry a firearm unless that individual has first passed an approved firearms course of instruction and an initial qualification administered by an approved ~~certified~~ firearms instructor. The course of instruction shall include a minimum 40 hours of training. The Professional Licensing Section may waive the 40 hour training requirement depending upon the applicant's professional credentials, training and/or work experience (i.e. prior law enforcement). If waived, they must show proficiency and qualify a day and low light shoot with an approved firearms instructor. The initial qualification course ~~may~~ shall be used to fulfill one day and one low light requirement during the first year; however an additional day shoot must be completed at least 90 days after the date of initial certification, within the calendar year.
- 1.3 In order to open carry a firearm while in the performance of their duties, individuals licensed to carry a firearm under 24 **Del.C.** Ch. 13 must shoot a minimum of three qualifying shoots per calendar year, scheduled on at least two separate days, with a minimum 90 days between scheduled day shoots. Of these three, there will be one mandatory "low light" shoot ~~and~~ which may be combined with a day shoot. Two day shoots shall not be completed on the same date. These qualifying shoots will be administered by an approved firearms instructor.
  - 1.3.1 An individual not meeting the minimum qualifications set forth in ~~Rule subsection~~ subsection 1.3 may have their firearms license suspended until such time that they meet the minimum three qualifying shoots within the calendar year.
- 1.4 Only the handguns with the following calibers are permitted:
  - 1.4.1 9mm;
  - 1.4.2 .357;
  - 1.4.3 .38;
  - 1.4.4 .40;
  - 1.4.5 .45; or
  - 1.4.6 .357 SIG.
- 1.5 All weapons must be either a revolver or semi-automatic and must be double-action or double-action only and must be maintained to factory specifications.
- 1.6 Under no circumstances will anyone under this Rule Section be allowed to carry ~~any type of shotgun or rifle or~~ any type of weapon that is not described herein.
- 1.7 All individuals must meet the minimum qualifications set forth in subsection 1.3 with the same make/model/caliber of weapon that he/she will carry.
- 1.8 All ammunition must be factory fresh (no re-loads).
- 1.9 The minimum passing score is 80%.
- 1.10 All firearms licenses, armed security guard and armed armored car guard, are valid for a period of ~~five~~ one years, ~~armored car licenses are valid for a period of two years~~, subject to proof of compliance of

~~Rule Section 1.0~~ by submission of shoot certification or re-certification forms to the Professional Licensing Section, by January 15<sup>th</sup> of each year, for the previous calendar year.

1.11 If an individual requests to carry a different approved weapon, while in the performance of their duties as an armed security guard or armed armored car guard, other than the one on file with the Professional Licensing Section, he/she must have approval from the Director of Professional Licensing after submitting certification of a day and low light qualification with the new weapon. Upon approval, the individual can begin to carry the new weapon and the prior qualification of a different weapon will become void. Another day shoot with the new weapon must take place after 90 days, during the same calendar year. Individuals will only be authorized to carry the weapon they last qualified with and provided the shoot certifications to the Professional Licensing Section.

1.11.1 An individual may not change weapons after September 30th, of the current calendar year, without prior approval of the Director of Professional Licensing, after submitting a request to the Professional Licensing Section. If approval is granted, the individual must be certified and submit certification of a day and low light qualification to the Professional Licensing Section prior to carrying the weapon.

1.142 Firearms Instructors providing instruction under Rule Section 1.0;

1.142.1 Firearms instructors must be certified by the National Rifle Association, a law enforcement training and standards commission (i.e. C.O.P.T.), or another professional firearms training institution as a "certified firearms instructor". as a Law Enforcement Instructor or through a law enforcement training and standards commission (i.e. C.O.P.T.). Certification by another professional firearms training institution as a "certified law enforcement firearms Instructor" must be approved by the Board. Instructors approved by the Board through another professional firearms training institution will have reciprocity approval with any other Board under Department of Safety and Homeland Security, Division of State Police, Professional Licensing Section.

1.142.2 Firearms instructors are restricted to teaching and qualifying individuals according to the type of firearm matching their certification. (For example, a certified handgun instructor may only instruct and qualify individuals with the handgun.)

1.142.3 All firearms instructors must be approved by the Professional Licensing Section before they are authorized to instruct or qualify licensed individuals.

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

## **4.0 Training Requirements**

4.1 Each person licensed as a security guard under 24 Del.C. Ch. 13 shall ~~undertake a total of sixteen (16) hours of~~ successfully complete a training through a program approved by the Board, and any such additional training as the Board deems appropriate. Satisfactory completion of the ~~sixteen (16) hours of training program~~ shall be certified by mandatory testing with a passing grade of 75%. The test will be administered by ~~Delaware Technical Community College (DTCC)~~ a Board approved training/testing facility.

4.1.1 Individuals engaged in any violation of academic integrity which is validated by the testing facility will be required to repeat the testing process and incur any additional costs involved. If a subsequent violation of the academic standard is discovered and validated by the testing facility, the individual will be barred from taking any further tests and their license or application will be denied/suspended. No provision of this Section will exclude the individual from a due process hearing before the Board, if requested.

4.2 The required training shall include, but not be limited to, instruction in legal requirements and limitations, use of force, ethics, emergency services, diversity, communication, asset protection, and terrorism. The Board, in its discretion, may require such additional topics as it finds necessary.

4.3 The Professional Licensing Section shall have the authority to require regular reports on training from licensees and employers, and shall report to the Board on compliance with this regulation.

4.4 Training certifications shall be submitted with each new application or re-application and the training shall be completed no more than one year prior to submission of the application.

# PROPOSED REGULATIONS

- 4.5 Instructors for the ~~sixteen (16) hours~~ of training program must take a Train the Trainer session through the Professional Licensing Section. Updates to the training curriculum will be sent out as approved by the Board, and shall be implemented into the course of instruction. An instructors test shall be mandatory with a passing grade of 75%. If this test is failed, the instructor shall re-take the session and the test until receiving a passing grade before being approved.
- 4.5.1 Instructors that have previously taken the class and the test must take the instructors test with a passing grade to maintain their instructor approval.
- 4.5.2 The instructor certification approval may be suspended or revoked as deemed necessary by the Board.

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

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

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## DIVISION OF STATE POLICE

### 2400 BOARD OF EXAMINERS OF CONSTABLES

Statutory Authority: 10 Delaware Code, Chapter 27 (10 **Del.C.** Ch. 27)  
24 **DE Admin. Code** 2400

#### PUBLIC NOTICE

#### 2400 Board of Examiners of Constables

Notice is hereby given that the Board of Examiners of Constables, in accordance with 10 **Del.C.** Ch. 27 proposes to amend the following adopted rules in 24 **DE Admin. Code** 2400 Constables: Rule 1.0 – Licensing – clarifies who is exempt from the Academy and MMPI or PAI and who is not; Rule 5.0 – Firearms Policy – clarifies the waiver of the 40 hour course, changing of weapons and makes firearms licenses valid for only one year; 9.0 – Minimum Training Standards and In-Service Training – removed DTCC as the sole entity to teach the courses. If you wish to view the complete Rules, contact Ms. Peggy Anderson at 302-672-5304. Any persons wishing to present views may submit them in writing, by October 3, 2016, to Delaware State Police, Professional Licensing Section, P. O. Box 430, Dover, DE 19903. The Board will hold a meeting in December 2016, at the Tatnall Building, 150 Martin L. King, Jr. Boulevard South, Room 112, Dover, DE.

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

**<http://regulations.delaware.gov/register/september2016/proposed/20 DE Reg 162RFA 09-01-16.pdf>**

#### 2400 Board of Examiners of Constables

### 1.0 Licensing

- 1.1 All applicants must submit written testimony from five ~~(5)~~ reputable citizens attesting to good character, integrity, and competency.
- 1.2 All applicants shall be required to submit an application and their fingerprints to the Professional Licensing Section on the appropriate forms. The Director of the State Bureau of Identification shall set the processing fee.
- 1.3 A constable shall not be a member or employee of any Delaware law enforcement organization, as defined by the Council on Police Training or a member or employee of a law enforcement organization of any other state or federal jurisdiction.
- 1.4 All applicants who were not prior law enforcement, in any jurisdiction, must meet the minimum training standards as established by the Board. They must also submit to either the MMPI (Minnesota



Multiphasic Personality Inventory) or the PAI (Personal Assessment Inventory) evaluation performed by a licensed psychologist who has knowledge of the requirements of the duties of the Constable position that the applicant is psychologically fit to function as a competent Constable.

- 1.4.1 Applicants, who were previously commissioned as a constable approved by the Board, and have not been active within the last five years, will be considered for commissions on a case-by-case basis. Applicants, who were a prior constable approved by the Board, and have not been active for over five years, will be required to take an MMPI or the PAI, under the conditions noted in subsection 1.4, and pass a comprehensive, multiple-choice examination of the minimum standards established by the Board to demonstrate their knowledge of the duties of a Constable. Any failed test may be taken again within two weeks of the first test. A second failed test will require the applicant to take the full Academy course.
- 1.5 Applicants, who were prior law enforcement officers in any jurisdiction in the State of Delaware, and have been away from active law enforcement under five years, will be considered for commissions on a case-by-case basis. Applicants who were prior law enforcement outside the State of Delaware will be required to take, and pass, a comprehensive, multiple-choice examination of the minimum standards established by the Board to demonstrate their knowledge of the duties of a Constable. ~~If the test is failed twice, the applicant will be required to take the full training course.~~ Any failed test may be taken again within two weeks of the first test. A second failed test will require the applicant to take the full Academy course.
- 1.6 Applicants, who have been law enforcement officers in the past, within or outside the State of Delaware, but have been away from active law enforcement for more than five years, will be required to take an MMPI (~~Minnesota Multiphasic Personality Inventory~~) or the PAI (~~Personal Assessment Inventory~~), under the conditions noted in Rule subsection 1.4, and pass a comprehensive, multiple-choice examination of the minimum standards established by the Board to demonstrate their knowledge of the duties of a Constable. ~~If the test is failed twice, the applicant will be required to take the full training course.~~ Any failed test may be taken again within two weeks of the first test. A second failed test will require the applicant to take the full Academy course.
- 1.7 All prior law enforcement applicants must take an approved Constable Orientation Overview session, approved and administered by a Board approved facility.
- 1.78 Applicants who are retired military law enforcement, corrections officers, or probation & parole shall take the ~~class~~ Academy and submit to the MMPI/ or PAI.
- 1.78.1 At the discretion of the Board, for good cause shown, the ~~class~~ Academy may be waived.
- 1.89 If an applicant wishes to work for more than one agency, they must submit an application and be approved by the Board for each agency. All other requirements do not need to be submitted as they are already on file in the Professional Licensing Section.
- 1.910 All applicants seeking a new commission as a constable shall be required to submit a \$200.00 licensing fee.
- 1.101 All applicants seeking a commission renewal as a constable shall be required to submit a \$100.00 renewal licensing fee and shall accompany each re-application thereafter.
- 1.142 All commissions will expire on December 31st, two years from the year the commission was first issued. Any commissions needing to be adjusted will be charged a pro-rated fee.

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

## **5.0 Firearms Policy**

- 5.1 Section 5.0 shall apply only to individuals licensed under 10 **Del.C.** Ch. 27, while such individuals are acting in the performance of their duties as a constable.
- 5.2 No individual licensed under 10 **Del.C.** Ch. 27 shall carry a firearm unless ~~the~~ that individual has first passed an approved firearms course of instruction and an initial qualification administered by an approved ~~certified~~ firearms instructor. The course of instruction shall include a minimum 40 hours of training. The Professional Licensing Section may waive the 40 hour training requirement depending upon the applicant's professional credentials, training and/or work experience (i.e. prior law

## PROPOSED REGULATIONS

enforcement). If waived, they must show proficiency and qualify a day and low light shoot with an approved firearms instructor. The initial qualification course ~~may~~ shall be used to fulfill one day and one low light requirement during the first year; however an additional day shoot must be completed at least 90 days after the date of initial certification, within the calendar year.

- 5.3 In order to open carry a firearm while in the performance of their duties, individuals licensed to carry a firearm under 10 Del.C. Ch. 27 must shoot a minimum of three qualifying shoots per calendar year, scheduled on at least two separate days, with a minimum 90 days between scheduled day shoots. Of these three, there will be one mandatory "low light" shoot ~~and~~ which may be combined with a day shoot. Two day shoots shall not be completed on the same date. These qualifying shoots will be administered by an approved firearms instructor.
- 5.3.1 An individual not meeting the minimum qualifications set forth in subsection 5.3 may ~~be suspended from carrying a firearm while acting in the performance of their duties as a constable~~ have their firearms license suspended until such time that they meet the minimum three qualifying shoots within the calendar year.
- 5.4 Only the handguns with the following calibers are permitted:
- 5.4.1 9mm;
- 5.4.2 .357;
- 5.4.3 .38;
- 5.4.4 .40;
- 5.4.5 .45; or
- 5.4.6 .357 SIG.
- 5.5 All weapons must be either a revolver or semi-automatic and must be double-action or double-action only and must be maintained to factory specifications.
- 5.6 Under no circumstances will anyone under this Rule Section be allowed to carry ~~any type of shotgun or rifle or~~ any type of weapon that is not described herein.
- 5.7 All individuals must meet the minimum qualifications set forth in subsection 5.3 with the same make/model/caliber of weapon that he/she will carry.
- 5.8 All ammunition must be factory fresh (no re-loads).
- 5.9 The minimum passing score is 80%.
- 5.10 ~~All licenses/commissions are valid for a period of two years~~ firearms licenses are valid for a period of one year, subject to proof of compliance of Section 5.0 by submission of shoot certification or re-certification forms to the Professional Licensing Section, by January 15th of each year for the previous calendar year.
- 5.11 If an individual requests to carry a different approved weapon, while in the performance of their duties as a constable, other than the one on file with the Professional Licensing Section, he/she must have approval from the Director of Professional Licensing after submitting certification of a day and low light qualification with the new weapon. Upon approval, the individual can begin to carry the new weapon and the prior qualification of a different weapon will become void. Another day shoot with the new weapon must take place after 90 days, during the same calendar year. Individuals will only be authorized to carry the weapon they last qualified with and provided the shoot certifications to the Professional License Section.
- 5.11.1 An individual may not change weapons after September 30<sup>th</sup>, of the current calendar year, without prior approval of the Director of Professional Licensing, after submitting a request to the Professional Licensing Section. If approval is granted, the individual must be certified and submit certification of a day and lowlight qualification to the Professional Licensing Section prior to carrying the weapon.
- 5.11.2 Firearms Instructors providing instruction under Section 5.0:
- 5.11.4 ~~Firearms instructors must be certified by the National Rifle Association, a law enforcement training and standards commission (i.e. C.O.P.T.), or another professional firearms training institution as a "certified firearms instructor".~~

- 5.12.1 Firearms instructors must be certified by the National Rifle Association as a Law Enforcement Instructor or through a law enforcement training and standards commission (i.e. C.O.P.T.). Certification by another professional firearms training institution as a “certified law enforcement firearms Instructor” must be approved by the Board. Instructors approved by the Board through another professional firearms training institution will have reciprocity approval with any other Board under Department of Safety and Homeland Security, Division of State Police, Professional Licensing Section.
- 5.142.2 Firearms instructors are restricted to teaching and qualifying individuals according to the type of firearm matching their certification. (For example, a certified handgun instructor may only instruct and qualify individuals with the handgun.)
- 5.142.3 All firearms instructors must be approved by the Professional Licensing Section before they are authorized to instruct or qualify ~~licensed~~/commissioned individuals.

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

## **9.0 Minimum Training Standards and In-Service Training**

- 9.1 The Constable Academy, administered through ~~Delaware Technical Community College (DTCC) Workforce Development and Community Education (WDCE)~~, a Board approved facility, shall instruct applicants in the minimum training standards established by the Board. The Academy shall be a minimum of 180.5 hours and include, but is not limited to the following courses:
- Introduction to law enforcement and constables; constitution and bill of rights; other police agencies/fire departments/ambulance jurisdictions; basic defensive driving; traffic investigations; criminal investigations; sex crimes; criminal code; handling person with disabilities; interventions with people suffering with mental health and substance abuse; civil disobedience; labor disputes (crowd control); active shooter; courtroom procedure and demeanor; cultural diversity and community relations; domestic violence; basic first aid; CPR; AED; NIMS 700; ICS 100; information systems – communications, report writing, DELJIS; interview/interrogation techniques; manual traffic control; juvenile procedures; laws of evidence and search and seizure; laws of arrest; police communication and crisis intervention; police discipline and ethics; baton/nightstick/pr24/chemical spray/handcuffing; officer survival/defensive techniques; patrol procedures; drug identification and controlled substances; canine; and 4<sup>th</sup> amendment.
- 9.2 Applicants attending the Academy must take and pass the test with a minimum score of 75%. Any failed test may be taken again within two weeks of the first test. A second failed test will require the applicant to take the Academy again.
- 9.3 In-service training shall be completed every year through a Board approved facility. Odd years will be eight hours of classroom ~~training through DTCC/WDCE instruction~~. Even years will be done by completing an on-line modular and test ~~through DTCC/WDCE~~.

***(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:**

**2400 Board of Examiners of Constables**

# PROPOSED REGULATIONS

## DIVISION OF STATE POLICE

### 5500 BAIL ENFORCEMENT AGENTS

Statutory Authority: 24 Delaware Code, Section 5504(e) (24 **Del.C.** §5504(e))  
24 **DE Admin. Code** 5500

#### PUBLIC NOTICE

#### 5500 Bail Enforcement Agents

Notice is hereby given that the Board of Examiners of Bail Enforcement Agents, in accordance with 24 **Del.C.** Ch. 55 proposes to amend the following adopted rule in 24 **DE Admin. Code** 5500 Bail Enforcement Agents: Rule 4.0 – Firearms Policy – clarifies the waiver of the 40 hour course, changing of weapons and makes firearms licenses valid for only one year. If you wish to view the complete Rule, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by October 3, 2016, to Delaware State Police, Professional Licensing Section, P.O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Tuesday, November 15, 2016, 10:00am, at the Tatnall Building, 150 Martin Luther King, Jr. Boulevard South, Room 112, Dover, DE.

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

<http://regulations.delaware.gov/register/september2016/proposed/20 DE Reg 166RFA 09-01-16.pdf>

#### 5500 Bail Enforcement Agents (Break in Continuity of Sections)

#### 4.0 Firearms Policy

- 4.1 Section 4.0 shall apply only to individuals licensed under 24 **Del.C.** Ch. 55, while such individuals are acting in the performance of their duties as a BEA.
- 4.2 No individual licensed under 24 **Del.C.** Ch. 55 shall carry a firearm unless ~~the~~ that individual has first passed an approved firearms course of instruction and an initial qualification administered by an approved ~~certified~~ firearms instructor. The course of instruction shall include a minimum 40 hours of training. The Professional Licensing Section may waive the 40 hour training requirement depending upon the applicant's professional credentials, training and/or work experience (i.e. prior law enforcement). If waived, they must show proficiency and qualify a day and low light shoot with an approved firearms instructor. The initial qualification course ~~may~~ shall be used to fulfill one day and one low light requirement during the first year; however an additional day shoot must be completed at least 90 days after the date of initial certification, within the calendar year.
- 4.3 In order to open carry a firearm while in the performance of their duties, individuals licensed to carry a firearm under 24 **Del.C.** Ch. 55 must shoot a minimum of three qualifying shoots per calendar year, scheduled on at least two separate days, with a minimum 90 days between scheduled day shoots. Of these three, there will be one mandatory "low light" shoot ~~and~~ which may be combined with a day shoot. Two day shoots shall not be completed on the same date. These qualifying shoots will be administered by an approved firearms instructor.
- 4.3.1 An individual not meeting the minimum qualifications set forth in subsection 4.3 may ~~be suspended from carrying a firearm while acting in the performance of their duties as a BEA~~ have their firearms license suspended until such time that they meet the minimum three qualifying shoots within the calendar year.
- 4.4 Only the handguns with the following calibers are permitted:
- 4.4.1 9mm;
- 4.4.2 .357;
- 4.4.3 .38;

- 4.4.4 .40;
- 4.4.5 .45; or
- 4.4.6 .357 SIG.
- 4.5 All weapons must be either a revolver or semi-automatic and must be double-action or double-action only and must be maintained to factory specifications.
- 4.6 Under no circumstances will anyone under this Section be allowed to carry ~~any type of shotgun or rifle~~ or any type of weapon that is not described herein.
- 4.7 All individuals must meet the minimum qualifications set forth in subsection 4.3 with the same make/model/caliber of weapon that he/she will carry.
- 4.8 All ammunition must be factory fresh (no re-loads).
- 4.9 The minimum passing score is 80%.
- 4.10 All firearms licenses are valid for a period of ~~four years~~ one year, subject to proof of compliance of Section 4.0 by submission of shoot certification or re-certification forms to the Professional Licensing Section, by January 15th of each year for the previous calendar year.
- 4.11 If an individual requests to carry a different approved weapon, while in the performance of their duties as a BEA, other than the one on file with the Professional Licensing Section, he/she must have approval from the Director of Professional Licensing after submitting certification of a day and low light qualification with the new weapon. Upon approval, the individual can begin to carry the new weapon and the prior qualification of a different weapon will become void. Another day shoot with the new weapon must take place after 90 days, during the same calendar year. Individuals will only be authorized to carry the weapon they last qualified with and provided the shoot certifications to the Professional Licensing Section.
- 4.11.1 An individual may not change weapons after September 30<sup>th</sup>, of the current calendar year, without prior approval of the Director of Professional Licensing, after submitting a request to the Professional Licensing Section. If approval is granted, the individual must be certified and submit certification of a day and low light qualification to the Professional Licensing Section prior to carrying the weapon.
- 4.11.2 Firearms instructors providing instruction under Section 4.0:
- ~~4.11.1 Firearms instructors must be certified by the National Rifle Association, a law enforcement training and standards commission (i.e. C.O.P.T.), or another professional firearms training institution as a "certified firearms instructor".~~
- 4.12.1 Firearms instructors must be certified by the National Rifle Association as a Law Enforcement Instructor or through a law enforcement training and standards commission (i.e. C.O.P.T.). Certification by another professional firearms training institution as a "certified law enforcement firearms Instructor" must be approved by the Board. Instructors approved by the Board through another professional firearms training institution will have reciprocity approval with any other Board under Department of Safety and Homeland Security, Division of State Police, Professional Licensing Section.
- 4.11.2.2 Firearms instructors are restricted to teaching and qualifying individuals according to the type of firearm matching their certification. (For example, a certified handgun instructor may only instruct and qualify individuals with the handgun.)
- 4.11.2.3 All firearms instructors must be approved by the Professional Licensing Section before they are authorized to instruct or qualify licensed individuals.

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

**5500 Bail Enforcement Agents**

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# PROPOSED REGULATIONS

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**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**3300 BOARD OF VETERINARY MEDICINE**

Statutory Authority: 24 Delaware Code, Section 3306(a)(1) (24 **Del.C.** §3306(a)(1))  
24 **DE Admin. Code** 3300

**PUBLIC NOTICE**

**3300 Board of Veterinary Medicine**

Pursuant to 24 **Del.C.** §3306(a)(1), the Board of Veterinary Medicine ("Board") has proposed revisions to its rules and regulations.

A public hearing will be held on October 11, 2016 at 1:00 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Veterinary Medicine, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be October 26, 2016, which is 15 days following the public hearing. The Board will deliberate on all of the public comments at its next regularly scheduled meeting, at which time the Board will decide whether to adopt the revisions as proposed.

The Board proposes a new Section 2.0 to address euthanasia of animals held in shelter, as set forth in 16 **Del.C.** §3004F. Other Sections are revised accordingly to accommodate the specific legal requirements pertaining to shelter animals. The Board also proposes requiring proof of continuing education hours for individuals who do not apply for licensure within the two-year period following examination. In addition, various Sections are amended to clarify the requirements for license renewal, reinstatement and inactive status. Typographical errors are corrected and the rules and regulations are re-numbered to accommodate the new Section 2.0.

A public hearing on proposed revisions was originally scheduled for April 12, 2016. However, prior to the hearing, the Board decided to revise the rules and regulations further. The Board therefore withdrew the rules and regulations published in the March 1, 2016 *Register of Regulations*, Volume 19, Issue 9.

The revised rules and regulations were published in the May 1, 2016 *Register of Regulations*, Volume 19, Issue 11. However, due to formatting errors in the marked-up submission, the rules and regulations will be published again with an October 11, 2016 hearing. There are no new revisions, other than correction of the formatting errors noted herein.

**\*Please Note:**

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

**<http://regulations.delaware.gov/register/september2016/proposed/20 DE Reg 168RFA 09-01-16.pdf>**

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

**3300 Board of Veterinary Medicine**

## DIVISION OF PROFESSIONAL REGULATION

### 3900 BOARD OF CLINICAL SOCIAL WORK EXAMINERS

Statutory Authority: 24 Delaware Code, Section 3906(a)(1), (24 Del.C. §3906(a)(1))  
24 DE Admin. Code 3900

#### PUBLIC NOTICE

#### 3900 Board of Clinical Social Work Examiners

Pursuant to 24 Del.C. §3906(a)(1), the Board of Clinical Social Work Examiners ("Board") proposes revisions to its rules and regulations.

On May 1, 2016, proposed revisions to the rules and regulations were published in the Delaware *Register of Regulations*, Vol. 19, Issue 11. Specifically, Subsection 9.3.9, pertaining to computer and internet technology, was stricken, and a new Section 10.0 was added to implement standards for the practice of clinical social work through telehealth. New Subsections 7.3.4 and 7.3.5 were added to clarify the continuing education audit process, including hearings and disciplinary sanctions. Finally, certain technical revisions addressed inconsistencies in the regulations.

A public hearing was held on June 20, 2016, before the Board, and the public comment period for written comment was held open for another 15 days. The Board deliberated on the evidence submitted at its meeting on July 18, 2016. Based on those deliberations, the Board made substantive revisions to the proposed rules and regulations. Therefore, the Board strikes the rules and regulations as proposed in the May 1, 2016 *Register of Regulations* and proposes revised rules and regulations attached hereto as Exhibit A.

A public hearing will be held on October 17, 2016 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Clinical Social Work Examiners, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address.

In accordance with 29 Del.C. §10118(a), the final date to receive written comments will be November 1, 2016, which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its next regularly scheduled meeting, at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to the public comment.

#### Nature of the Proceedings

A public hearing was held before the Board on June 20, 2016 in the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public were invited to offer comments on the proposed amendments to the rules and regulations. Members of the public were also invited to submit written comments. In accordance with 29 Del.C. §10118(a), the written public comment period was held open until July 5, 2016, which was 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on July 18, 2016.

#### Summary of the Evidence

At the June 20, 2016 hearing, the following exhibits were made part of the record:

**Exhibit 1:** *News Journal* Affidavit of Publication.

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

**Exhibit 3:** June 6, 2016 letter from Janet F. Teixeira, LCSW, Executive Director, Cancer Care Connection.

Ms. Teixeira stated that the proposed telehealth regulations would create a barrier to delivery of services to cancer patients who are unable to access services in person. Ms. Teixeira suggested an amendment to Section 10.1 to specify that telehealth is not intended to be the primary means of providing services *unless the patient's condition or situation is such that services could not otherwise be obtained*. She also suggested revisions to Section 10.12 to state that the licensee shall not use telehealth with a client for more than 60 days, *unless the patient's condition or situation requires more than 60 days of treatment*. Finally, Ms. Teixeira requested that the last



sentence of Section 10.12, requiring all evaluations to be face to face, be stricken.

**Exhibit 4:** June 8, 2016 letter from Dr. Marlene A. Saunders, Executive Director, NASW, Delaware Chapter.

Dr. Saunders objected to Section 10.6, requiring that a client receiving telehealth services be at least 18, and Section 10.12, pertaining to the 60-day limitation. Dr. Saunders indicated that the Sections in question would limit access to services and were not consistent with requirements for other mental health professions.

**Exhibit 5:** June 15, 2016 letter from Bruce Kelsey, LCSW, Executive Director of Delaware Guidance Services.

Mr. Kelsey expressed concern that the proposed regulations would be overly restrictive for social work clinicians. Mr. Kelsey felt that no restrictions for clients under 18 are needed. He also objected to the time limitations set forth in Section 10.12. Finally, he noted that none of the other behavioral health professions are restricting the use of telehealth as proposed by the Board.

**Exhibit 6:** Undated comments from Dale Perkel, LCSW, Director of Social Work, and Michael Kurliand, MS RN, Telehealth Program Director, both of Nemours/Alfred I. duPont Hospital for Children.

These commenters requested that the Board remove Sections 10.6 and 10.12 from the proposed regulations. As for Section 10.6, there was no clinical or policy reason for excluding children from receiving services through telehealth. With respect to Section 10.12, imposing the 60-day limitation, the commenters stated, again, that there was no clinical or policy reason for this limitation. The commenters also noted the need to expand access to services in certain areas in Delaware. In addition, testimony was presented, as follows:

The first speaker was Ms. Dale Perkel, Director of Social Work at the Alfred I. duPont Hospital for Children. Ms. Perkel stated that she had concerns with Section 10.6, which prohibits children from receiving services through telehealth. This section is unnecessarily restrictive and Ms. Perkel asked that it be removed. Ms. Perkel also voiced concerns about the restrictions in Section 10.12, which prohibits social workers from using telehealth services beyond 60 days and restricts evaluating, reevaluating, and discharging through telehealth services. Ms. Perkel stated that she could see no real clinical or policy reasons for these restrictions. There is a lack of behavioral health services in Delaware especially in the Sussex County area. Ms. Perkel urged the Board to remove sections 10.6 and 10.12, as these are too restrictive and will not help the children of Delaware, and issue the remaining regulations, which will provide for quality, confidentiality and the responsible use of technologies that can enhance the lives of Delawareans, including many children.

The next speaker was Ms. Janet Teixeira, Executive Director of Cancer Care Connection. Her concerns were very similar to those of Ms. Dale Perkel with respect to cancer patients and their care givers. Cancer Care Connection provides services to cancer patients in person and by phone. The regulations that present barriers are Section 10.1, which will prohibit telehealth from being the primary means of providing services, and Section 10.12, in that the 60-day limit is very restrictive. These sections of the regulations could reduce the role of licensed clinical social workers in bringing behavioral health to where the state wants it to be.

The next speaker was Lanae Ampersand, provider in the local community and a licensed clinical social worker. Ms. Ampersand agreed with what Ms. Perkel and Ms. Teixeira said. Her main concern was Section 10.6, requiring the client to be 18 or older. Ms. Ampersand stated that telehealth is an advancement in treatment worldwide and she would hate to see Delaware youth being left behind. Ms. Ampersand also asked that Section 10.6 be changed so that it is not so restrictive.

The next speaker was Michael Kurliand, Director of Telehealth at Nemours/Alfred I. duPont Hospital for Children. Mr. Kurliand wanted to echo the comments made so far and give a snapshot of the hospital's experience with the use of telehealth. He has noticed that some specialties, whether at Nemours or elsewhere, have received more referrals for people that otherwise would not reach out to a professional for help.

The final speaker was Dr. Marlene Saunders, Executive Director of NASW-DE. Dr. Saunders stated that she was present on behalf of Norwood Coleman, President of NASW-DE, with comments which he wanted to share. Dr. Saunders stated that the Board's proposed telehealth regulations, namely Sections 10.6 and 10.12, limit the practice of social work, once again, placing the profession in a secondary position to disciplines such as medicine, psychology, and nursing which do not place age restrictions on the use of telehealth. Telehealth responds to inadequate access to services for some populations, and is an effective means for providing services to persons who do not go to an office for services.

Dr. Saunders continued that the proposed regulations prevent social workers from engaging young people who are motivated for services but live in challenging caregiver situations where the caregiver has limited motivation and/or appreciation for the experience and opportunity for treatment. Section 10.6 denies minors access to services through legal means. Based on the provision that youth are able to consent for clinical services from the age of 14 into adulthood without parental consent, why does the Board believe that telehealth regulations should

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restrict the use of telehealth to youth via electronic services? NASW-DE conducted a survey and most participants felt that the age for individuals using telehealth should start at 14 years of age.

No written comments were received during the 15-day window for submission of additional written comments, as required by 29 **Del.C.** §10118(a).

## Findings and Conclusions

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

Pursuant to 24 **Del.C.** §3906(a)(1), the Board has statutory authority to promulgate rules and regulations. The proposed changes seek to establish standards for the delivery of social work services by telehealth.

During deliberations, the Board considered the testimony of witnesses and the documents marked as exhibits. The Board addressed the concerns presented through this evidence. The Board agrees with the commenters that certain provisions in the proposed regulations are overly restrictive and will unnecessarily limit the public's access to social work services. The decision to provide services through telehealth must be left to the professional's expertise and judgment on a case-by-case basis as set forth in Section 10.5. Therefore, the Board strikes the sentence "Telehealth is not intended to be the primary means of providing services to a client" in Section 10.1 and Sections 10.6 and 10.12 in their entirety. The Board concludes that the other proposed changes are in the best interest of the public and also serve to update and clarify the regulations.

The amended proposed rules and regulations are attached hereto as Exhibit A.

**\*Please Note:**

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

<http://regulations.delaware.gov/register/september2016/proposed/20 DE Reg 169RFA 09-01-16.pdf>

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

**3900 Board of Clinical Social Work Examiners**

## Symbol Key

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. **Bracketed Bold language**] indicates text added at the time the final order was issued. ~~**Bracketed bold stricken through**~~] indicates language deleted at the time the final order was issued.

## Final Regulations

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

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

## DEPARTMENT OF EDUCATION

## OFFICE OF THE SECRETARY

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

## REGULATORY IMPLEMENTING ORDER

**925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs****I. Summary of the Evidence and Information Submitted**

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs. This regulation is being amended to align with changes made to 14 **Del.C.** Ch. 31, which includes progress on transition goals, conduct of Individualized Education Program (IEP) meetings, notice of such meetings and parent input prior to IEP meetings. The amendments also include language that the Department of Education, in conjunction with the Department of Justice, will annually survey a random and representative sample of parents and their children who have IEPs with respect to their satisfaction with the IEP process. Also, this regulation is being amended to change the terminology of "Emotional Disturbance" to also be known as "Emotional Disability" within the regulation, as these terms are used interchangeably.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on May 1, 2016 and June 1, 2016, in the form hereto attached as *Exhibit "A"*. Concerns were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities regarding when and how procedural safeguards are provided to parents. The Department acknowledges that there may be confusion regarding the notice of meeting (a.k.a. invitation to meeting) (925.22) and prior written notice (926.3.0). As an attempt to clarify the notice of meeting, the Department revised the language in 22.2.3 to note that "a summary of the procedural safeguards shall be included with the notice of meeting and a full copy of the procedural safeguards

shall be provided to parents at the IEP meeting.”

## II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs to align it with changes made to 14 **Del.C.** Ch. 31 regarding progress on transition goals, conduct and notice of IEP meetings, as well as parent input prior to IEP meetings. The amendments also include language that the Department of Education, in conjunction with the Department of Justice, will annually survey a random and representative sample of parents and their children who have IEPs with respect to their satisfaction with the IEP process. Also, this regulation is being amended to change the terminology of “Emotional Disturbance” to also be known as “Emotional Disability” within the regulation, as these terms are used interchangeably.

## III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs.

Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs attached hereto as *Exhibit “B”* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. Text and Citation

The text of 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs amended hereby shall be in the form attached hereto as *Exhibit “B”*, and said regulation shall be cited as 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs in the *Administrative Code of Regulations* for the Department of Education.

## V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on August 18, 2016. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 18<sup>th</sup> day of August 2016.

### Department of Education

Steven H. Godowsky, Secretary of Education

Approved this 18<sup>th</sup> day of August 2016

### State Board of Education

Teri Quinn Gray, Ph.D., President

Nina L. Bunting, Vice President

Jorge L. Melendez

Gregory B. Coverdale, Jr.

G. Patrick Heffernan

Barbara B. Rutt

Terry M. Whittaker, Ed.D.

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

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

*(Break in Continuity of Sections)*

**22.0 Parent Participation**

*(Break in Continuity Within Section)*

22.2 Information provided to parents: The notice required under 22.1 shall:

*(Break in Continuity Within Section)*

22.2.3 A ~~[full-copy summary]~~ of the procedural safeguards ~~[under state and federal law and regulations]~~ shall be ~~offered~~ included with the notice of meeting and a full copy of the procedural safeguards shall be provided] to the parents at the IEP meeting.

*(Break in Continuity Within Section)*

\*Please note that no additional changes were made to the regulation as originally proposed and published in the May 2016 issue of the *Register* at page 969 (19 DE Reg. 969). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**925 Children with Disabilities Subpart D**

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**PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))  
14 DE Admin. Code 1506

**ORDER**
**1506 Emergency Certificate**
**I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1506 Emergency Certificate. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1305(a). It is necessary to amend this regulation in order to clarify the application process and to set forth appropriate timelines. This regulation sets forth the requirements for an Emergency Certificate.

Notice of the proposed amendment of the regulation was published in the Delaware *Register of Regulations* on March 1, 2016. The notice received written comments from the State Council for Persons with Disabilities. The suggestions that were made were considered by the Professional Standards Board, but no changes were made at this time.

**II. FINDINGS OF FACTS**

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute.

**III. DECISION TO AMEND THE REGULATION**

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1305(a), the regulation attached hereto as Exhibit "A" is hereby amended. Pursuant to the provision of 14 **Del.C.** §1305(a), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

#### IV. TEXT AND CITATION

The text of the regulation amended shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1506 of the Administrative Code of Regulations of the Professional Standards Board.

#### V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

#### APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 7<sup>th</sup> DAY OF APRIL, 2016

Byron Murphy, Chair	Darren Guido (absent)
Diane Albanese	David Kohan, Vice Chair
Amber Augustus	Rosaria Macera
Linda Brown (absent)	Darlene O'Neill (absent)
Jennifer Burton	Mary Pinkston
Stephanie DeWitt	Stephanie Smith
Nelia Dolan	Sue Smith
Laura Glass	

**IT IS SO ORDERED** this 21<sup>st</sup> day of April, 2016.

#### Department of Education

Steven H. Godowsky, Secretary of Education

**Approved this 21<sup>st</sup> day of April, 2016.**

#### State Board of Education

Teri Quinn Gray, Ph.D., President	G. Patrick Heffernan (absent)
Jorge L. Melendez, Vice President	Barbara B. Rutt (absent)
Nina Lou Bunting	Terry M. Whittaker, Ed.D.
Gregory B. Coverdale	

**\*Please note that no changes were made to the regulation as originally proposed and published in the March 2016 issue of the *Register* at page 812 (19 DE Reg. 812). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1506 Emergency Certificate**

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# FINAL REGULATIONS

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)(u)(1)) (16 Del.C. §122(3)(u)(1))

### ORDER

#### 4458A Cottage Food Regulations

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“DHSS”) initiated proceedings to adopt the State of Delaware Regulations Governing Cottage Food Industries. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Del.C. Ch. 101 and authority as prescribed by 16 Del.C. §122 (u)(1).

On May 1, 2016 (Volume 19, Issue 11), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 Del.C. §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by June 9, 2016, or be presented at a public hearing on May 25, 2016, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

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

#### SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Cottage Food Industries were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*. Written comments were received on the proposed regulations during the public comment period (May 1, 2016 through June 9, 2016).

Entities offering written comments include:

- Craig Brady, Delaware Farmer

#### Comments from Craig Brady, Delaware Farmer

I have reviewed the Proposed Cottage Food Regulations, established Department of Health and Department of Agriculture regulations pertaining to food industry regulations. I believe current regulations for commercial and farm kitchens are sufficient and do protect the public. The proposed Cottage Food Regulations will create more adverse effects on established commercial and On-Farm Home Food Process Program and will increase risk to the public. There are established avenues within these regulations for the entry of a new business, a real new business that can hire employees and with no cap on gross annual sales.

The proposed Cottage Food Regulation will adversely impact upon my currently licensed farm kitchen. The Department of Agriculture regulation for the On-Farm Home Food Process Program is more beneficial regarding labeling requirements, gross annual sales

First, I believe the proposed regulation should not be passed.

Second, if the proposed regulation is passed, current licensees with an On-Farm Home Food Process License should be grandfathered under current Department of Agriculture Regulations, with regards to the established licensed kitchen facility requirements and annual gross sales \$40,000.00, and labeling requirements and registration fees.

**Response: Discussions on grandfathering DDA licensed facilities will take place this fall so that these concerns can be addressed. DPH regulations will not be applied to DDA facilities until the path forward is determined.**

Third, problems with the Proposed Cottage Food Regulation and suggested changes.

1. The development of a new business under the guise of a Cottage Food Regulation with the preparation of food for sale from a residential kitchen, this is a commercial activity in a residential area, which is contrary and prohibited by most State and Local zoning regulations and home owner deed restrictions and covenants. Concerns will range from too many delivery trucks at a location, parking, potential fire problems, no home owner insurance policies will cover commercial

activity in a residence and health a safety problems due to dual use of a residential kitchen, i.e. pets, other family members and friends, how do you monitor this?

**Response: All entities permitted under this program will be required to comply with all local, county and state rules and regulations relevant to the proposed operation.**

2. Will these new business be required to obtain a business license, business insurance, and register as a limited liability company as do other established commercial kitchens and farm, how pay for this associated costs? If no, then these new businesses are not competing with established farms and business fairly. Without liability insurance the public has no recourse for compensation from an adverse event.

**Response: The regulations discussed here deal primarily with food safety. Insurance and licensing issues are outside of the purview of DPH, however we would encourage all businesses to take steps to ensure they are properly licensed and insured.**

3. An annual gross sales cap of \$25,000.00 is prohibitive and new business will never succeed at this level.

**Response: DPH has included the \$25,000.00 limit in the final regulations. This can be revised in the future if it is determined that many of the permitted businesses are hitting this ceiling, but DPH is using this as a limit as the proposed program is meant to small start-up businesses. Established businesses whose growth may be hampered by the limits are encouraged to look at other available permits relevant to larger operations.**

4. The label statement is too prohibitive and suggestive to the public that the product is not safe. Remove the portion of the statement, NOT subject to routine Government Food Inspections.

**Response: The labeling requirement is similar to surrounding jurisdictions and has not been changed in response to this comment.**

5. Annual registration fees should be set at \$25.00, comparable with the Department of Agriculture current fee.

**Response: DPH is proceeding with the planned \$30 per facility fee, which is reasonable in comparison with other jurisdictions. If it is determined that this fee is a burden to producers it can be revised in the future.**

Thank you for accepting my written suggestions and concerns regarding the Proposed Cottage Food Regulations. A copy of this statement will also be sent to my local State Senators and Representatives.

### Comments from Katherine Hall

If I may, I have helped a friend who retired from school teaching and took up a kitchen home business of making jellies and jams. She and I have attended many of the fairs and church fundraising and so forth, and firehouse, and she's quite aware -- she couldn't be here today, but she's quite aware that there is no regulation and still proceeded as one of many who do food service kinds of things specific to home kitchens or home gardens. Her husband grows all their produce and has taken a lot of the university courses through the extension services. She uses that produce and has done quite well in her little niche, to use that word.

But we were curious as to what was going to transpire from this hearing, because we both feel that there should be some accountability so that not everybody can do this. I mean, as a former school teacher, we used to cringe when the kids would bring in food from home for a party and, I mean, you just had no control, even though there was goodwill, there still wasn't any control on it other than saying, no, we can't serve it.

But there are so many people who do this as a second income, retirees, and it serves to give them something to do. But I think if there were minor regulations and not so totally overwhelming that it would put them out of business just because of the insult type thing that occurs with legislation or whatever.

But we were curious, because she has a fine product, we know if somebody got sick, you could trace it back to the product, we know that. I mean, it's in the news all the day, all the time. But just to have a process so that more people can fill this need, and with the generations now wanting organic foods and so forth, I think it's a way to go all the way around, except it does pose possible health problems.

Are these regulations intended like a business she has with just making jam, or the church bake sales and the non-profit entities that have food? Is this intended for them, or is this intended for something else?

**Response: These are intended for people who want to operate a small business making foods out of**



their home. This would allow them to make certain products for sale at farmers markets and other venues in their home kitchen which is currently not allowed. As far as bake sales, there is still an exemption for bake sales that is not affected by these regulations.

What about catering from one's home? Would this go to that? You're talking about gross income. Many people do that.

**Response: Caterers working without a dedicated facility would be encouraged to look into a Caterer's Without Premises Food Establishment Permit, which would be more appropriate than operating under this program unless their selections are limited to the products and restrictions put forth by these regulations.**

The public comment period was open from May 1, 2016 through June 9, 2016. In addition, a public hearing was held May 25, 2016. Based on comments received, only non-substantive changes have been made to the proposed regulations. The regulations have been reviewed by the Delaware Attorney General's office and approved by the Cabinet Secretary of DHSS.

#### FINDINGS OF FACT:

Changes made to the regulations based on the comments received are detailed in the summary of evidence. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Cottage Food Industries is adopted and shall become effective September 11, 2016, after publication of the final regulation in the Delaware *Register of Regulations*.

Rita M. Landgraf, Secretary  
August 16, 2016

#### 4458A Cottage Food Regulations (Break in Continuity of Sections)

### 3.0 Registration

(Break in Continuity Within Section)

#### 3.3 Application

(Break in Continuity Within Section)

3.3.2 Producers may first apply to the Division for registration as a CFE on or after ~~July 11, 2016~~ October 1, 2016].

(Break in Continuity of Sections)

### 7.0 Facility Requirements

#### 7.1 Outdoor Areas

(Break in Continuity Within Section)

7.1.4 ~~[Solid, self-closing exterior doors shall be installed.]~~ If doors are kept open for ventilation, self-closing screened doors with 16 mesh screening will be used.

(Break in Continuity of Sections)

### 9.0 Compliance and Enforcement Procedures

(Break in Continuity Within Section)

9.3 In response to the order to close, the facility may:

9.3.1 Take no action, in which case the order to close shall remain in effect.

~~9.3.1.4~~ 9.3.2] Take action to correct the unsafe and unsanitary practices identified during the survey.

- [9.3.1.1.4 9.3.2.1] The facility may submit evidence through a written plan of correction showing that the deficient practices, identified during the investigation, have been addressed and corrected.
- [9.3.1.1.4.1 9.3.2.1.1] A change of location for the facility does not nullify an order to close and an acceptable plan of correction must still be submitted.
- [9.3.1.1.2 9.3.2.2] The Department shall determine if the plan of correction is acceptable.
- [9.3.1.1.3 9.3.2.3] Once accepted, the Department shall schedule a revisit as soon as possible.
- [9.3.2 9.3.3] Request, in writing, an administrative hearing with the Secretary of the Department to contest the order to close.
- [9.3.2.1 9.3.3.1] Such request must be received within 20 calendar days from the date on which the order to close was issued.
- [9.3.2.1.1 9.3.3.1.1] As soon as possible, but in no event later than 60 calendar days after the issuance of the closure order, the Department shall convene a hearing on the reasons for closure.
- [9.3.2.1.2 9.3.3.1.2] The Department shall make a determination based upon the evidence presented.
- [9.3.2.1.2.1 9.3.3.1.2.1] A written copy of the determination and the reasons upon which it is based shall be sent to the facility within 30 calendar days.
- [9.3.2.1.3 9.3.3.1.3] A facility may request an expedited hearing.
- [9.3.2.1.3.1 9.3.3.1.3.1] The Department shall schedule the hearing on an expedited basis provided that the Department receives the facility's written request for an expedited hearing within five (5) calendar days from the date on which the facility received notification of the Department's decision to close the facility.
- [9.3.2.1.3.2 9.3.3.1.3.2] The Department shall convene an expedited hearing within 15 calendar days of the receipt by the Department of such a request.
- [9.3.2.1.3.3 9.3.3.1.3.3] The Department shall make a determination based upon the evidence presented.
- [9.3.2.1.3.4 9.3.3.1.3.4] A written copy of the determination and the reasons upon which it is based shall be sent to the facility within 30 calendar days.
- [9.3.2.2 9.3.3.2] During an administrative hearing:
- [9.3.2.2.1 9.3.3.2.1] The facility has the right to be represented by counsel.
- [9.3.2.2.2 9.3.3.2.2] All statements made shall be under oath.
- [9.3.2.2.3 9.3.3.2.3] The facility has the right to examine and cross-examine witnesses.
- [9.3.2.2.4 9.3.3.2.4] A stenographic recording will be made by a qualified court reporter. At the request and expense of any party, such record shall be transcribed with a copy to the other party.
- [9.3.2.2.5 9.3.3.2.5] The decision of the Department shall be based upon sufficient legal evidence. If the charges are supported by such evidence, the Department may continue, modify or revoke the closure order.
- [9.3.2.3 9.3.3.3] Upon reaching its conclusion of law and determining an appropriate disciplinary action, the Department shall issue a written decision and order in accordance with §10128 of Title 29.
- [9.3.2.4 9.3.3.4] All decisions of the Department shall be final and conclusive. Where the facility is in disagreement with the action of the Department, the facility may appeal the Department's decision to the Superior Court within 30 days of service or of the postmarked date of the copy of the decision mailed to the facility. The appeal shall be on the record to the Superior Court and shall be as provided in §§10142 - 10145 of Title 29.
- [9.3.3 9.3.4] Examination of Food
- [9.3.3.1 9.3.4.1] Food may be examined or sampled by the Division as often as necessary for enforcement of this regulation.

~~[9.3.3.2~~ 9.3.4.2] All food shall be wholesome and free from spoilage. Food that is spoiled or unfit for human consumption shall not be kept on the premises. The establishment administrative procedures for the implementation and enforcement of the provision of Chapter 33 of Title 16 of the Delaware Code, relating to the embargo of misbranded or adulterated food, and penalties shall be applicable to this section.

*Break in Continuity Within Section)*

\*Please note that no additional changes were made to the regulation as originally proposed and published in the May 2016 issue of the *Register* at page 989 (19 DE Reg. 989). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**4458A Cottage Food Regulations**

## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF WATER

Statutory Authority: 7 Delaware Code, Sections 6003 and 6010 (7 Del.C. §§6003 & 6010)

Secretary's Order No.: 2016-W-0033

### 7301 Regulations Governing the Construction and Use of Wells

Date of Issuance: August 12, 2016

Effective Date of the Amendment: September 11, 2016

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 Del.C. §§6006, 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 regulatory proceeding.

The regulatory changes that will be implemented through this Order represent the culmination of more than 7 years of work by the Department that include multiple discussions with stakeholders, including the real estate and banking industries, and representatives of various corporate utilities which construct and/or maintain well systems, as well as both the general public and the regulated community at large. Additionally, over the course of this promulgation, the Department reached out to numerous committees, workgroups and agencies to properly vet these regulatory changes and provide further review and suggested revisions concerning the same. Such entities include, but are certainly not limited to, the Delaware Department of Agriculture, the Delaware Farm Bureau, the Delaware League of Women Voters, representatives of the State of Delaware Water Well Licensing Board, and various representatives from all specialties within Delaware's well drilling community, such as the Geothermal, Environmental, and Potable Water Well Drilling facets of the same. As a result of this exhaustive outreach, these revised regulations are responsive to the concerns raised in these discussions and throughout the public hearing process, appropriately balance economic considerations and environmental protection, and will help Delaware achieve its goals of protecting the public health and safety.

### Background, Procedural History and Findings of Fact

This Order relates to proposed revised regulation amendments to 7 DE Admin. Code §7301: *Regulations Governing the Construction and Use of Wells*. The Department's Division of Water ("Water") commenced the regulatory development process with Start Action Notice 2009-30 dated November 20, 2009. The Department published its initial proposed regulation amendments in the January 1, 2016 Delaware *Register of Regulations*. The Department then held a public hearing on February 1, 2016. Consistent with 29 Del.C. §10118(a), the public hearing record remained open for public comment through February 16, 2016.

The primary purpose of this proposed regulatory promulgation is to adopt as final the aforementioned proposed revised Amendments to 7 DE Admin. Code §7301, *Regulations Governing the Construction and Use of Wells* ("Amendments"), in order for Delaware to (1) modernize existing well construction regulations that have not

been modified since 1997; (2) streamline the process by which well construction and siting issues are handled by the Department's Division of Water; (3) provide greater overall regulatory consistency for the Department in general, as these *revised* regulations will align better with other existing Delaware regulations; and (4) provide greater clarity and understanding to both the regulated community and the public at large with regard to such regulatory matters.

The aforementioned proposed Amendments were presented and thoroughly vetted by the Department at the public hearing on February 1, 2016. Members of the public attended that public hearing, and provided comment to the Department regarding the same, both at the time of the hearing and during the post-hearing time period. The public comment period closed on February 16, 2016.

Upon the public comment period closing on February 16, 2016, the Division of Water thoroughly reviewed all comment received by the Department in this matter, and provided for the benefit of the hearing record a formal Technical Response Memorandum ("TRM"), dated March 23, 2016. This TRM provided a balanced discussion of the comment received, and provided the Department's reasoning for all action taken by the Department concerning these proposed regulatory Amendments. Some comments prompted the Department to insert additional language to the proposed Amendments in order to provide greater clarity and understanding for both the regulated community and the public at large with regard to such regulatory matters. In such cases, said additional language was for clarification purposes only, and did not change the intent of the proposed Amendments; therefore, no additional republication or noticing of these proposed Amendments is necessary.

During the aforementioned review of the hearing record, the Division of Water realized a clerical error had occurred with the State Registrar's office with respect to the initial publication of these proposed regulatory Amendments. When initially published in the January 1, 2016 edition of the *Register of Regulations*, the State Registrar's office inadvertently excluded proposed Subsection 10.1.9, which had been submitted for publication as new regulatory language. Since the excluded Subsection 10.1.9 was never published by the Registrar as part of the initial proposed regulatory Amendments in the January 1, 2016 edition of the *Register of Regulations*, the Registrar subsequently published the same as an *Errata* Notice in the May 1, 2016 edition. Accordingly, the public comment period regarding this proposed regulatory action was re-opened by the Department for an additional 30 days, in order to provide the public another opportunity to comment on this matter.

Upon the public comment period re-closing on May 31, 2016, the Division of Water once again reviewed the hearing record compiled to date regarding this matter. Only one comment was received by the Department during the additional comment period in May. This comment, provided by John D. Hynes and Associates, Inc., did not pertain to the newly published Subsection 10.1.9 as described above; nevertheless, the Division of Water offered a thorough response to the same in its supplemental TRM dated June 27, 2016. Based on the reasoning set forth in the aforementioned supplemental TRM, the Department does not agree with the suggestions set forth in Mr. Hynes' comment, and thus no further action is recommended by the Department concerning the same.

As noted previously, while the Department has made revisions to the initial proposed Amendments to **7 DE Admin. Code** §9201, *Regulations Governing the Construction and Use of Wells* as a result of the comment received in this matter, such changes are non-substantive, as they neither alter the meaning or intent of the proposed regulatory amendments, and therefore, no additional noticing or re-publication of the same is necessitated at this time. It should also be noted that all proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

Subsequent to receiving the Division of Water's aforementioned TRM and supplemental TRM, the Department's presiding hearing officer, Lisa A. Vest, then prepared a Hearing Officer's Report dated July 19, 2016 ("Report"). The Report documents the proper completion of the required regulatory development process, establishes the record, and recommends the adoption of the *revised* proposed regulatory Amendments as attached to the Report as Appendix "D".

## Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the *revised* proposed regulatory Amendments to **7 DE Admin. Code** §7301, *Regulations Governing the Construction and Use of Wells*, are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the *revised* proposed regulatory Amendments be promulgated as final.

I find that the Department's experts in the Division of Water fully developed the record to support adoption of these revised regulatory Amendments. The adoption of these *revised* regulatory Amendments will allow Delaware

to modernize existing well construction regulations that have not been modified since 1997, streamline the process by which well construction and siting issues are handled by the Department's Division of Water, provide greater overall regulatory consistency for the Department in general (as these *revised* regulations will align better with other existing Delaware regulations), and provide greater clarity and understanding to both the regulated community and the public at large with regard to such regulatory matters.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed revised amendments to 7 **DE Admin. Code** §7301, Regulations Governing the Construction and Use of Wells, pursuant to 7 **Del.C.** §§6003 and 6010;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting these proposed *revised* regulatory Amendments as final;
3. The Department provided adequate public notice of the proposed regulatory Amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory Amendments, including at the time of the public hearing held on February 1, 2016, and held the record open through close of business on February 16, 2016, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on these proposed regulatory Amendments before making any final decision;
4. Due to the aforementioned publication error made by the Registrar's office (realized by the Department subsequent to the public hearing held in this matter) as set forth above, an *Errata* Notice was published by the State Registrar in the May 1, 2016 edition of the *Register of Regulations*. Accordingly, the Department re-opened the hearing record from May 1, 2016 through close of business May 31, 2016, in order to properly vet the previously excluded subsection to the public, and to consider any public comment which might be offered on same before making any final decision;
5. The Department's Hearing Officer's Report, including its established record and the recommended *revised* proposed regulatory Amendments as set forth in Appendix "D" therein, are hereby adopted to provide additional reasons and findings for this Order;
6. Promulgation of the revised proposed regulatory amendments to 7 **DE Admin. Code** §7301, Regulations Governing the Construction and Use of Wells, will enable Delaware to (1) modernize existing well construction regulations that have not been modified since 1997; (2) streamline the process by which well construction and siting issues are handled by the Department's Division of Water; (3) provide greater overall regulatory consistency for the Department in general, as these revised regulations will align better with other existing Delaware regulations; and (4) provide greater clarity and understanding to both the regulated community and the public at large with regard to such regulatory matters;
7. The Department reviewed these proposed regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104 (version applicable to all regulations initially submitted for publication to the Registrar on or before December 31, 2015), and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally. The *revised* regulatory Amendments only included clarification, and not substantive changes; therefore, no additional review of the *revised* Amendments was triggered under the Regulatory Flexibility Act;
8. The Department's proposed regulatory amendments to 7 **DE Admin. Code** §7301, *Regulations Governing the Construction and Use of Wells*, as initially published in the February 1, 2016 Delaware *Register of Regulations*, and then as revised and set forth in Appendix "D" of the Hearing Officer's Report, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final *revised* regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the Delaware *Register of Regulations*; and
9. The Department shall submit this Order approving as final the *revised* proposed Amendments to 7 **DE Admin. Code** §7301, *Regulations Governing the Construction and Use of Wells*, to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

David S. Small, Secretary

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

**7301 Regulations Governing the Construction and Use of Wells**

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## DIVISION OF WATERSHED STEWARDSHIP

Statutory Authority: 7 Delaware Code, Section 1902(a) (7 **Del.C.**, §1902(a))  
7 **DE Admin. Code** 7402

Secretary's Order No.: 2016-WS-0034

### 7402 Shellfish Sanitation Regulations

***Shellfish Sanitation Regulations (Prohibited Shellfish Growing Areas; Seasonally Approved Shellfish Growing Areas [Appendix 1 & 3, respectively])***

**Date of Issuance: August 12, 2016**

**Effective Date of the Amendment: September 11, 2016**

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

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

This Order relates to proposed regulation Amendments to 7 **DE Admin. Code** 7402: *Shellfish Sanitation Regulations (Prohibited Shellfish Growing Areas; Seasonally Approved Shellfish Growing Areas [Appendix 1 & 3, respectively])*, promulgated pursuant to authority granted in 7 **Del.C.** §1902(a) and 7 **DE Admin. Code** 7402, Section 3.1.5 of the *Shellfish Sanitation Regulations*, which charges the Department to ensure that public health and safety is not at risk from consumption of shellfish that may have been subjected to pollution, or other conditions that may render the shellfish dangerous to public health (for the purpose of this regulation, shellfish are defined as clams, oysters, and mussels). The Department's Division of Watershed Stewardship commenced the regulatory development process with Start Action Notice 2016-04 dated April 5, 2016. The Department published its initial proposed regulation Amendments in the May 1, 2016 Delaware *Register of Regulations*. The Department then held a public hearing on June 27, 2016. Consistent with 29 **Del.C.** §10118(a), the public hearing record remained open for public comment through July 12, 2016.

The purpose of this proposed regulatory promulgation is to adopt as final the aforementioned proposed Amendments to 7 **DE Admin. Code** 7402: *Shellfish Sanitation Regulations (Prohibited Shellfish Growing Areas; Seasonally Approved Shellfish Growing Areas [Appendix 1 & 3, respectively])*, ("Amendments"). This proposed action seeks to adopt provisions consistent with the National Shellfish Sanitation Program ("NSSP") and the United States Food and Drug Administration ("USFDA") Guidance Documents for shellfish growing area classifications which were recently revised in January 11, 2016, and, as noted above, to ensure that public health and safety is not at risk from the same. Specifically, this promulgation is in support of the recent Secretary's Order No. 2016-WS-0013 (March 16, 2016), which ordered a specific identified area of the Rehoboth Bay to be immediately reclassified as "Prohibited" effective March 21, 2016, consistent with the revised USFDA Guidance Documents. This proposed action will amend existing Delaware Shellfish Sanitation regulations to come into alignment with the aforementioned Secretary's Order. Additionally, these Amendments will provide further clarity to the regulated community by the removal of various duplicate citations as set forth in the existing regulations.

The international standards for the growing, harvesting, handling, and processing of shellfish are maintained by the Interstate Shellfish Sanitation Conference ("ISSC"). This administrative body of the NSSP is a combination of industry, state regulators, and federal Food and Drug officials. Delaware is a cooperative member of the NSSP,

which evolved from the public health principles and program controls formulated at the original conference on shellfish sanitation called by the Surgeon General of the United States Public Health Service in 1925. Adherence to ISSC principles and standards is administered under the auspices of the USFDA.

Based upon the recommendation of the Department's Division of Watershed Stewardship's Shellfish Program, the Seasonally Approved area identified in 7 **DE Admin. Code** 7402, *Shellfish Sanitation Regulations*, Appendix 3, Rehoboth Bay 1, no longer meets the classification for seasonal harvest, and is therefore closed. The description of said lands are as follows: *the areas north of a line drawn from the tip of White Oak Point in a southeasterly direction to a point identified as being directly west of the south submarine observation tower at Delaware Seashore State Park and south of the Lewes and Rehoboth Canal mouth, thence in an easterly direction to the south submarine observation tower.* It should be noted that the decision to recommend closure of the Rehoboth Conditionally Approved Area is based on an assessment of theoretical waste water discharge dilutions, and not on changes to observed water quality. The theoretical waste water discharge dilution criteria were recently changed by a U.S. Food and Drug Administration guidance document, which is now being incorporated into the Department's existing regulations with this proposed promulgation.

The current classification of the shellfish growing area is "Seasonally Approved" (December 1st through April 15th); however, due to new USFDA Federal Guidance for prohibited zones around wastewater treatment plants as referenced above, this area is now being classified as "Prohibited" to the harvest of shellfish. The closure of this shellfish growing area, through the aforementioned Secretary's Order No. 2016-WS-0013, exceeds the required prohibited area associated with the Rehoboth Wastewater Treatment Plant year-round. This proposed regulatory promulgation will update the current Shellfish Sanitation Regulations Appendix 3, Rehoboth Bay 1 (Seasonally Approved) to Regulations Appendix 1, Rehoboth Bay and Indian River Bay: 18 (Prohibited).

The above-referenced proposed Amendments were presented and thoroughly vetted by the Department at the public hearing on June 27, 2016. No member of the public attended the hearing held by the Department in this matter on June 27, 2016, nor was any public comment received by the Department at any time during this proposed promulgation. All proper notification and noticing requirements concerning this proposed promulgation were met by the Department in this matter. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated July 26, 2016 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix "A"

### ***Reasons and Conclusions***

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed regulatory Amendments to 7 **DE Admin. Code** 7402: *Shellfish Sanitation Regulations (Prohibited Shellfish Growing Areas; Seasonally Approved Shellfish Growing Areas [Appendix 1 & 3, respectively])*, are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory Amendments be promulgated as final.

I find that the Department's experts in the Division of Watershed Stewardship fully developed the record to support adoption of these regulatory Amendments. The adoption of these regulatory Amendments will enable Delaware to remain in compliance and adhere to ISSC principles and standards, as administered under the auspices of the U.S. Food and Drug Administration, amend existing Delaware regulations to come into alignment with Secretary's Order No. 2016-WS-0013, which ordered a specific identified area of the Rehoboth Bay to be immediately reclassified as "Prohibited" effective March 21, 2016, and ensure that public health and safety is not at risk from consumption of shellfish that may have been subject to pollution or other conditions that may render the shellfish dangerous to public health;

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 **DE Admin. Code** 7402, *Shellfish Sanitation Regulations (Prohibited Shellfish Growing Areas; Seasonally Approved Shellfish Growing Areas [Appendix 1 & 3, respectively])*, pursuant to 7 **Del.C.** §1902(a), and 7 **DE Admin. Code** 7402, Section 3.1.5 of the *Shellfish Sanitation Regulations*, which charges the Department to ensure that public health and safety is not at risk from consumption of shellfish that may have been subjected to pollution, or other conditions that may render the shellfish dangerous to public health;

2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting these proposed regulatory amendments as final;
3. The Department provided adequate public notice of the proposed regulatory amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory amendments, including at the time of the public hearing held on June 27, 2016, and held the record open through close of business on July 12, 2016, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on these proposed regulatory amendments before making any final decision;
4. The Department's Hearing Officer's Report, including its established record, and the recommended proposed regulatory Amendments, as set forth in Appendix "A", are hereby adopted to provide additional reasons and findings for this Order;
5. The adoption of these proposed regulatory Amendments will enable Delaware to (1) remain in compliance and adhere to ISSC principles and standards recently revised on January 11, 2016, as administered under the auspices of the U.S. Food and Drug Administration; (2) allow the Department to amend existing Delaware regulations to come into alignment with Secretary's Order No. 2016-WS-0013, which ordered a specific identified area of the Rehoboth Bay to be immediately reclassified as "Prohibited" effective March 21, 2016; (3) ensure that public health and safety is not at risk from consumption of shellfish that may have been subject to pollution or other conditions that may render the shellfish dangerous to public health; and (4) provide further clarity to the regulated community by the removal of various duplicate citations as set forth in the existing regulations;
6. The Department has reviewed these proposed regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104 (version applicable to all regulations initially published on or after January 1, 2016), and has selected Exemption "B1" regarding same, as this proposed regulation is not substantially likely to impose additional costs or burdens upon individuals and/or small businesses. Moreover, the Department believes these proposed regulatory Amendments to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
7. The Department's proposed regulatory Amendments to 7 **DE Admin. Code** 7402, *Shellfish Sanitation Regulations (Prohibited Shellfish Growing Areas; Seasonally Approved Shellfish Growing Areas [Appendix 1 & 3, respectively])*, as published in the May 1, 2016 Delaware Register of Regulations, and as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory amendments, which shall go into effect ten days after their publication in the next available issue of the Delaware Register of Regulations; and
8. The Department shall submit this Order approving as final the proposed Amendments to 7 **DE Admin. Code** 7402, *Shellfish Sanitation Regulations (Prohibited Shellfish Growing Areas; Seasonally Approved Shellfish Growing Areas [Appendix 1 & 3, respectively])*, to the Delaware Register of Regulations for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

David S. Small, Secretary

**\*Please note that no changes were made to the regulation as originally proposed and published in the May 2016 issue of the Register at page 990 (19 DE Reg. 990). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**7402 Shellfish Sanitation Regulations**



# FINAL REGULATIONS

## DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION 700 BOARD OF CHIROPRACTIC

Statutory Authority: 24 Delaware Code, Sections 706(a)(1) and (10) (24 **Del.C.** §706(a)(1) and (10))

24 **DE Admin. Code** 700

### ORDER

#### 700 Board of Chiropractic

On May 1, 2016 the Delaware Board of Chiropractic published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 19, Issue 11. The notice indicated that written comments would be accepted by the Board, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on June 2, 2016 at a regularly scheduled meeting of the Board of Chiropractic to receive verbal comments regarding the Board's proposed amendments to its regulations.

#### SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

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

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

There was no verbal testimony presented at the public hearing on June 2, 2016. No written comments were received by the Board.

#### FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Board during the written public comment periods, or at the public hearing.
3. Pursuant to 24 **Del.C.** §706(a)(1) the Board has the statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. Having received no public comments, the Board finds no reason not to amend the regulations as proposed.

#### DECISION AND ORDER CONCERNING THE REGULATIONS

**NOW THEREFORE**, pursuant to 24 **Del.C.** §706(a)(1) and for the reasons set forth above, the Board does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth in the Delaware *Register of Regulations* on May 1, 2016. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 **Del.C.** §10118(g).

The new regulations are attached hereto as Exhibit A.

**SO ORDERED** this 4<sup>th</sup> day of August, 2016.

#### DELAWARE BOARD OF CHIROPRACTIC

Dr. Jessica Bohl, D.C.

Lois J. Dunning

Dr. Kelly Keener, D.C.

Dr. John Mahoney, D.C. (absent)

Taube Carpenter

Dr. Trevor Ennis, D.C.

Marceline Knox

\*Please note that no changes were made to the regulation as originally proposed and published in the May 2016 issue of the *Register* at page 1000 (19 DE Reg. 1000). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**700 Board of Chiropractic**

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## DIVISION OF PROFESSIONAL REGULATION

### 1770 RESPIRATORY CARE PRACTICE ADVISORY COUNCIL

Statutory Authority: 24 Delaware Code, Section 1775(c) (24 Del.C. §1775(c))  
24 DE Admin. Code 1770

#### ORDER

#### 1770 Respiratory Care Practice Advisory Council

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on May 11, 2016 at a scheduled meeting of the Respiratory Care Practice Advisory Council ("the Council") of the Board of Medical Licensure and Discipline ("the Board") to receive comments regarding proposed amendments to the Council's rules and regulations. The Council proposed revisions to Section 8.0, setting forth the Council's continuing education requirements, to provide greater clarity for licensees. A new Section 11.0 establishes standards for the practice of respiratory care through telehealth. Finally, certain revisions address inconsistencies in the rules and regulations.

The proposed changes to the rules and regulations were published in the *Register of Regulations*, Volume 19, Issue 10, on April 1, 2016. The public hearing took place on May 11, 2016 at a scheduled Council meeting. Notice of the May 11, 2016 hearing was published in the *News Journal* (Exhibit 1) and the *Delaware State News*. Exhibit 2. Pursuant to 29 Del.C. §10118(a), the date to receive final written comments was May 26, 2016, 15 days following the public hearing. The Council deliberated on the proposed revisions at its regularly scheduled meeting on June 8, 2016.

#### Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

Council Exhibit 1: *News Journal* Affidavit of Publication.

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

Council Exhibit 3: Written comments from Nemours/Alexis I. duPont Hospital for Children

In addition, two witnesses offered testimony. First, Joel Brown, Director of Respiratory Care at Nemours, read the content of Exhibit 3. He then added that, as set forth in Exhibit 3, Nemours supports Sections 11.1.4.1-11.1.4.4. However, he recommended a revision to Section 11.1.1.2, stating that the patient must be located in the State of Delaware to receive telehealth services, to add an exception for a patient who is temporarily located outside of the State. Mr. Brown presented a scenario for the Council's consideration. Nemours has sites in Delaware and Florida. At times, patients will need to leave Delaware to go the Florida site for care. The patient may only be gone one day but will need follow-up care from the Delaware physician while in Florida. Mr. Brown commended the Council for the revisions to the continuing education regulations and stated that they area now "crystal clear."

Michael Kurliand, Director of Telehealth at Nemours, supplemented Mr. Brown's comments. He noted that the industry is changing in terms of patient monitoring. A patient could receive a new diagnosis and receive a new treatment. If the patient leaves Delaware, he or she could miss a dosage or treatment. There is a process now where notification will be sent to the telehealth group if the patient did not take the prescribed medication. Mr. Kurliand noted the benefits of the use of telehealth in Delaware, which is so close to other states. Telehealth would only be used for existing patients. Nemours is not yet using telehealth for respiratory care practice.

#### Findings of Fact and Conclusions

The public was given notice and an opportunity to provide the Council with comments in writing and by

testimony on the proposed amendments to the Council's rules and regulations.

The only comment on the revisions to Section 8.0, pertaining to continuing education for respiratory care practitioners, came from Mr. Brown, who commended the Council for its work. As stated by Mr. Brown, the amendments create greater clarity for licensees. The revised Section 8.0 outlines very specifically the continuing education requirements and the range of sanctions for non-compliance with those requirements. Therefore, the Council recommends that the Board approve Section 8.0 as proposed.

There were a number of comments, both in writing and through testimony, with respect to the new Section 11.0, which sets forth requirements for the practice of respiratory care by telehealth. The sole objection to the new requirements relates to the location of the patient during the provision of services by telehealth. Specifically, proposed Section 11.1.1.2 provides:

11.1.1.2 During the telehealth treatment session, the patient shall be located within the borders of the State of Delaware.

Commenters proposed that care by telehealth may continue when the patient temporarily leaves the State of Delaware. They argued that, as written, Section 11.1.12 will disrupt the continuity of care.

The Council proposed Section 11.0 pursuant to the following statutory directive, set forth in 24 **Del.C.** §1776(b):

(b) A respiratory care practitioner works under the general supervision of a person certified to practice medicine, whether by direct observation and monitoring, by protocols approved by a person certified to practice medicine, or by orders written or verbally given by a person certified to practice medicine. A respiratory care practitioner may evaluate patients and make decisions within parameters defined by a person certified to practice medicine and by the Board of Medical Licensure and Discipline. The work performed by a respiratory care practitioner includes, but is not limited to.....

(10) *The use of telemedicine as defined in this chapter and, as further described in regulation, the use of and participation in telehealth.*

The definitions pertinent to telemedicine and telehealth are set forth in Chapter 17, Section 1702 of Title 24 of the Delaware Code. Read together, these definitions establish that, during the delivery of services, the patient must be located in Delaware and the provider must be licensed in Delaware.

(16) "Telemedicine" means a form of telehealth which is the delivery of clinical health-care services by means of real time 2-way audio, visual, or other telecommunications or electronic communications, including the application of secure video conferencing or store and forward transfer technology to provide or support health-care delivery, which facilitate the assessment, diagnosis, consultation, treatment, education, care management and self-management of a patient's health care *by a health-care provider practicing within his or her scope of practice as would be practiced in-person with a patient, legally allowed to practice in the State, while such patient is at an originating site and the health-care provider is at a distant site.*

(9) *"Originating site" means a site in Delaware at which a patient is located at the time health-care services are provided to him or her by means of telemedicine...*

(3) "Distant site" means a site at which a health-care provider legally allowed to practice in the State is located while providing health-care services by means of telemedicine.

It is also significant that Section 1702, setting forth the definitions applicable to telehealth, includes the following provision, applicable to the practice of medicine:

For the purposes of this chapter, in order that the full resources of the State are available for the protection of persons using the services of physicians, *the act of the practice of medicine occurs where a person is located at the time a physician practices medicine upon the person.*

The Council's proposed Section 11.1.1.2 is consistent with this language and serves the interests of protecting members of the public who are the recipients of care provided by respiratory care practitioners.

The Council concludes that while the concerns regarding continuity of care are understandable, a Delaware

licensed respiratory care practitioner cannot treat a patient who is not physically located in Delaware. Therefore, the Council recommends that the Board approve Section 11.0 as proposed.

Finally, certain revisions address inconsistencies in the regulations. For example, the "Board of Medical Practice" has been changed to "the Board of Medical Licensure and Discipline" and licensees are advised that license renewal must be accomplished electronically, in that paper renewals are no longer accepted. No comments were offered on these changes and the Council recommends that they be approved as proposed.

Pursuant to 24 **Del.C.** §1775(c), the Council has the statutory authority to promulgate rules and regulations governing the practice of respiratory care after a public hearing and subject to the approval of the Board. The Council finds that the proposed amendments to the rules and regulations will create greater clarity with respect to continuing education requirements for the benefit of both licensees and the Division of Professional Regulation. Further, the addition of the new Section 11.0 sets forth standards and parameters for the practice of respiratory care by telehealth which will serve the interests of public protection. The requirement that the patient must be physically located in Delaware during the provision of services is mandated by the definitions in Chapter 17, which governs the practice of medicine and the practice of the health care professions regulated by the Board.

The Council therefore recommends to the Board that it approve the rules and regulations as published and attached hereto as Exhibit A.

## RECOMMENDATION TO THE BOARD OF MEDICAL LICENSURE AND DISCIPLINE

By the unanimous affirmative vote of the undersigned members, the Respiratory Care Practice Advisory Council hereby adopts the rules and regulations as published in the Register of Regulations of April 1, 2016, Volume 19, Issue 10 and recommends approval of such rules and regulations to the Board of Medical Licensure and Discipline.

If approved by the Board, these rules and regulations will be effective ten days after publication of the Board's final order in the *Register of Regulations*.

Respectfully submitted this 13<sup>th</sup> day of July, 2016.

Christiana Cipolla, Chairperson  
Crystal Cordrey, Vice Chairperson  
Juanita Bernard  
Charles McElroy

Francis Gott, III (absent)  
Michael Eddy  
Joseph M. Parise, D.O.

**AND NOW**, this 19<sup>th</sup> day of July, 2016;

**WHEREAS**, the Board of Medical Licensure and Discipline has considered the attached recommendation of the Respiratory Care Practice Advisory Council for approval of amended rules and regulations related to continuing education and telehealth; and

**WHEREAS**, the Board has determined to approve the aforesaid rules and regulations as proposed by the Respiratory Care Practice Advisory Council and attached hereto as Exhibit A.

**NOW THEREFORE IT IS ORDERED by the Board of Medical Licensure and Discipline:**

1. The rules and regulations recommended by the Respiratory Care Practice Advisory Council governing continuing education and telehealth are hereby approved by the Board of Medical Licensure and Discipline.

2. The rules and regulations shall be effective ten days after publication of this Final Order in the *Register of Regulations*.

**IT IS SO ORDERED this 19<sup>th</sup> day of July, 2016:**

Gregory Adams, M.D.  
Garrett H. Colmorgen, M.D.  
Stephen Cooper, M.D.  
Georges A. Dahr, M.D.  
Joseph M. Parise, D.O.  
Karyl Rattay, M.D.

Malvine Richard, Ed.D.  
Mary Ryan  
N.C. Vasuki  
Brian Villar, M.D.  
Sharon Williams-Mayo

\*Please note that no changes were made to the regulation as originally proposed and published in the April 2016 issue of the *Register* at page 914 (19 DE Reg. 914). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**1770 Respiratory Care Practice Advisory Council**

### DIVISION OF PROFESSIONAL REGULATION

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

### ORDER

### 1799 Genetic Counselor Advisory Council

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on March 4, 2016 at a scheduled meeting of the Genetic Counselor Advisory Council ("the Council") of the Board of Medical Licensure and Discipline ("the Board") to receive comments regarding proposed amendments to the Council's rules and regulations. The Council had proposed revisions to its rules and regulations pertaining to license renewal and continuing education requirements. Specifically, a new Section 4.4 has been added to provide that, as a condition of renewal, each licensee must maintain his/her certification with the American Board of Genetic Counseling, the American Board of Medical Genetics or an organization that is recognized as equivalent by the Board. The required number of continuing education units has been changed from five to three and the breakdown of hours has been revised accordingly. These changes were proposed in the interests of greater clarity for licensees.

The proposed changes to the rules and regulations were published in the *Register of Regulations*, Volume 19, Issue 8, on February 1, 2016. The public hearing took place on March 4, 2016 at a scheduled Council meeting. Notice of the March 4, 2016 hearing was published in the *News Journal* (Exhibit 1) and the *Delaware State News*. Exhibit 2. Pursuant to 29 **Del.C.** §10118(a), the date to receive final written comments was March 19, 2016, 15 days following the public hearing. The Council deliberated on the proposed revisions at its regularly scheduled meeting on July 15, 2016.

### Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

**Council Exhibit 1:** *News Journal* Affidavit of Publication.

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

The Council received no written or public comment.

### Findings of Fact and Conclusions

The public was given notice and an opportunity to provide the Council with comments in writing and by testimony on the proposed amendments to the Council's rules and regulations. The Council did not receive any written comments and no members of the public attended the hearing to offer verbal comment.

In deliberations, the Council noted a typographical error in Section 5.3.2.2. "PACs may substitute for up .06 Category 1 CEU" should read "PACS may substitute for up to 0.6 category 1 CEU."

Pursuant to the Administrative Procedures Act, 29 **Del.C.** §10118(c), if an agency makes a non-substantive change to a proposed regulation, the agency shall not be required to re-propose the regulation change and go through the hearing process again. Because the change here is the matter of placement of a period, this non-substantive change is indicated in the regulation attached hereto as Exhibit A.

Pursuant to 24 **Del.C.** §1799I(c), the Council has the statutory authority to promulgate rules and regulations governing the practice of genetic counseling after a public hearing and subject to the approval of the Board. Given the absence of comment, either by testimony or in writing, the Council recommends to the Board that it approve the rules and regulations as published, with one non-substantive change, and attached hereto as Exhibit A.

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## RECOMMENDATION TO THE BOARD OF MEDICAL LICENSURE AND DISCIPLINE

By the unanimous affirmative vote of the undersigned members, the Genetic Counselor Advisory Council hereby adopts the rules and regulations as published in the *Register of Regulations* of February 1, 2016, Volume 19, Issue 8 and recommends approval of such rules and regulations as amended to the Board of Medical Licensure and Discipline.

If approved by the Board, these rules and regulations will be effective ten days after publication of the Board's final order in the *Register of Regulations*.

Respectfully submitted this 15<sup>th</sup> day of July, 2016.

Zohra J. Ali-Khan Catts, Chairperson (absent)

Sara Ennis Mora, Vice Chairperson

Garrett H. Colmorgen, M.D.

Becky Milewski

Angela Duker

**AND NOW**, this 19<sup>th</sup> day of July, 2016;

**WHEREAS**, the Board of Medical Licensure and Discipline has considered the attached recommendation of the Genetic Counselor Advisory Council for approval of amended rules and regulations related to license renewal and continuing education; and

**WHEREAS**, the Board has determined to approve the aforesaid rules and regulations as proposed by the Genetic Counselor Advisory Council and attached hereto as Exhibit A.

**NOW THEREFORE IT IS ORDERED by the Board of Medical Licensure and Discipline:**

1. The rules and regulations recommended by the Genetic Counselor Advisory Council governing license renewal and continuing education are hereby approved by the Board of Medical Licensure and Discipline.

2. The rules and regulations shall be effective ten days after publication of this Final Order in the *Register of Regulations*.

**IT IS SO ORDERED this 19<sup>th</sup> day of July, 2016:**

Gregory Adams, M.D.

Malvine Richard, Ed.D.

Garrett H. Colmorgen, M.D.

Mary Ryan

Stephen Cooper, M.D.

N.C. Vasuki

Georges A. Dahr, M.D.

Brian Villar, M.D.

Joseph M. Parise, D.O.

Sharon Williams-Mayo

Karyl Rattay, M.D.

### 1799 Genetic Counselor Advisory Council

#### 1.0 Source of Authority

The Rules and Regulations herein contained constitute, comprise, and shall be known as the Rules and Regulations of the Genetic Counselor Advisory Council of the Board of Medical Licensure and Discipline, and are hereby promulgated, pursuant to 24 **Del.C.** §1799I(c).

#### 2.0 Definitions

Whenever used in these Rules and Regulations unless expressly otherwise stated, or unless the context or subject matter requires a different meaning, the following terms shall have the respective meanings hereinafter set forth or indicated.

"**Board**" means Delaware Board of Medical Licensure and Discipline.

"**Council**" means the Genetic Counselor Advisory Council of the Board of Medical Licensure and Discipline.

"**Crime Substantially Related to the Practice of Genetic Counseling**" means those crimes identified in ~~Rule 29~~ **Section 15.01** of the Rules and Regulations of the Board of Medical Licensure and Discipline.

### 3.0 Purpose

The purpose of the rules and regulations is to establish minimal acceptable levels of safe practice to protect the general public and to serve as a guide for the Council and Board to evaluate the safe and effective practice of genetic counseling.

### 4.0 Renewal of License

- 4.1 Each license shall be renewed biennially. The failure of the Council and/or Board to notify a licensee of his/her expiration date and subsequent renewals does not, in any way, relieve the licensee of the requirement to renew his/her certificate pursuant to the regulations of the Council and 24 **Del.C.** Ch. 17, Subchapter 11.
- 4.2 ~~Renewal may be effected by:~~ License renewal shall be accomplished online at [www.dpr.delaware.gov](http://www.dpr.delaware.gov) and shall include:
- 4.2.1 ~~filing a renewal application on the prescribed online application approved by the Council and provided by the Division of Professional Regulation. License renewal may be accomplished online at [www.dpr.delaware.gov](http://www.dpr.delaware.gov);~~
- 4.2.2 ~~providing other information as may be required by the Council to ascertain the licensee's good standing;~~
- 4.2.3 ~~attesting on the renewal application to having completed~~ attestation of completion of the continuing education required by [Rule Section] 5.0; and
- 4.2.4 ~~payment of fees as determined by the Division of Professional Regulation.~~
- 4.3 As a condition of renewal, each licensee shall maintain his/her certification with the American Board of Genetic Counseling, the American Board of Medical Genetics, or an organization that is recognized as equivalent.
- 4.4 As a condition of renewal, the licensee shall provide the Council with any other information as may be required by the Council to ascertain the licensee's good standing.
- 4.35 Failure of a licensee to renew his/her license shall cause his/her license to expire. A licensee whose license has expired may renew his/her license within one (1) year after the expiration date upon fulfilling ~~[items 4.2.1 - 4.2.4 and 4.2.2 subsections 4.2 - 4.4]~~ above, certifying that he/she has not practiced genetic counseling in Delaware while his/her license has expired, and paying the renewal fee and a late fee as determined by the Division of Professional Regulation.
- 4.46 No licensee will be permitted to renew his/her license once the one (1) year period has expired.
- 4.57 The former licensee may re-apply under the same conditions that govern applicants for new licensure under 24 **Del.C.** Ch. 17, Subchapter 11.
- 4.68 No genetic counselor shall practice in the State of Delaware during the period of time that his/her Delaware license has expired.

### 5.0 Continuing Education

- 5.1 Continuing Education Credit Hours Required for Renewal
- 5.1.1 Licensees are required to complete ~~five (5)~~ three (3) Continuing Education Units (CEU) biennially. A continuing education unit is equivalent to ten contact hours (a contact hour is 60 minutes). Licensees shall retain all certificates and other documented evidence of participation in an approved/accredited continuing education program for a period of at least (5) five years.
- 5.1.2 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the Requirements of **[Rule Section] 5.0**.
- 5.1.3 Attestation must be completed electronically at the time of renewal.
- 5.1.4 Licensees selected for random audit pursuant to **[Rule Section] 6.0** will be required to supplement the attestation with attendance verification.
- 5.1.5 CEU hours shall be prorated for new licensees. A licensee for renewal shall follow the following schedule of reporting CEUs: if, at the time of renewal, you have been licensed for less than one year, NO continuing education is required; licensed for more than one year, but less than two

years, half of the continuing education (21.5 CEUs) is required, all of which shall be Category 1 CEUs pursuant to subsection 5.3.2; licensed for two or more years, the full amount (53 CEUs) is required.

## 5.2 Exemptions

5.2.1 A licensee who because of a physical or mental illness during the license period could not complete the continuing education requirement may apply through the Council to the Board of Medical Licensure and Discipline for a waiver. A waiver would provide for an extension of time or exemption from some or all of the continuing education requirements for one (1) renewal period. Should the illness extend beyond one (1) renewal period, a new request must be submitted.

5.2.2 A request for a waiver may be submitted up to the time of renewal

## 5.3 Acceptable Activities /Continuing Education Program Offerings

5.3.1 The overriding consideration in determining whether a specific activity/program qualifies as acceptable continuing education shall be that it is a planned program of learning which contributes directly to professional competence in the practice of Genetic Counseling

5.3.2 Licensees shall demonstrate that they have obtained CEUs in the categories and according to the criteria established by the American Board of Genetic Counselors (ABGC) for recertification, as may be amended from time to time.

5.3.2.1 CEUs must be completed during the biennial renewal cycle.

5.3.2.2 ~~The percentage of CEUs obtained in each category should be scaled to fit the biennial renewal period. The breakdown of CEUs should shall be as follows: ABGC guidelines for recertification and be scaled for the renewal period. For example current guidelines state: at least 60% 2 Category 1 CEUs, and up to but no more than 40% 1 Category 2 CEUs, PACs may substitute for up to [.96 0.6] Category 1 CEUs for up to 20% of the total CEUs. Therefore, for a full 2 year renewal cycle the CEU breakdown should be comprised of at least 3.0 Category 1 CEUs, up to but no more than 2.0 Category 2 CEUs. If using PACs the breakdown would be as follows: at least 2.0 Category 1 CEUs, up to but no more than 2.0 Category 2 CEUs and up to but no more than 1.0 PACs.~~

## 6.0 Audit of Continuing Education Unit Hours

### 6.1 Audits Each Biennium

6.1.1 The Division of Professional Regulation shall randomly select from the list of renewed licensees a percentage of licensees, determined by the Council to be audited. The Council may also audit based on complaints or charges against an individual license, relative to compliance with continuing education requirements or based on a finding of past non-compliance during prior audits.

### 6.2 Documentation.

6.2.1 When a licensee is selected for audit, the licensee shall be required to submit documentation showing detailed accounting of the various CEUs claimed by the licensee. Licensees selected for random audit are required to supplement the attestation with supporting materials which may include a syllabus, agenda, itinerary or brochure published by the sponsor of the activity and a document showing proof of attendance (i.e., certificate, a signed letter from the sponsor attesting to attendance, report of passing test score). The Council shall attempt to verify the CEUs shown on the documentation provided by the licensee. Upon completion of the review, the Council will decide whether the licensee's CEUs meet the requirements of these regulations.

6.2.2 Any continuing education not meeting all provisions of these regulations shall be rejected in part or in whole by the Council.

6.2.3 Any incomplete or inaccurate documentation of continuing education may be rejected in part or in whole by the Council

6.2.4 Any continuing education that is rejected must be replaced by acceptable continuing education within a reasonable period of time established by the Council. This continuing education will not be counted towards the next renewal period.



**6.3 Council Review and Hearing Process.**

- 6.3.1 The Council shall review all documentation requested of any licensee shown on the audit list. If the Council determines the licensee has met the requirements, the licensee's license shall remain in effect. If the Council determines the licensee has not met the requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. This hearing will be conducted to determine if there are any extenuating circumstances justifying the apparent noncompliance with these regulations. Unjustified noncompliance with these regulations shall be considered unprofessional conduct and grounds for discipline pursuant to 24 **Del.C.** §1799P(a)(5), subject to final approval of the Council's written recommendation by the Board.

**7.0 Crimes Substantially Related to the Practice of Genetic Counseling**

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

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**DEPARTMENT OF TRANSPORTATION**  
**DIVISION OF TRANSPORTATION SOLUTIONS**

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

**ORDER****2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual**

Pursuant to the authority provided by 21 **Del.C.** §4504, the Delaware Department of Transportation proposed to adopt changes to its regulation entitled the Oversize/Overweight Hauling Permit Policy and Procedures Manual.

The Department, through its Division of Transportation Solutions, published proposed revisions to the existing regulation, the Oversize/Overweight Hauling Permit Policy and Procedures Manual, seeking public comment through the public notice appearing in 20 DE Reg. 41 (07/01/16).

The Department indicated in its July 1, 2016 notice that it would accept written public comments on the proposed changes to the Oversize/Overweight Hauling Permit Policy and Procedures Manual from July 1, 2016 through August 1, 2016.

No comments were received.

**Summary of the Evidence and Information Submitted.**

The proposed changes to the Oversize/Overweight Hauling Permit Policy and Procedures Manual are procedural changes, administrative in nature and serve to clarify the intent of the Department.

**Findings of Fact**

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

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

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

## Decision and Effective Date

Based on the provisions of Delaware law and the record in this docket, I hereby adopt the amended Oversize/Overweight Hauling Permit Policy and Procedures Manual, as set forth in the version attached hereto, to be effective on September 11, 2016.

**IT IS SO ORDERED this 10<sup>th</sup> day of August, 2016.**

Jennifer Cohan, Secretary  
Delaware Department of Transportation

**\*Please note that no changes were made to the regulation as originally proposed and published in the July 2016 issue of the *Register* at page 41 (20 DE Reg. 41). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

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

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# GENERAL NOTICES

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Statutory Authority: 16 Delaware Code, Chapter 25 (16 Del.C. Ch. 25)

### Review of Agency Regulations 29 Del.C. §10407

House Bill 147, which was passed by the General Assembly and signed by Governor Markell in 2015 requires executive branch agencies to review their existing regulations to determine whether they should be amended or rescinded. The law requires agencies to solicit public input to identify regulations adopted four years ago or more for possible modification or elimination. **Do you have specific ideas about which regulations that should be modified or eliminated? If so, we want to hear from you.**

**NOTICE IS HEREBY GIVEN** that the Department of Health and Social Services will be holding public hearings to receive comment on regulations that were adopted or amended before 2012.

Public Hearings will be held as follows:

Wednesday, September 21, 2016, 6:00 pm, at the Chapel, DHSS Herman Holloway Campus, 1901 N. DuPont Highway, New Castle, Delaware 19720.

Wednesday, September 28, 2016, at 6:00 pm, in the DPH Conference Room 100, Adams State Service Center, 546 S. Bedford Street, Georgetown, DE 19947.

Thursday, October 20, 2016, at 6:00 pm, at the DPH Office in the Edgehill Shopping Center, 43 S. DuPont Highway Dover, DE 19901.

If you require special assistance or auxiliary aids and/or services to participate in the public hearing (eg: sign language) please call the following contact at least ten (10) days prior to the hearing for arrangements: Cindi Powell at (302) 255-9043.

Written comments can be submitted through October 31, 2016 using the form on the DHSS website: <http://www.dhss.delaware.gov/dhss/>.

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 16 Delaware Code, Chapter 25 (16 Del.C. Ch. 25)

### Access to Care Monitoring Review Plan (AMRP)

In accordance with the public notice requirements of 42 CFR 447.203(b) and Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives notice related to the state's plan to comply with new federal regulations requiring states to develop an Access to Care Monitoring Review Plan (AMRP).

#### Purpose

The purpose of this posting is to provide public notice and receive public input for consideration regarding DMMA's Proposed Access to Care Monitoring Review Plan (AMRP).

#### Overview

The Centers for Medicare and Medicaid Services (CMS) published regulations in the Federal Register (42 CFR 447.203 & 42 CFR 447.204) on November 2, 2015, effective January 4, 2016, that requires states to review data and trends so as to evaluate access to care for covered services. It also requires states to obtain public input on the adequacy of access to covered services in the Medicaid program to the extent that such care and services are available to the general population in the geographic area as required by section 1902(a)(30)(A) of the Social Security Act (the Act). The final rule requires states to develop an Access to Care Monitoring Review Plan (AMRP) in which states are to design appropriate approaches to demonstrate and monitor access to care, which reflects unique and evolving state service delivery models and service rate structures.

For additional information about the CMS Medicaid Program; Methods for Assuring Access to Covered

Medicaid Services final rule, use the following link to the Federal Register of Regulations website:

<https://www.federalregister.gov/articles/2015/11/02/2015-27697/medicaid-program-methods-for-assuring-access-to-covered-medicaid-services#h-8>

## Proposed Access to Care Monitoring Review Plan (AMRP)

On August 1, 2016, DMMA's proposed AMRP was posted on the DMMA website: <http://dhss.delaware.gov/dhss/dmma/>. In addition, public notice was published in both the *Delaware State News* and *News Journal* on August 11. Delaware will be submitting its AMRP to CMS by September 30, 2016.

Hard copies are available by contacting Glyne Williams at [DMMA\\_PublicHearing@state.de.us](mailto:DMMA_PublicHearing@state.de.us). Hard copies are also available for review at the Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, Holloway Campus, Lewis Building, Conference Room 198, New Castle, Delaware 19720 from 8:00 a.m. - 4:30 p.m.

## Public Comment Submission Process

As required by 42 CFR 447.203(b), DHSS/DMMA must provide, at a minimum, a thirty-day public notice and comment period. The public is invited to review and comment on the State's proposed AMRP. Comments must be received by 4:30 p.m. on September 12, 2016. Comments and input regarding the proposed plan may be submitted in the following ways:

By email: [DMMA\\_PublicHearing@state.de.us](mailto:DMMA_PublicHearing@state.de.us)

By fax: 302-255-4481 to the attention of Glyne Williams

By written comments sent to:

Access to Care Monitoring Review Plan (AMRP)  
Division of Medicaid and Medical Assistance  
Planning, Policy & Quality Unit  
1901 North DuPont Highway  
P.O. Box 906  
New Castle, Delaware 19720-0906

Please identify in the subject line: Delaware Medicaid and Medical Assistance (DMMA) Proposed Access to Care Monitoring Review Plan (AMRP).

The state will post a summary of public comments and our responses, and the final updated AMRP with any modifications after the receipt of public comments on the DMMA website: <http://dhss.delaware.gov/dhss/dmma/>.

Stephen M. Groff, Director

Division of Medicaid and Medical Assistance

8/12/16

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL OFFICE OF THE SECRETARY

### Regulatory Review

In accordance with 29 **Del.C.** §10407, DNREC will be conducting a review of agency regulations that have *not* been amended in the last four years. For a listing of regulations subject to this review please [click here](#). The three month review period began Aug. 4, 2016 and concludes Nov. 4, 2016.

DNREC is now accepting public comment as to whether or not the regulations subject to this review should be amended or possibly eliminated. Comments should be as specific as possible and include a reference to the relevant regulation. Public comments may be submitted in a variety of ways as listed below:

- Electronic comment form (comments can be submitted anonymously):

<http://delaware.gov/help/public-comment.shtml?subj=dnrec>

- Email to Hearing Officer: [Lisa.Vest@state.de.us](mailto:Lisa.Vest@state.de.us)
- In writing to:

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

In addition to accepting written comment at any time during the review period, DNREC will hold three public hearings to receive verbal comments from the public. The agency's public hearings are scheduled as follows:

- 6:00 pm Thursday, September 15, 2016, at DNREC's Auditorium, 89 Kings Highway SW, Dover, DE 19901
- 6:00 pm Monday, September 19, 2016, at Sussex Central High School Auditorium, 26026 Patriot's Way, Georgetown, DE 19947
- 6:00 pm, Wednesday, September 21, 2016, at Appoquinimink Public Library, Meeting Rooms I and II, 651 N. Broad Street #101, Middletown, DE 19709

For more information please contact Michelle Jacobs via email at [Michelle.Jacobs@state.de.us](mailto:Michelle.Jacobs@state.de.us) or by calling 302-739-9069.

## DEPARTMENT OF STATE

### DIVISION OF PROFESSIONAL REGULATION

#### 1100 BOARD OF DENTISTRY AND DENTAL HYGIENE

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

The Delaware Board of Dentistry and Dental Hygiene, pursuant to 24 **Del.C.** §1106(a)(1), proposes to re-propose revisions to its regulations. The proposed amendments to regulations 4.0 and 4.1 seek to clarify that the statutory requirement set forth at 24 **Del.C.** §1122(a)(1) requiring dental candidates to have "received a degree in dentistry from an accredited dental college or university accredited by the Commission on Dental Accreditation of the American Dental Association" may obtain such a degree through either a pre-doctoral dental education program or a post-doctoral dental program of at least 24 months in any specialty that includes a clinical component. The proposed changes at regulation 12.2.28 seeks to clarify that fee-splitting is a basis for discipline of a Delaware dentist or dental hygienist.

The Board originally held public hearing on the proposed rule change on March 17, 2016. As a result of the submission of public comments, the Board attempted to hold a second hearing in regard to this re-proposal on August 18, 2016 but was unable to hold the hearing due to insufficient notice of the hearing under the Delaware Administrative Procedures Act. The Board will now hold a public hearing on the re-proposed rule change on October 20, 2016 at 3:00 PM, Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Jennifer Witte, Administrator of the Delaware Board of Dentistry and Dental Hygiene, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until November 4, 2016.

The proposed rule changes are as follows, additions are indicated in underline, deletions are indicated in strikethrough:

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

#### 4.0 Qualifications of Applicant; Education and Residency Requirements [24 Del.C. §1122(a)(3)]

- 4.1 An applicant for licensure as a dentist shall have received one of the following: a doctoral degree from a US dental college accredited by the Commission on Dental Accreditation; or a doctoral degree from a dental college or university, plus a post-doctoral degree or certificate from a US CODA approved

specialty program in Oral and Maxillofacial Surgery, Periodontics, Pediatric Dentistry, Endodontics, Orthodontics, or Prosthodontics.

- 4.42 An applicant for licensure as a dentist must have completed 1 year as a dental intern within a general practice residency accredited by the Commission on Dental Accreditation (CODA).
- 4.23 An applicant who has completed a CODA approved specialty residency of 4 years or more will be deemed to have satisfied the general practice residency requirement.
- 4.34 An applicant who has completed a CODA approved specialty residency of less than 4 years must demonstrate that the specialty residency program meets the following criteria:
- 4.3-14.1 The program must meet the goals, objectives, proficiencies and competencies set forth in Standard 2.4 of the CODA Accreditation Standards for Advanced Education Programs in General Practice Residency, ©2007.
- 4.3-24.2 The program must include a rotation of at least 70 hours in anesthesia and a rotation of at least 70 hours in medicine.
- 4.45 An applicant for licensure as a dentist by reciprocity who has had at least 3 years of active dental practice in another state or territory of the United States is not required to provide evidence of a general practice or specialty residency.
- 4.4-15.1 Active practice shall be defined as an average of at least 1000 hours of direct patient care per year. Satisfactory evidence of active practice may include, but is not limited to, W-2 forms, 1099 forms, tax returns, and/or written verification of hours from the dental practice administrator. The Board reserves the right to request supplemental verification and to reject incomplete documentation.
- 4.56 An applicant for licensure as a dental hygienist by reciprocity must demonstrate active practice during 3 of the 5 years immediately preceding the application in the state in which the applicant currently is or has been licensed.
- 4.5-16.1 Active practice shall be defined as an average of at least 350 hours of direct patient care per year. Satisfactory evidence of active practice may include, but is not limited to, W-2 forms, 1099 forms, tax returns, and/or written verification of hours from the dental practice administrator. The Board reserves the right to request supplemental verification and to reject incomplete documentation.

*(Break in Continuity of Sections)*

## 12.0 Unprofessional Conduct Defined

*(Break in Continuity Within Section)*

- 12.2 Unprofessional conduct shall include but is not limited to the following:

*(Break in Continuity Within Section)*

12.2.28 Knowingly making or receiving any payment to another dentist, dental hygienist, or employee of a dental office of a dental office or to divide or split any fee received for professional services for directly bringing or referring a patient. Furthermore, a corporation cannot be established to evade the above regulation.

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## DIVISION OF PROFESSIONAL REGULATION 3800 BOARD OF DIETETICS/NUTRITION

Statutory Authority: 24 Delaware Code, Section 3805(1) (24 Del.C. §3805(1))  
24 DE Admin. Code 3800

The Delaware Board of Dietetics/Nutrition, pursuant to 24 Del.C. §3805(11), proposes to revise its regulations. The proposed amendments to the regulations seek to clarify and provide more detailed information regarding the use of telehealth for the provision of dietetics and nutrition services.

The Board originally scheduled a hearing on this matter for August 12, 2016 at 1:30 p.m., but was unable to

hold the hearing due to insufficient notice of the hearing under the Delaware Administrative Procedures Act. The Board will now hold a public hearing on the proposed rule change on November 4, 2016 at 1:30 p.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to LaTonya Brown, Administrator of the Delaware Board of Dietetics/Nutrition, Cannon Building, 861 Silver Lake Blvd, Dover, DE 19904. Written comments will be accepted until November 21, 2016.

The proposed additions are indicated in underline:

## **9.0 Telehealth**

9.1 Telehealth is the use of electronic communications to provide and deliver a host of health-related information and health-care services, including dietetics and nutrition-related information and services, over large and small distances. Telehealth encompasses a variety of health care and health promotion activities, including education, advice, reminders, interventions, and monitoring of interventions.

9.2 The licensed dietitian/nutritionist (referred to as "licensee" for the purpose of this Board Rule) who provides treatment through telehealth shall meet the following requirements:

### 9.2.1 Location of patient during treatment through telehealth

9.2.1.1 The licensee shall have an active Delaware license in good standing to practice telehealth in the state of Delaware.

9.2.1.2 Licensees understand that this rule does not provide licensees with authority to practice telehealth to clients located in any jurisdiction other than Delaware, and licensees bear responsibility for complying with laws, rules, and/or policies for the practice of telehealth set forth by other jurisdictional boards dietetics and nutrition.

9.2.1.3 Licensees practicing telehealth shall comply with all of these rules of professional conduct and with requirements incurred in state and federal statutes relevant to the practice of dietetics and nutrition.

### 9.2.2 Informed consent

9.2.2.1 Before services are provided through telehealth, the licensee shall obtain written, informed consent from the patient, or other appropriate person with authority to make health care treatment decisions for the patient. At minimum, the informed consent shall inform the patient and document acknowledgement of the risk and limitations of:

9.2.2.1.1 The use of electronic communications in the provision of care;

9.2.2.1.2 The potential breach of confidentiality, or inadvertent access, of protected health information using electronic communication in the provision of care; and

9.2.2.1.3 The potential disruption of electronic communication in the use of telehealth.

9.2.3 Confidentiality: The licensee shall ensure that the electronic communication is secure to maintain confidentiality of the patient's medical information as required by the Health Insurance Portability and Accountability Act (HIPAA) and other applicable Federal and State laws. Confidentiality shall be maintained through appropriate processes, practices and technology, including disposal of electronic equipment and data.

### 9.2.4 Competence and scope of practice

9.2.4.1 The licensee shall be responsible for determining and documenting that telehealth is an appropriate level of care for the patient.

9.2.4.2 The licensee shall comply with the Board's law and rules and regulations and all current standards of care requirements applicable to onsite care.

9.2.4.3 The licensee shall limit the practice of telehealth to the area of competence in which proficiency has been gained through education, training and experience.

9.2.4.4 All initial evaluations shall be performed face to face and not through telehealth.

9.2.4.5 The licensee shall document in the file or record which services were provided by telehealth.



**DEPARTMENT OF EDUCATION**  
**PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, September 15, 2016 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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**DEPARTMENT OF INSURANCE**  
**OFFICE OF THE COMMISSIONER**  
**PUBLIC NOTICE****304 Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition**

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed Department of Insurance Regulation 304 relating to Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition [Formerly Regulation 70]. The docket number for this proposed regulation is 3214.

The proposed amended regulation will bring the current regulation in compliance with the National Association of Insurance Commissioners (NAIC Model Regulation 385, as revised 2008). Model Reg. 385 is needed for accreditation purposes and provides additional standards for consideration by the Insurance Commissioner to determine whether the continued operation of any insurer might be deemed to be hazardous to its policyholders, creditors or the general public. The proposed amendments give the Insurance Commissioner additional authority to issue an order requiring companies deemed to be in hazardous financial condition to take corrective action. These amendments should not pose additional burdens on insurers. The Delaware Code authority for this proposed amended regulation is 18 **Del.C.** §§311, 519, 520, 5901 and 5905; 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:

<http://www.delawareinsurance.gov/departments/documents/ProposedRegs/>

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amended regulation. Any written submission in response to this notice and relevant to the proposed amended regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Monday, October 3, 2016. 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

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**OFFICE OF THE COMMISSIONER**  
**PUBLIC NOTICE****1214 Senior Protection in Annuity Transactions**

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed amended Department of Insurance Regulation 1214 relating to Senior Protection in Annuity Transactions. The docket number for this proposed regulation is 3213.

The proposed amended regulation will bring the current regulation in compliance with the National Association of Insurance Commissioners (NAIC) Model Regulation for Suitability in Annuity Transaction (NAIC Model Reg. 275, as revised December 2010). NAIC Model Reg. 275 requires insurers and producers to establish a system to



supervise recommendations made in the marketing and sale of annuities, regardless of age (which standards are also consistent with the standards imposed by the Financial Industry Regulatory Authority (FINRA)). This proposed amended regulation is good for consumers and should not pose additional burdens on agents as they should already be doing this. The Delaware Code authority for this proposed amended regulation is 18 **Del.C.** §§311, 2304, and 2312; 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:

<http://www.delawareinsurance.gov/departments/documents/ProposedRegs/>

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amended regulation. Any written submission in response to this notice and relevant to the proposed amended regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Monday, October 3, 2016. 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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**OFFICE OF THE COMMISSIONER**  
**PUBLIC NOTICE**

**1313 Arbitration of Health Insurance Disputes Between Carriers and Providers**

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed Department of Insurance **Regulation 1313** relating to **Arbitration of Health Insurance Disputes Between Carriers and Providers**. The docket number for this proposed regulation is 3253.

The proposed amended regulation amends the current regulation to make the current arbitration provisions applicable to arbitrations conducted pursuant to 18 **Del.C.** §§3371 and 3571S. The Delaware Code authority for this proposed regulation is 18 **Del.C.** §§311, 333, 3371, and 3571S; and 29 **Del.C.** Ch. 101.

The Department of Insurance does not plan to hold a public hearing on the proposed regulation. The proposed regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/>.

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed regulation. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Monday, October 3, 2016. 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)

**OFFICE OF THE COMMISSIONER**  
**PUBLIC NOTICE**  
**1317 Network Disclosure and Transparency**

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed Department of Insurance Regulation 1317 relating to Network Disclosure and Transparency. The docket number for this proposed regulation is 3252.

The proposed regulation establishes the standards for the form and content of network disclosures that are required to be made by out-of-network providers and the written consent that must be obtained by such a provider prior to balance billing an insured. The proposed regulation also requires health insurers to maintain and publish accurate, complete and up-to-date provider directories and to make those directories easily accessible to covered persons. The Delaware Code authority for this proposed regulation is 18 **Del.C.** §§3371 and 3571S; and 29 **Del.C.** Ch. 101.

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

<http://www.delawareinsurance.gov/departments/documents/ProposedRegs/>

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amended regulation. Any written submission in response to this notice and relevant to the proposed amended regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Monday, October 3, 2016. 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

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**DEPARTMENT OF SAFETY AND HOMELAND SECURITY**  
**DIVISION OF STATE POLICE**

**1300 BOARD OF EXAMINERS OF PRIVATE INVESTIGATORS & PRIVATE SECURITY AGENCIES**  
**PUBLIC NOTICE**

Notice is hereby given that the Board of Examiners of Private Investigators and Private Security Agencies, in accordance with 24 **Del.C.** Ch. 13 proposes to amend the following adopted rule in 24 **DE Admin. Code** 1300 Board of Examiners of Private Investigators and Private Security Agencies: Rule 1.0 - Firearms Policy - clarifies the waiver of the 40 hour course, changing of weapons and makes firearms licenses valid for only one year; and Rule 4.0 - Training Requirements - clarifying the issue of an individual that violates the academic integrity while testing for the training and re-structures the mandatory training. If you wish to view the complete Rules, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by October 3, 2016, to Delaware State Police, Professional Licensing, P.O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Wednesday, October 19, 2016, 10:00am, at the Tatnall Building, 150 Martin Luther King, Jr. Boulevard South, Room 112, Dover, DE.

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**DIVISION OF STATE POLICE**  
**2400 BOARD OF EXAMINERS OF CONSTABLES**  
**PUBLIC NOTICE**

Notice is hereby given that the Board of Examiners of Constables, in accordance with 10 **Del.C.** Ch. 27

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## CALENDAR OF EVENTS/HEARING NOTICES

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proposes to amend the following adopted rules in 24 **DE Admin. Code** 2400 Constables: Rule 1.0 – Licensing – clarifies who is exempt from the Academy and MMPI or PAI and who is not; Rule 5.0 – Firearms Policy – clarifies the waiver of the 40 hour course, changing of weapons and makes firearms licenses valid for only one year; 9.0 – Minimum Training Standards and In-Service Training – removed DTCC as the sole entity to teach the courses. If you wish to view the complete Rules, contact Ms. Peggy Anderson at 302-672-5304. Any persons wishing to present views may submit them in writing, by October 3, 2016, to Delaware State Police, Professional Licensing Section, P. O. Box 430, Dover, DE 19903. The Board will hold a meeting in December 2016, at the Tatnall Building, 150 Martin L. King, Jr. Boulevard South, Room 112, Dover, DE.

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**DIVISION OF STATE POLICE**  
**5500 BAIL ENFORCEMENT AGENTS**  
**PUBLIC NOTICE**

Notice is hereby given that the Board of Examiners of Bail Enforcement Agents, in accordance with 24 **Del.C.** Ch. 55 proposes to amend the following adopted rule in 24 **DE Admin. Code** 5500 Bail Enforcement Agents: Rule 4.0 – Firearms Policy – clarifies the waiver of the 40 hour course, changing of weapons and makes firearms licenses valid for only one year. If you wish to view the complete Rule, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by October 3, 2016, to Delaware State Police, Professional Licensing Section, P.O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Tuesday, November 15, 2016, 10:00am, at the Tatnall Building, 150 Martin Luther King, Jr. Boulevard South, Room 112, Dover, DE.

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**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**3300 BOARD OF VETERINARY MEDICINE**  
**PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §3306(a)(1), the Board of Veterinary Medicine ("Board") has proposed revisions to its rules and regulations.

A public hearing will be held on October 11, 2016 at 1:00 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Veterinary Medicine, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be October 26, 2016, which is 15 days following the public hearing. The Board will deliberate on all of the public comments at its next regularly scheduled meeting, at which time the Board will decide whether to adopt the revisions as proposed.

The Board proposes a new Section 2.0 to address euthanasia of animals held in shelter, as set forth in 16 **Del.C.** §3004F. Other Sections are revised accordingly to accommodate the specific legal requirements pertaining to shelter animals. The Board also proposes requiring proof of continuing education hours for individuals who do not apply for licensure within the two-year period following examination. In addition, various Sections are amended to clarify the requirements for license renewal, reinstatement and inactive status. Typographical errors are corrected and the rules and regulations are re-numbered to accommodate the new Section 2.0.

A public hearing on proposed revisions was originally scheduled for April 12, 2016. However, prior to the hearing, the Board decided to revise the rules and regulations further. The Board therefore withdrew the rules and regulations published in the March 1, 2016 *Register of Regulations*, Volume 19, Issue 9.

The revised rules and regulations were published in the May 1, 2016 *Register of Regulations*, Volume 19, Issue 11. However, due to formatting errors in the marked-up submission, the rules and regulations will be published again with an October 11, 2016 hearing. There are no new revisions, other than correction of the formatting errors noted herein.

**DIVISION OF PROFESSIONAL REGULATION**  
**3900 BOARD OF CLINICAL SOCIAL WORK EXAMINERS**  
**PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §3906(a)(1), the Board of Clinical Social Work Examiners ("Board") proposes revisions to its rules and regulations.

On May 1, 2016, proposed revisions to the rules and regulations were published in the Delaware *Register of Regulations*, Vol. 19, Issue 11. Specifically, Subsection 9.3.9, pertaining to computer and internet technology, was stricken, and a new Section 10.0 was added to implement standards for the practice of clinical social work through telehealth. New Subsections 7.3.4 and 7.3.5 were added to clarify the continuing education audit process, including hearings and disciplinary sanctions. Finally, certain technical revisions addressed inconsistencies in the regulations.

A public hearing was held on June 20, 2016, before the Board, and the public comment period for written comment was held open for another 15 days. The Board deliberated on the evidence submitted at its meeting on July 18, 2016. Based on those deliberations, the Board made substantive revisions to the proposed rules and regulations. Therefore, the Board strikes the rules and regulations as proposed in the May 1, 2016 *Register of Regulations* and proposes revised rules and regulations attached hereto as Exhibit A.

A public hearing will be held on October 17, 2016 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Clinical Social Work Examiners, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be November 1, 2016, which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its next regularly scheduled meeting, at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to the public comment.

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