
Delaware Register of Regulations

Issue Date: SEPTEMBER 1, 2017

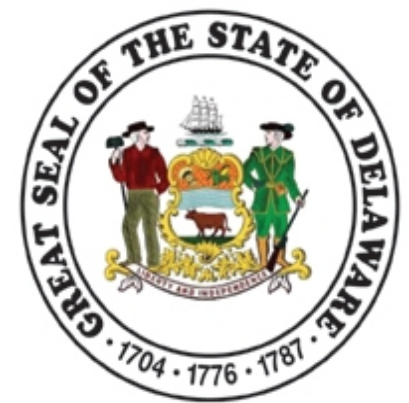
Volume 21 - Issue 3, Pages 165 - 252

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Regulations:
Proposed
Final

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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, 2017.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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

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Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF AGRICULTURE**HARNESS RACING COMMISSION****DELAWARE STANDARDBRED BREEDERS' FUND**

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

PUBLIC NOTICE**502 Delaware Standardbred Breeders' Fund Regulations**

The State of Delaware, Department of Agriculture's Standardbred Breeders' Fund ("the Fund") hereby gives notice of its intention to adopt an amended regulation pursuant to the General Assembly's delegation of authority to do so found at 29 **Del.C.** §4815(b)(4)b.2 and in compliance with Delaware's Administrative Procedures Act at 29 **Del.C.** §10115. The proposed amended regulations under 4.2, 9.2, 13.7, and 14.5 address the fiduciary responsibility of "the Fund" to sustain the program into the future while maintaining the current status.

The Fund solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty days (30) after these proposed amended regulations are promulgated in the Delaware *Register of Regulations*. Any such submissions should be mailed or hand-delivered to Ms. Judy Davis-Wilson, Administrator, Delaware Standardbred Breeders' Fund Program whose address is State of Delaware, Department of Agriculture, 2320 South DuPont Highway, Dover, Delaware 19901 by October 2, 2017.

***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/september2017/proposed/21 DE Reg 173RFA 09-01-17.pdf>

502 Delaware Standardbred Breeders' Fund Regulations

(Break in Continuity of Sections)

4.0 Eligibility of Breeders for Bonus Payments

(Break in Continuity Within Section)

PROPOSED REGULATIONS

- 4.2 ~~Beginning in race year 2012 2018, any four year old horse that was nominated by May 15th of its yearling year or supplemented by March 15th of its two year old year will be eligible to earn a bonus in overnight races conducted by a licensed harness race track in Delaware. A bonus payment of ten percent (10%) of any overnight purse earned shall be paid to the breeder of the eligible four year old and ten percent (10%) of any overnight purse earned shall be paid to the owner(s) or legal entity of record at the time of the race the four year old bonus program will be terminated.~~

(Break in Continuity of Sections)

9.0 Purses and Bonus Awards

(Break in Continuity Within Section)

- 9.2 ~~Administrator of the Program shall compile bonus payments earned by breeders of Delaware Sires and Dams and maintain a separate ledger of them. Starting in race year 2012 2018, the Administrator of the Program shall compile bonus payments earned by breeders and owners of Delaware Standardbred Breeders' Fund four year olds in overnight races at each racing meet and maintain a separate ledger for them. Starting in race year 2015 bonus payments will be paid on consolation races the four year old Bonus and the Consolation race bonus will be terminated.~~ Bonus payments will be paid out at the end of the racing year.

(Break in Continuity of Sections)

13.0 Races

(Break in Continuity Within Section)

- 13.7 No horse is eligible to declare unless it has at least one charted satisfactory performance line within 60 days of declaration and must meet the following qualifying standards:

2 Year Olds		3 Year Olds	
Pacers	Trotters	Pacers	Trotters
2:40 <u>2:08</u>	2:44 <u>2:10</u>	2:06	2:42 <u>2:09</u>

(Break in Continuity Within Section)

14.0 Nomination and Sustaining Payments

(Break in Continuity Within Section)

- 14.5 ~~The May 15th nomination payment or the March 15th \$350 supplement nomination must be made to be eligible to the four (4) year old bonus program.~~

- 14.6 If the May 15th deadline to nominate a yearling is missed, a late supplemental payment of \$350 shall be required. The late supplemental payment shall be accepted if it is received by March 15th of the two (2) year old year. This payment is in addition to the regular sustaining payment due on March 15th.

- 14.76 Sustaining payments shall be as follows:

14.76.1 Two (2) Year Old payments

March 15th	\$100 (must be made to ensure eligibility as a three (3) year old)
May 15th	\$200
Declaration Fee	\$500 (for each track)

14.76.2 Three (3) Year Old payments

February 15th	\$300
Declaration Fee	\$500 (for each track)

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

502 Delaware Standardbred Breeders' Fund Regulations

OFFICE OF THE SECRETARY

Statutory Authority: 3 Delaware Code, Section 2220(a) (3 Del.C. §2220(a))
3 DE Admin. Code 1201

PUBLIC NOTICE

1201 Nutrient Management Certification Regulations

The Delaware Nutrient Management Commission, pursuant to 3 Del.C. §2220(a), proposes to revise its regulations incorporating by reference the State Technical Standards developed by an appointed committee to establish appropriate standards for nutrient application, development and implementation of nutrient management and animal waste management plans, compliance with CAFO permits, and siting new CAFO facilities. The State Technical Standards can be viewed in person at the Delaware Department of Agriculture or online at http://dda.delaware.gov/nutrients/NM_TechStandards.shtml.

The Commission originally published the proposed regulation change and technical standards on July 1, 2017. As a result of the submission of a public comment, the Commission voted to substantively amend the State Technical Standard regarding temporary field staging to allow for 120 days instead of 90. As such, the Commission will now allow for written comments to be sent to Chris Brosch, Administrator of the Delaware Nutrient Management Commission, 2320 S. DuPont Highway, Dover DE 19901, until October 2, 2017 pursuant to 29 Del.C. §10118(a).

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

<http://regulations.delaware.gov/register/september2017/proposed/21 DE Reg 175RFA 09-01-17.pdf>

1201 Nutrient Management Certification Regulations (Break in Continuity of Sections)

3.0 Definitions

For purposes of these regulations, the following words or terms shall have the meanings as indicated:

(Break in Continuity Within Section)

"State Technical Standards" are the practices and conduct required of individuals or entities overseen by the Nutrient Management Commission that were developed by a group of environmental scientists, agronomists, engineers, planners, agricultural operators, and policy makers from the Nutrient Management Commission, Department of Agriculture, the Department of Natural Resources and Environmental Control, the University of Delaware, USDA NRCS and the private sector. The Commission hereby adopts the State Technical Standards in their entirety by reference.

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

[1201 Nutrient Management Certification Regulations](#)

PROPOSED REGULATIONS

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. §122(d)

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

A. TYPE OF REGULATORY ACTION REQUIRED

New Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

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

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before October 5, 2017 to Susan K Haberstroh, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, Finance Office located at the address listed above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The new regulation is intended to help improve student achievement specifically as measured against state achievement standards by encouraging school stability for students in foster care.
2. Will the amended regulation help ensure that all students receive an equitable education? The new regulation is intended to continue to help ensure all students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The new regulation does not address students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The new regulation continues to help ensure that all student's legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The new regulation preserves the necessary authority and flexibility of decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The 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 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 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: 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/september2017/proposed/21 DE Reg 176RFA 09-01-17.pdf>

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

1.0 Purpose

Under 14 **Del.C.** §202A, a student in the custody of DSCYF must remain in the student's School of Origin unless a determination is made that it is not in the student's best interest to attend such school. The purpose of this regulation is to provide the process for the determination of best interest in school placement decisions for students in foster care.

2.0 Definitions

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

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

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

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

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

"Department" means the Delaware Department of Education.

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

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

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

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

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

"Secretary" means the Secretary of Education.

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

3.0 School of Origin for Students in Foster Care

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

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

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

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

4.0 Best Interest Meeting Timeline

4.1 A Best Interest meeting must occur within five (5) school days based on the School of Origin's school calendar:

4.1.1 when a student is placed into foster care;

PROPOSED REGULATIONS

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

4.1.3 when the student leaves the custody of DSCYF.

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

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

5.0 Process for the Determination of Best Interest

5.1 The DFS Caseworker and LEA Foster Care Liaison shall be responsible for the coordination of the date, time, and method for the Best Interest Meeting using available technology; however, in person attendance is preferred.

5.1.1 The LEA Foster Liaison shall:

5.1.1.1 invite needed educationally related participants; and

5.1.1.2 invite the special education administrator or designee from the student's school of residence, based on the address of the DSCYF custody placement at the time of the meeting, and the student's School of Origin to participate in the Best Interest meeting if the student is eligible for or receiving special education services.

5.1.2 The DFS Caseworker shall:

5.1.2.1 invite the parent(s) or legal guardian(s) or Relative Caregiver, foster care parent(s), attorney for the child or CASA, and educational decision maker, as applicable; and

5.1.2.2 invite the student to attend when it is determined to be developmentally appropriate by the DFS Caseworker.

5.2 The Best Interest Meeting shall be conducted in a manner that results in the Best Interest Determination Form (Foster Care) being completed.

5.3 The Best Interest determination shall be made by the following individuals:

5.3.1 a representative of DSCYF, preferable the DFS Caseworker,

5.3.2 a representative of the student's School of Origin, and

5.3.3 a representative of the student's school of residence based on the address of the DSCYF custody placement at the time of the meeting.

5.4 If no agreement is reached by all of the representatives specified in subsection 5.3 for changing the school placement from the School of Origin to the student's school of residence, based on the address of the DSCYF custody placement at the time of the meeting, then the student shall remain in the School of Origin.

5.4.1 Except in accordance with subsection 5.4.2, a subsequent Best Interest Meeting shall not occur unless subsection 4.1 or subsection 4.3 applies.

5.4.2 If exigent circumstances exist for a subsequent Best Interest Meeting to occur, an application shall be submitted on a form approved by the Department to the State Coordinator. The Secretary or designee will determine whether to approve the application for the requested subsequent Best Interest Meeting.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 **Del.C.** §§1203 & 1205(b))
14 **DE Admin. Code** 1511

PUBLIC NOTICE

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

1511 Issuance and Renewal of Continuing License

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board ("Board"), acting in consultation and cooperation with the Department of Education ("Department"), seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1511 Issuance and Renewal of Continuing License. This regulation concerns the requirements for issuance and renewal of a continuing license for educators pursuant to 14 **Del.C.** Ch. 12. Proposed changes to the regulation were initially published on March 1, 2017. Thereafter, 14 **Del.C.** Ch. 12 was amended, effective June 20, 2017. The proposed changes in this regulation include the changes that were initially published on March 1, 2017 and additional changes to bring this regulation in compliance with the recent amendments to 14 **Del.C.** Ch. 12. In addition, the reference to salary increments in Section 7.0 was stricken because it was determined that the Department has the authority to promulgate regulations concerning salary increments under 14 **Del.C.** Ch. 13.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before October 2, 2017 to Mr. Chris Kenton, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Professional Standards Board's Office, located at the address above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation will help to improve the quality of the Delaware educator workforce and to improve student performance.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help to improve the quality of the Delaware educator workforce and to improve student performance.

3. Will the amended regulation help to ensure all student's 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 does not change authority and flexibility of decision makers at the local board and school level.

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

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

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

educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies.

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

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

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

<http://regulations.delaware.gov/register/september2017/proposed/21 DE Reg 179RFA 09-01-17.pdf>

1511 Issuance and Renewal of Continuing License

1.0 Content

This regulation shall apply to the issuance and renewal of a Continuing License for educators, pursuant to 14 Del.C. §§1211 and §1213.

2.0 Definitions

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

(Break in Continuity Within Section)

"**Approved Mentoring Program**" means a mentoring program approved by either the Department or the Standards Board.

(Break in Continuity Within Section)

"**DPAS II**" means Delaware Performance Appraisal System II, an approved state State educator performance evaluation system pursuant to 14 Del.C. Chapter 12, Subchapter VII.

(Break in Continuity Within Section)

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

"**Exigent Circumstances**" means unanticipated circumstances or circumstances beyond the educator's control, including, but not limited to, expiration of an ~~Initial or Continuing~~ a license during the school year, serious illness of the educator or a member of ~~his/her~~ his or her immediate family, activation to active military duty, and other serious emergencies which necessitate the educator's temporarily leaving active service.

"**Experienced Educator**" is an educator who holds a Continuing or Advanced License, or an educator who held a Professional Status Certificate issued prior to August 1, 2003. An educator from another jurisdiction who has completed ~~three (3)~~ four (4) or more years of successful teaching may be considered an experienced educator.

(Break in Continuity Within Section)

"**Mentoring**" means activities, training and service in mentoring support or assistance provided through a formally organized Department approved ~~mentoring~~ comprehensive induction program or such supplemental mentoring programs as required by regulation or the educator's employing authority. Mentoring includes, but is not limited to the mentoring ~~programs~~ that occurs in the approved comprehensive induction programs required for educators during a ~~three (3)~~ their four (4) year Initial Licensure period, a Continuing Licensure period, or any other mentoring program as required by law.

(Break in Continuity Within Section)

"**Professional Development**" means a combination of focused, in-depth learning, practice, feedback, reflection, and expert support experiences designed to change participants' attitudes, insights, and/or perspectives; and ultimately results in improved professional practice. Effective professional development programs include ample opportunities for knowledge acquisition, skill mastery,

descriptive feedback, and refinement of practice in the work setting as per 14 DE Admin. Code 1598 Delaware Professional Development Standards.

(Break in Continuity Within Section)

"Standards Board" means the Professional Standards Board established pursuant to 14 Del.C. §~~104~~1201.

"State" means State of Delaware.

"State Board" means the State Board of Education ~~of the State of Delaware~~ established in response pursuant to 14 Del.C. §104.

(Break in Continuity Within Section)

3.0 Issuance of the Original Continuing License

- 3.1 In accordance with 14 Del.C. §1211, the Department shall issue, upon application, a Continuing License to a qualified educator who has successfully completed the requirements ~~under the~~ of initial licensure as set forth in 14 Del.C. §1210 ~~and §1211~~ and has not received more than one (1) unsatisfactory annual evaluation, as defined by DPAS II or a state-approved alternative educator evaluation system, during the period of initial licensure.
- 3.2 An applicant for a Continuing License shall submit a complete application on the Department approved application form to the Department. Verification by the school district, or charter school, ~~or other employing authority~~ of satisfactory DPAS II annual summative evaluations or the equivalent thereof on a state-approved alternative educator evaluation system for the period of initial licensure shall be submitted with an initial application for a Continuing License.
- 3.3 An applicant with more than one (1) unsatisfactory DPAS II annual summative evaluation or the equivalent thereof on a state-approved alternative educator evaluation system during the period of initial licensure is ineligible to be issued a Continuing License.
- 3.4 Incomplete applications shall not be processed. The applicant shall provide evidence that all requirements have been ~~successfully~~ successfully met.

(Break in Continuity Within Section)

3.5 Applicants from Another Jurisdiction

- 3.5.1 The Department ~~shall~~ may issue a Continuing License to a qualified applicant currently licensed as an educator in another jurisdiction who provides evidence of having completed ~~three (3)~~ four (4) or more years of successful teaching experience with the following conditions:

3.5.1.1 The educator may demonstrate ~~three (3)~~ four (4) years of successful teaching experience by submitting documentation to the Department or employing authority of a minimum of ~~three (3)~~ four (4) years of teaching experience and of having received at least two (2) satisfactory evaluations from the other jurisdiction that the Department or employing authority finds are the equivalent of the two (2) satisfactory summative evaluations required of a Delaware educator.

3.5.1.2 If the educator has been out of the profession for more than ~~three (3)~~ four (4) years, the educator must meet the following as a condition of maintaining the original Continuing License:

(Break in Continuity Within Section)

3.5.1.3 The educator shall be entitled to notice and the right to a hearing as provided within Section 12.0.

(Break in Continuity Within Section)

- 3.6 A Continuing License is valid for five (5) years unless extended pursuant to 14 Del.C. §1216 or revoked or suspended for cause, as defined in 14 Del.C. §1218, or suspended for failure to meet the other conditions of maintaining a License.

(Break in Continuity Within Section)

4.0 Educators with Expired Delaware Licenses applying for their Original Continuing License

PROPOSED REGULATIONS

- 4.1 Delaware Certificates issued prior to July 2, 2001
- 4.1.1 In accordance with 14 **Del.C.** §1215, the Department ~~may~~ shall issue an original Continuing License to qualified educator who holds a Delaware certificate issued by an education certifying board prior to July 13, 1971 or who previously held a valid Delaware Standard or Professional Status certificate that has expired.
- (Break in Continuity Within Section)***
- 4.1.1.2 The educator shall be entitled to notice and the right to a hearing as provided in Section 12.0.
- (Break in Continuity Within Section)***
- 4.3 A Continuing License is valid for five (5) years unless extended pursuant to 14 **Del.C.** §1216 or revoked or suspended for cause, as defined in 14 **Del.C.** §1218, or suspended for failure to meet the other conditions of maintaining a License.

5.0 Renewal of a Continuing License

- 5.1 In accordance with 14 **Del.C.** §1212, the Department shall renew a Continuing License, valid for an additional five (5) years, to a qualified educator who has fulfilled the ninety (90) clock hour requirement for professional development and other requirements of this regulation. At least one half of the required hours [forty-five (45) hours every five (5) years] for educators shall be in activities that relate to the educator's work with students or staff. Satisfactory evidence of such completion, as set forth in Section 15.0 ~~or Section 16~~, shall be submitted to the Department with the application for renewal. The ninety (90) clock hours of professional development shall have taken place during the term of the Continuing License.
- 5.2 Renewal of Expired Delaware Continuing License
- 5.2.1 The Department may issue a Continuing License to a qualified educator who previously held a Delaware Continuing License that expired not more than five years before the renewal application, with the following conditions:
- 5.2.1.1 Prior to renewal of the License, the educator shall provide to the Department evidence of successfully completing ninety (90) clock hours of professional development during the five (5) years preceding application, pursuant to Section 7.0.
- (Break in Continuity Within Section)***
- 5.3 Professional Development Options for Relicensure are listed in Section 15.0 ~~and Section 16~~.
- 5.4 Documentation of Clock Hours for Relicensure
- 5.4.1 For renewal of the Continuing License, educators may complete and document clock hours for the variety of activities described under relicensure options. When college or university courses are used to fulfill the requirements, the following equivalencies shall be used: one (1) semester hour equals fifteen (15) clock hours, one (1) quarter hour equals ten (10) clock hours, one (1) CEU equals ten (10) clock hours. To be documented for clock hours, activities shall meet the criteria set forth in the regulations and shall be appropriately verified and applied for. Professional development activities that are part of a DPAS II assistance or improvement plan or the equivalent thereof on a state-approved alternative educator evaluation system may be used to satisfy this requirement. Individuals, schools or school districts, or other agencies organizing or conducting professional development activities which may be used for fulfilling the requirements for renewal of a license are responsible for providing documentation of participation to all participants. Each educator is responsible for obtaining any necessary approvals, as set forth in Section 14.0 and in Section 15.0, from his or her employer before participating in a professional development activity. An employer may not impose additional activity requirements on the award of clock hours towards renewal of a Continuing License.

(Break in Continuity Within Section)

6.0 Required Professional Development

To obtain renewal of a Continuing License, educators are required to participate in professional development activities totaling a minimum of ninety (90) clock hour every five (5) years and any other professional development or mentoring requirements required. The ninety (90) clock hours shall be completed during the five (5) year term of the license. All activities shall relate to the 14 ~~Del.C. DE Admin. Code~~ §1597; Delaware Professional Teaching Standards, or 14 ~~Del.C. DE Admin. Code~~ §1590; Delaware Administrator Standards, or appropriate specialty organization standards.

7.0 Professional Development Options for Renewal of a Continuing License

Candidates for renewal of a Continuing License may select from a variety of professional development options, as set forth in the relicensure options approved by the Professional Standards Board, set forth in Section 14.0 and in Section 15.0 and contained in the Guidelines for Renewal of a Continuing License. The activities selected must be beyond the normal or specified requirements of the position. Professional development activities which fulfill the criteria for relicensure for which educators receive compensation may be submitted in fulfillment of the ninety (90) clock hour requirement for relicensure. ~~Graduate credits used to satisfy the ninety (90) clock hour requirement for license renewal may, if part of a matriculated program, also be used for a salary increment on the state salary schedule, if they meet the requirements set forth in 14 DE Admin. Code 1502.~~ The activities or options used to satisfy the ninety (90) clock hour requirement for license renewal may be part of an approved professional development cluster eligible for a salary supplement.

8.0 Extension of Continuing License for Exigent Circumstances

- 8.1 The Department may extend a Continuing License for a period not to exceed one (1) year, upon the ~~educator license holder's~~ showing of exigent circumstances warranting the necessity of such extension.
- 8.1.1 ~~The expiration of an educator's License before the end of the school year shall be considered an exigent circumstance; however the educator's License may only be extended to the end of that current school year. A license holder whose Continuing License expires during the school year may have the Continuing License extended until the last day of the fiscal year upon a request from the district superintendent or charter school administrator. This extension shall be considered an exigent circumstance and shall not exceed 1 year in length.~~

(Break in Continuity Within Section)

9.0 Leave of Absence

- 9.1 ~~An~~ At the discretion of the hiring district or charter school, an educator may take an authorized a leave of absence of up to three years ~~with no effect upon the validity or expiration of the Continuing License. The date of expiration of the Continuing License will be extended commensurate with the length of the leave of absence.~~
- 9.1.1 ~~Upon application by the educator to the Department on a Department approved form, the educator's Continuing License may be extended for up to three (3) years for the time period of an authorized leave of absence.~~
- 9.1.2 ~~The Department may require that the educator use a Department approved form.~~
- 9.1.3 9.2 The Department may require that the educator provide documentation sufficient to establish the ~~authorized~~ leave of absence.
- 9.1.4 9.3 An educator's Continuing License shall not be automatically extended under this section and the burden is on the educator to ~~make proper application~~ submit an extension request with sufficient documentation to the Department and to establish the authorized leave of absence.

10.0 Criminal Conviction History and Investigation of Misconduct

- 10.1 An applicant shall disclose his or her criminal conviction history upon application for a Continuing License, or within ninety (90) days prior to the expiration of a Continuing License if the applicant requests the renewal of ~~their~~ his or her Continuing License, or upon application of renewal of an

expired Continuing License. Failure to disclose a criminal conviction history is grounds for denial or revocation of a Continuing License as specified in 14 Del.C. §1219.

(Break in Continuity Within Section)

11.0 Effect of Regulation

11.1 This regulation shall apply to all requests for Continuing License, issuance and renewal, except as specifically addressed herein.

11.2 Effective February 11, 2010, as educators receive either their original Continuing License or as they renew their Continuing License, only the Options listed in Section 15.0 shall be valid.

12.0 Suspension of a Continuing License For Failure To Meet Conditions of Issuance

(Break in Continuity Within Section)

12.2 Notice of Action

12.2.1 The Secretary of Education or his or her designee shall not take action against a person to suspend their Continuing License without providing the person with written notice of the suspension and the reasons therefore and with an opportunity for a full and fair hearing before the Standards Board.

(Break in Continuity Within Section)

13.0 Secretary of Education Review

The Secretary of Education may, upon the written request of the superintendent of a local public school district or charter school administrator or other employing authority, review licensure credentials submitted in application for a Continuing License on an individual basis and grant a Continuing License to an applicant who otherwise does not meet the requirements for a Continuing License, but whose effectiveness is documented by the local public school district or charter school administrator or other employing authority.

14.0 Continuing License Options for Relicensure

Options for Relicensure

(Break in Continuity Within Section)

14.2 Educators holding a Continuing License whose expiration date does not exceed February 10, 2015 may also use the Continuing License options listed in Section 15.0.

(Break in Continuity Within Section)

14.4 Educators either receiving their original Continuing License after February 11, 2010 or upon renewing their Continuing License on or after February 11, 2010 shall use the options listed in Section 15.0.

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

1511 Issuance and Renewal of Continuing License

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

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

PUBLIC NOTICE

Reasonable Limits on Care Expenses

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding Reasonable Limits on Care Expenses, specifically, to *clarify remedial care deductions for pre-incurred Medical expenses*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@state.de.us, or by fax to 302-255-4413 by 4:30 p.m. on October 2, 2017. Please identify in the subject line: Reasonable Limits on Care Expenses.

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

SUMMARY OF PROPOSAL

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

Statutory Authority

- 42 CFR 435.725(b)

Background

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

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

Summary of Proposal

Purpose

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

Summary of Proposed Changes

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

Public Notice

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

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals Update

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

DMAP provider manuals and official notices are available on the Delaware Medical Assistance Provider Portal website: <https://medicaid.dhss.delaware.gov/provider>

Fiscal Impact

The following fiscal impact is projected:

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

***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/september2017/proposed/21 DE Reg 185RFA 09-01-17.pdf>

AMENDED

Supplement 3 to
Attachment 2.6-A
Page 1

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

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

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

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

TN No. SPA #07-023

Supersedes

TN No. SPA 06-003

Approval Date _____

Effective Date July 1, 2017

AMENDED

20620.2.3 Prior Medical Costs

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

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

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

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Inpatient Psychiatric Hospital Services For Individuals Under Age 21

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding Inpatient Psychiatric Hospital Services for Individuals under Age 21, specifically, to *clarify reimbursement methodology for psychiatric residential treatment facilities (PRTFs)*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@state.de.us, or by fax to 302-255-4413 by 4:30 p.m. on October 2, 2017. Please identify in the subject line: Inpatient Psychiatric Hospital Services for Individuals under Age 21.

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

SUMMARY OF PROPOSAL

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

Statutory Authority

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

Background

The Psychiatric Services for Individuals under Age 21 benefit at section 1905(a)(16) of the Act, is optional. The benefit must be provided in all States to those individuals who are determined during the course of an Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) screen to need this type of inpatient psychiatric care. Under the EPSDT provision, States must provide any services listed in section 1905(a) of the Act that is needed to correct or ameliorate defects and physical and mental conditions discovered by EPSDT screening, whether or not the service is covered under the State plan.

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

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

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

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

To view the CMCS Informational Bulletin regarding Inpatient Psychiatric Hospital Services for Individuals under age 21, use the following link to the CMS website:

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

Summary of Proposal***Purpose***

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

Summary of Proposed Changes

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

Public Notice

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

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals Update

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

DMAP provider manuals and official notices are available on the Delaware Medical Assistance Provider Portal website: <https://medicaid.dhss.delaware.gov/provider>

Fiscal Impact

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

***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/september2017/proposed/21 DE Reg 187RFA 09-01-17.pdf>

AMENDED

ATTACHMENT 4.9-A.3

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
State: **DELAWARE**
METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES
INPATIENT PSYCHIATRIC HOSPITAL SERVICES FOR UNDER 21

1. Psychiatric Residential Treatment Facility (PRTF) Reimbursement

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

residential treatment facilities will be reimbursed the lesser of:

- The Delaware Medicaid per diem reimbursement rate for activities in the per diem plus additional fee-for-service reimbursement using the Delaware Medicaid fee schedule for activities on the plan of care but not in the per diem;
- The facilities usual and customary charge to privately insured or private-pay beneficiaries; or
- ~~If an out-of-state facility, the specific in-state PRTF interim Medicaid per diem reimbursement rate for the activities included in that state's per diem rate with additional fee-for-service reimbursement using the Delaware Medicaid fee schedule for activities on the plan of care but not in that state's per diem reimbursement.~~
- The lesser of a negotiated per diem reimbursement rate, the facilities usual and customary charge, or the Delaware Medicaid per diem rate.

Except as otherwise noted in the State Plan, the State-developed fee schedule is the same for both governmental

PROPOSED REGULATIONS

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

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

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

TN No. SPA #17-025

Approval Date _____

Supersedes

TN No. SPA 16-004

Effective Date October 1, 2017

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)v (16 **Del.C.** §122(3)v)
16 **DE Admin. Code** 4453

PUBLIC NOTICE

4453 Cosmetology and Barbering

The Division of Public Health, Department of Health and Social Services, is proposing revisions to the Regulations Governing Cosmetology and Barbering (4453). The purpose of the amendments is to make technical corrections to the regulations to allow for the practice of threading. On September 1, 2017, DPH plans to publish as proposed the amended regulations, and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the September 1, 2017 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the DPH at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Jamie Mack by Friday, October 6, 2017, at:

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

*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/september2017/proposed/21 DE Reg 190RFA 09-01-17.pdf>

4453 Cosmetology and Barbering
(Break in Continuity of Sections)

5.0 Safety and Sanitation Requirements

5.1 General Requirements

(Break in Continuity Within Section)

5.1.6 All supplies or instruments which come in direct contact with a patron and cannot be disinfected (for example, cotton pads, emery boards used on the natural nail, thread and neck strips) must be disposed of in a covered waste receptacle immediately after their use.

(Break in Continuity of Sections)

8.0 Employees, Apprentices and Students

8.1 Sanitary and Hygienic Practices

(Break in Continuity Within Section)

8.1.4 Hair clips, hairpins, bobby pins, thread or similar implements may not be placed in the mouth.

(Break in Continuity of Sections)

10.0 Prohibited Hazardous Substances/Use of Products

(Break in Continuity Within Section)

~~10.7 The practice of threading for hair removal is prohibited.~~

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

4453 Cosmetology and Barbering

DEPARTMENT OF INSURANCE
OFFICE OF LEGAL AND SPECIAL PROJECTS

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

PUBLIC NOTICE

301 Audited Financial Reports

THE DEPARTMENT OF INSURANCE hereby gives notice of a proposed amendment to Department of Insurance Regulation 301 relating to audited financial reports and financial statements of insurance companies. The Department's internal docket number for this regulatory project is 3575-2017.

The purpose of the proposed amendment to Regulation 301 is to update the existing financial report and audit requirements to conform to the Model Regulation published by the National Association of Insurance Commissioners (NAIC), by adding new section 15, recodifying sections 15 through 19 as 16 through 20 with no change in text, and updating definitions and internal cross references. The model regulation can be viewed on the NAIC's website at http://www.naic.org/documents/cmte_f_materials_%20annual_financial_reporting_model_reg_205.pdf.

The text of the proposed amendment appears below and can also be viewed at the Delaware Insurance Commissioner's website at <http://insurance.delaware.gov/information/proposedregs/>. The Department of

Insurance does not plan to hold a public hearing on the proposed regulation. The Department's Docket number is 3575-2017.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, 2nd day of October, 2017. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist
Dkt. No. 3575-2017
Delaware Department of Insurance
841 Silver Lake Drive
Dover, 19904
(302) 674-7379
Email: Leslie.Ledogar@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/september2017/proposed/21 DE Reg 191RFA 09-01-17.pdf](http://regulations.delaware.gov/register/september2017/proposed/21%20DE%20Reg%20191RFA%2009-01-17.pdf)

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

[301 Audited Financial Reports](#)

OFFICE OF LEGAL AND SPECIAL PROJECTS

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

PUBLIC NOTICE

[1301 Internal Review and Independent Utilization Review of Health Insurance Claims](#)

A. Type of Regulatory Action Required

Proposed amendments to existing regulation

B. Synopsis of Subject Matter of the Regulation

The Department of Insurance (Department) hereby gives notice of proposed amendment to existing Regulation 1301, Internal Review and Independent Utilization Review of Health Insurance Claims. The proposed regulatory amendments to the definition of "Authorized Representative" and to the content of the notice to be provided by carriers to their insureds and codified in Section 4 of this regulation, implement HB 100, which amends 18 Del.C. §332 to now require that an insurance carrier, when informing a covered person of its internal review process, must inform the covered person of the availability of legal assistance from attorneys working for the Delaware Department of Justice in the preparation of an appeal of an adverse determination involving treatment for substance abuse. HB 100 was signed into law on May 30, 2017, becomes effective on September 27, 2017 and sunsets on January 1, 2020 unless expressly reauthorized prior to that date. Published elsewhere in this volume of the *Register of Regulations* is a proposal to amend Regulation 1315 to also implement HB 100.

The Department is also taking this opportunity to make non-substantive corrections in punctuation at subparagraphs 3.1.6 and 9.4.6, and in style throughout paragraphs 5.7, 7.1 and 11.1, and throughout sections 9 and 10.

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

insurance.delaware.gov/information/proposedregs/. The Department's docket number is DOI Docket No. 3571-2017.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed new regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, the 2nd day, October, 2017. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist
Delaware Department of Insurance
841 Silver Lake Drive
Dover, DE 19904
(302) 674-7379
Email: Leslie.Ledogar@state.de.us

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

<http://regulations.delaware.gov/register/september2017/proposed/21 DE Reg 192RFA 09-01-17.pdf>

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

2.0 Definitions

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

(Break in Continuity Within Section)

“Authorized representative” means an individual who a covered person willingly acknowledges to represent his interests during the internal review process and/or an appeal through the Independent Health Care Appeals Program, including but not limited to a provider to whom a covered person has assigned the right to collect sums due from a carrier for health care services rendered by the provider to the covered person. A carrier may require the covered person to submit written verification of his consent to be represented. If a covered person has been determined by a physician to be incapable of assigning the right of representation, the covered person may be represented by a family member or a legal representative. In cases involving the existence or scope of private or public coverage for substance abuse treatment, an attorney retained or employed by the Delaware Department of Justice may serve as an authorized representative, regardless of whether the covered person has been determined by a physician to be incapable of assigning the right of representation. The Department of Justice may be reached by calling 302-577-4206.

(Break in Continuity Within Section)

3.0 Minimum Requirements for an Internal Review Process (IRP)

In addition to the requirements set forth in 18 Del.C. §332, the following provisions shall govern the internal review process of all carriers offering health insurance in Delaware:

- 3.1 All written procedures and forms utilized by a carrier shall be readable and understandable by a person of average intelligence and education. All such documents shall meet the following criteria:

(Break in Continuity Within Section)

- 3.1.6 Where appropriate, definitions shall be included, shall be sufficient to clearly apply to the usage intended, and shall not conflict with the definitions contained in this regulation;_i
- 3.1.7 The forms shall be written in everyday, conversational language to the extent possible to preserve the legal meaning;_and

(Break in Continuity Within Section)

4.0 Mediation Services

At the time a carrier provides to a covered person written notice of a carrier's final coverage decision, if the decision does not authorize payment of the claim in its entirety, the carrier shall provide the covered person with a written notice of mediation services offered by the Department. Such notice may be separate from or a part of the written notice of the carrier's decision. Any notice provided to a covered person shall, at a minimum, contain the following language:

"You have the right to seek a review of a claim reduction or denial through the Delaware Insurance Department. The Delaware Insurance Department ~~also~~ provides free informal mediation services which are in addition to, but do not replace, your right to a review of this decision through the Department's arbitration program. You can contact the Delaware Insurance Department for information about claim denial review or mediation by calling the Consumer Services Division at 800-282-8611 or ~~302-739-4254~~ 302-674-7310. If your request involves an adverse determination involving treatment for substance abuse, and you are approaching the deadline for filing your appeal, you may be eligible to receive legal assistance from the Delaware Department of Justice. Please contact the Delaware Department of Justice at 302-577-4206 for more information. All requests for review through ~~procedures established by the Delaware Insurance Department~~ the Department's arbitration program must be filed within 60 days from the date you receive this carrier's notice; ~~otherwise, this decision will be final.~~"

5.0 IHCAP Procedure

(Break in Continuity Within Section)

5.7 Within 45 days after the IURO's receipt of an appeal, the assigned IURO shall provide written notice of its decision to uphold or reverse the final coverage decision to the covered person or his authorized representative, the carrier and the Department, which notice shall include the following information:

- 5.7.1 ~~the~~ The qualifications of the members of the review panel;
- 5.7.2 a A general description of the reason for the request for external review;
- 5.7.3 ~~the~~ The date the IURO received the assignment from the Department to conduct the external review;
- 5.7.4 ~~the~~ The date(s) the external review was conducted;
- 5.7.5 ~~the~~ The date of its decision;
- 5.7.6 ~~the~~ The principal reason(s) for its decision; and
- 5.7.7 ~~references~~ References to the evidence or documentation, including practice guidelines and clinical review criteria, considered in reaching its decision.

(Break in Continuity of Sections)

7.0 Refusal or Dismissal of IHCAP Appeal

(Break in Continuity Within Section)

7.2 Carrier's motion to dismiss an IHCAP appeal.

- 7.2.1 A carrier may move to dismiss an IHCAP appeal if the carrier believes the appeal:
 - 7.2.1.1 ~~the appeal concerns~~ Concerns a benefit that is the subject of an express written exclusion from the covered person's health insurance;
 - 7.2.1.2 ~~the appeal is~~ Is appropriate for arbitration; or
 - 7.2.1.3 ~~the appeal should~~ Should be dismissed because it is inappropriate for IHCAP review as explained in a sworn statement by an officer of the carrier.

(Break in Continuity Within Section)

7.2.3 The Department shall review the appeal and motion for dismissal and may, in its discretion:

- 7.2.3.1 ~~dismiss~~ Dismiss the appeal and notify the covered person or his authorized representative in writing that the appeal is inappropriate for the IHCAP; or
- 7.2.3.2 ~~appoint~~ Appoint an IURO to conduct a full external review.

(Break in Continuity of Sections)

9.0 Approval of Independent Utilization Review Organizations

(Break in Continuity Within Section)

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

10.0 Recordkeeping and Reporting Requirements

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

(Break in Continuity Within Section)

11.0 Non-Retaliation

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

(Break in Continuity of Sections)

14.0 Effective Date

PROPOSED REGULATIONS

This regulation shall become effective 10 days after being published as a final regulation. The amendments to section 4.0 of this regulation and to the definition of "Authorized representative" shall become effective 10 days after being published as a final regulation and shall sunset on January 1, 2020 unless expressly reauthorized prior to that date.

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

[1301 Internal Review and Independent Utilization Review of Health Insurance Claims](#)

OFFICE OF LEGAL AND SPECIAL PROJECTS

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

PUBLIC NOTICE

[1315 Arbitration of Health Insurance Disputes Between Individuals and Carriers](#)

A. Type of Regulatory Action Required

Proposed amendments to existing regulation

B. Synopsis of Subject Matter of the Regulation

The Department of Insurance (Department) hereby gives notice of a proposed amendment to the definition of "Authorized Representative" codified in existing Regulation 1315, Arbitration of Health Insurance Disputes Between Individuals and Carriers. The proposed amendment implements HB 100, which amends 18 Del.C. §332 to now require that an insurance carrier, when informing a covered person of its internal review process, must inform the covered person of the availability of legal assistance from attorneys working for the Delaware Department of Justice in the preparation of an appeal of an adverse determination involving treatment for substance abuse. HB 100 was signed into law on May 30, 2017, becomes effective on September 27, 2017 and sunsets on January 1, 2020 unless expressly reauthorized prior to that date. Published elsewhere in this volume of the *Register of Regulations* is a proposal to also amend Regulation 1301 to implement HB 100.

The Department is also taking this opportunity to make non-substantive corrections in punctuation and grammar throughout sections 3, 4 and 5.

The Department does not plan to hold a public hearing on the proposed amendments. The proposed amendments appear below and can also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>. The Department's docket number is DOI Docket No. 3572-2017.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed new regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, the 2nd day, October, 2017. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist
Delaware Department of Insurance
841 Silver Lake Drive
Dover, DE 19904
(302) 674-7379
Email: Leslie.Ledogar@state.de.us

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

<http://regulations.delaware.gov/register/september2017/proposed/21 DE Reg 196RFA 09-01-17.pdf>

1315 Arbitration of Health Insurance Disputes Between Individuals and Carriers
*(Break in Continuity of Sections)***2.0 Definitions***(Break in Continuity Within Section)*

“**Authorized representative**” means an individual who a covered person willingly acknowledges to represent his interests during the arbitration process, including but not limited to a provider to whom a covered person has assigned the right to collect sums due from a carrier for health care services rendered by the provider to the covered person. A carrier may require the covered person to submit written verification of his consent to be represented. If a covered person has been determined by a physician to be incapable of assigning the right of representation, the covered person may be represented by a family member or a legal representative. In cases involving the existence or scope of private or public coverage for substance abuse treatment, an attorney retained or employed by the Delaware Department of Justice may serve as an authorized representative, regardless of whether the covered person has been determined by a physician to be incapable of assigning the right of representation. The Department of Justice may be reached by calling 302-577-4206.

*(Break in Continuity Within Section)***3.0 Arbitration Procedure to Review a Carrier’s Final Coverage Decision****3.1 Petition for Arbitration**

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

*(Break in Continuity Within Section)***3.2 Response to Petition for Arbitration***(Break in Continuity Within Section)*

- 3.2.2 At the time of delivering the Response to the Department, the carrier must also:
- 3.2.2.1 ~~send~~ Send a copy of the Response and supporting documentation to the covered person or his authorized representative by certified mail, return receipt requested;
 - 3.2.2.2 ~~deliver~~ Deliver to the Department a proof of service confirming that a copy of the Response was mailed to the covered person or his authorized representative by certified mail, return receipt requested; and
 - 3.2.2.3 ~~deliver~~ Deliver to the Department a \$75.00 filing fee.
- 3.2.3 The Department may return any non-conforming Response to the carrier.
- 3.2.4 If the carrier fails to deliver a Response to the Department in a timely fashion, the Department, after verifying proper service, and with written notice to the parties, may assign the matter to the next scheduled Arbitrator for summary disposition. The Arbitrator may:
- 3.2.4.1 ~~The Arbitrator may determine~~ Determine the matter in the nature of a default judgment after establishing that the Petition is properly supported and was properly served on the carrier; and
 - 3.2.4.2 ~~The Arbitrator may allow~~ Allow the re-opening of the matter to be re-opened to prevent a manifest injustice. A request for re-opening must be made by the covered person or his authorized representative no later than seven days after notice of the default judgment.

*(Break in Continuity Within Section)***3.4 Appointment of Arbitrator**

PROPOSED REGULATIONS

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

(Break in Continuity Within Section)

3.5 Arbitration Hearing

(Break in Continuity Within Section)

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

(Break in Continuity Within Section)

4.0 Carrier Recordkeeping and Reporting Requirements

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

4.1.1 For each grievance:

4.1.1.1 ~~the~~ The date received;

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

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

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

4.1.2 For each Petition for Arbitration:

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

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

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

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

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

4.2.1 The total number grievances filed.

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

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

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

(Break in Continuity of Sections)

8.0 Effective Date

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

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

1315 Arbitration of Health Insurance Disputes Between Individuals and Carriers

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WATER

GROUND WATER DISCHARGES SECTION

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

REGISTER NOTICE SAN #2012-21

7102 Regulations Governing Underground Injection Control

1. TITLE OF THE REGULATION:

State of Delaware Regulations Governing Underground Injection Control.

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

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

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

Title 7, Delaware Code, Chapter 60, Environmental Control

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

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

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to State of Delaware Regulations Governing Underground Injection Control will be re-opened September 1, 2017 for a 30-day public comment period ending at the close of business on October 2, 2017. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042.

7. PREPARED BY:

Katharyn Potter Phone: (302) 739-9948
Delaware DNREC Fax: (302) 739-7764
Ground Water Discharges Section Email: katharyn.potter@state.de.us
89 Kings Highway
Dover, DE 19901

Please Note:

(1) The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by

29 Del.C. Ch. 104, is available at:

<http://regulations.delaware.gov/register/september2017/proposed/21 DE Reg 199RFA 09-01-17.pdf>

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

[7102 Regulations Governing Underground Injection Control](#)

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
100 BOARD OF CHARITABLE GAMING

Statutory Authority: 28 Delaware Code, Section 1508(a)(2) (28 **Del.C.** §1508(a)(2))
 10 **DE Admin. Code** 101

PUBLIC NOTICE

101 Regulations Governing Bingo

Pursuant to 28 **Del.C.** §1508(a)(2), the Delaware Gaming Control Board has proposed revisions to its rules and regulations. The rules pertaining to bingo and instant bingo are modified to provide additional guidance on allowable games.

A public hearing will be held on September 27 at 10:00 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Gaming Control Board, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board, attention Meredith Hurley, at the above address by October 13, 2017 in accordance with 29 **Del.C.** §10118(a).

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

<http://regulations.delaware.gov/register/september2017/proposed/21 DE Reg 200RFA 09-01-17.pdf>

101 Regulations Governing Bingo

1.0 Definitions

(Break in Continuity Within Section)

“Cookie Jar Bingo” A game of chance in which players pay a set fee into a cookie jar or other container and receive a number which entitles the player to a chance to win the total funds in the cookie jar or container. ~~At the start of the event, a bingo number shall be drawn which shall serve as the “cookie jar number.” That number shall be posted for all players to see. During the games played on that occasion, if a player achieves bingo when the cookie jar number is drawn, the player shall win the funds in the cookie jar or container. If no one achieves bingo when the cookie jar number is drawn, the funds in the jar shall not be awarded. An organization may not otherwise offer a cookie jar game and may not designate the last game of the night or any other particular game as a cookie jar game at which the funds will be awarded without a person achieving bingo when the cookie jar number is drawn. The fee to play a cookie jar bingo game must be collected separately and such fee may not be included in the fee to play regular bingo games or in any other fee.~~

~~Any amounts in any cookie jar bingo games shall not be included in any prize money limitations contained in these rules. An organization may not have more than two cookie jar bingo pots at any one time. The first jar must be awarded before a third jar can be started. If two cookie jar pots each contain the maximum amount of money allowed by law, the first jar must be awarded at the same event at which the second jar reaches the allowable maximum. If the first jar has not been awarded by the final~~

~~game of the night, a special final bingo game of "full card" or "black out" bingo using a separate, single card, shall be played and the jar will be won by the first person who covers all spaces on their entire card.~~

~~The fees for cookie jar bingo shall be collected at the beginning of the event and added to the jar or jars before the first number is drawn. If at the beginning of an event when players pay their fee, one jar contains the maximum (up to \$1,000) and the second jar would go over the maximum if the fees are added, the fees shall be held and not placed in the second jar at that time. When the first jar is then won, the second jar shall be filled to a total of the maximum and the remaining fee moneys shall be placed in a new jar.~~

~~The organization conducting the bingo event may choose any amount up to \$1,000 for each cookie jar. The organization shall post the amount available to be won in the cookie jar and also clearly announce to the players the amount available to be won in the cookie jar.~~

(Break in Continuity of Sections)

4.0 Conduct of Bingo

(Break in Continuity Within Section)

4.2 The room where any game is being held, operated, or conducted, or where it is intended that any game shall be held, operated, or conducted, or where it is intended that any equipment be used, shall at all times be open to inspection by the appropriate law enforcement officers and agents of the District in which the premises are situated, and to the Board and its agents and employees. Bingo games shall not be commenced prior to 12:00 p.m. and the operation of a function shall be limited to six hours. ~~Instant or sealed games are permitted during any event sponsored by the organization that is licensed to conduct it, regardless of the day or time.~~

4.3 No person under the age of eighteen (18) may participate in any bingo game. ~~No person under the age of 18 shall be permitted to participate in any instant or sealed game.~~ Persons between the ages of 16 through 18 may conduct or assist in conducting the bingo game and persons over the age of fourteen (14) may act as waiters and waitresses in the handling of food or drinks at an occasion on which a licensee conducts bingo.

(Break in Continuity Within Section)

4.9 All games shall be conducted with equipment that is owned absolutely by the licensee or that is leased for fees not in excess of those allowable under the Schedule of Rental for leasing of equipment on file with the Board. Equipment shall include bingo playing cards. If the licensee uses cards that are for more than one session of playing bingo, these cards should be identified as the property of the licensee.

(Break in Continuity Within Section)

4.18 ~~In the playing of bingo, no person who is not physically present in the room where the game is actually conducted shall be allowed to participate as a player in the game.~~

4.1918 Within the limits contained in Title 28 of the **Delaware Code**, the prizes offered may be varied depending upon the number of people who attend the occasion, provided the application for bingo license and license so specify. If a licensee avails itself of the provisions of this rule, it must announce at the beginning of each game the number of people present and the prizes to be awarded.

4.2019 The entire proceeds of the games of bingo must be used solely for the promotion or achievement of the purposes of the licensee.

4.2120 Any ~~local~~ house rules adopted by the licensee that affect the conduct of the players or the awarding of prizes shall be prominently posted in at least four locations within the area where the bingo games are conducted.

4.2221 The licensee shall be permitted to reserve seats within the area where the bingo games are conducted to provide for the special needs of handicapped persons, and the licensee shall ensure that the remaining seats are made available to the players on an equal basis.

4.2322 A licensee may charge an admission fee to a game event in any room or area in which a game is to be conducted. The admission fee shall entitle the game player (a) to a card enabling the player to

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participate without additional charge in all regular games to be played under the license at the event, or (b) to free refreshments. The licensee may charge an additional fee to a game player for a single opportunity to participate in a special game to be played under license at the event.

- 4.2423 No person shall conduct or assist in conducting any game except an active member of the organization to which the license is issued.
- 4.2524 No item of expense shall be incurred or paid in connection with the conduct of the game except shall be incurred or paid in connection with the conduct of the game except such as are bona fide items of a reasonable amount for merchandise furnished or services rendered which are reasonably necessary for the conduct of the game.
- 4.25 The bingo event shall start when the balls are verified. The balls shall be verified before the cookie jar number is selected and called.
- 4.26 In the playing of bingo, all players shall be physically present in the room where the game is actually conducted in order to play the game or claim a prize offered.
- 4.27 A winner shall be determined when the preannounced pattern of squares is covered by a player on a card.
- 4.28 It shall be the player's responsibility to notify a volunteer including the chairperson or caller that the player has a winning bingo combination as announced.
- 4.29 Break Open or Game Event Bingo
- 4.29.1 A break open or game event bingo game shall begin when, in the presence of players attending the bingo occasion, the organization calls and posts, either manually or by use of a flashboard, a predetermined quantity of randomly selected bingo numbers from a receptacle or game is decided instantly by verification of serial number. The balls shall then be placed back into the receptacle until the next game is played on the program.
- 4.29.2 Sealed bingo paper sheets for a break open or game event bingo game may be sold throughout the bingo occasion. Additional bingo paper sheets for a break open or game event bingo game shall not be sold after the organization resumes calling letters and numbers when the game is played on the program
- 4.30 "U Pick Em" or Player Pick Games.
- 4.30.1 If the charitable organization offers a "U Pick Em" or Player Pick game, the requirements in this section shall apply.
- 4.30.1.1 A player shall select numbers between one (1) and seventy-five (75). A player shall not select more than five (5) numbers for each column. The player may allow the machine to select the numbers, if the organization has such a machine available.
- 4.30.1.2 Duplicate numbers shall not be played on a purchased face. If duplicate numbers appear on a face, the card shall be void.
- 4.30.1.3 Once selected, the numbers shall be printed/written on the card face.
- 4.30.1.4 The faces shall conform to the construction and randomization standards set forth in subsection 4.14.
- 4.30.1.5 The price of each face and the amount of numbers that will be chosen shall be listed on the bingo program.
- 4.30.1.6 An organization shall list all "U Pick Em" or Player Pick Games on the organization's bingo application on the addendum A form and shall include the payout amount for each game.
- 4.30.1.7 The numbers shall be daubed as the balls are called when the game is played as listed on the bingo program.
- 4.30.1.8 A player shall win if he or she is the first person to cover the numbers.
- 4.31 "Cookie Jar Bingo" A game of chance in which players pay a set fee into a cookie jar or other container and receive an entry which entitles the player to a chance to win the total funds in the cookie jar or container.

- 4.31.1 The organization conducting the bingo event may choose any amount up to \$1,000 for each cookie jar. The organization shall post the amount available to be won in the cookie jar and also clearly announce to the players the amount available to be won in the cookie jar.
- 4.31.2 Any amounts in any cookie jar bingo games shall not be included in any prize money limitations contained in these rules.
- 4.31.3 The fee to play a cookie jar bingo game must be collected separately and such fee may not be included in the fee to play regular bingo games or in any other fee.
- 4.31.4 The fees for cookie jar bingo shall be collected at the beginning of the event and added to the jar or jars before the first number is drawn. If at the beginning of an event when players pay their fee, one jar contains the maximum (up to \$1,000) and the second jar would go over the maximum if the fees are added, the fees shall be held and not placed in the second jar at that time. When the first jar is then won, the second jar shall be filled to a total of the maximum and the remaining fee moneys shall be placed in a new jar.
- 4.31.5 An organization may not have more than two cookie jar bingo pots at any one time. The first jar must be awarded before a third jar can be started. If two cookie jar pots each contain the maximum amount of money allowed by law, the first jar must be awarded at the same event at which the second jar reaches the allowable maximum. If the first jar has not been awarded by the final game of the night, a special final bingo game of "full card" or "black out" bingo using a separate, single card, shall be played and the jar will be won by the first person who covers all spaces on their entire card.
- 4.31.6 At the start of the event, a bingo number shall be drawn which shall serve as the "cookie jar number." That number shall be posted for all players to see. During the games played on that occasion, if a player achieves bingo when the cookie jar number is drawn, the player shall win the funds in the cookie jar or container. If no one achieves bingo when the cookie jar number is drawn, the funds in the jar shall not be awarded. An organization may not otherwise offer a cookie jar game and may not designate the last game of the night or any other particular game as a cookie jar game at which the funds will be awarded without a person achieving bingo when the cookie jar number is drawn.

5.0 Conduct of Instant Or Sealed Games (Pull Tab Games)

- 5.1 "Pull-tab" means a single folded or banded ticket or a multi-ply card with perforated break-open tabs, the face of which is initially covered to conceal one or more numbers or symbols, where one or more of each set of tickets or cards has been designated in advance as a winner.
- 5.2 "Pull-tab dispensing device" means a mechanical device that dispenses paper pull-tabs and has no additional function as an amusement or gambling device. A pull-tab dispensing device may have as a component an auditory or visual enhancement to promote or provide information about a game being dispensed, provided the component does not affect the outcome of a game or display the results of a game or an individual ticket.
 - 5.2.1 A pull-tab dispensing device is not required for the sale of instant or sealed games.
- 5.3 No person under the age of 18 shall be permitted to participate in any instant or sealed games.
- 5.4 Instant bingo or sealed games are permitted during any event sponsored by the organization that is licensed to conduct it, regardless of the day or time.
 - 5.4.1 If Instant bingo or sealed games are played during a permitted bingo event, it must be kept separate from the bingo games conducted and it cannot be incorporated into the bingo event games. The only exception would be Break Open or Game Event Bingo games covered under subsection 4.29. Break Open or Game Event Bingo games are part of the bingo event and are not Instant Bingo games.
- 5.5 A merchandise board or coin collecting board is a variation on pull-tab games. A game board of this type typically comes with a registered package of pull-tab tickets, a signer's card, and a pay-out slip.

PROPOSED REGULATIONS

- 5.5.1 When a ticket is sold, the player opens the ticket to reveal its hidden numbers. If a number on the ticket matches a number on the game board, the player wins a prize and/or a chance at one or more seal prizes, which are revealed at the end of the game.
- 5.5.2 The game board shall display the prizes available for the game. Some of the winners receive instant cash only, while some of the winning numbers win a chance to win a large prize and may match numbers on coins, wallets, or small panels that are built into the board.
- 5.5.3 If a player wins a chance at a larger prize or a seal prize, that player's name is added to the signer's card or game board. The organization shall be responsible for maintaining contact information for the player that is added to the signer's card or game board.
- 5.5.4 The game is concluded when all of the tickets sell out, or all the prizes are won. The seals on the game board are opened in some fashion to reveal the winning numbers and the winning players shall be contacted.
- 5.6 After occasion reports are not required for instant or sealed games.
- 5.7 Instant or sealed game permits shall expire annually on a date determined by the Division of Professional Regulation.

5.06.0 Reports After the Function

- 5.16.1 When no game is held on a date a licensee is authorized to hold such game, a report to that effect shall be filed with the Board.
- 5.26.2 Within 5 30 days of the last day of the function, the member-in-charge shall submit a report to the Board that includes all information required by Title 28 of the **Delaware Code**.
- 5.36.3 If a licensee fails to timely file a report or if a report is not properly verified, or not fully, accurately, and truthfully completed, no further license shall be issued to the licensee and any existing license shall be suspended until such time as the deficiency has been corrected.

6.07.0 Suspension and Revocation of Licenses

- 6.17.1 Proceedings to suspend or to revoke a license shall be brought by notifying the licensee of the ground thereof and the date set forth for a hearing thereon. The Board may stop the operation of a game pending hearing, in which case the hearing must be held within five (5) days after such action.
- 6.27.2 When suspension or revocation proceedings are begun before the Board, it shall hear the matter and make written findings in support of its decision. The licensee shall be informed of the decision and of the effective date of the suspension or revocation.
- 6.37.3 When a license is suspended or revoked, the licensee shall surrender up the license to the Board on or before that effective date set forth in the notice of decision. In no case shall any license be valid beyond the effective date of suspension or revocation, whether surrendered or not.
- 6.47.4 Upon finding of the violation of these rules and regulations or the Bingo Statute, such as would warrant the suspension or revocation of a license, the Board may in addition to any other penalties which may be imposed, declare the violator ineligible to conduct a game of bingo and to apply for a license under said law for a period not exceeding thirty (30) months thereafter. Such declaration of the ineligibility may be extended to include, in addition to the violator, any of its subsidiary organizations, its parent organization and any other organization having a common parent organization or otherwise affiliated with the violator, when in the opinion of the Board, the circumstances of the violation warrant such action.

7.08.0 Severability

If any provision of these Regulations or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of these Regulations and the applicability of such provisions to other persons or circumstances shall not be affected thereby.

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

regulation is available at:

101 Regulations Governing Bingo

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Sections 209(a) and 362(b) (26 **Del.C.** §§209(a) & 362(b))
26 **DE Admin. Code** 3008

PUBLIC NOTICE

3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard (Opened August 23, 2005)

IN THE MATTER OF THE ADOPTION OF RULES AND PROCEDURES TO IMPLEMENT THE RENEWABLE ENERGY PORTFOLIO STANDARDS ACT, 26 *DEL. C.* §§ 351-363, AS APPLIED TO RETAIL ELECTRICITY SUPPLIERS (OPENED AUGUST 23, 2005; REOPENED SEPTEMBER 4, 2007; AUGUST 5, 2008; SEPTEMBER 22, 2009; AUGUST 17, 2010; SEPTEMBER 6, 2011, SEPTEMBER 18, 2012; FEBRUARY 2, 2017)

PSC REGULATION DOCKET NO. 56

PUBLIC NOTICE OF PROPOSED REGULATIONS

The Delaware Public Service Commission, in compliance with the Memorandum Opinion, issued December 30, 2016, in Delaware Division of the Public Advocate v. Delaware Public Service Commission, C.A. N15A-12-002 AML, and pursuant to 26 **Del.C.** §362(b), proposes to revise its regulations for the limited purpose of complying with the Memorandum Opinion, issued December 30, 2016, in Delaware Division of the Public Advocate v. Delaware Public Service Commission, C.A. N15A-12-002 AML; that is, specifically to promulgate regulations to amend 26 Del. Admin. C. § 3008-3.2.21 and related regulations as needed to specify the procedures for freezing the minimum cumulative solar photovoltaic and eligible energy resource requirements under 26 **Del.C.** §§354(i) and (j).

You can review the proposed revised Rules in the September 2017 issue of the Delaware *Register of Regulations*. You can also review the Order and the proposed revised Rules in the PSC's electronic filing system DelaFile at <http://delafile.delaware.gov/> and for docket # input "Reg. 56." If you wish to obtain written copies of the Order and proposed revised Rules, please contact the PSC at (302) 736-7500. Copies in excess of the first twenty pages are \$0.10 per page. Payment is expected prior to copying (if you wish the copies to be mailed) or at the time the copies are retrieved (if you retrieve them in person).

Written comments can be filed electronically in DelaFile at <http://delafile.delaware.gov/> by filling out the Public Comment Form located under Public Links. Written comments can also be mailed to Joseph DeLosa, Public Service Commission, Cannon Building, 861 Silver Lake Blvd., Suite 100, Dover, DE 19904 or via email to joseph.delosa@state.de.us, with the subject line "Regulation Docket No. 56." Written comments will be accepted until Monday, October 2, 2017, pursuant to 29 **Del.C.** §10118(a).

ORDER NO. 9090

AND NOW, this 25th day of July, 2017, the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, on October 2, 2015, in Docket No. 15-1462, the Delaware Division of the Public Advocate ("DPA") filed a Petition requesting that this Commission open a docket to consider whether to amend 26 Del. Admin. C. §3008-3.2.21 to issue regulations governing when a freeze of the minimum percentages of eligible energy

resources and solar photovoltaics may be declared pursuant to 26 **Del.C.** §§354(i) and (j); and on October 12, 2015, the Caesar Rodney Institute ("CRI") submitted a Petition supporting the DPA's Petition;

WHEREAS, on October 27, 2015, the Commission Staff ("Staff") and the DNREC filed a Joint Motion opposing the Petitions of the DPA and CRI and requesting that the Commission deny the Petitions (the "Joint Motion"); and on October 29, 2015, the DPA and CRI filed a joint response ("Joint Response") to the Joint Motion;

WHEREAS, the Commission also received a letter signed by eight members of the Delaware House of Representatives supporting the Petition, and written comments from Dr. Jeremy Firestone and the Mid-Atlantic Renewable Energy Coalition opposing the Petition;

WHEREAS, on November 3, 2015, the Commission met at its regularly-scheduled meeting to consider the Petition, the Joint Motion, the Joint Response, and other written comments, and to hear oral argument from the parties. After deliberations, the Commission denied the Petition and closed the docket. This decision was memorialized in Order No. 8807, which explained the Commission's decision as follows:

The language of the REPSA [Renewable Energy Portfolio Standards Act, 26 **Del.C.** §§351-363] is not a model of clarity. We believe that the language could be improved to make the respective responsibilities of the Commission and DNREC clearer, and we question whether the aims of the statute will be accomplished given the dispute about how to interpret the language. We urge the General Assembly to clarify those responsibilities going forward. In the meantime, we interpret Sections 354(i) and (j) to provide DNREC with the primary responsibility for issuing regulations governing when a freeze of the minimum percentages of eligible energy resources and solar photovoltaics may be declared.¹

WHEREAS, on December 7, 2015, the DPA filed a Notice of Appeal of the Commission's decision in Order No. 8807 with the Superior Court of the State of Delaware (the "Court"); and

WHEREAS, after briefing and oral argument by the DPA and the Commission, on December 30, 2016, the Court issued a Memorandum Opinion² reversing the Commission's decision in Order No. 8807 and remanding to the Commission for proceedings consistent with the decision; and

WHEREAS, in compliance with the Court's Memorandum Opinion, on February 2, 2017, the Commission adopted Order No. 9025 in Docket No. 15-1462, which 1) re-opened Docket No. 15-1462 for the limited purpose of complying with the Memorandum Opinion, issued December 30, 2016, in *Delaware Division of the Public Advocate v. Delaware Public Service Commission*, C.A. N15A-12-002 AML; 2) reversed Ordering Paragraph No. 21 of Order No. 8807, which denied the Petition of the DPA and CRI; and 3) directed Staff to re-open Regulation Docket 56 for the limited purpose of complying with the Memorandum Opinion, issued December 30, 2016, in *Delaware Division of the Public Advocate v. Delaware Public Service Commission*, C.A. N15A-12-002 AML; that is, specifically to promulgate regulations to amend 26 Del. Admin. C. § 3008-3.2.21 and related regulations as needed to specify the procedures for freezing the minimum cumulative solar photovoltaic and eligible energy resource requirements under 26 **Del.C.** §§354(i) and (j); and

WHEREAS, on February 2, 2017, the Commission adopted Order No. 9024 in this docket, which required the publication of proposed Rules in the March 1, 2017 *Delaware Register of Regulations*, publication of public notice, and a public comment period through April 24, 2017; and

WHEREAS, at the public hearing at the April 6, 2017 regularly-scheduled Commission meeting, the Commission heard public comments; and

WHEREAS, before April 24, 2017, 104 written public comments were received, including comments from the DPA, CRI, Delaware Department of Natural Resources and Environmental Conservation, and Mr. Gary Myers, among others; and

WHEREAS, in consideration of these public comments, Staff has proposed substantive revisions to the Rules approved for publication by the Commission on February 2, 2017 in Order No. 9024. The proposed revision is set forth herein as **Exhibit "B"**; and

WHEREAS, in support of these proposed substantive revisions, and to address several issues raised in the public comments, Staff has authored a review and recommendation; and

WHEREAS, considering these substantive revisions, Staff recommends that the Commission approve for publishing the proposed Rules attached as **Exhibit "B"** in the Delaware Registrar of Regulations on September 1, 2017 and set forth another public comment period.

NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE

VOTE OF NOT FEWER THAN THREE COMMISSIONERS:

1. That, pursuant to 29 **Del.C.** §§1133 and 10115(a), the Commission Secretary shall transmit to the Registrar of Regulations for publication on September 1, 2017 in the Delaware *Register of Regulations* a copy of this Order, along with copies of the proposed and current Rules (**Exhibits "B" and "C"**, respectively).

2. That the Commission Secretary shall publish in the manner described below the Notice of Proposed Rulemaking attached as **Exhibit "A."** Such notice shall be published in the *Delaware State News* and *The News Journal* by September 1, 2017. The notice shall also be sent to the Delaware Registrar of Regulations for publication on September 1, 2017 in the Delaware *Register of Regulations*.

3. That, pursuant to 29 **Del.C.** §§10115(a) and 10116, the Commission encourages persons or entities to submit written comments, on or before Monday, October 2, 2017.

4. That the Commission reserves jurisdiction and authority to enter such further orders as may be deemed necessary or proper.

1. Order No. 8807, ¶ 19 (Dec. 3, 2015).

2. Memorandum Opinion, *Delaware Division of the Public Advocate v. Delaware Public Service Commission*, C.A. N15A-12-002 AML (Dec. 30, 2016).

BY ORDER OF THE COMMISSION:

BY ORDER OF THE COMMISSION:

Dallas Winslow, Chair

Joann T. Conaway, Commissioner

Manubhai (Mike) C. Karia, Commissioner

K. F. Drexler, Commissioner

ATTEST:

Donna Nickerson, Secretary

*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/september2017/proposed/21 DE Reg 205RFA 09-01-17.pdf>

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

3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard (Opened August 23, 2005)

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** 292

REGULATORY IMPLEMENTING ORDER

292 Post Secondary Institutions and Degree Granting Institutions of Higher Education

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** 292 Post Secondary Institutions and Degree Granting Institutions of Higher Education. The regulation is being amended to: 1) clarify that the requirements of this regulation do not apply to Institutions of Higher Education specified in 14 **Del.C.** Parts II, III, and VI; 2) add subsection 2.3 which provides that the requirements and approval process for educator preparation programs are specified in 14 **DE Admin. Code** 290; 3) add section 5.0 which specifies the criteria for obtaining the Department's approval to offer courses, programs of courses, and degrees within Delaware; 4) amend section 7.0 to clarify the requirements for the levels of degree-granting authority approval; and 5) add degrees to section 11.0 to clarify that Institutions of Higher Education are required to seek the Department's approval in order to offer an additional level of degree.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on July 1, 2017 in the form hereto attached as *Exhibit "A"*. The Department did not receive comments on this regulation.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 292 Post Secondary Institutions and Degree Granting Institutions of Higher Education to further clarify the process.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 292 Post Secondary Institutions and Degree Granting Institutions of Higher Education. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 292 Post Secondary Institutions and Degree Granting Institutions of Higher Education attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 292 Post Secondary Institutions and Degree Granting Institutions of Higher Education 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** 292 Post Secondary Institutions and Degree Granting Institutions of Higher Education amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 292 Post Secondary Institutions and Degree Granting Institutions of Higher Education 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 17, 2017. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 17th day of August 2017.

Department of Education

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

Approved this 17th day of August 2017

State Board of Education

Dennis L. Loftus, Ed.D., President

Nina Lou Bunting, Vice President

G. Patrick Heffernan (absent)

Barbara B. Rutt (absent)

Gregory B. Coverdale, Jr.

Liane M. Sorenson

Terry M. Whittaker, Ed.D.

***Please note that no changes were made to the regulation as originally proposed and published in the July 2017 issue of the *Register* at page 11 (21 DE Reg. 11). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[292 Post Secondary Institutions and Degree Granting Institutions of Higher Education](#)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 729

REGULATORY IMPLEMENTING ORDER

729 School Custodians

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education intends to amend 14 **DE Admin. Code** 729 School Custodians. This regulation is being amended to correct a typographical error in subsection 3.2.10. No other changes are needed.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on July 1, 2017, in the form hereto attached as *Exhibit "A"*. No comments were received for this regulation.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 729 School Custodians in order to correct a typographical error in subsection 3.2.10.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 729 School Custodians. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 729 School Custodians attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 729 School Custodians 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** 729 School Custodians amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 729 School Custodians 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 15, 2017. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 15th day of August 2017.

Department of Education

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

Approved this 15th day of August 2017

***Please note that no changes were made to the regulation as originally proposed and published in the July 2017 issue of the *Register* at page 12 (21 DE Reg. 12). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

729 School Custodians

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 734

REGULATORY IMPLEMENTING ORDER

734 District School Board and Charter School Board Member Financial Responsibility Training

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education intends to amend 14 **DE Admin. Code** 734 District School Board and Charter School Board Member Financial Responsibility Training. The Department of Education reviewed this and other regulations which were four years or older as part of the 2016 Regulation Review as required by 29 **Del.C.** §10407.

This review resulted in the regulation being amended to clarify definitions and align with current practice regarding budget oversight committees in district and charter schools. It also is amended to include language from Regulation 736 Local School District and Charter School Citizen Budget Oversight Committees. As a result, the title of the regulation is changed to reflect its content.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on June 1, 2017, in the form hereto attached as *Exhibit "A"*. The Department received comments from a representative of the Freire charter school as well as a private citizen. Both individuals noted a concern with the requirement that training for new members of a district or charter board, or a new member of the Citizen Board Oversight Committee (CBOC) to occur within 3 months of election or appointment. The Department intends to have online training available by October 1, 2017, which will allow for the required training to occur at any time that is convenient for the trainee and not dependent on a face to face training. Additionally, a comment was made regarding "additional training may be required from time to time as determined by the Department." The Department reviewed the comment and at this time is not making a change. The Department maintains the flexibility is necessary for any rare occasion of a systemic issue where training may be needed. It is not the intent of the Department to overburden those in these positions. Another comment related to the definition of charter school. The Department reviewed and noted the incorrect definition was published. This has been amended in this final order. In addition, clarity was provided for any additional training that may be required.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 734 District School Board and Charter School Board Member Financial Responsibility Training in order to clarify definitions and align with current practice regarding budget oversight committees in district and charter schools. It also is being amended to include language from Regulation 736 Local School District and Charter School Citizen Budget Oversight Committees.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 734 District School Board and Charter School Board Member Financial Responsibility Training. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 734 District School Board and Charter School Board Member Financial Responsibility Training attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 734 District School Board and Charter School Board Member Financial Responsibility Training 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** 734 District School Board and Charter School Board Member Financial Responsibility Training amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 734 District School Board and Charter School Board Member Financial Responsibility Training 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 15, 2017. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 15th day of August 2017.

Department of Education

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

Approved this 15th day of August 2017

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

1.0 Purpose

The purpose of this regulation is to outline the criteria and process for the required ~~financial responsibility training~~ Financial Responsibility Training for members of district school boards including vocational technical school boards and the boards of charter schools pursuant to 14 Del.C. §1803 and for members of the Citizen Budget Oversight Committee (CBOC) pursuant to 14 Del.C. §1508. ~~The purpose of the training is~~ Financial Responsibility Training provides instruction to instruct members of school boards ~~in~~ and CBOCs ~~as to how to properly discharging their responsibility to insure~~ ensure that public funds, ~~including both state and local funds,~~ are appropriately managed and expended, and ~~shall include~~ as well as to provide training on state and local funding of public education.

2.0 Definitions

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

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

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

"**Charter School Board**" ~~shall mean the charter school board of directors pursuant to 14 Del.C. §§503, 504~~ means the board of directors of a charter school that shall be a public body subject to the requirements of 29 Del.C. Ch. 100 and shall have the same standing and authority as a Reorganized School District Board of Education, except the power to tax.

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

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

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

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

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

"**Trainer**" means an individual or organization approved by the ~~Secretary~~ Department of Education to provide the ~~School Board~~ Financial Responsibility Training.

3.0 School Board Financial Responsibility Training Components

3.1 The ~~School Board Financial Responsibility Training or Training~~ means the educational programs, shall be developed and coordinated by the Department of Education, ~~approved by the Office of Management and Budget and Controller General's Office for District School Board and Charter School Board members~~ Department's Finance Office. This ~~Training~~ one-time training may be provided in person or online at the discretion of the Department and shall, ~~at a minimum, consist of two (2) hours~~ and cover the following topics:

3.1.1 Overview of education budget process and timelines;

3.1.2 Instruction in the basic rules of budgeting, including State of Delaware funds, local funds, and federal funds;

- 3.1.3 ~~State Financial Management System~~ Information regarding the State's financial management system; and
- 3.1.4 Reporting requirements.

4.0 District School Board, and Charter School Board ~~Financial Responsibility Training Requirement and CBOC Member Requirements~~

- 4.1 Each member of a District School Board or Charter School Board shall attend and receive a Certificate of Completion for ~~the School Board Financial~~ Responsibility Training within ~~one (1) year~~ three (3) months of election, appointment, or voluntary service to a District School Board or Charter School Board. Provided further, additional training may be required from time to time as determined by the Department. [Notification of any additional training shall be provided to the district or charter school.]
- 4.2 ~~An individual that attends Training and receives a Certificate of Completion shall be considered to meet the requirement of 4.1.~~
- 4.2 Each member of a CBOC shall attend and receive a Certificate of Completion for the Financial Responsibility Training within three (3) months of appointment to a CBOC. Provided further, additional training may be required from time to time as determined by the Department. [Notification of any additional training shall be provided to the district or charter school.]

5.0 ~~Schedule of School Board~~ Financial Responsibility Training Schedule

- 5.1 ~~The Department shall annually publish a list of date(s) for Training~~ communicate training opportunities to Local School Districts and Charter Schools as they are scheduled. The Financial Responsibility Training shall be conducted by a Trainer as defined in this regulation, and approved by the Department's Finance Office.

6.0 Notification of Attendance

- 6.1 ~~The Department shall periodically, but not less than annually, provide a list of those School Board Members and CBOC members that have not satisfied the requirement of subsections 4.1 and 4.2 to their respective District School Board or Charter School Board President, the Office of Management and Budget, and Controller General's Office.~~

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 736

REGULATORY IMPLEMENTING ORDER

736 Local School District and Charter School Citizen Budget Oversight Committees

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education intends to amend 14 DE Admin. Code 736 Local School District and Charter School Citizen Budget Oversight Committees. The Department of Education reviewed this and other regulations which were four years or older as part of the 2016 Regulation Review as required by 29 Del.C. §10407. After an internal review, the regulation is amended to remove training information that is noted in Regulation 734 and thus not needed in this regulation, and to clarify the definition of "Charter School" to be consistent with Regulation 734.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on June 1, 2017, in the form hereto attached as *Exhibit "A"*. Comments were received from the Delaware Charter School Network regarding the inadvertent omission of "and Charter Schools" in Section 3.0 and 3.1. Comments were received from a private citizen related to the composition of the Citizen Board Oversight Committee (CBOC),

approval of CBOC policies, maintenance of the CBOC application form, and the extension for membership terms. The Department reviewed each comment and revised the proposed amendment as needed. The regulation follows the Delaware Code for membership therefore no changes were made. Clarification was provided related to the policy referenced in the renumbered 3.2. The policy referenced is the selection process policy. Additionally, the Department made minor renumbering and technical corrections for clarity.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 736 Local School District and Charter School Citizen Budget Oversight Committees in order to remove training information that is noted in Regulation 734 and thus not needed in this regulation, and to clarify the definition of "Charter School" to be consistent with Regulation 734.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 736 Local School District and Charter School Citizen Budget Oversight Committees. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 736 Local School District and Charter School Citizen Budget Oversight Committees attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 736 Local School District and Charter School Citizen Budget Oversight Committees 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** 736 Local School District and Charter School Citizen Budget Oversight Committees amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 736 Local School District and Charter School Citizen Budget Oversight Committees 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 15, 2017. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 15th day of August 2017.

Department of Education

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

Approved this 15th day of August 2017

736 Local School District and Charter School Citizen Budget Oversight Committees

1.0 Purpose

4.4 The purpose of this regulation is to outline procedures, criteria and responsibilities related to the local school district and charter school Local School District and Charter School Citizen Budget Oversight Committees (CBOC) required pursuant to 14 **Del.C.** §1508. ~~The Citizen Budget Oversight Committee is solely~~ CBOCs are established to oversee the financial position of the local school district or charter school ~~it is assigned to oversee~~ each Local School District and Charter School for which it was appointed. ~~The local school board or charter school board~~ Local School District and Charter School Board shall retain all policy and decision-making authorities granted pursuant to Delaware Code.

2.0 Definitions

"**Certificate of Completion**" means the document provided by the Department of Education indicating the individual has attended and completed the ~~Citizen Budget Oversight Committee training~~ Financial Responsibility Training.

"**Charter School**" ~~shall mean a school pursuant to 14 Del.C., Ch. 5~~ means a non-home based full-time public school that is operated in an approved physical plant under a charter granted by, or transferred to, the Department or other authorizing body for the personal physical attendance of all students.

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

"**Trainer**" means an individual or organization approved by the ~~Secretary~~ Department of Education to provide ~~the Citizen Budget Oversight Committee training~~ Financial Responsibility Training.

3.0 Committee Members for Local School Districts [and Charter Schools]

3.1 Each Local School District and Charter School shall be required to establish a ~~Citizen Budget Oversight Committee (Committee)~~ CBOC no later than June 1, 2010. The ~~Committee~~ CBOC shall have access either electronically or in hard copy format to financial documents and financial information the Local School District [or Charter School] has in its possession and that are relevant to the financial position of the [district District or Charter School], with redactions permitted only to protect confidential personal information regarding students or employees as permitted by the state's Freedom of Information Act.

~~[3.2~~ 3.1.1] The ~~Committee~~ Local School District's CBOC shall have at least five (5) members, ~~with representation from~~ Representation shall consist of parents, educators and taxpayers residing in the district. In addition, where possible, the ~~Committee~~ CBOC shall have at least two members with formal educational or vocational backgrounds amenable to oversight of school district financial statements. Further provided, ~~Committee~~ CBOC members shall not be compensated, except for allowable mileage for training or similar activities, for participation on such ~~Committee~~ CBOC.

~~[3.3~~ 3.1.2] The Charter School's CBOC shall have at least five (5) members. Representation shall consist of educators and parents of students in the school, with no more than two being Charter School Board members and one being a representative of the Department. In addition, where possible, the CBOC shall have at least two members with formal educational or vocational backgrounds amenable to oversight of school [district] financial statements. Further provided, CBOC members shall not be compensated, except for allowable mileage for training or similar activities, for participation on such CBOC.

~~3.3~~ [3.4 3.2] Each Local School ~~district may~~ District and Charter School shall establish its own **[selection]** policy for its ~~Citizen Oversight Budget Committee~~ CBOC, and shall submit the **[selection]** policy to the Department for review. The Local School District, if it chooses to establish its own policy, shall submit the policy to the Department within ninety (90) calendar days of the effective day of this regulation. The ~~Associate Secretary for Finance and Services~~ Department's Finance Office shall review the proposed policy and make a decision within fifteen (15) work days to approve or request revisions. The decision to approve or request revisions shall be based on whether the **[selection]** policy meets the provisions in ~~3.4 subsection~~ [3.5 3.3].

~~3.3.1~~ If the Department does not approve the submitted policy, the Department shall provide comment for areas requiring revisions within fifteen (15) work days of receipt of the proposed policy. The Local School District may submit a revised policy. If the revised policy is not subsequently approved, the Local School District shall follow the Department's ~~Citizen Budget Oversight Committee~~ policy for Local School Districts pursuant to 3.4. In addition, a Local School District may not resubmit a policy for approval more than one time during a fiscal year.

~~3.4~~ [3.5 3.3] The Department's ~~Citizen Budget Oversight Committee~~ CBOC membership provisions shall be as follows:

~~3.4.1~~ [3.5.1 3.3.1] Use the appropriate District or Charter School application form[,], as developed and **[approved maintained]** by the Department[,], that delineates standard application language and additional information that includes, but is not limited to, the following:

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- 3.4.1.1 ~~3.5.1.1~~ 3.3.1.1] Membership pursuant to subsections ~~3.2~~ 3.1.1] and ~~3.3~~ 3.1.2];
- 3.4.1.2 ~~3.5.1.2~~ 3.3.1.2] Conflict of interest, and disqualification from membership upon identification thereof, criteria;
- 3.4.1.3 ~~3.5.1.3~~ 3.3.1.3] Selection, or removal, of the Chairperson to be determined by a majority of the membership of the committee CBOC;
- 3.4.1.4 ~~3.5.1.4~~ 3.3.1.4] Term length ~~[of shall be]~~ two (2) years with ~~[an]~~ option ~~[at the end of the term]~~ to ~~[extend to no more than three (3) approve an]~~ additional ~~[terms two-year term]~~ based on the majority vote of the ~~[other]~~ existing members of the Committee CBOC]; **provided that the cumulative number of extensions shall not exceed three (3);** however, a member may terminate his or her position upon written notice to the Chairperson; and
- 3.4.1.5 ~~3.5.1.5~~ 3.3.1.5] Experience and statement ~~[for of]~~ reason for participation on the Committee CBOC.
- 3.4.2 ~~3.5.2~~ 3.3.2] Post the request for Committee CBOC members for at least fifteen (15) work days on its website and all school building main entrance doors;
- 3.4.3 ~~3.5.3~~ 3.3.3] Identify and post on its website the Selection Committee selection committee that consists of one educator from the district Local School District or Charter School, one local school board Local School Board or Charter School Board member, one member of the local teacher's union, and at least two parents or community members who are not district Local School District or Charter School employees or local school board members; and
- 3.4.4 ~~3.5.4~~ 3.3.4] Use the selection rubric developed and approved by the Department of Education.
- 3.5 Notwithstanding the above, a Local School District with an established citizen budget oversight committee or similar type of citizen committee established for financial oversight may submit a request to the Associate Secretary of Finance and Services for this established committee to be considered the Citizen Budget Oversight Committee pursuant to this regulation as long as the membership meets 3.2 of this regulation. The request shall be made in writing and the Associate Secretary of Finance and Services shall respond within fifteen (15) work days whether to approve such established committee to meet the requirements of this regulation. Upon the effective date of this regulation, any new members or membership solicitation shall be subject to the provisions herein.

4.0 ~~Committee Members for Charter Schools~~

- 4.1 Each Charter School shall be required to establish its Citizen Budget Oversight Committee (Committee) no later than June 1, 2010. The Committee shall have access either electronically or in hard copy format to financial documents and financial information the Charter School has in its possession and that are relevant to the financial position of the district, with redactions permitted only to protect confidential personal information regarding students or employees.
- 4.2 The Committee shall have at least five (5) members with representation from educators and parents of students in the school and representation from the Department of Education. In addition, where possible, the Committee shall have at least two members with formal educational or vocational backgrounds amenable to oversight of school district financial statements. Further provided, Committee members shall not be compensated, except for allowable mileage for training or similar activities, for participation on such Committee.
- 4.3 Each Charter School may establish its own policy for its Citizen Oversight Budget Committee. The Charter School, if it chooses to establish its own policy, shall submit the policy to the Department within ninety (90) calendar days of the effective day of this regulation. The Associate Secretary for Finance and Services shall review the proposed policy and make a decision within fifteen (15) work days to approve or request revisions. The decision to approve or request revisions shall be based on whether the policy meets the provisions in 4.4.
- 4.3.1 If the Department does not approve the submitted policy, the Department shall provide comment on areas requiring revisions within fifteen (15) work days of receipt of the proposed policy. The Charter School may submit a revised policy. If the revised policy is not subsequently approved, the

~~Charter School shall follow the Department's Citizen Budget Oversight Committee policy for Charter Schools pursuant to 4.4. In addition, a Charter School may not resubmit a policy for approval more than one time during a fiscal year.~~

- ~~4.4 The Department's Citizen Budget Oversight Committee membership provisions shall be as follows:~~
- ~~4.4.1 Use the application form as developed and approved by the Department that delineates standard application language and additional information that includes, but is not limited to, the following:~~
 - ~~4.4.1.1 Membership pursuant to 4.2;~~
 - ~~4.4.1.2 Conflict of interest, and disqualification from membership upon identification thereof, criteria;~~
 - ~~4.4.1.3 Selection, or removal, of the Chairperson to be determined by a majority of the membership of the committee;~~
 - ~~4.4.1.4 Term length of two (2) years with option to extend to no more than three (3) additional terms based on the majority vote of the existing members of the Committee; however, a member may terminate his or her position upon written notice to the Chairperson; and~~
 - ~~4.4.1.5 Experience and statement for reason for participation on the Committee.~~
 - ~~4.4.2 Post the request for Committee members for at least fifteen (15) work days on its website and all school building main entrance doors;~~
 - ~~4.4.3 Identify and post on its website a Selection Committee that consists of one educator from the school, one Charter School board member, one teacher, and at least two parents or community members who are not Charter School employees or Charter School Board members; and~~
 - ~~4.4.4 Use the selection rubric developed and approved by the Department of Education.~~
- ~~4.5 Notwithstanding the above, a Charter School with an established citizen budget oversight committee or similar type of citizen committee established for financial oversight may submit a request to the Associate Secretary of Finance and Services for this established committee to be considered the Citizen Budget Oversight Committee pursuant to this regulation as long as the membership meets 4.2 of this regulation. The request shall be made in writing and the Associate Secretary of Finance and Services shall respond within fifteen (15) work days whether to approve such established committee to meet the requirements of this regulation. Upon the effective date, any new members or membership shall be subject to the provisions herein.~~

5.0 Citizen Budget Oversight Committee Training

- ~~5.1 The Citizen Budget Oversight Committee Training (Training) means the educational programs developed by the Department of Education for the local school district and charter school Citizen Budget Oversight Committee members. This Training shall, at a minimum, consist of two (2) hours and cover the following topics:~~
- ~~5.1.1 Overview of education budget process and timeliness~~
 - ~~5.1.2 Instruction in the basic rules of budgeting, including State of Delaware funds, local funds, and federal funds;~~
 - ~~5.1.3 State Financial Management System; and~~
 - ~~5.1.4 Reporting requirements.~~

6.04.0 District School Board and Charter School Board Financial Responsibility Training Requirement

- ~~6.1 Each member of a Citizen Budget Oversight Committee shall attend and receive a Certificate of Completion for the Citizen Budget Oversight Committee training within three ((3)) months of subsequent appointment to a Citizen Budget Oversight Committee. Provided further, additional training may be required from time to time as determined by the Department. District School Board, Charter School Board and Citizen Budget Oversight Committee Financial Responsibility Training, including frequency and required trainings, is outlined in 14 DE Admin. Code 734.~~

7.0 Schedule of School Board Financial Training

- 7.1 ~~The Department shall annually publish a list of date(s) for Training. The Training shall be conducted by a Trainer as defined in this regulation.~~

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 1009

REGULATORY IMPLEMENTING ORDER

1009 DIAA High School Interscholastic Athletics

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Title 14 of the Delaware Code governs the Department of Education ("Department") matters. The Delaware Interscholastic Athletic Association is a unit of the Department. House Bill 98 with House Amendment 1, "An Act to Amend Title 14 of the Delaware Code Relating to the Delaware Interscholastic Athletic Association," was signed into law by the Governor on July 17, 2017 and became effective immediately ("Act"). The Act establishes the ability to grant a waiver for participation in interscholastic sports when a child exercises the right to choice from one school to another school of choice provided the standards for waiver are met. The Act also takes into consideration a new charter school or newly added grades to a charter school.

Under the provisions of 29 **Del.C.** §10113(b)(5), subsection 2.4.7 of 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics is being amended to make it consistent with the Act. The amendments to subsection 2.4.7 do not otherwise alter the substance of the regulation.

The amendments are exempt from the requirement of public notice and comment and are adopted informally in accordance with 29 **Del.C.** §10113(b)(5).

IT IS SO ORDERED the 15th day of August, 2017.

Department of Education

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

1009 DIAA High School Interscholastic Athletics
(Break in Continuity of Sections)

2.0 Eligibility: No Student Shall Represent a School in an Interscholastic Scrimmage or Contest if the Student Does Not Meet the Following Requirements

(Break in Continuity Within Section)

2.4 Eligibility, Transfers

(Break in Continuity Within Section)

- 2.4.7 Pursuant to 14 ~~**Del.C.** Ch. 4~~ a student who transfers from a school of choice to another school of choice in grades 10, 11, and 12 shall be ineligible to participate in interscholastic contests or competitions during the student's first year of attendance at the receiving school unless the receiving school sponsors a sport(s) not sponsored by the sending school in which case the student shall be eligible to participate in that sport(s) only.

Transfers under the School District Enrollment Choice Program (14 **Del.C.** Ch. 4)

- 2.4.7.1 Pursuant to 14 **Del.C.** §410(a), if a student was enrolled in a traditional public, vocational, or charter school outside of the student's feeder pattern through the School District Enrollment Choice Program during the preceding school year and the student transfers to and enrolls in grades 10, 11, or 12 at a different traditional public, vocational, or charter school outside of the student's feeder pattern through the program, the student shall be

ineligible to participate in interscholastic athletic contests or competitions during the student's first year of enrollment at the receiving school.

- 2.4.7.1.1 For the purpose of subsection 2.4.7.1, a student's feeder pattern consists of the public schools in which the student would normally be enrolled based on the student's place of residence.
- 2.4.7.2 If a student is ineligible under subsection 2.4.7.1, a student, the student's family, and the student's receiving school may submit a waiver request. A waiver may be granted if the student, the student's family, and the student's receiving school establish the conditions for granting a waiver set forth in subsection 9.1.1 of 14 **DE Admin. Code** 1006, including hardship, and the student's transfer was not for athletic advantage as provided in subsection 2.4.6 of this regulation.
- 2.4.7.3 A waiver request is not required and the period of ineligibility under subsection 2.4.7.1 shall not apply if:
- 2.4.7.3.1 One of the exceptions to the High School Transfer Rule as provided in subsection 2.4.4 applies; or
- 2.4.7.3.2 The student wishes to participate in an interscholastic sport that was not offered at the sending school; or
- 2.4.7.3.3 The receiving school is a charter school in its first year of operation; or
- 2.4.7.3.4 The receiving school is a charter school in its first year of serving grades 10, 11, or 12.

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

1009 DIAA High School Interscholastic Athletics

OFFICE OF THE SECRETARY

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

REGULATORY IMPLEMENTING ORDER

1202 Delaware Teacher Corps Program

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education ("Secretary") intends to create 14 **DE Admin. Code** 1202 Delaware Teacher Corps Program. The proposed regulation is being created to provide guidance relative to the implementation of the Delaware Teacher Corps Program and to establish the purpose, eligibility, and other criteria for an award from the program.

Notice of the proposed regulation was published in the *Register of Regulations* on July 1, 2017 and in the *News Journal* and *Delaware State News* on July 1, 2017, in the form hereto attached as Exhibit "A." Persons who wished to present their views regarding the proposed regulation were invited to do so in writing by August 7, 2017. The Delaware Department of Education did not receive written comments.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to create 14 **DE Admin. Code** 1202 Delaware Teacher Corps Program to provide guidance relative to the implementation of the Delaware Teacher Corps Program and to establish the purpose, eligibility, and other criteria for an award from the program.

III. DECISION TO CREATE THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to create 14 **DE Admin. Code** 1202

Delaware Teacher Corps Program. Therefore, pursuant to 14 **Del.C.** §122 and 14 **Del.C.** §3402(c), 14 **DE Admin. Code** 1202 Delaware Teacher Corps, attached hereto as Exhibit "B," is hereby created. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1202 Delaware Teacher Corps Program hereby created 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** 1202 Delaware Teacher Corps Program created hereby shall be in the form attached hereto as Exhibit "B" and said regulation shall be cited as 14 **DE Admin. Code** 1202 Delaware Teacher Corps Program in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 and 14 **Del.C.** §3402(c) on August 15, 2017. The effective date of this Order shall be ten (10) days from the date this Order is published in its final form in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 15th day of August, 2017.

Department of Education

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

1202 Delaware Teacher Corps Program

1.0 Purpose

The purpose of this teacher incentive program is to encourage academically talented Delawareans to pursue teaching careers in Delaware public schools.

2.0 Definitions

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

"Award" means a loan under the Delaware Teacher Corps Program, the repayment of which is forgiven when the borrower is employed in the teaching profession for the specified period of time.

"Delaware Higher Education Office (DHEO)" is the Department of Education's office which administers specific programs related to higher education, including, but not limited to, scholarship and loan programs.

"Full-Time Student" means a student enrolled in a minimum of college credit hours as required by the student's college or university for full-time status. Generally, for an undergraduate program this is a minimum of 12 credit hours per term or for a graduate program a minimum of 9 credit hours.

"High Priority Program" means classifications with the highest [~~shortest~~ shortage] of teachers and persistent need for teachers available for employment. These classifications of a subset of the identified Critical Need Areas. They will be posted annually on the Delaware Higher Education Office (DHEO) website and are based on federal and state reporting.

"Qualifying Employment" means employment as a teacher in a Delaware public school, whether as an employee of the State, the Department of Education, a school district or an individual school, as an educator in the Department of Services for Children, Youth and Their Families or as an employee of a private organization providing educational services to Delaware school children under a contract with the State, the Department of Education, a school district or an individual school.

"Resident of the State" means the student meets the definition of residency as defined in 14 **Del.C.** §3402(f).

"Semester" means a half-year term in a school or college, typically lasting fifteen to eighteen weeks.

"Student Account Access Site" means the webpage on the DHEO's website where students can access scholarship opportunities.

"Tuition" means the cost of attendance excluding room, board, mandatory fees, books and supplies.

"Undergraduate" means a student at a college or university who has not yet earned a bachelor's or equivalent degree; typically the first four years of college attendance.

3.0 Application Acceptance and Submission Period

- 3.1 Applications must be submitted online via the Student Account Access Site accessed via the DHEO's website.
 - 3.1.1 First time users shall establish an account and provide a valid email and mailing address before being permitted to submit an application online.
- 3.2 The application acceptance period for this scholarship loan will be posted on the DHEO's website by December 1 of each calendar year.
 - 3.2.1 Applications shall not be accepted outside of the posted application acceptance period under any circumstances.
 - 3.2.2 Applicants are required to submit:
 - 3.2.2.1 A completed application form, including activities; and
 - 3.2.2.2 An unofficial transcript.
 - 3.2.2.2.1 An applicant is responsible for ensuring that he or she electronically submits his or her unofficial transcript to the DHEO.
 - 3.2.2.2.2 An applicant who is a current high school senior enrolled in a public or charter school in Delaware is not required to submit an unofficial transcript.
- 3.3 Incomplete applications shall not be accepted or processed.

4.0 Eligibility

- 4.1 Applicants shall meet the following eligibility requirements to be considered for the Delaware Teacher Corps Program:
 - 4.1.1 Be a Resident of the State; and
 - 4.1.2 Be a Full-Time Student; and
 - 4.1.3 Be enrolled at a Delaware college or university; and
 - 4.1.4 Be admitted into a Department of Education-approved teacher prep program leading to certification; and
 - 4.1.5 Be in a High Priority Program leading to teacher licensure and certification and have at least a 2.75 cumulative GPA.

5.0 Awards

- 5.1 The number and amount of Awards each year will vary and is subject to General Assembly appropriations for the Delaware Teacher Corps Program.
- 5.2 Awards shall first be provided to applicants planning to teach in one of the High Priority Program areas as listed on the DHEO website.
- 5.3 An Award is to be used for, and not in excess of, Tuition.
- 5.4 For Full-Time Students an Award may be renewed annually for up to three additional academic years depending on the degree program.
 - 5.4.1 An Award is renewable upon the condition that the student maintains enrollment in an eligible program of study leading to teacher certification in a High Priority Program.

6.0 Award Payment

- 6.1 Students awarded under this program shall sign a promissory note, which includes the terms of repayment and loan forgiveness, annually in order to receive and disburse the Award.
- 6.2 DHEO will contact the student's college or university to verify the student's enrollment and eligibility at the start of the fall and spring Semesters prior to an Award payment being disbursed.
- 6.3 All payments will be disbursed directly to the eligible student's college or university only.

7.0 **Repayment**

- 7.1 An individual shall meet the definition of Qualifying Employment, as defined within this regulation, in order to be eligible for loan forgiveness.
- 7.2 For each year of Qualifying Employment, one year of the Award payment will be forgiven.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DELAWARE HEALTH CARE COMMISSION

DELAWARE HEALTH RESOURCES BOARD

Statutory Authority: 16 Delaware Code, Section 9303 (16 Del.C. §9303)

ORDER

Delaware Health Resources Management Plan

The Department of Health and Social Services, The Delaware Health Resources Board (The Board) initiated proceedings to adopt a revised Health Resources Management (HRMP) regulation pursuant to 16 Del.C. §9303(d)(1). The Board published its notice of the revised regulation in the November 1, 2016 Delaware *Registrar of Regulations*. A public hearing was held on December 5, 2016 in which public comments were accepted through January 5, 2017

SUMMARY OF FINAL AMENDMENT

The purpose of the HRMP is to establish the core set of common review considerations for use in reviewing Certificate of Public Review (CPR) applications submitted on behalf of applicants proposing health care-related projects. The revised edition of the HRMP promotes the alignment of Delaware's existing health planning framework with statewide policy aimed at promoting health system improvement. There were no substantive changes to the revised HRMP regulation as a result of the comments received. Therefore, the Board is publishing the HRMP as final.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

The Delaware Health Care Association, Delaware Surgery Center, St. Francis Hospital and Post Acute Medical LLC submitted comments and suggestions. The Board has considered each comment and responds as follows:

Comment 1: Section II, Activities Subject to CPR Review, No. 2, Page 6: apply the annual inflation adjustment to the \$5.8 million capital expenditure.

Response: The Board appreciates and acknowledges this comment. The Board will review the capital expenditure threshold amount at a future date.

Comment 2: Section II, Activities Subject to CPR Review, No. 4, Page 6: why isn't major medical equipment in an inpatient rehabilitation facility (IRF) not subject to review? The reference to an IRF should be deleted.

Response: The Board appreciates and acknowledges this comment. This requires a statutory change in which the Board is unable to change in regulation. The Board will review in a future revision.

Comment 3: Section III, CPR Application Procedure, Step 1, Page 8: the sentence 180 days following the

data, the word data should be changed to date.

Response: Revised as recommended.

Comment 4: Section III, CPR Application Procedure, Steps 1-9, Page 8: there needs to be an additional step identified as to when copies of the application will be made available to the public. Once the application is made available, then the timeframe for requesting a public hearing should be identified. Recently, public hearings have had to be requested and impacted parties have to make their case without even knowing what is being proposed in the application, because they could not obtain a copy. There should be a requirement that the State will make copies available within a certain timeframe (currently it takes several weeks) and, based on that, set the timetable for the public hearing.

Response: The Board appreciates and acknowledges this comment. Modifications will be made in the application kit to clarify the application process for applicants.

Comment 5: Section III, CPR Application Procedure, Step 10, Page 10: the phrase or impacted party should be added after an applicant. Appeals should not be limited to just the applicant.

Response: The Board appreciates and acknowledges this comment. Revisions have been made based upon the Board's final decision and vote clarifying that an appeal can be made by any party.

Comment 6: Section IV. Certificate of Public Review (CPR) Common Review Considerations, Page 11: related guiding principles, we are not sure incorporating the related guiding principles into the statutory criteria really works in this section or in others. The guiding principles do not necessarily direct the applicant as to what they need to provide the Board and they do not necessarily tie cleanly to the statutory criteria. We would suggest keeping the related guiding principles separate and more clearly articulating what is expected from the applicant.

Response: The Board appreciates and acknowledges this comment; however, revisions will not be made. The statutory criteria (SC) and guiding principles (GP) incorporate similar Triple Aim themes.

Comment 7: Section IV. Certificate of Public Review (CPR) Common Review Considerations, Page 11: the additional requirement of having to identify the names of all key professional, administrative, clinical and direct services personnel and their CVs is impractical and unlikely to add much to the application except extra paper. Since the service is proposed, it is unlikely that the staff have been hired. If personnel are identified, there is a decent likelihood they will change by the time the service is implemented. COPR is about the need for the service, not the specific individuals that will be involved.

Response: The Board appreciates and acknowledges this comment. Revisions have been made based upon the Board's final decision and vote clarifying applicants must provide a list of administrative, clinical, leadership and other positions related to the proposal as necessary.

Comment 8: Section IV. Certificate of Public Review (CPR) Common Review Considerations, Page 12: section IV that outlines the Common Review Considerations for a Certificate of Public Review addresses the need of the population for the proposed project. Post-Acute believes that the efficiency of the process will be enhanced if the Plan provides guidance to applicants on how best to substantiate bed need rather than leaving the methodology solely to the discretion of each applicant.

Response: The Board appreciates and acknowledges this comment; however, the Board agrees that estimating Delaware's future health care needs cannot be accomplished solely with the precision of mathematical formulae. As such, the Board decided to consider calculations in conjunction with statutory criteria and guiding principles. The applicant(s) must prove the need.

Comment 9: Section IV. Certificate of Public Review (CPR) Common Review Considerations, Page 12: suggest adding to the end of the sentence, or another reputable source (e.g., Bureau of the Census, Claritas). DE Pop. Consortium data projects at the County level but does not project at the zip code level. It is rare that the service area in an application is defined as the County but the surrounding zip codes routinely define more.

Response: Revisions have been made to include the U.S. Bureau as a reputable source.

Comment 10: Section IV. Certificate of Public Review (CPR) Common Review Considerations, Page 13: the phrase beginning including evidence until the end of the sentence should be replaced with the impact on those

parties. We do not know that the fact that the project has been discussed with impacted parties has any bearing on the consideration of the application. It may give the appearance implication that since the application was discussed with the impacted party, that there is some sort of agreement or support of the project by the impacted party. Also, the phrase if such information is available should be added to the end of the last line. The information requested is not necessarily publicly available.

Response: Revisions have been made based upon the Board's final decision and vote clarifying that each proposal should provide information about alternative providers of the proposed service, referencing the specific provider that now offer the proposed service and the impact of those parties. If alternative providers currently offer the proposed service, include financial information indicating whether these alternative providers are more or less costly in the provision of the service.

Comment 11: Section IV. Certificate of Public Review (CPR) Common Review Considerations, Page 13: the word that and phrase for the applicant should be deleted. The words are not additive to the requirement. The second sentence should be deleted as duplicative of the first.

Response: Revised as recommended.

Comment 12: Section IV. Certificate of Public Review (CPR) Common Review Considerations, Page 14: individual charges should be defined or rephrased or the sentence should be deleted. Does the State want to know what the list charges will be for the service, the expected reimbursement, or the expected out-of-pocket cost to the patient?

Response: Revisions have been made based upon the Board's final decision and vote clarifying the applicant will demonstrate how the application will impact cost and charges to the individual(s) for health services.

Comment 13: Section IV. Certificate of Public Review (CPR) Common Review Considerations, Page 14: each proposal shall describe how the applicant intends to transition from a traditional fee for service reimbursement model to a payment model that embraces value-based payments with a goal of fostering better clinical outcomes across the community, providing patient-centered care and lowering the total cost of care.

Response: The Board appreciates and acknowledges this comment. The HRMP has a section on alignment with the State Health Care Innovation Plan. Applicants should refer to this section.

Comment 14: Section IV. Certificate of Public Review (CPR) Common Review Considerations, Page 14: third paragraph, meaningful market should be defined.

Response: Revisions have been made based upon the Board's final decision and vote clarifying projects resulting from or anticipated to enhance meaningful markets that ensure appropriate/adequate coverage, access and quality that is affordable are to be encouraged.

Comment 15: Section IV. Certificate of Public Review (CPR) Common Review Considerations, Page 14: the sentence beginning in the past, should be deleted as non-additive.

Response: Revisions have been made based upon the Board's final decision and vote to delete the words in the past, but keep the remainder of the sentence.

Comment 16: Section IV. Certificate of Public Review (CPR) Common Review Considerations, Page 14: the first paragraph should be restructured or deleted. It is not clear what the direction is for the applicant to respond. It is better to be clear as to what the State wants from the applicant. What is asked for in the second paragraph does not necessarily tie to what is discussed in the first paragraph.

Response: Revisions have been made based upon the Board's final decision and vote clarifying the applicant shall satisfactorily demonstrate how the proposal will impact the financial strengths of the health care system.

Comment 17: Section IV. Certificate of Public Review (CPR) Common Review Considerations, Page 14: the second paragraph, the references to cost-effectiveness should be deleted as duplicative of statutory criteria six.

Response: Revised as recommended.

Comment 18: Section IV. Certificate of Public Review (CPR) Common Review Considerations, Page 15: in section B, while there are calculated need methodologies for Nursing Homes, Hospitals and Freestanding

Surgery Centers (FSSC), there are no such methodologies for IRFs, even though plenty of need methodologies exist in other States. It is suggested that there should be a calculated need methodology for this service.

Response: The Board appreciates and acknowledges this comment and will review in a future revision.

Comment 19: Section IV. Certificate of Public Review (CPR) Common Review Considerations, Page 15: we suggest replacing sufficient with definitive or all encompassing.

Response: Revisions have been made to the language based upon the Board's final decision and vote clarifying the project-specific mathematical need calculations represent a necessary, but not always sufficient or all-encompassing component of the CPR decision-making process.

Comment 20: Section V. Charity Care Policy, Page 16: we suggest deleting the word original and changing were to are. The sentence references original goals implying that those goals have changed, however there is nothing in this section showing any revised goals.

Response: Revised as recommended.

Comment 21: Section V. Charity Care Policy, Page 16: we recommend that charitable care include Medicare and Medicaid shortfalls. This inclusion would be consistent with Federal reporting and would reinforce, from a public policy perspective, the benefits that non-profit hospitals and others provide when caring for these populations. This approach is also consistent with the statutory purpose of the Board to support indigent care as provided in 16 Del.C. §9303.

Response: The Board acknowledges and appreciates this comment; however, Medicare and Medicaid shortfalls will not be included in charitable care.

Comment 22: Section V. Charity Care Policy, Page 17: it would be helpful to identify the actual minimum Medicaid utilization level established by the Board and incorporate that number into the plan. Currently, we are unaware that the Board has established a minimum number. The other option is to delete the phrase established by the Board.

Response: The Board appreciates and acknowledges this comment and will review in a future revision.

Comment 23: Section VII. CPR Application: Document Property Guidelines, Page 21: we believe that reducing the page limits, especially given that the Plan seeks even more information and detail than the last Plan., statutory criteria¹ requires more information on the narrative and background of the project. The project specific need criteria have added quality measures included documented plans of action for each one, detailed explanations of all assumptions used for population, utilization, payer mix and financial projections. The appendices are only allowing 10 pages but letters of support and CVs of every person involved with the proposed service are to be submitted which would easily exceed 10 pages. The page count table does not include the requirements of the Charity Care Policy, which will also add volume to the application. To suggest that the length of the applications should be limited while asking for more information from the applicant is nonsensical.

Response: The Board appreciates and acknowledges this comment; however, changes will not be made to this section.

Comment 24: Section VII. CPR Application: Document Property Guidelines, Page 21: the second bullet point under NIH guidelines, we believe type density and margin guidelines may be too specific to address something that may not be a problem. Tables or a series of bullets may all fit on one page with a .7" bottom margin vs. split on two pages with a 1" margin where the reader may have to flip back and forth to understand the information.

Response: The Board appreciates and acknowledges this comment; however, changes will not be made to this section.

Comment 25: Section VIII. Acute Care, Page 26: quality measures, we are not sure if the State's interest is in the actual results of the quality measures, or the documented plans of action that serve to prevent, identify, diagnose and control the measures. This section does not ask the applicant's results. It wants plans for each of the 10 measures. This appears to be unnecessary additional paperwork for an audience that is primarily non-clinical. We suggest a better route may be for the applicant to share their actual results and to identify any steps it is taking

to improve scores that are below average performance.

Response: The Board appreciates and acknowledges this comment. Revisions have been made based upon the Board's final decision and vote clarifying the applicant will include documented plans of action and -when applicable to provide actual results and identification of steps to improve scores and requiring applicants make available copies of reports that are required and submitted to regulatory entities. Any further changes will be considered in future revisions of the plan.

Comment 26: Section IX. Obstetric Care (Hospital- Based), Page 29: the paragraph that begins with the words the above methodology, this sentence summarizes tenets of statistical theory but does not elaborate why the applicant should use the numbers that it is required to use. The explanation in the existing Jan. 2014 Health Resources Management Plan provides a much cleaner explanation. We suggest using the language in the 2014 Plan. Further, there is no explanation as to why Kent and Sussex have a 95% Confidence Interval but New Castle County requires a 99% confidence interval. We suggest having a consistent confidence interval.

Response: The Board agrees that there should be a consistent confidence interval of 95% in all three (3) counties. Revisions have been made to adopt a 95% confidence interval.

Comment 27: Section IX. Obstetric Care (Hospital- Based), Page 30: quality measures, we are not sure if the State's interest is in the actual results of the quality measures, or the documented plans of action that serve to prevent, identify, diagnose and control the measures. This section does not ask the applicant's results. It wants plans for each of the 10 measures. This appears to be unnecessary additional paperwork for an audience that is primarily non-clinical. We suggest a better route may be for the applicant to share their actual results and to identify any steps it is taking to improve scores that are below average performance.

Response: The Board appreciates and acknowledges this comment. Revisions have been made based upon the Board's final decision and vote clarifying the applicant will include documented plans of action and -when applicable to provide actual results and identification of steps to improve scores and requiring applicants make available copies of reports that are required and submitted to regulatory entities. Any further changes will be considered in future revisions of the plan.

Comment 28: Section X. Nursing Home Care, Page 35: quality measures, we are not sure if the State's interest is in the actual results of the quality measures, or the documented plans of action that serve to prevent, identify, diagnose and control the measures. This section does not ask the applicant's results. It wants plans for each of the 10 measures. This appears to be unnecessary additional paperwork for an audience that is primarily non-clinical. We suggest a better route may be for the applicant to share their actual results and to identify any steps it is taking to improve scores that are below average performance.

Response: The Board appreciates and acknowledges this comment. Revisions have been made based upon the Board's final decision and vote clarifying the applicant will include documented plans of action and -when applicable to provide actual results and identification of steps to improve scores and requiring applicants make available copies of reports that are required and submitted to regulatory entities. Any further changes will be considered in future revisions of the plan.

Comment 29: Section XI. Freestanding Surgery Center (FSSC), Page 37: section a, a FSSC is defined as a health facility that specializes in performing surgical procedures, including certain diagnostic and preventive services, in an outpatient setting. Services performed in an FSSC are billed as surgical procedures and typically represent procedures more complex than those performed in a physician's office, but not so complex as to require overnight skilled nursing care. This definition is contradictory to what is found in the Delaware Regulations: Administrative Code: Title 16: Department of Health and Social Services; Division of Public Health: 4400 Health Systems Protection: 4405 Free Standing Surgical Centers. This regulation states: Free Standing Surgical Center abbreviated as FSSC, means a facility, other than a hospital or the office of a physician, dentist or podiatrist, or professional association thereof, which is maintained and operated for providing surgical services and in which the expected duration of services would not exceed 23 hours 59 minutes following an admission. Per this regulation, a FSSC if licensed may provide surgical services that require overnight skilled care. Please consider rewording the definition to align with Title 16: 4405 Free Standing Surgical Centers that allows overnight skilled care when licensure is approved through the Delaware Health and Social Services Department of Office of Health Facilities and Licensing and Certification. At present, Delaware Surgery Center is licensed by DOHFL to provide overnight

care not to exceed 23 hours 59 minutes. 16 **Del.C.** §9303, states: A "freestanding surgical center" shall mean any facility licensed as such pursuant to Chapter 1 of Title 16 and particularly in the State Board of Health Regulations: Division of Public Health: 4400 Health Systems Protection: 4405 Free Standing Surgical Centers.

Response: Revised as recommended.

Comment 30: Section XI. Freestanding Surgery Center (FSSC), Page 37: section b, review considerations for CPR proposal involving the establishment of an FSSC, project-specific mathematical need calculations, the previous plan had a definition of FSSC rooms that included 65% of hospital operating and procedure rooms and all ambulatory surgery centers rooms. In the proposed plan, the hospital OR and procedure rooms are not mentioned. However, the plan references the National Ambulatory Surgery use rate published by The National Health Statistics Report of 2006, which is based upon statistical data including surgical procedures performed on an ambulatory basis in both, hospitals and freestanding surgical centers.

Response: Revisions have been made to clinical impact section for applicants to include hospital operating and procedure rooms when describing how and where the proposed patient population is currently obtaining ambulatory surgery services.

Comment 31: Section XI. Freestanding Surgery Center (FSSC), Page 37: request to add the 65% of hospital operating and procedure rooms back into the calculation. As the calculation is presented in the new plan, it will erroneously show a deficit by including hospital cases in the use rate but not in the available rooms. An oversaturated ASC market will have an impact on all facilities including the hospital. Excess capacity stemming from overbuilding of health care faculties will result in health care price inflation.

Response: The Board appreciates and acknowledges this comment and will review in a future revision.

Comment 32: Section XI. Freestanding Surgery Center (FSSC), Page 37: the reference to the ratio used is from 2006. This should be updated or, if it no longer is published, find another source. It is likely that use rates [for] FSSCs have changed dramatically since 2006.

Response: Revisions have been made based upon the Board's final decision and vote. Language has been clarified to include corrected data from the most recent report of the Centers for Disease Control and Prevention, National Center for Health Statistics, 2006 [published in 2009].

Comment 33: Section XI. Freestanding Surgery Center (FSSC), Page 38: hospital operating rooms should be included in the inventory or at least a significant fraction of rooms. For most hospitals, approximately half of their surgeries are outpatient. Given that the use rate to be used is a national ambulatory surgery use rate, presumably, irrespective of whether the surgeries are performed in a hospital or in a freestanding ASC, it would be appropriate to apply that use rate to all operating rooms that provide ambulatory surgery in the area and not just those in FSSCs.

Response: Revisions have been made to clinical impact section for applicants to include hospital operating and procedure rooms when describing how and where the proposed patient population is currently obtaining ambulatory surgery services.

Comment 34: Section XI. Freestanding Surgery Center (FSSC), Page 39: the lack of any quality measures gives the impression that FSSCs are not expected to perform to the level of hospitals or nursing homes. It seems that many of the quality measures being applied to hospitals are applicable to FSSCs (e.g., infections, medication errors, transfers to hospitals, sepsis, adverse medication reactions). FSSCs should have the same outcome expectations as other facilities.

Response: Revisions have been made based upon the Board's final decision and vote to include in this category, applicants make available copies of reports that are required and submitted to regulatory entities.

Comment 35: Section XII. Acquisition of Major Medical Equipment, Page 41: there is a need to include/add the description of the methodology/process HRB uses for determining which major medical technology the Board designates as subject to review. The process/methodology should include clearly defined criteria taking into account the advancements in the technology, changes in the reimbursement and health policy (e.g. value based purchasing, parity outpatient billing, bundle payments); as well as, contemporary clinical practices and applications. The process also should allow participation and input from the key stakeholders. The current listed

examples should be re-examined through this process. Not certain as to why CT and MRI are being listed as examples as they currently do not require COPR, unless the cost exceeds \$5.8 million. These services are considered current standard diagnostic modalities. Most states exclude them from the CON review process

Response: The Board appreciates and acknowledges this comment and will review in a future revision.

Comment 36: Section XII. Acquisition of Major Medical Equipment, Page 41: section a, second and fourth bullets, CT and MRI appear to be new additions to the medical equipment acquisition list. To our knowledge, these modalities do not currently require a COPR currently unless the cost exceeds \$5.8 million. It is not clear as to why CT and MRI are being added other than to add significant burden to the Health Resources Board, which has difficulty managing the existing COPR requests. As opposed to the other major medical equipment, these services are lower dollar investments and require non-unique skills that are plentiful in the market. Utilization controls already exist with payers and will grow under bundled payments and population health management. Those controls will be more effective than a COPR, especially given that there are no specific criteria for them that applicants must meet. Most, if not all states do not include these services as part of their CON review process.

Response: The Board appreciates and acknowledges this comment. These items are not new additions to the CPR process. PET CT and PET MRI are activities subject to CPR review.

Comment 37: General Comment, no page referenced Process for future document review, the future process for public input needs to include a comparative or redlined document so that reviewers can determine which elements of the plan have been altered from prior years. Review of this year's proposals from a comparative perspective is hampered by significant changes in format from prior years and the lack of information regarding specifically how the plan has evolved. Conceptual changes, such as guiding principles and their relationship to statutory criteria are not sufficient for review of substantive and definitional changes, which are difficult to identify in this year's document.

Response: The Board appreciates and acknowledges this comment. This revision was a complete repeal and replace. It was not feasible to provide a comparative or redlined document. The Board will provide a comparative or redlined document in the future revision process.

DECISION AND EFFECTIVE DATE

The Delaware Health Resources Board finds that the revised HRMP regulation shall be adopted with the changes as final in the form proposed. The revised HRMP will become effective ten days following publication of this Final Order in the Delaware *Registrar of Regulations*.

IT IS SO ORDERED this 1st day of August by the Delaware Department of Health and Social Services.

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

***Please Note: Due to the size and formatting of the final regulation, it is not being published here. A link to a PDF version of the final regulation is provided below:**

[Health Resources Management Plan \(Delaware Health Resources Management Plan\)](#)

DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Statutory Authority: 16 Delaware Code, Section 1101 (16 **Del.C.** §1101)
16 **DE Admin. Code** 3310

ORDER

3310 Neighborhood Homes for Persons with Developmental Disabilities

NATURE OF THE PROCEEDINGS:

The Department of Health and Social Services ("Department") / Division of Long Term Care Residents Protection (DLTCRP) initiated proceedings to establish Regulation 3310 Neighborhood Homes for Individuals with Intellectual and/or Developmental Disabilities.

The Department's proceedings to establish the regulation was initiated pursuant to 16 Delaware Code §1101 and its authority as prescribed by 29 **Del.C.** §7971.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in April, 2017 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by, May 1, 2017, at which time the Department would receive information, factual evidence and public comment to the said proposed regulations.

SUMMARY OF FINAL AMENDMENT

The proposal establishes Regulation 3310 Neighborhood Homes for Individuals with Intellectual and/or Developmental Disabilities. The proposed change will establish the regulation as required by Title 16 **Del.C.** §3007A.

Statutory Authority

16 **Del.C.** §1101

29 **Del.C.** §7971(D)(1) Subchapter VI "Department of Health And Social Services, Division of Long-Term Care Residents Protection."

Background

DLCTRP is revising these regulations pursuant to 16 **Del.C.** §1101, 29 **Del.C.** Ch.79.

Summary of Final Amendment

The proposal establishes regulation which detail the Department of Health and Social Services' authority to promulgate rules and regulations related to the Neighborhood Homes for Individuals with Intellectual and/or Developmental Disabilities. The comments we received did not result in substantive revisions to the published proposed regulation. Therefore, we are publishing these regulations as final.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

The proposal establishes Regulation 3310 Neighborhood Homes for Individuals with Intellectual and/or Developmental Disabilities. The final change will establish the regulation as required by 16 **Del.C.** §1101.

Comment 1: DHSS should consider joint promulgation of regulations by both the DLTCRP and DDDS. By statute, DDDS is authorized to promulgate regulations covering neighborhood homes. See 29 **Del.C.** §7909A(c)(1) and (e). In the past, the DLTCRP and DDDS jointly promulgated the neighborhood home regulations. See 15 DE Reg. 968 (January 1, 2012). Sole promulgation by DLTCRP may render the regulations vulnerable to question in any enforcement action.

Response: DLTCRP disagrees. We conferred with the Department of Justice (DOJ) and Delaware Division of Disabilities Services (DDDS) as regulations were being revised.

Comment 2: In §1.0, the definition of "authorized representative" merits revision. On the one hand, it appears

to limit an "authorized representative" to someone acting on behalf of a resident lacking decision-making capacity in the first and last sentences. On the other hand, it includes someone appointed under a POA, AHCD, or supportive decision-making agreement - all of which require the resident to have capacity. This is confusing. The section should be revised to encompass anyone authorized by law to act on the resident's behalf. Also, since minors can be Neighborhood Home residents, the definition of "authorized representative" should preferably be expanded to cover a parent or guardian of a minor.

Response: The Division disagrees. The regulation covers all situations in which an authorized representative may function. The DLTCRP licenses Neighborhood Homes for adults only (18 years and older).

Comment 3: In §1.0, definition of "person centered plan", the grammar in the second sentence is incorrect. The list inconsistently includes nouns (people; strategies) and verbs (uses; offers). Compare the attached §7.3 from the Delaware Administrative Code Drafting & Style Manual.

Response: DLTCRP agrees and the definition was revised.

Comment 4: In §3.2.1, insert "at least" prior to "annually". Otherwise, a licensee could argue that DHSS can only conduct one inspection annually, i.e., there is a regulatory "cap" of one inspection annually.

Response: The DLTCRP agrees and the term was added.

Comment 5: In §4.2.15, a total ban on firearms on the premises of a neighborhood home could be challenged under the Second Amendment and the Delaware Constitution. See attached March 14, 2014 *News Journal* article describing Delaware Supreme Court ruling that WHA cannot limit firearms in common areas. See also Title 16 **Del.C.** §1121(25) and (29). The DLTCRP may wish to seek guidance from the Attorney General's Office in this context.

Response: The provision was in the previous regulations, and there are no changes.

Comment 6: the Division should consider adding a subsection to §5.4 which currently contemplates submission of plans only to DHSS. Under certain circumstances, the premises would be subject to review by the State Architectural Accessibility Board. See Title 29 **Del.C.** §7303.

Response: The DLTCRP disagrees. According to the State AAB website, it pertains to only State of Delaware government owned or leased facilities, or facilities constructed or altered with State funding, either in total or in part. These standards are followed in combination with the local building code and with the guidelines established under the Americans with Disabilities Act (ADA).

Comment 7: the only accessibility references in Section 5.4 are in the context of ramps. See, e.g., §§5.4.6 and 5.4.6.2. This is highly under inclusive. For example, a ramp for ingress and egress is of little use if doorways are narrow or bathrooms are inaccessible. A general reference at §5.6 is rather cryptic. The CMS Rule contemplates that "the setting is physically accessible to the individual" overall. See 42 C.F.R. 441.710(a)(1)(B).

Response: The DLTCRP disagrees. 5.3 Already includes local and state building codes which incorporates ADA standards.

Comment 8: Section 5.4.6 only requires a ramp if accommodating individuals who regularly require wheelchairs. One problem with this approach is that providers have no incentive to have accessible sites and individuals using wheelchairs are disproportionately excluded from the neighborhood home network. A second problem with this approach is that visitors using wheelchairs cannot enter the home.

Response: The DLTCRP disagrees. 5.3 Already includes local and state building codes which incorporates ADA standards.

Comment 9: There is some "tension" between §5.9.5 (requiring doors to be capable of being opened from either side at all times) and §5.10.7 (requiring lockable doors). The CMS Community Rule promotes resident privacy, including doors "lockable by the individual, with only appropriate staff having keys to doors". See 42 C.F.R. 441.710(a)(1)(B).

Response: The DLTCRP agrees and 5.10.7 has been revised.

Comment 10: Section 5.10.12 limits bedrooms to no more than two (2) individuals. It would be prudent to

include a subsection noting that residents have some choice in roommates. See Title 16 **Del.C.** §1121(28). The CMS Rule is even more affirmative: "Individuals sharing units have a choice of roommates in that setting." 42 C.F.R. 441.710(a)(1)(B).

Response: DLTCRP disagrees and 8.0 Residents Rights requires compliance with Title 16 **Del.C.** §1121(28).

Comment 11: Section 6.2 contemplates manual entries in a medication administration record. If electronic entries are permissible in a data base (e.g. in THERAP), then this section may merit revision.

Response: The DLTCRP agrees and 6.2 has been revised.

Comment 12: Section 6.8.3.1 merits review. It generally includes elopement as a reportable incident only if an individual's whereabouts are unknown and the individual suffers harm. Many behavior plans include restrictions (e.g. line of sight or supervision standards). Section 6.8.3.1 does not account for violations of behavioral plans. Thus, an individual restricted to line of sight due to sex offenses could elope and the agency would not have to report the occurrence.

Response: The DLTCRP disagrees. Violations of a line of sight restriction would be covered by 6.8.2.

Comment 13: Section 6.8.4.2 characterizes injuries resulting in transfer to an acute care facility as a reportable incident. At a minimum, we recommend including "urgent care" facilities in this section. Anecdotally, we understand that a provider may have opted to take injured individuals to urgent care facilities to inferentially avoid reporting incidents. By analogy, the DSCY&F requires its providers to report any injury resulting in medical/dental treatment other than first aid provided on-site. See 9 **DE Admin Code** 103.15.22 and 103.32.0. This is manifestly a more protective standard.

Response: DLTCRP agrees and 6.8.4.2 has been revised.

Comment 14: Section 7.4 could be improved by incorporating the ADA standard that there should be no protrusion from the wall in excess of four inches. See attachments related to fire extinguishers.

Response: The DLTCRP disagrees. The Fire Marshall oversees the life safety regulations by issuing a report and this standard is in compliance with 5.3 which already includes local and state building codes which incorporates ADA standards.

Comment 15: Section 9.1.5 is overly restrictive in requiring all prescribed medications to be kept locked in a cabinet or lock box. An individual with asthma could not keep an emergency inhaler in his personal possession. An individual with dry skin could not keep a prescription skin moisturizer in his personal possession. The standard is also too brittle if staff are trying to train an individual to monitor and self-administer medications in anticipation of developing greater independence. Restricting access to an individually prescribed medication is not "normal" and the blanket policy of locking all prescribed medications may violate the CMS Community Rule. If there are less intrusive methods to achieve safety, they should be considered and restrictions only allowed if included in the person-centered service plan. See 42 C.F.R. 441.530 and 441.710(a).

Response: The Division disagrees. All medication is accessible to the individual via 24 hour staff.

Comment 16: We did not notice a "waiver of standards" provision analogous to the current regulation, §12.0. If this is an oversight, the Division may wish to include a comparable provision.

Response: The Division disagrees. Regulations are to ensure requirements are met and we do not want to deviate from the said requirements.

Decision and Effective Date

The Department of Health and Social Services finds that 3310 Neighborhood Homes for Individuals with Intellectual and/or Developmental Disabilities shall be adopted. This regulation will be effective ten (10) days from the date of publication in the Delaware *Register of Regulations*.

IT IS SO ORDERED this 17th day of August, 2017.

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

3310 Neighborhood Homes for Individuals with Intellectual and/or Developmental Disabilities
(Break in Continuity of Sections)

2.0 Definitions

(Break in Continuity Within Section)

"Person Centered Plan" means the Life Span Plan or other plan approved by DDDS. This plan includes the following elements: people chosen by the individual; **[reflects]** cultural considerations; **[uses]** plain language; strategies for solving disagreements; **[offers]** informed choice[s] to the individual regarding services and supports that the individual receives and from whom; and **[provides]** a method to request updates.

(Break in Continuity Within Section)

3.0 Licensing and General Requirements

(Break in Continuity Within Section)

3.2 Inspection

3.2.1 Every neighborhood home for which a license has been issued under this chapter shall be inspected **[at least]** annually.

(Break in Continuity of Sections)

5.0 Environment

(Break in Continuity Within Section)

5.4 Physical Plant

(Break in Continuity Within Section)

~~**5.4.6** Neighborhood homes accommodating individuals who regularly require wheelchairs shall be equipped with ramps.~~

~~**5.4.6.1** Egress ramps must be located at the primary means of egress.~~

~~**5.4.6.1.1** A secondary means of egress that is independent and remotely located from the primary means of egress must be provided to the outside of the dwelling at street/ground level or open to an exterior balcony.~~

~~**5.4.6.2** Ramps must be compliant with the standards outlined in Americans with Disabilities Act (ADA).]~~

~~**5.4.7** 5.4.6] The physical dimensions of the home will provide, as a minimum, 150 square feet of common living space for the first occupant and 100 square feet of living space for each additional occupant.~~

~~**5.4.8** 5.4.7] Neighborhood homes with below grade accommodations must have a direct means of egress to the outside from that level.~~

~~**5.4.9** 5.4.8] The roof, exterior walls, doors, skylights and windows shall be weather tight and watertight and shall be kept in sound condition and good repair.~~

(Break in Continuity Within Section)

5.10 Bedrooms

(Break in Continuity Within Section)

5.10.7 Doors must be closable and lockable **[by the individual with only appropriate staff having keys to the doors]**.

(Break in Continuity Within Section)

6.0 Records and Reports

6.1 There shall be a separate record maintained on each individual as per DDDS standards.

6.2 There shall be a medication administration record (MAR) including medications, dosages, frequency, route of administration, and initials of the person administering each dose. The record shall include

~~[the signature of each person whose initials appear on the MAR the identity of each person administering medication].~~

(Break in Continuity Within Section)

6.8 Reportable incidents are as follows:

(Break in Continuity Within Section)

6.8.4 Significant injuries.

(Break in Continuity Within Section)

6.8.4.2 Injury which results in ~~[transfer to an acute care facility for treatment or evaluation medical or dental treatment other than first aid provided in the home].~~

*Please note that no additional changes were made to the regulation as originally proposed and published in the April 2017 issue of the *Register* at page 766 (20 DE Reg. 766). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

3310 Neighborhood Homes for Persons with Developmental Disabilities

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 2505A (16 Del.C. §2505A)
16 DE Admin. Code 4304

ORDER

4304 Delaware Medical Orders for Scope of Treatment (DMOST)

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Medical Orders for Scope of Treatment (DMOST, 4304). The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Delaware Code** Chapter 101 and authority as prescribed by 16 **Delaware Code**, §2505A.

On April 1, 2017 (Volume 20, Issue 10), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Delaware Code** Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by May 4, 2017, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

Endorsement of the revisions was received from the State Council on Persons with Disabilities, but no comments resulting in changes were received.

FINDINGS OF FACT:

No changes made to the regulations since publication as proposed. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Medical Orders for Scope of Treatment (4304) is adopted and shall become effective September 11, 2017, after publication of the final regulation in the Delaware *Register of Regulations*.

Kara Odom Walker, MD, MPH, MSHS, 8/17/17
DHSS Secretary

*Please note that no changes were made to the regulation as originally proposed and published in the April 2017 issue of the *Register* at page 770 (20 DE Reg. 770). Therefore, the final regulation is not being

republished. A copy of the final regulation is available at:

4304 Delaware Medical Orders for Scope of Treatment (DMOST)

DEPARTMENT OF HUMAN RESOURCES

DIVISION OF STATEWIDE BENEFITS

Statutory Authority: 29 Delaware Code, Section 5256 (29 **Del.C.** §5256)
19 **DE Admin. Code** 2007

ORDER

2007 Disability Insurance Program Rules and Regulations

Pursuant to House Bill No. 4 amended by House Amendment No. 1(149th General Assembly), the Department of Human Resources and the Division of Statewide Benefits of the Department of Human Resources was established effective July 1, 2017, having powers, duties and functions as follows:

"(1) With the exception of deferred compensation pursuant to Chapter 60A of this title and any other investment or retirement savings plan, the Director of Statewide Benefits shall be responsible for the management and administration of all currently existing and future state employee benefits programs, including but not limited to group health, group life, flexible benefits, dental, vision, prescription, long-term care, disability, supplemental benefits and the Blood Bank."

Epilogue language referenced below from Section 30 of House Substitute No. 1 for House Bill No. 275 (149th General Assembly) allows the SEBC to amend the Disability Insurance Program (DIP) Rules & Regulations.

"**Section 30.** Notwithstanding the provisions of the Administrative Procedures Act, 29 **Del. C.** c. 101 or any other laws to the contrary, the State Employee Benefits Committee is authorized to amend the rules for Employees Eligible to Participate in the State Group Health Insurance Program and the State Disability Insurance Program by approving such amendments and causing the amendments to be published in the Register of Regulations with such amendments to be effective as of the date of such publication unless otherwise specified by the State Employee Benefits Committee."

The attached version of the Disability Insurance Program (DIP) Rules & Regulations, effective September 1, 2017, adds section 16.7 referenced below requiring repayment to the State by the DIP insurance carrier and/or administrator of any STD overpayments before a (current or former) employee is eligible for or receives LTD benefits.

"16.7 If the State of Delaware notifies the DIP Insurance Carrier and/or administrator that a claimant receiving LTD benefits has been overpaid STD benefits, the DIP insurance carrier and/or administrator shall make any LTD payments that it would otherwise pay to the claimant directly to the State of Delaware until the State of Delaware has been paid in full for the claimant's overpaid STD benefits."

STATE OF DELAWARE
DEPARTMENT OF HUMAN RESOURCES

Brenda L. Lakeman
Director, Statewide Benefits
8/24/17

2007 Disability Insurance Program Rules and Regulations
Effective ~~February~~ September 1, 2017

(Break in Continuity of Sections)

2.0 Definitions

“**Appeal**” is the action you can take pursuant to 29 **Del.C.** §5258 if you disagree with a coverage decision made by the DIP insurance carrier and/or third party administrator (Administrator) selected to administer and/or insure the program by the SEBC pursuant to 29 **Del.C.** §5254 and/or the Appeals Administrator from the Statewide Benefits Office and/or the Hearing Officer from the ~~Office of Management and Budget~~ Department of Human Resources and/or the SEBC.

(Break in Continuity Within Section)

“**Return to Work (RTW) Coordinator**” means the person selected by the ~~Office of Management and Budget~~ Department of Human Resources to assist individuals enrolled or previously enrolled in the DIP who expect to be out of work with their transition back to work. Return To Work assistance may be requested by an employee, previously employed individual and/or by an employing organization. The RTW Coordinator may also consult with the individual’s health care provider(s) to acquire and/or clarify a claimant’s restrictions and/or limitations if applicable, to facilitate a safe return to the workplace.

(Break in Continuity of Sections)

11.0 Appeals - STD Claim Determinations

(Break in Continuity Within Section)

- 11.2 Pursuant to 29 **Del.C.** §5258, within 90 days of the postmark date of the carrier’s written notice of its determination regarding STD benefits, a claimant may appeal any determination of disability benefits by filing a written petition setting forth with particularity the grounds for appeal with the DIP insurance carrier and/or Administrator. The DIP insurance carrier and/or Administrator has the authority to reverse all or any part of its initial STD benefit determination and shall notify the claimant, the employing organization and the Statewide Benefits Office in writing by certified mail, return receipt requested within 10 days of the determination. The claimant’s written appeal should be addressed and mailed to:

Benefit Management Services
~~Atlanta Disability~~ Maitland Claim Office
RE: DISABILITY APPEAL
The Hartford
P.O. Box ~~44304~~ 14306
Lexington, KY 40512-~~4304~~4306
Tel: (800) 549-6514/ Fax: (866) 411-5613

(Break in Continuity Within Section)

- 11.4 Pursuant to 29 **Del.C.** §5258, if the Appeals Administrator affirms the DIP insurance carrier and/or Administrator’s decision to deny disability benefits or any part thereof, a claimant may file an appeal to the SEBC within 20 days of the postmark date of the notice of the determination from the Appeals Administrator by filing a written petition with the SEBC setting forth with particularity the grounds for the appeal. The claimant’s written appeal should be addressed and mailed to:

Co-Chair, State Employee Benefits Committee (SEBC)
RE: DISABILITY APPEAL
~~Office of Management and Budget~~ Department of Human Resources
Haslet Armory, ~~Third~~ Second Floor
122 Martin Luther King Jr. Blvd. South
Dover, DE 19901
Tel: (302) 739-~~4204~~4195
Fax: (302) 739-~~3342~~3000

The SEBC may designate an appropriate representative from the ~~Office of Management and Budget~~ Department of Human Resources as a hearing officer to hear evidence presented by the employee or, in its sole discretion, it may decide to hear the appeal directly. The SEBC or the hearing officer, as the case may be, shall determine whether the determination to deny benefits complies with the applicable

disability plan adopted by the SEBC. The Hearing officer and/or SEBC shall have all of the following powers in respect to the conduct at the hearing:

(Break in Continuity of Sections)

16.0 LTD Benefit Payment

(Break in Continuity Within Section)

16.7 If the State of Delaware notifies the DIP insurance carrier and/or administrator that a claimant receiving LTD benefits has been overpaid STD benefits, the DIP insurance carrier and/or administrator shall make any LTD payments that it would otherwise pay to the claimant directly to the State of Delaware until the State of Delaware has been paid in full for the claimant's overpaid STD benefits.

(Break in Continuity of Sections)

20.0 Return To Work (RTW)

20.1 Pursuant to 29 **Del.C.**, §5256(5), a contract exists between the SEBC and the Statewide Benefits Office for the purpose of the administration of the DIP, including but not limited to determination of an individual's ability to return to work by the RTW Coordinator pursuant to 29 **Del.C.** §5257(b).

20.1.1 Short Term Disability – Return To Work (RTW)

20.1.1.1 Pursuant to 29 **Del.C.** §5257(a), once an employee has been determined to have the ability to return to employment by the SEBC, the employee will receive the following assistance:

20.1.1.1.1 Merit employees may be placed in any vacant merit position, for which they qualify, by the ~~Office of Management and Budget~~ Department of Human Resources.

(Break in Continuity Within Section)

21.0 Long Term Disability (RTW)

21.1 Pursuant to 29 **Del.C.** §5257(b), once an individual has been determined to have the ability to return to employment by the SEBC, the individual will receive the following assistance:

21.1.1 Former merit employees enrolled in and previously deemed eligible for the Long-Term Disability Program may, when available and appropriate, be placed by the ~~Office of Management and Budget~~ Department of Human Resources in any merit position, for which they qualify without a certification list, as long as the paygrade does not exceed their paygrade at the time of their acceptance into and eligibility for the Short-Term Disability Program. Exceptions to the paygrade limitation may be made for vacancies for which a documented shortage of qualified applicants exists.

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

2007 Disability Insurance Program Rules and Regulations

DEPARTMENT OF INSURANCE OFFICE OF LEGAL AND SPECIAL PROJECTS

Statutory Authority: 18 Delaware Code, Sections 311 and 2712 and 21 Delaware Code, Sections 2118 and 2902 (18 **Del.C.** §§311 & 2712, and 21 **Del.C.** §§2118 & 2902)
18 **DE Admin. Code** 603

ORDER

603 Delaware Motorists Protection Act

Regulation 603 implements the Delaware Motorists Protection Act. Recently, the Legislature passed HB 114, "An Act to Amend Title 21 of the Delaware Code Relating to Bodily Injury and Property Damage Coverage on Motor Vehicles," signed into law by the Governor on June 13, 2017 and effective on December 13, 2017 (six months after the date of enactment). The Act amends 21 **Del.C.** §2902 to raise the minimum bodily injury and property damage limits in all automobile insurance policies newly written or renewed after the effective date of the Act.

On July 15, 2017 the Department filed a general notice of amendments to Regulation 603 that updated coverage limits codified in the regulation to reflect the increased limits in HB 114. That notice was published in the August 1, 2017 *Register of Regulations*.

Attached to Regulation 603 is Form A, the Coverage Election form that must be presented by the insurer, broker or agent to the policyholder and acknowledged by the policyholder's signature that describes various types and levels of coverage. In its July 15, 2017 General Notice, the Department should have also updated the coverage limits set forth on Form A, Line 6. Accordingly, by way of this notice, the Department is updating Form A, Line 6 to reflect the revised coverage minimums promulgated by HB 114.

This amendment is exempt from the requirement of public notice and comment because it is an amendment to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations, pursuant to 29 **Del.C.** §10113(b)(5).

It is so ordered. This 9th day of August, 2017

Trinidad Navarro
Commissioner, Delaware Department of Insurance

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

603 Delaware Motorists Protection Act

DEPARTMENT OF LABOR DIVISION OF INDUSTRIAL AFFAIRS OFFICE OF LABOR LAW ENFORCEMENT

Statutory Authority: 19 Delaware Code, Section 105(a)(8) and 19 Delaware Code, Section 3503(f) (19 **Del.C.** §105(a)(8) & 19 **Del.C.** §3503(f))
19 **DE Admin. Code** 1326

ORDER

1326 Workplace Fraud Act Regulations

I. NATURE OF PROCEEDINGS

Pursuant to its authority under 29 **Del.C.** §10111(1), 19 **Del.C.** §105(a)(8) and 19 **Del.C.** §3503(f) the State of

Delaware, Department of Labor's Division of Industrial Affairs (herein "the Division") proposed to amend its regulations. The Division's purpose in proposing these amendments was to provide additional due process to entities found by the Division to be in violation of the Workplace Fraud Act by making changes to the conduct of those hearings themselves. Minor amendments and changes were also inserted regarding other portions of the regulations.

Notice of a public comment period of thirty (30) days on the Division's proposed regulations was published in the Delaware *Register of Regulations* for July 1, 2017 as well as in two Delaware newspapers of general circulation in accordance with 29 **Del.C.** §10115. This is the Division's Decision and Order adopting the proposed regulations.

II. PUBLIC COMMENTS

The Division received no public comments in response to its notice of intention to adopt the proposed regulations apart from comments praising the Division's efforts. The Division did not receive comments suggesting changes to the proposed regulations.

III. FINDINGS AND CONCLUSIONS

The public was given the required notice of the Division's intention to adopt the proposed amended regulations and was given ample opportunity to provide the Division with comments opposing the Division's plan. Thus, the Division concludes that its consideration of the proposed amended regulations was entirely within its prerogatives and statutory authority and, having received no comments opposed to adoption, is now free to adopt the proposed amended regulations. They are unchanged from the proposed regulations.

IV. ORDER

AND NOW this 1st day of September, 2017, it is hereby ordered that:

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

IT IS SO ORDERED.

The Honorable Patrice Gilliam-Johnson, Secretary
Delaware Department of Labor

***Please note that no changes were made to the regulation as originally proposed and published in the July 2017 issue of the *Register* at page 23 (21 DE Reg. 23). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1326 Workplace Fraud Act Regulations

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(h) and 29 Delaware Code, Section 10119
(7 Del.C. §903(h) and 29 Del.C. §10119)
7 DE Admin. Code 3511

Secretary's Order No. 2017-F-0019

Date of Issuance: August 10, 2017

Effective Date of the Amendment: September 11, 2017

3511 Summer Flounder Size Limits; Possession Limits; Season

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 Del.C. §§6006 and 6010, and 7 Del.C. §§901(c & d) and 903(e)(2), 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 regulatory Amendments to 7 DE Admin. Code 3511: *Summer Flounder Size Limits; Possession Limits; Seasons* ("Amendments"). On February 2, 2017, the Atlantic States Marine Fisheries Commission's ("ASMFC") Summer Flounder, Scup and Black Sea Bass Management Board approved Addendum XXVIII to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan ("FMP"), thus maintaining regional management for the 2017 recreational Summer Flounder fishery. Addendum XXVIII requires each region to increase their Summer Flounder minimum size limit by one inch and adopt a no more than four fish possession limit to stay within the 2017 recreational harvest limit. This action only affects Delaware's existing 16-inch minimum size limit, as Delaware's existing recreational Summer Flounder possession limit is four fish.

Subsequent to the ASMFC's approval of Addendum XXVIII as referenced above, the Department consulted with the other states (Maryland and Virginia) within Delaware's ASMFC-defined region, and both states committed at that time to adopt a 17-inch minimum size limit and a four fish possession limit by April 1, 2017. This deadline necessitated that the Department adopt an Emergency Regulation with regard to this matter, in order to (1) meet the implementation target date; (2) remain compliant with the FMP; and (3) protect the Summer Flounder resource from overfishing. Additionally, the adoption of such Emergency Regulation provided for the welfare of those individuals (and of Delaware's businesses) dependent upon the Summer Flounder recreational fishery. Failure to adopt such measures in a timely fashion would have risked a federal closure of the fishery, in accordance with the Atlantic Coastal Fisheries Cooperative Management Act.

Pursuant to 29 Del.C. §10119 and 7 Del.C. §903(h), the Department adopted such Emergency Regulation, as referenced above, without prior notice or public hearing, to amend 7 DE Admin. Code 3511: *Summer Flounder Size Limits; Possession Limits; Seasons* with the issuance of Emergency Secretary's Order (No. 2017-F-0012). Said Order became effective at 12:01 a.m. on April 1, 2017, and was published in the *State of Delaware Register of Regulations* on that same date. 29 Del.C. §10119 authorizes Emergency Regulations when an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 Del.C. §10115. Additionally, 7 Del.C. §903(h) authorizes the Department to adopt Emergency Regulations when such regulations are necessary to deal with an actual or imminent public health threat or danger to a fishing resource or habitat involving finfish. It should be noted that the aforementioned Emergency Secretary's Order was effective for ninety (90) days from its date of issuance on April 1, 2017.

While concurrently adopting the above-referenced Emergency Regulation, DNREC began its internal regulatory development process to formally amend 7 DE Admin. Code 3511. Thus, the Department's Division of Fish and Wildlife commenced said process with Start Action Notice ("SAN") #2017-05, signed by me on April 17, 2017. The Department subsequently published its initial proposed regulation Amendments in the June 1, 2017 *Delaware Register of Regulations*, and scheduled its public hearing to be held on June 29, 2017.

Since it would not be possible to complete DNREC's internal regulatory development process prior to the

expiration of the initial Emergency Regulation Order referenced above, on June 2, 2017, Emergency Secretary's Order No. 2017-F-0016 was issued, which, pursuant to 7 **Del.C.** §903(h), provides for a one-time renewal of an Emergency Regulation when such regulation is necessary to deal with an actual or imminent public health threat or danger to a fishing resource or habitat involving finfish. Said Order (which formally extended the aforementioned Emergency Regulation for an additional ninety [90] days) became effective at 12:01 a.m. on June 30, 2017, and was published in the *State of Delaware Register of Regulations* on July 1, 2017.

It should be noted that the issuance of the subsequent Emergency Secretary's Order dated June 2, 2017, provided for seamless regulatory coverage for Delaware's Summer Flounder resource, from the date of issuance of the initial Emergency Secretary's Order No. 2017-F-0012 (dated April 1, 2017), through the expiration of the subsequent Emergency Secretary's Order No. 2017-F-0016 (which will be September 30, 2017). Thus, the Department maintained continuous compliance with ASMFC's approved Addendum XXVIII to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, and was enabled to prevent overfishing the Summer Flounder resource.

As noted above, the Department held a public hearing regarding this proposed promulgation on June 29, 2017. Consistent with 29 **Del.C.** §10118(a), the public hearing record remained open for public comment through July 14, 2017. Members of the public attended the June 29, 2017 public hearing; however, no opposition to this proposed promulgation was received by the Department at that time, nor at any subsequent time prior to the hearing record closing with regard to public comment on July 14, 2017. 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.

Hearing Officer Lisa A. Vest prepared a Hearing Officer's Report dated July 24, 2017 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments, 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** 3511, *Summer Flounder Size Limits; Possession Limits; Seasons*, 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 Fish and Wildlife fully developed the record to support adoption of these regulatory Amendments. The adoption of the above will enable Delaware to comply with the ASMFC's approved Addendum XXVIII to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, thus maintaining consistent regional management for the 2017 recreational Summer Flounder fishery, and protecting the Summer Flounder resource from overfishing.

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** 3511, *Summer Flounder Size Limits; Possession Limits; Seasons*, pursuant to 7 **Del.C.** Ch. 60, and 7 **Del.C.** §§901(c & d) and 903(e)(2);

2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, and 7 **Del.C.** §§901(c & d) and 903(e)(2), to issue an Order adopting these proposed regulatory amendments as final;

3. The Department provided adequate public notice of the proposed regulatory amendments to 7 **DE Admin. Code** 3511, *Summer Flounder Size Limits; Possession Limits; Seasons*, and all proceedings associated with the same, 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 29, 2017, and held the record open through close of business on July 14, 2017, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on the same before making any final decision;

4. Promulgation of the proposed regulatory amendments to 7 **DE Admin. Code** 3511, *Summer Flounder Size Limits; Possession Limits; Seasons*, will enable the Department to comply with the ASMFC's approved Addendum XXVIII to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, thus maintaining regional management for the 2017 recreational Summer Flounder fishery, and to protect the Summer Flounder resource from overfishing;

5. The Department's Hearing Officer's Report, including its established record and the recommended proposed regulatory Amendments as set forth in Appendix "A" thereto, are hereby adopted to provide additional reasons and findings for this Order;

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 "B" regarding same, as this proposed regulation is not substantially likely to impose additional costs or burdens upon individuals and/or small businesses;

7. The Department's proposed regulatory Amendments, as published in the June 1, 2017 *Delaware Register of Regulations*, and as fully vetted at the public hearing of June 29, 2017 as noted above, 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** 3511, *Summer Flounder Size Limits; Possession Limits; Seasons* to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Shawn M. Garvin
Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the June 2017 issue of the *Register* at page 952 (20 DE Reg. 952). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

3511 Summer Flounder Size Limits; Possession Limits; Season

DIVISION OF WATERSHED STEWARDSHIP

Statutory Authority: 7 Delaware Code, Section 6010 (7 **Del.C.** §6010)
7 **DE Admin. Code** 7401

Secretary's Order No.: 2017-WS-0020

Date of Issuance: August 14, 2017

Effective Date of the Amendment: September 11, 2017

7401 Surface Water Quality Standards

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

Background, Procedural History and Findings of Fact

This Order relates to proposed regulation amendments ("Amendments") to 7 **DE Admin. Code** 7401, *Surface Water Quality Standards*. The Clean Water Act of 1972 ("CWA") set in place a federal program intended to restore the chemical, physical, and biological integrity of national waters. To reach these goals, a series of steps were mandated by Congress for the U.S. Environmental Protection Agency ("EPA") and the individual States to take. The first step was for the States to set their own standards for their waters. As established under the CWA, water quality standards are the regulations which list designated uses, water quality criteria, and an anti-degradation policy for each State. Such standards have been established to protect public health and welfare, and to further enhance water quality in the State. While the standards are State regulations, they must be approved by the EPA. If the EPA cannot approve the water quality standards as proposed by the State, then EPA is mandated to take over the process and set standards on that State's behalf.

The CWA was amended in 2000 by the *Beaches Environmental Assessment and Coastal Health* ("BEACH") Act. Pursuant to the BEACH Act, States are required to update their water quality criteria to meet updated guidance from the EPA, pursuant to the marine recreational bacteria standards found in EPA's 2012 *Recreational Water*

Quality Criteria, which reflect the latest scientific knowledge, public comments, and external peer review. Said criteria are designed to protect the public from exposure to harmful levels of pathogens while participating in water-contact activities such as swimming, wading, and surfing in all waters designated for such recreational uses.

The Amendments to the CWA by the BEACH Act directed the EPA to conduct studies associated with pathogens and human health, and to publish new or revised criteria recommendations for pathogens and pathogen indicators based on those studies. The purpose of this proposed regulatory promulgation is to adopt as final the aforementioned *revised* proposed amendments to 7 **DE Admin. Code** 7401, *Surface Water Quality Standards*, in order to provide the Department with a criteria basis to assess water quality trends and pollution control needs with regard to primary and secondary contact recreation in waters of the State of Delaware, and to comply with the CWA, as amended by the BEACH Act, as set forth in 33 U.S.C. §1313(i)(1)(B) and 40 CFR §131.21.

It should be noted that the proposed adopted criteria would apply to enterococcus bacteria determined by the Department to be of non-wildlife origin, based on best scientific judgment using available information. Furthermore, the Department notes that swimming in waters affected by runoff during runoff periods may present an elevated risk of gastrointestinal illness, and is not recommended.

The Department's Division of Watershed Stewardship commenced the regulatory development process with Start Action Notice ("SAN") #2016-15 (approved by then-DNREC Secretary David S. Small on December 13, 2016). The Department published its initial proposed regulation Amendments in the January 1, 2017 Delaware *Register of Regulations*. The Department then held a public hearing on February 23, 2017. Consistent with 29 **Del.C.** §10118(a), the public hearing record remained open for public comment through March 10, 2017.

While no members of the public attended the February 23, 2017 hearing, comment was received from EPA by the Department on the actual day of said hearing. At that time, EPA recommended several revisions to the Department's proposed Amendments, namely, for the purposes of clarification, and to ensure that the proposed criteria for coastal recreation waters was consistent with EPA's recommended 2012 *Recreational Water Quality Criteria*. As noted above, the hearing record initially closed for comment in this matter on March 10, 2017, with no additional comment (other than that from EPA) having been received by the Department regarding this matter.

Upon closure of the hearing record as noted above, a thorough review of EPA's recommendations was performed by the Department's Division of Watershed Stewardship. The Department concurred with EPA's suggested changes, and thus *revisions* to the initial proposed Amendments were made at that time. In addition to the above revisions resulting from EPA's comments, the Department also noticed several clerical errors that were contained in the initial proposed Amendments. Thus, revisions were made to correct those errors as well.

Due to the fact that the above revisions were made by the Department subsequent to the public hearing, and that the revisions were substantive in nature, the *revised* proposed Amendments were re-noticed and re-published in the Delaware *Register of Regulations* on May 1, 2017. Accordingly, the hearing record was re-opened for additional public comment for an additional forty-five (45) days, so as to provide complete transparency to the public with regard to this rule-making process. This additional comment period remained open through Thursday, June 15, 2017.

Once again, EPA provided comment on the *revised* proposed Amendments in its letter dated May 18, 2017. In that letter, EPA advised that it was pleased to see that DNREC had incorporated the suggested criteria changes as identified in its previous letter of February 22, 2017, and stated that no further comments would be forthcoming from EPA with regard to this matter. No other comment was received from the Department prior to the hearing record formally closing on June 15, 2017.

Subsequent to the hearing record closing on June 15, 2017, the Division of Watershed Stewardship provided the Department's presiding Hearing Officer, Lisa A. Vest, with a formal Technical Response Memorandum ("TRM"), dated July 21, 2017. This TRM provided a balanced discussion of the comment received, and provided the Department's reasoning for all action taken with regard to these *revised* proposed Amendments. As noted above, all revisions to the proposed Amendments were made *prior* to the re-publication and re-opening of the hearing record for comment from May 1, 2017 - June 15, 2017. Although comment was received by the Department during the second aforementioned comment period, no additional revisions were made to these *revised* proposed Amendments as a result of the same. Therefore, no further re-publication or re-noticing is necessary in this matter.

Hearing Officer Vest prepared a Hearing Officer's Report dated July 28, 2017 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the *revised* 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 *revised* proposed regulatory amendments to 7 **DE Admin. Code** 7401, *Surface Water Quality Standards*, 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 Watershed Stewardship fully developed the record to support adoption of these *revised* regulatory Amendments. The adoption of these *revised* regulatory Amendments will enable the Department to formally update Delaware's water quality criteria to meet updated federal EPA guidance for bacterial water quality. Furthermore, adoption of these *revised* proposed Amendments will provide the Department with a criteria basis to assess water quality trends and pollution control needs with regard to primary and secondary contact recreation in waters of the State of Delaware, and to comply with the CWA, as amended by the BEACH Act, as set forth in 33 U.S.C. §1313(i)(1)(B) and 40 CFR §131.21

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 *revised* proposed amendments to 7 **DE Admin. Code** 7401, *Surface Water Quality Standards*, pursuant to 7 **Del.C.** Ch. 60;

2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting these *revised* proposed regulatory amendments as final;

3. The Department provided adequate public notice of the initial proposed regulatory amendments, and all proceedings associated with the same, 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 23, 2017, and initially held the record open through close of business on March 10, 2017, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on the same before making any final decision;

4. To ensure that all of the aforementioned revisions to the initial proposed Amendments were fully vetted to the public, a re-noticing and re-publication of the revised proposed Amendments was issued by the Delaware *Register of Regulations* on May 1, 2017. Accordingly, the Department re-opened the hearing record from May 1, 2017, through close of business June 15, 2017, in order to properly vet the *revised* proposed Amendments to the public, and to consider any public comment which might be offered on same before making any final decision in this proposed promulgation;

5. While the Department has made revisions to the initial proposed regulatory Amendments to 7 **DE Admin. Code** 7401, *Surface Water Quality Standards*, such changes were all fully vetted to the public as referenced above. Moreover, although additional comment was received by the Department during the second public comment period of May 1, 2017 - June 15, 2017, no additional changes were made to these *revised* proposed Amendments as a result of the same. Therefore, no additional re-publication or re-noticing is necessitated at this time;

6. The Department's Hearing Officer's Report, including its established record and the recommended *revised* proposed regulatory Amendments as set forth in Appendix "A", are hereby adopted to provide additional reasons and findings for this Order;

7. The adoption of the *revised* proposed regulatory Amendments to 7 **DE Admin. Code** 7401, *Surface Water Quality Standards*, will enable the Department to formally update Delaware's water quality criteria to meet updated federal EPA guidance for bacterial water quality. Furthermore, adoption of these *revised* proposed Amendments will provide the Department with a criteria basis to assess water quality trends and pollution control needs with regard to primary and secondary contact recreation in waters of the State of Delaware, and to comply with the CWA, as amended by the BEACH Act, as set forth in 33 U.S.C. §1313(i)(1)(B) and 40 CFR §131.21. Lastly, the adoption of said Amendments will assist the Department in further enhancement of the water quality throughout the State, and in the continued protection of the public health and welfare of the citizens of Delaware;

8. The Department has reviewed these *revised* proposed regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch.104, and has selected Exemption "B" regarding same, as this proposed regulation is not substantially likely to impose additional costs or burdens upon individuals and/or small businesses;

9. The Department's *revised* proposed regulatory Amendments, as re-published in the May 1, 2017 Delaware *Register of Regulations*, and as set forth in Appendix "A" as noted above, 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

10. The Department shall submit this Order approving as final the *revised* proposed Amendments to 7 **DE Admin. Code** 7401, *Surface Water Quality Standards*, to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Shawn M. Garvin
Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the May 2017 issue of the *Register* at page 880 (20 DE Reg. 880). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

7401 Surface Water Quality Standards

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

2930 COUNCIL ON REAL ESTATE APPRAISERS

Statutory Authority: 24 Delaware Code, Section 4006(a)(1) (24 **Del.C.** §4006(a)(1))
24 **DE Admin. Code** 2930

ORDER

2930 Council on Real Estate Appraisers

On May 1, 2017 the Delaware Council on Real Estate Appraisers published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 20, Issue 11. The notice indicated that written comments would be accepted by the Council, 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 20, 2017 at a regularly scheduled meeting of the Council on Real Estate Appraisers to receive verbal comments regarding the Council's proposed amendments to its regulations.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

At the time of the deliberations, the Council 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. No written comments were received by the Council.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Council with comments on the proposed amendments to the Council's regulations in writing and by testimony at the public hearing.
2. There were no public comments provided to the Council during the written public comment periods.
3. Pursuant to 24 **Del.C.** §4006(a)(1) the Council has the statutory authority to promulgate rules and regulations to implement or clarify specific statutory sections of its statute.
4. Having reviewed 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.** §4006(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, 2017. 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 18th day of July, 2017.

DELAWARE COUNCIL ON REAL ESTATE APPRAISERS

Lynn Baker, Professional Member

Douglas Nickel, Professional Member

Kevin Gillis, Banking Member

Christopher Schneider, Professional Member

Earl Timmons Professional Member (absent)

Mark Rainford, Public Member (absent)

Georgina Trietley, Professional Member

Denise Stokes, Public Member

Patricia Ennis, Public Member

***Please note that no changes were made to the regulation as originally proposed and published in the May 2017 issue of the *Register* at page 885 (20 DE Reg. 885). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

2930 Council on Real Estate Appraisers

GENERAL NOTICES

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

NOTICE

TANF State Plan

Delaware Health and Social Services (DHSS)/Division of Social Services is providing a public notice related to the state's plan to comply with federal regulations governing the TANF program.

Purpose

The purpose of this posting is to provide public notice and receive public input for consideration regarding Delaware's Temporary Assistance for Needy Families State Plan.

Overview

The TANF State plan is a comprehensive statement submitted by Delaware Division of Social Services describing the nature and scope of its program and giving assurance that it will be administered in conformity with the specific requirements stipulated in the pertinent title of the Social Security Act, the regulations in subtitle A and this chapter of this title, and other applicable official issuances of the Department. The State plan contains all information necessary for the Administration for Children and Families to determine whether the plan can be approved, as a basis for Federal financial participation in the State program.

A copy if the plan can be found at <http://www.dhss.delaware.gov/dhss/dss/repstats.html>.

Public Comment Submission Process

DHSS gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the TANF state plan. The comment period begins on September 1, 2017 and ends on October 2, 2017.

Comments and input may be submitted in the following ways:

By email: Janneen.boyce@state.de.us

By fax: 302-255-4425 to the attention of Janneen Boyce

By mail: Janneen Boyce
Division of Social Services
Policy & Program Development Unit
1901 North DuPont Highway
P.O. Box 906
New Castle, Delaware 19720-0906

This notice shall appear for one (1) day only. Please identify in the subject line: TANF state Plan

Ray Fitzgerald
Director
Division of Social Services

August 8, 2017

DEPARTMENT OF AGRICULTURE
HARNESS RACING COMMISSION
DELAWARE STANDARDBRED BREEDERS' FUND
PUBLIC NOTICE

502 Delaware Standardbred Breeders' Fund Regulations

The State of Delaware, Department of Agriculture's Standardbred Breeders' Fund ("the Fund") hereby gives notice of its intention to adopt an amended regulation pursuant to the General Assembly's delegation of authority to do so found at 29 **Del.C.** §4815(b)(4)b.2 and in compliance with Delaware's Administrative Procedures Act at 29 **Del.C.** §10115. The proposed amended regulations under 4.2, 9.2,13.7, and 14.5 address the fiduciary responsibility of "the Fund" to sustain the program into the future while maintaining the current status.

The Fund solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty days (30) after these proposed amended regulations are promulgated in the Delaware *Register of Regulations*. Any such submissions should be mailed or hand-delivered to Ms. Judy Davis-Wilson, Administrator, Delaware Standardbred Breeders' Fund Program whose address is State of Delaware, Department of Agriculture, 2320 South DuPont Highway, Dover, Delaware 19901 by October 2, 2017.

OFFICE OF THE SECRETARY
PUBLIC NOTICE

1201 Nutrient Management Certification Regulations

The Delaware Nutrient Management Commission, pursuant to 3 **Del.C.** §2220(a), proposes to revise its regulations incorporating by reference the State Technical Standards developed by an appointed committee to establish appropriate standards for nutrient application, development and implementation of nutrient management and animal waste management plans, compliance with CAFO permits, and siting new CAFO facilities. The State Technical Standards can be viewed in person at the Delaware Department of Agriculture or online at http://dda.delaware.gov/nutrients/NM_TechStandards.shtml.

The Commission originally published the proposed regulation change and technical standards on July 1, 2017. As a result of the submission of a public comment, the Commission voted to substantively amend the State Technical Standard regarding temporary field staging to allow for 120 days instead of 90. As such, the Commission will now allow for written comments to be sent to Chris Brosch, Administrator of the Delaware Nutrient Management Commission, 2320 S. DuPont Highway, Dover DE 19901, until October 2, 2017 pursuant to 29 **Del.C.** §10118(a).

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, September 21, 2017 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
PUBLIC NOTICE

Reasonable Limits on Care Expenses

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing

to amend Title XIX Medicaid State Plan regarding Reasonable Limits on Care Expenses, specifically, to *clarify remedial care deductions for pre-incurred Medical expenses*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@state.de.us, or by fax to 302-255-4413 by 4:30 p.m. on October 2, 2017. Please identify in the subject line: Reasonable Limits on Care Expenses.

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

PUBLIC NOTICE

Inpatient Psychiatric Hospital Services For Individuals Under Age 21

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding Inpatient Psychiatric Hospital Services for Individuals under Age 21, specifically, to *clarify reimbursement methodology for psychiatric residential treatment facilities (PRTFs)*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@state.de.us, or by fax to 302-255-4413 by 4:30 p.m. on October 2, 2017. Please identify in the subject line: Inpatient Psychiatric Hospital Services for Individuals under Age 21.

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

DIVISION OF PUBLIC HEALTH

PUBLIC NOTICE

4453 Cosmetology and Barbering

The Division of Public Health, Department of Health and Social Services, is proposing revisions to the Regulations Governing Cosmetology and Barbering (4453). The purpose of the amendments is to make technical corrections to the regulations to allow for the practice of threading. On September 1, 2017, DPH plans to publish as proposed the amended regulations, and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the September 1, 2017 edition of the Delaware Register of Regulations, accessible online at: <http://regulations.delaware.gov> or by calling the DPH at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Jamie Mack by Friday, October 6, 2017, at:

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

DEPARTMENT OF INSURANCE
OFFICE OF LEGAL AND SPECIAL PROJECTS
PUBLIC NOTICE
301 Audited Financial Reports

THE DEPARTMENT OF INSURANCE hereby gives notice of a proposed amendment to Department of Insurance Regulation 301 relating to audited financial reports and financial statements of insurance companies. The Department's internal docket number for this regulatory project is 3575-2017.

The purpose of the proposed amendment to Regulation 301 is to update the existing financial report and audit requirements to conform to the Model Regulation published by the National Association of Insurance Commissioners (NAIC), by adding new section 15, recodifying sections 15 through 19 as 16 through 20 with no change in text, and updating definitions and internal cross references. The model regulation can be viewed on the NAIC's website at

http://www.naic.org/documents/cmte_f_materials_%20annual_financial_reporting_model_reg_205.pdf.

The text of the proposed amendment appears below and can also be viewed at the Delaware Insurance Commissioner's website at <http://insurance.delaware.gov/information/proposedregs/>. The Department of Insurance does not plan to hold a public hearing on the proposed regulation. The Department's Docket number is 3575-2017.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, 2nd day of October, 2017. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist
Dkt. No. 3575-2017
Delaware Department of Insurance
841 Silver Lake Drive
Dover, 19904
(302) 674-7379
Email: Leslie.Ledogar@state.de.us

OFFICE OF LEGAL AND SPECIAL PROJECTS
PUBLIC NOTICE

1301 Internal Review and Independent Utilization Review of Health Insurance Claims

The Department of Insurance (Department) hereby gives notice of proposed amendment to existing Regulation 1301, Internal Review and Independent Utilization Review of Health Insurance Claims. The proposed regulatory amendments to the definition of "Authorized Representative" and to the content of the notice to be provided by carriers to their insureds and codified in Section 4 of this regulation, implement HB 100, which amends 18 **Del.C.** §332 to now require that an insurance carrier, when informing a covered person of its internal review process, must inform the covered person of the availability of legal assistance from attorneys working for the Delaware Department of Justice in the preparation of an appeal of an adverse determination involving treatment for substance abuse. HB 100 was signed into law on May 30, 2017, becomes effective on September 27, 2017 and sunsets on January 1, 2020 unless expressly reauthorized prior to that date. Published elsewhere in this volume of the *Register of Regulations* is a proposal to amend Regulation 1315 to also implement HB 100.

The Department is also taking this opportunity to make non-substantive corrections in punctuation at subparagraphs 3.1.6 and 9.4.6, and in style throughout paragraphs 5.7, 7.1 and 11.1, and throughout sections 9 and 10.

The Department does not plan to hold a public hearing on the proposed amendments. The proposed amendments appear below and can also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>. The Department's docket number is DOI Docket No. 3571-2017.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed new regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, the 2nd day, October, 2017. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist
Delaware Department of Insurance
841 Silver Lake Drive
Dover, DE 19904
(302) 674-7379
Email: Leslie.Ledogar@state.de.us

OFFICE OF LEGAL AND SPECIAL PROJECTS

PUBLIC NOTICE

1315 Arbitration of Health Insurance Disputes Between Individuals and Carriers

The Department of Insurance (Department) hereby gives notice of a proposed amendment to the definition of "Authorized Representative" codified in existing Regulation 1315, Arbitration of Health Insurance Disputes Between Individuals and Carriers. The proposed amendment implements HB 100, which amends 18 **Del.C.** §332 to now require that an insurance carrier, when informing a covered person of its internal review process, must inform the covered person of the availability of legal assistance from attorneys working for the Delaware Department of Justice in the preparation of an appeal of an adverse determination involving treatment for substance abuse. HB 100 was signed into law on May 30, 2017, becomes effective on September 27, 2017 and sunsets on January 1, 2020 unless expressly reauthorized prior to that date. Published elsewhere in this volume of the *Register of Regulations* is a proposal to also amend Regulation 1301 to implement HB 100.

The Department is also taking this opportunity to make non-substantive corrections in punctuation and grammar throughout sections 3, 4 and 5.

The Department does not plan to hold a public hearing on the proposed amendments. The proposed amendments appear below and can also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>. The Department's docket number is DOI Docket No. 3572-2017.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed new regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, the 2nd day, October, 2017. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist
Delaware Department of Insurance
841 Silver Lake Drive
Dover, DE 19904
(302) 674-7379
Email: Leslie.Ledogar@state.de.us

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF WATER****GROUND WATER DISCHARGES SECTION****PUBLIC NOTICE****7102 Regulations Governing Underground Injection Control**

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

The hearing record on the proposed changes to State of Delaware Regulations Governing Underground Injection Control will be re-opened September 1, 2017 for a 30-day public comment period ending at the close of business on October 2, 2017. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
100 BOARD OF CHARITABLE GAMING**PUBLIC NOTICE****101 Regulations Governing Bingo**

Pursuant to 28 **Del.C.** §1508(a)(2), the Delaware Gaming Control Board has proposed revisions to its rules and regulations. The rules pertaining to bingo and instant bingo are modified to provide additional guidance on allowable games.

A public hearing will be held on September 27 at 10:00 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Gaming Control Board, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board, attention Meredith Hurley, at the above address by October 13, 2017 in accordance with 29 **Del.C.** §10118(a).

PUBLIC SERVICE COMMISSION**PUBLIC NOTICE****3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard (Opened August 23, 2005)**

The Delaware Public Service Commission, in compliance with the Memorandum Opinion, issued December 30, 2016, in Delaware Division of the Public Advocate v. Delaware Public Service Commission, C.A. N15A-12-002 AML, and pursuant to 26 **Del.C.** §362(b), proposes to revise its regulations for the limited purpose of complying with the Memorandum Opinion, issued December 30, 2016, in Delaware Division of the Public Advocate v. Delaware Public Service Commission, C.A. N15A-12-002 AML; that is, specifically to promulgate regulations to

amend 26 Del. Admin. C. § 3008-3.2.21 and related regulations as needed to specify the procedures for freezing the minimum cumulative solar photovoltaic and eligible energy resource requirements under 26 **Del.C.** §§354(i) and (j).

You can review the proposed revised Rules in the September 2017 issue of the Delaware *Register of Regulations*. You can also review the Order and the proposed revised Rules in the PSC's electronic filing system DelaFile at <http://delafile.delaware.gov/> and for docket # input "Reg. 56." If you wish to obtain written copies of the Order and proposed revised Rules, please contact the PSC at (302) 736-7500. Copies in excess of the first twenty pages are \$0.10 per page. Payment is expected prior to copying (if you wish the copies to be mailed) or at the time the copies are retrieved (if you retrieve them in person).

Written comments can be filed electronically in DelaFile at <http://delafile.delaware.gov/> by filling out the Public Comment Form located under Public Links. Written comments can also be mailed to Joseph DeLosa, Public Service Commission, Cannon Building, 861 Silver Lake Blvd., Suite 100, Dover, DE 19904 or via email to joseph.delosa@state.de.us, with the subject line "Regulation Docket No. 56." Written comments will be accepted until Monday, October 2, 2017, pursuant to 29 **Del.C.** §10118(a).
