
Delaware Register of Regulations

Issue Date: March 1, 2010

Volume 13 - Issue 9, Pages 1132 - 1239



IN THIS ISSUE:

Regulations:
Proposed
Final

Governor:
Executive Orders

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 February 15, 2010.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

1133

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

13 **DE Reg.** 24-47 (07/01/09)

Refers to Volume 13, pages 24-47 of the *Delaware Register* issued on July 1, 2009.

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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.

INFORMATION ABOUT THE DELAWARE REGISTER OF 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.

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
April 1	March 15	4:30 p.m.
May 1	April 15	4:30 p.m.
June 1	May 14	4:30 p.m.
July 1	June 15	4:30 p.m.
August 1	July 15	4:30 p.m.

DIVISION OF RESEARCH STAFF

Deborah A. Porter, Interim Supervisor; **Judi Abbott**, Administrative Specialist I; **Jeffrey W. Hague**, Registrar of Regulations; **Robert Lupo**, Printer; **Ruth Ann Melson**, Legislative Librarian; **Deborah J. Messina**, Print Shop Supervisor; **Kathleen Morris**, Administrative Specialist I; **Debbie Puzzo**, Research Analyst; **Don Sellers**, Printer; **Georgia Roman**, Unit Operations Support Specialist; **Victoria Schultes**, Administrative Specialist II; **Rochelle Yerkes**, Administrative Specialist II.

TABLE OF CONTENTS

1135

Cumulative Tables.....	1137
------------------------	------

PROPOSED

DELAWARE RIVER BASIN COMMISSION	
Administrative Manual, Part III: Basin Regulations - Water Supply Charges.....	1144
DELAWARE SOLID WASTE AUTHORITY	
502 Statewide Solid Waste Management Plan.....	1147
DEPARTMENT OF EDUCATION	
Office of the Secretary	
107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II).....	1147
107A Specialist Appraisal Process Delaware Performance Appraisal System	
.....(DPAS II) Revised.....	1151
701 Unit Count.....	1158
DEPARTMENT OF FINANCE	
Office of the State Lottery	
203 Video Lottery and Table Game Regulations.....	1163
DEPARTMENT OF HEALTH AND SOCIAL SERVICES	
Division of Developmental Disabilities Services	
2101 Agency Appeal Process.....	1164
Division of Medicaid and Medical Assistance	
DMAP General Policy Manual: Utilization Control – Prior Authorization.....	1166
Division of Social Services	
DSSM: 7000 Cash Assistance Overpayments.....	1174
..... 9095 Establishing Claims Against FSP Households.....	1174
..... 9060 Income Deductions.....	1174
DEPARTMENT OF INSURANCE	
1408 Standards for Prompt, Fair and Equitable Settlement of Claims for Long-Term Care Insurance ...	1181
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL	
Division of Fish and Wildlife	
3511 Summer Flounder Size Limits; Possession Limits.....	1183
3900 Wildlife, Sections 1.0, 2.0, 3.0, 4.0, 7.0, 21.0 and 22.0.....	1185
DEPARTMENT OF STATE	
Division of Professional Regulation	
100 Board of Accountancy.....	1198
2500 Board of Pharmacy.....	1198
DEPARTMENT OF TRANSPORTATION	
Division of Transportation Solutions	
2402 Delaware Manual on Uniform Traffic Control Devices, Parts 2, 3, and 6.....	1199

FINAL

DEPARTMENT OF EDUCATION	
Office of the Secretary	
612 Possession, Use or Distribution of Drugs and Alcohol.....	1201

TABLE OF CONTENTS

736 Local School District and Charter School Citizen Budget Oversight Committees.....	1203
805 The School Health Tuberculosis (TB) Control Program.....	1205
DEPARTMENT OF HEALTH AND SOCIAL SERVICES	
Division of Social Services	
DSSM: 3033 Interim Assistance Reimbursement.....	1209
..... Child Care Subsidy Program, 11006.5.1 Terminating Providers.....	1211
DEPARTMENT OF JUSTICE	
301 Violent Crimes Compensation Board Rules and Regulations.....	1213
DEPARTMENT OF STATE	
Division of the Arts	
1001 Assistance for the Development of the Arts Regulations.....	1222
Division of Professional Regulation	
1770 Respiratory Care Advisory Council Of The Delaware Board Of Medical Practice.....	1223
DEPARTMENT OF TRANSPORTATION	
Division of Motor Vehicles	
2201 Procedure for Re-licensing Investigations Character Background Review.....	1225
2217 Driver License and Identification Card Application Procedures for Delaware Compliant and Delaware Non-Compliant Identification Documents.....	1226
EXECUTIVE DEPARTMENT	
Delaware Economic Development Office	
402 Procedures Governing The Delaware Strategic Fund.....	1227
<hr/> GOVERNOR	
Executive Orders:	
No. 16: Naming Linda L. Ammons to Lead Independent Review of Delaware's Policies and Procedures for Sexual Assault Cases.....	1228
No. 17: Allocation and Sub-allocation of State Private Activity Bond Volume Cap for Calendar Year 2010 and Reallocation of State Private Activity Bond Volume Cap for Calendar Year 2009	1229
No. 18, Leading by Example Towards a Clean Energy Economy and Sustainable Natural Environment.....	1230
<hr/> CALENDAR OF EVENTS/HEARING NOTICES	
Delaware River Basin Commission, Notice of Public Hearing and business meeting.....	1235
Delaware Solid Waste Authority, Notice of Public Hearing and Public Comment period.....	1235
State Board of Education, Notice of Monthly Meeting.....	1235
Dept. of Finance, Office of the State Lottery, Notice of Public Comment period.....	1235
Dept. of Health and Social Services, Div. of Management Services, Notice of Public Comment	1236
Div. of Developmental Disabilities, Notice of Public Comment period.....	1236
Div. of Medicaid & Medical Assistance, Div. of Social Services, Notices of Public Comment	1236
Dept. of Insurance, Notice of Public Comment Period.....	1237
Dept. of Natural Resources & Environmental Control, Div. of Fish & Wildlife, Notices of Public Hearings and Public Comment periods	1237 - 1238
Dept of State, Division of Professional Regulation, Board of Accountancy & Board of Pharmacy Notice of Public Hearings & Public Comment periods.....	1238
Dept. of Transportation, Div. of Transportation Solutions , Notice of Public Comment Period....	1239

The table printed below lists the regulations that have been proposed, adopted, amended or repealed in the preceding issues of the current volume of the *Delaware Register of Regulations*.

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

DELAWARE COUNCIL ON POLICE TRAINING	13 DE Reg. 593(Prop.) 13 DE Reg. 840(Final)
DELAWARE RIVER BASIN COMMISSION	
Proposed Amendments to the Water Quality Regulations, Water Code and Comprehensive Plan to Revise the Human Health Water Quality Criteria for PCBs in the Delaware Estuary, etc.....	13 DE Reg. 154(Prop.)
DELAWARE SOLID WASTE AUTHORITY	
501 Regulations of the Delaware Solid Waste Authority.....	13 DE Reg. 326(Prop.)
502 Statewide Solid Waste Management Plan.....	13 DE Reg. 333(Prop.)
DELAWARE STATE FIRE PREVENTION REGULATIONS	
Proposed Recommendations for 2009.....	13 DE Reg. 7(Prop.) 13 DE Reg. 629 (Final)
DEPARTMENT OF AGRICULTURE	
Delaware Standardbred Breeders' Fund	
502 Delaware Standardbred Breeder's Fund Regulations, Sections 4.0, 9.0 & 14.0.....	13 DE Reg. 496(Final)
Division of Animal Health and Food Products Inspection	
304 Exotic Animal Regulations.....	13 DE Reg. 8(Prop.) 13 DE Reg. 559(Prop.) 13 DE Reg. 926(Final)
Harness Racing Commission	
501 Harness Racing Rules and Regulations.....	13 DE Reg. 1064(Final)
501 Harness Racing, Rule 7.0 Rules of the Race.....	13 DE Reg. 17(Prop.) 13 DE Reg. 841(Final)
501 Harness Racing Rules and Regulations, Sections 7.0 and 10.0	13 DE Reg. 336(Prop.)
Section 10.0 Due Process & Disciplinary Action.....	13 DE Reg. 931(Final)
Thoroughbred Racing Commission	
Rule 11.0, Entries, Subscriptions, Delegations.....	13 DE Reg. 343(Prop.) 13 DE Reg. 497(Final)
Rule 14.0 Running of the Race.....	13 DE Reg. 971(Prop.)
Rule 14.20 Toe Grabs.....	13 DE Reg. 6(Emer) 13 DE Reg. 151(Emer)
DEPARTMENT OF EDUCATION	
Office of the Secretary	
103 Accountability for Schools, Districts and the State.....	13 DE Reg. 708(Prop.) 13 DE Reg. 1065(Final)
106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II).....	13 DE Reg. 725(Prop.) 13 DE Reg. 1067(Final)
106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II).....	13 DE Reg. 732(Prop.) 13 DE Reg. 1068(Final)

CUMULATIVE TABLES

108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II).....	13 DE Reg. 738(Prop.) 13 DE Reg. 1071(Final)
108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II).....	13 DE Reg. 745(Prop.) 13 DE Reg. 1073(Final)
202 Freedom of Information Act (FOIA) Procedures.....	13 DE Reg. 252(Final)
251 Family Educational Rights and Privacy Act (FERPA).....	13 DE Reg. 751(Prop.)
252 Required Educational Records and Transfer and Maintenance of Educational Records.....	13 DE Reg. 753(Prop.) 13 DE Reg. 1075(Final)
260 General Administrative Review Procedures for the Child & Adult Care Food Programs of the United States Department of Agriculture CACFP/USDA..	13 DE Reg. 345(Prop.) 13 DE Reg. 636(Final)
262 General Administrative Appeal Procedures for National School Lunch Programs (NSLP), the School Breakfast Program (SBP) and the After School Snack Program (ASSP) of the United States Department of Agriculture (USDA) Fiscal Action.....	13 DE Reg. 975(Prop.)
264 General Administrative Appeal Procedures for the Summer Food Service Programs of the United States Department of Agriculture CACFP/USDA .	13 DE Reg. 977(Prop.)
401 Major Capital Improvement Programs.....	13 DE Reg. 980(Prop.)
501 State Content Standards.....	13 DE Reg. 256(Final)
502 Alignment of Local School District Curricula to the State Content Standards...	13 DE Reg. 257(Final)
609 District and School-Based Intervention Services.....	13 DE Reg. 570(Prop.) 13 DE Reg. 986(Prop.)
612 Possession, Use or Distribution of Drugs and Alcohol.....	13 DE Reg. 882(Prop.)
705 Leave for Training Camp or Special Duty in the National Guard or the Military Reserves of the United States	13 DE Reg. 348(Prop.) 13 DE Reg. 637(Final)
706 Credit for Experience for Full Time Active Duty Service in the Armed Forces .	13 DE Reg. 349(Prop.) 13 DE Reg. 639(Final)
712 Employee Leave.....	13 DE Reg. 988(Prop.)
714 Professional Employee Work Stoppage or Strike.....	13 DE Reg. 756(Prop.) 13 DE Reg. 1078(Final)
718 Health Examinations for Employees of School Districts, Charter Schools, and Alternative Programs.....	13 DE Reg. 351(Prop.) 13 DE Reg. 640(Final)
725 School Administrator Contracts and Agreements.....	13 DE Reg. 758(Prop.) 13 DE Reg. 1080(Final)
735 Standardized Financial Reporting.....	13 DE Reg. 572(Prop.) 13 DE Reg. 933(Final)
736 Local School District and Charter School Citizen Budget Oversight Committees.....	13 DE Reg. 574(Prop.) 13 DE Reg. 886(Prop.)
738 Financial Goals for Instruction and Instruction-related Expenditures.....	13 DE Reg. 759(Prop.) 13 DE Reg. 1082(Final)
742 Compensation of School District and Charter School Personnel Under Federal Projects.....	13 DE Reg. 443(Prop.) 13 DE Reg. 842(Final)
746 Criminal Background Check for Student Teaching.....	13 DE Reg. 445(Prop.) 13 DE Reg. 843(Final)
805 The School Health Tuberculosis (TB) Control Program.....	13 DE Reg. 890(Prop.)
851 K to 12 Comprehensive Health Education Program..	13 DE Reg. 578(Prop.) 13 DE Reg. 935(Final)
852 Child Nutrition.....	13 DE Reg. 353(Prop.)
1105 School Transportation.....	13 DE Reg. 449(Prop.) 13 DE Reg. 845(Final)

Professional Standards Board

1507 Alternative Routes to Teacher Licensure and Certification Program.....	13 DE Reg. 354(Prop.)
1511 Issuance and Renewal of Continuing License.....	13 DE Reg. 642(Final) 13 DE Reg. 762(Prop.)
1512 Issuance and Renewal of Advanced License.....	13 DE Reg. 1084(Final) 13 DE Reg. 359(Prop.)
1560 Art Teacher.....	13 DE Reg. 647(Final)
1563 Music Teacher.....	13 DE Reg. 990(Prop.)
1564 Physical Education Teacher.....	13 DE Reg. 994(Prop.)
1590 Delaware Administrator Standards.....	13 DE Reg. 998(Prop.) 13 DE Reg. 362(Prop.) 13 DE Reg. 650(Final)

DEPARTMENT OF FINANCE

State Lottery Office

460 Sports Lottery Rules and Regulations.....	13 DE Reg. 24(Prop.) 13 DE Reg. 406(Final)
---	---

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Long Term Care Residents Protection

3101 Adult Abuse Registry.....	13 DE Reg.1002(Prop.)
3105 Criminal History Record Checks and Drug Testing.....	13 DE Reg.1007(Prop.)
3110 Criminal History Checks And Drug Testing For Home Health Agencies..	13 DE Reg.1009(Prop.)
3201 Skilled and Intermediate Care Nursing Facilities.....	13 DE Reg.1013(Prop.)
3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants.....	13 DE Reg.1014(Prop.)
3225 Assisted Living Facilities.....	13 DE Reg.1018(Prop.)

Division of Medicaid and Medical Assistance

1915(c) Home and Community-Based Services Waiver for the Elderly and Disabled	13 DE Reg. 93(Final)
Diamond State Health Plan 1115 Demonstration Waiver.....	13 DE Reg. 370(Prop.)
Diamond State Health Plan 1115 Demonstration Waiver.....	13 DE Reg. 652(Final)
Title XIX Medicaid State Plan, Attachment 4.19-a, Page 3, Reimbursement Methodology for Inpatient Hospital Services.....	13 DE Reg. 373(Prop.) 13 DE Reg. 656(Final)
Title XIX Medicaid State Plan, Attachment 4.19-b, Page 14, Reimbursement Methodology for Medicaid Services	13 DE Reg. 375(Prop.) 13 DE Reg. 658(Final)
Title XIX Reimbursement Methodology for Medicaid Services	13 DE Reg. 259(Final)

DSSM 17900 Medicaid for Workers with Disabilities	13 DE Reg. 371(Prop.) 13 DE Reg. 654(Final)
17908 Unearned Income Exclusion.....	13 DE Reg. 371(Prop.) 13 DE Reg. 654(Final)
17911 Financial Eligibility Determination.....	13 DE Reg. 371(Prop.) 13 DE Reg. 654(Final)
17912 Retroactive Eligibility.....	13 DE Reg. 371(Prop.) 13 DE Reg. 654(Final)
20800 Determining Eligibility for the Acute Care Program.....	13 DE Reg. 263(Final)

Division of Public Health

4454 Tanning Facilities Regulations.....	13 DE Reg.1029(Prop.)
--	-----------------------

Division of Social Services

DSSM 1006.6 Civil Rights Program and Public Relations.....	13 DE Reg. 7(Prop.) 13 DE Reg. 150(Err.) 13 DE Reg. 407(Final)
2001.1 Redetermination: Eligibility Review Periods.....	13 DE Reg. 378(Prop.) 13 DE Reg. 661(Final)

CUMULATIVE TABLES

3017 Other CMR Elements.....	13 DE Reg. 450(Prop.)
3033 Interim Assistance Reimbursement.....	13 DE Reg. 847(Final)
3034 General Assistance Time Limits.....	13 DE Reg. 894(Prop.)
4002.2 Available Resources.....	13 DE Reg. 1032(Prop.)
4002.5 Excluded Resources.....	13 DE Reg. 378(Prop.)
4002.6 Disposal of Real Property.....	13 DE Reg. 663(Final)
4007.1 Standards of Need/Payment Standard - GA.....	13 DE Reg. 378(Prop.)
9018.1 Work Registration Requirements; 9021 Failure to Comply; 9026 Voluntary Quit.....	13 DE Reg. 663(Final)
9032.3 Utility Expenses.....	13 DE Reg. 1032(Prop.)
9032.8 (Reserved).....	13 DE Reg. 1033(Prop.)
9032.9 Continuing Shelter Charges.....	13 DE Reg. 267(Final)
9032.11 (Reserved).....	13 DE Reg. 267(Final)
9038 Verification for Recertifications and Interim Changes.....	13 DE Reg. 267(Final)
9059 Income Exclusions.....	13 DE Reg. 267(Final)
9068 Food Supplement Program.....	13 DE Reg. 580(Prop.)
9085 Certification Periods Reporting Changes.....	13 DE Reg. 937(Final)
9094 Cooperation with the Division of Child Support Enforcement (DCSE).....	13 DE Reg. 779(Prop.)
11000 Child Care Subsidy Program.....	13 DE Reg. 1086(Final)
11003.2.1 TANF and Transitional Work Program Sanctions.....	13 DE Reg. 779(Prop.)
11003.7.8 Special Needs Children.....	13 DE Reg. 1086(Final)
11006.4.1 Absent Day Policy.....	13 DE Reg. 1040(Prop.)
11006.5.1 Terminating Providers.....	13 DE Reg. 1040(Prop.)

DEPARTMENT OF INSURANCE

305 Actuarial Opinion and Memorandum Regulation.....	13 DE Reg. 102(Final)
607 Defensive Driving Course Discount (Automobiles and Motorcycles).....	13 DE Reg. 158(Prop.)
901 Arbitration of Automobile and Homeowners' Insurance Claims.....	13 DE Reg. 498(Final)
1212 Valuation of Life Insurance Policies.....	13 DE Reg. 583(Prop.)
1215 Recognition of Preferred Mortality Tables for use in Determining Minimum Reserve Liabilities.....	13 DE Reg. 152(Emer)
1305 Rate Filing Procedures for Health Insurers and Health Service Corporations and Managed Care Organizations.....	13 DE Reg. 409(Final)
1310 Standards for Prompt, Fair and Equitable Settlement of Claims for Health Care Services.....	13 DE Reg. 153(Emer)
1501 Medicare Supplement Insurance Minimum Standards.....	13 DE Reg. 410(Final)

DEPARTMENT OF JUSTICE

Division of Securities

Part H Provisions Applicable to Broker-Dealers, Agents, Investment Advisers & Investment Adviser Representatives § 800. Senior Specific Designations.	13 DE Reg. 48(Prop.)
Rules and Regulations Pursuant to the Delaware Securities Act.....	13 DE Reg. 381(Prop.)

DEPARTMENT OF STATE

Controlled Substance Advisory Committee

Uniform Controlled Substance Act Regulations..... 13 **DE Reg.** 281(Final)

Division of the Arts

1001 Assistance for the Development of the Arts Regulations..... 13 **DE Reg.** 231(Prop.)

Division of Professional Regulation**Delaware Gaming Control Board, 103 Regulations Governing Charitable**

Gambling Other Than Raffles; 104 Regulations Governing Texas Hold

'Em Poker..... 13 **DE Reg.** 1058(Prop.)

100 Board of Accountancy..... 13 **DE Reg.** 901(Prop.)

101 Regulations Governing Bingo..... 13 **DE Reg.** 49(Prop.)

13 **DE Reg.** 412(Final)

13 **DE Reg.** 599(Prop.)

13 **DE Reg.** 901(Prop.)

102 Regulations Governing Raffles..... 13 **DE Reg.** 107(Final)

13 **DE Reg.** 901(Prop.)

103 Regulations Governing Charitable Gambling Other Than Raffles. 13 **DE Reg.** 107(Final)

13 **DE Reg.** 599(Prop.)

13 **DE Reg.** 901(Prop.)

104 Regulations Governing No Limit Texas Hold'em Poker..... 13 **DE Reg.** 49(Prop.)

13 **DE Reg.** 107(Final)

13 **DE Reg.** 412(Final)

13 **DE Reg.** 599(Prop.)

1000 Board of Pilot Commissioners..... 13 **DE Reg.** 464(Prop.)

13 **DE Reg.** 503(Final)

13 **DE Reg.** 946(Final)

1700 Board of Medical Practice..... 13 **DE Reg.** 236(Prop.)

13 **DE Reg.** 284(Final)

13 **DE Reg.** 680(Final)

1770 Respiratory Care Practice Advisory Council..... 13 **DE Reg.** 815(Prop.)

1790 Acupuncture Advisory Council..... 13 **DE Reg.** 237(Prop.)

13 **DE Reg.** 858(Final)

1800 Board of Plumbing, Heating, Ventilation, Air Conditioning & Refrigeration

Examiners..... 13 **DE Reg.** 825(Prop.)

2000 Board of Occupational Therapy Practice..... 13 **DE Reg.** 606(Prop.)

13 **DE Reg.** 1095(Final)

2500 Board of Pharmacy..... 13 **DE Reg.** 57(Prop.)

13 **DE Reg.** 506(Final)

2700 Board of Professional Land Surveyors, Sections 12.0 Minimum Technical

Standards for Licences and 15.0 Reciprocity Eligibility..... 13 **DE Reg.** 244(Prop.)

2930 Council on Real Estate Appraisers..... 13 **DE Reg.** 123(Final)

3300 Board of Veterinary Medicine..... 13 **DE Reg.** 1061(Prop.)

3500 Board of Examiners of Psychologists..... 13 **DE Reg.** 124(Final)

3600 Board of Registration of Geologists..... 13 **DE Reg.** 390(Prop.)

13 **DE Reg.** 682(Final)

3700 Board of examiners of Speech/Language Pathologists, Audiologists &

Hearing Aid Dispensers..... 13 **DE Reg.** 826(Prop.)

13 **DE Reg.** 1097(Final)

3800 Committee on Dietetics/Nutrition..... 13 **DE Reg.** 79(Prop.)

13 **DE Reg.** 414(Final)

4400 Delaware Manufactured Home Installation Board..... 13 **DE Reg.** 834(Prop.)

13 **DE Reg.** 1098(Final)

Office of the State Bank Commissioner

2101 Mortgage Loan Brokers Operating Regulations..... 13 **DE Reg.** 468(Prop.)

13 **DE Reg.** 862(Final)

2201 Licensed Lenders Operating Regulations..... 13 **DE Reg.** 468(Prop.)

13 **DE Reg.** 862(Final)

2401 Mortgage Loan Originator Licensing.....	13 DE Reg. 468(Prop.)
	13 DE Reg. 862(Final)

Public Service Commission

3001 Reg. Docket No. 49: Rules and Regulations to Implement the Provisions of 26 Del.C. Ch. 10 Relating to the Creation of a Competitive Market for Retail Electric Supply Service.....	13 DE Reg. 614(Prop.)
	13 DE Reg. 950(Final)
3007 Reg. Docket No. 50: Rules, Standards and Indices to Ensure Reliable Electric Service by Electric Distribution Companies.....	13 DE Reg. 837(Prop.)
	13 DE Reg. 1100(Final)
3008 Reg. Docket No. 56: Rules and Procedures to Implement the Renewable Energy Portfolio Standards Act.....	13 DE Reg. 623(Prop.)
	13 DE Reg. 952(Final)
3010 Reg. Docket No. 60: Integrated Resource Planning for the Provision of Standard Offer Service by Delmarva Power & Light Company.....	13 DE Reg. 395(Prop.)
	13 DE Reg. 953(Final)
8000 Reg. Docket No. 61: Adoption of Rules to Establish an Intrastate Gas Pipeline Safety Compliance Program	13 DE Reg. 416(Final)

DEPARTMENT OF TRANSPORTATION

Division of Motor Vehicles

2201 Procedure for Re-licensing Investigations Character Background Review	13 DE Reg. 908(Prop.)
2217 Interim Identification Procedure for the Division of Motor Vehicles.....	13 DE Reg. 911(Prop.)
2287 Public Carrier Regulations.....	13 DE Reg. 405(Prop.)
	13 DE Reg. 955(Final)

Division of Planning and Policy

2309 Standards and Regulations for Subdivision Streets and State Highway Access	13 DE Reg. 626(Prop.)
	13 DE Reg. 1101(Final)

Division of Transportation Solutions

2402 Delaware Manual on Uniform Traffic Control Devices, Parts 2, 6, and 9.	13 DE Reg. 418(Final)
--	------------------------------

EXECUTIVE DEPARTMENT

Delaware Economic Development Office

402 Procedures Governing The Delaware Strategic Fund.....	13 DE Reg. 489(Prop.)
---	------------------------------

Office of Management and Budget

Freedom of Information Act Policy and Procedures.....	13 DE Reg. 493(Prop.)
---	------------------------------

STATE EMPLOYEE BENEFITS COMMITTEE

2001 Group Health Care Insurance Eligibility and Coverage Rules.....	13 DE Reg. 126(Final)
	13 DE Reg. 683(Final)

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.

DELAWARE RIVER BASIN COMMISSION**NOTICE OF PROPOSED RULEMAKING AND PUBLIC HEARING**

The Delaware River Basin Commission (“DRBC” or “Commission”) is a federal interstate compact agency charged with managing the water resources of the Basin without regard to political boundaries. Its commissioners are the governors of the four Basin states – New Jersey, New York, Pennsylvania and Delaware – and a federal representative, the North Atlantic Division Commander of the United States Army Corps of Engineers. The Commission is not subject to the requirements of the Delaware Administrative Procedures Act. This notice is published by the Commission for information purposes.

PROPOSED RULEMAKING TO AMEND SCHEDULE OF WATER CHARGES

Summary: The Delaware River Basin Commission will hold a **public hearing** to receive comments on proposed amendments to the Administrative Manual – Part III – Basin Regulations – Water Supply Charges to revise the schedule of water charges.

Dates: The Commission will hold a **public hearing** on Tuesday, April 13, 2010, beginning at 1:30 p.m. The hearing will continue until the later of 3:30 p.m. or such time as all those who wish to testify have been afforded an opportunity to do so. **Written comments** will be accepted until 5:00 p.m. on Friday, April 16.

Addresses: The hearing will take place in the Goddard Room at the Commission’s office building, located at 25 State Police Drive, West Trenton, New Jersey. Driving directions are available on the Commission’s website – www.drbc.net. Please do not rely on Internet mapping services as they may not provide accurate directions to the DRBC.

Written comments may be submitted at the hearing and may also be sent as follows: via email to Paula.Schmitt@drbc.state.nj.us; otherwise, to the attention of the Commission Secretary, DRBC, either by fax to (609) 883-9522; U.S. Mail to P.O. Box 7360, West Trenton, NJ 08628-0360; or delivery service to 25 State Police Drive, West Trenton, NJ 08628-0360. Regardless of the method of submission, written comments should include the name, affiliation (if any) and address of the commenter and the subject line “Schedule of Water Charges.”

For further information contact: Please contact Paula Schmitt at 609-477-7224 or Katharine O'Hara at 609-477-7205 with questions about the public hearing.

Supplementary Information: Background. In response to the need to fund certain water supply storage facility projects, the Commission between 1964 and 1974 established a system of water supply charges pursuant to section 3.7 of the Delaware River Basin Compact. In December of 1964, it adopted Resolution 64-16A, "A Resolution to establish policy concerning water supply in federal projects authorized in the Comprehensive Plan." This resolution established a revenue stream to repay the obligations the Commission eventually assumed to purchase capacity at the federal government's Beltzville and Blue Marsh water storage facilities. The resolution specifically provided that the debt for DRBC's share of storage in these facilities would be repaid through the sale of water (or other products and services) and through an apportionment of the costs to the states benefiting from those projects. See Resolution No. 64-16A, adopted December 29, 1964 (adding to the Comprehensive Plan a "Section IX – Water Supply Policy", par. 3.a. and b. of which establish the described debt repayment mechanisms).

The Commission subsequently adopted Resolution No. 71-4, "A Resolution to amend and supplement the Comprehensive Plan by the addition of a new article on policy for water supply charges." This resolution established a schedule of rates for basin water withdrawals and provided that the "charges for water supplied will include all costs associated with making basin water supply available and maintaining its continued availability in adequate quantity and quality over time." Res. No. 71-4, adopted April 7, 1971, par. A.2. Resolution No. 71-4 requires the Commission to collect sufficient annual revenue to meet all annual project costs, "including debt service, operation, maintenance, replacement, reserves, and associated administrative costs." Res. No. 71-4, par. A.2.b. The Commission recognized that the waters of the basin formed a "unitary system" and thus applied the charges to water withdrawals made throughout the basin, including up-stream of Commission facilities. See Res. No. 71-4, preamble. The unitary system is sometimes referred to as the "pooled water" theory. See, for example, *Delaware River Basin Commission v. Bucks County Water & Sewer Authority*, 641 F. 2d 1087, 1094 (3rd Cir. 1982) (citing *Borough of Morrisville v. Delaware River Basin Comm'n*, 399 F.Supp. 469, 471 (E.D. Pa. 1975), *aff'd per curiam*, 532 F.2d 745 (3d Cir. 1976)). Resolution No. 71-4 imposed charges only on withdrawals from surface waters of the basin. In accordance with Section 15.1(b) of the Compact, it limited charges to the amounts of water withdrawn in excess of those "that could lawfully have been made without charge on the effective date of the Compact." Compact § 15.1(b).

The Commission has historically placed the revenues generated through the sale of water in an account called the "Water Supply Storage Facilities Fund" ("Storage Fund"). The Storage Fund holds funds dedicated to pay the costs of project construction, operation, maintenance, and replacement, as well as associated administrative costs. See Res. No. 71-4, par. A.2. The estimated balance in the Storage Fund as of June 30, 2009 was \$12.1M. A snapshot of the Storage Fund at the close of fiscal year ending July 31, 2009 shows the following: The Storage Fund received approximately \$2.6M in water sale revenue. It disbursed or incurred approximately \$2.2M in expenses, consisting of approximately \$483K in interest paid to the U.S. Treasury, \$423K in asset depreciation, \$310K for operations and maintenance of the Blue Marsh and Beltzville projects, \$86K for contractual services from the U.S. Geological Survey for operation and maintenance of stream gauges, and \$933K associated with Commission administration. The fund lost \$153K on investments (the sole Storage Fund investment loss in 35 years). The approximately \$204K difference between the annual costs and revenue is retained in the Storage Fund as a reserve against the future costs of expected significant repair to the facilities.

Historically, the Commission has not charged its full administrative cost against the Storage Fund. Periodic reviews of the charges have shown that the costs involved in Commission activities properly chargeable to the Storage Fund have exceeded the amounts actually charged for many years. To the extent that the Storage Fund has not been charged its full allocable costs, contributions by the signatory parties of the Delaware River Basin Compact (the states of Delaware, New Jersey, New York, Pennsylvania and the federal government) have made up the difference. In extremely challenging economic times, however, the signatories find themselves less capable of assuming this burden. In fiscal year 2010, an adjustment was made to better align charges to the Storage Fund with actual costs. Even absent this adjustment, the trend evident since 2008 is that retained Storage Fund earnings have leveled off. Recent plant closures in the basin are expected to result in reductions of approximately \$500K annually (about 20 percent) in water sale revenues, while the costs of reservoir maintenance and operations, contractual services and administration continue to rise.

DRBC's Current Schedule of Water Charges. Resolution No. 71-4 provided that water rates would consist of "the weighted-average unit cost of all water stored by or on behalf of the Commission" and specified that the unit

cost of all water would be determined "by dividing all of the commission's annual project cost by the net yield of the water supply in federal reservoirs authorized in the commission's Comprehensive Plan." Res. No. 71-4, par. A.2.a. A/so see Res. No. 78-14, preamble.

In accordance with this formula, the current schedule of water charges was established by Resolution No. 78-14 in October of 1978, based on the unit cost of water stored by the Commission in the Beltzville and Blue Marsh reservoirs. It was codified at section 5.3.1 of the Commission's Administrative Manual – Part III – Basin Regulations – Water Supply Charges (hereinafter, "WSC"). Section 5.3.1 provides that the Commission "will from time to time, after public notice and hearing, make, amend and revise a schedule of water charges" and that until changed, the charges for water shall be \$.06 per thousand gallons for consumptive use (\$60 per million gallons) and six-tenths of a mill per thousand gallons (\$.60 per million gallons) for non-consumptive use. WSC § 5.3.1. These rates which have remain unchanged for more than 30 years, lag far behind the rates charged for raw (untreated) water by the Commission's sister agency the Susquehanna River Basin Commission (SRBC) and by the New Jersey Water Supply Authority (NJWSA) for raw water from its Raritan System.

The consumptive use rate established by SRBC in May of 1992, effective January 1, 1993, was \$140 per million gallons, nearly two-and-a-half times the current rate charged by DRBC. In June of 2008, SRBC approved a two-step increase to \$210 per million gallons effective January 1, 2009 and \$280 per million gallons (more than four-and-a-half times DRBC's current rate) effective January 1, 2010. NJWSA charged \$216 per million gallons as of July 1, 2010 and will charge \$220 per million gallons (more than three-and-a-half times DRBC's current rate) as of July 1, 2011 for raw water from its Raritan System. DRBC's proposed 2010 and 2011 rates for consumptively used water remain well below those of its counterparts.

Proposed Rate Increase. Resolution No. 71-4 provided that "[c]osts, rates and charges will be recomputed . . . as often as necessary to reflect relevant changes in any cost components associated with sustaining specific base flows." Res. No. 71-4, par. A.2.a. At this time, in order to maintain net income to the Storage Fund and ensure financial stability to address future operating and maintenance costs, the Commission is proposing its first water charging rate increase in 32 years. Because many people find the expression of the rates confusing, the Commission also is proposing that the new rates be established per million gallons rather than per thousand.

In light of the difficult economic climate, the rate change is proposed in two stages. The proposed rates, calculated using the formula established by Resolution No. 71-4 and set forth above, are as follows: The consumptive use rate is proposed to be increased from \$60 to \$90 per million gallons effective on January 1, 2011 and from \$90 to \$120 per million gallons effective on January 1, 2012. The non-consumptive use rate is proposed to be increased from \$.60 to \$.90 per million gallons effective on January 1, 2011 and from \$.90 to \$1.20 per million gallons effective on January 1, 2012.

Even with the proposed increases, Delaware Basin water will remain inexpensive when compared to raw water in neighboring jurisdictions. Notably, the proposed 2012 rate of \$120 per million gallons for raw water consumptively used in the Delaware Basin is less than half the rate of \$280 currently in effect in the Susquehanna Basin and only a little more than half the rate of \$216 currently charged by the NJWSA for its Raritan System water, which rate will increase to \$220 effective January 1, 2011. The Commission's proposed 2012 rate is below the current (2010) rate of \$60 per million if adjusted for inflation, which would be approximately \$200 per million gallons.

No Change to Exempt Uses. No change to the list of uses exempt from charges, as set forth at WSC § 5.3.3 is proposed. The following categories of uses are currently exempt from water charges: non-consumptive uses of less than 1,000 gallons a day and less than 100,000 gallons during any quarter (§ 5.3.3 A.); ballast water used for shipping purposes (§ 5.3.3 B.); water taken, withdrawn or diverted from streams tributary to the River Master's gauging station at Montague, New Jersey (§ 5.3.3 C.); and water taken, diverted or withdrawn below the mouth of the Cohansey River) and such proportion of water withdrawn above that point and below the mouth of the Schuylkill River as the Executive Director may determine would have no discernable effect upon the maintenance of the salt front below the mouth of the Schuylkill River (§ 5.3.3 D.).

PAMELA M. BUSH, ESQ.
Commission Secretary

DELAWARE SOLID WASTE AUTHORITY

Statutory Authority: 7 Delaware Code, Section 6403 (7 Del.C. §6403)

502 Statewide Solid Waste Management Plan

PUBLIC NOTICE

Pursuant to 7 Del.C. §§ 6403, 6404, 6406 and other pertinent provisions of 7 Del.C. Ch. 64; the Delaware Solid Waste Authority ("DSWA") is proposing a new Statewide Solid Waste Management Plan (the "Plan") to replace the Plan adopted May 26, 1994.

Notice of Hearing: A public hearing will be held Wednesday, March 24, 2010 at 5:30 p.m., in the DSWA board room located in the main administrative offices of the DSWA at 1128 South Bradford St., Dover, DE 19903. The hearing is to provide an opportunity for public comment on the proposed amendments.

Written Comments: The DSWA will receive written comments, suggestions briefs or other written material until the close of business, March 30, 2010. Written comments, suggestions, compilations of data or other written material shall be submitted to Michael D. Parkowski, Manager of Business Services and Government Relations, Delaware Solid Waste Authority, 1128 South Bradford Street, PO Box 455, Dover, Delaware 19903. Anyone wishing to obtain a copy of the proposed amendments may obtain a copy from the Delaware Solid Waste Authority, 1128 South Bradford Street, PO Box 455, Dover, Delaware 19903, (302) 739-5361.

Summary of Proposed Changes: Pursuant to 7 Del.C. Ch. 64, the DSWA is charged with developing the Plan and amending the Plan as necessary. The Plan was last adopted in 1994 and the DSWA has determined that the passage of time and changes in circumstances require wholesale revisions to all facets of the existing Plan. The DSWA therefore is proposing to replace the 1994 Plan in its entirety. If adopted, the Plan will establish policies and goals for statewide solid waste disposal and will identify the programs necessary to implement these policies and goals. The Plan is intended to address the roles and responsibilities of DSWA and other stakeholders in solid waste disposal and recycling diversion activities as they relate to both public bodies (State, counties, municipalities) and private enterprise. The Plan is based on "Zero Waste" principles, which involves the design and management of products and processes to systematically reduce and eliminate the volume of waste and to maximize the conservation and recovery of resources.

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

[502 Statewide Solid Waste Management Plan](#)

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 107

107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II)

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

- A. Type of Regulatory Action Required**
Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II). The amendments include an effective date and a cross reference to a new proposed regulation designed to replace this regulation with the 2011-2012 school year. Other technical amendments have been made.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before April 5, 2010 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amendments are intended to continue to help improve student achievement as measured against state achievement standards.

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

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amendments to the regulation are intended to ensure all students' legal rights continue to be respected.

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

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

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

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 other state educational policies, in particular the educational policies related to achievement in the core academic subjects.

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? The amendments do not substantively change the process so no anticipated costs are expected.

107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II)

(Break in Continuity of Sections)

2.0 Definitions

The following definitions shall apply for purposes of this regulation:

“**Announced Observation**” shall consist of the Pre-observation Form and conference with the evaluator, an observation by the evaluator at an agreed upon date and time, using the associated formative conferences and reports. The observation for the specialist may be a collection of data over a specified period of time, up to four (4) weeks, or it may be an observation of sufficient length, at least thirty (30) minutes, to gather appropriate data and assess specialist performance.

“**Board**” shall mean a local board of education or a charter school board of directors.

“**Credentialed Evaluator**” shall mean the individual, usually the supervisor of the specialist, who has successfully completed the evaluation training in accordance with 10.0. The Credentialed Evaluator may also be referred to as “Evaluator”.

“**DASA**” shall mean the Delaware Association of School Administrators.

“**DPAS II Guide for Specialists**” shall mean the manual that contains the prescribed forms, detailed procedures, specific details about the five (5) components of evaluation and other relevant documents that are used to implement the appraisal system.

“**DSEA**” shall mean the Delaware State Education Association.

“**Experienced Specialist**” shall mean a specialist who holds a valid and current Continuing or Advanced License, issued pursuant to Chapter 12 of Title 14 of the *Delaware Code*; or Standard or Professional Status Certificate issued prior to August 1, 2003 or holds a valid and current license from his or her respective licensure body.

“**Improvement Plan**” shall be the plan that a specialist and evaluator mutually develop in accordance with 8.0.

“**Novice Specialist**” shall mean a specialist who holds a valid and current Initial License issued pursuant to Chapter 12 of Title 14 of the *Delaware Code*; or holds a valid and current license from his or her respective licensure body.

“**Satisfactory Component Rating**” shall mean the specialist’s performance demonstrates an understanding of the concepts of the component issued pursuant to Chapter 12 of Title 14 of the *Delaware Code*.

“**Satisfactory Evaluation**” shall be equivalent to the overall “Effective” or “Needs Improvement” rating on the Summative Evaluation and shall be used to qualify for a continuing license.

“**State Assessment**” shall mean the Delaware Student Testing Program (DSTP) or its successor.

“**Summative Evaluation**” shall be the final evaluation at the conclusion of the appraisal cycle.

“**Unannounced Observation**” shall consist of an observation by the evaluator at a date and time that has not been previously arranged using the associated formative conferences and reports. The observation shall be of sufficient length, at least thirty (30) minutes, to gather appropriate data and assess specialist performance.

“**Unsatisfactory Component Rating**” shall mean the specialist’s performance does not demonstrate an understanding of the concepts of the component.

“**Unsatisfactory Evaluation**” shall be the equivalent to the overall “Ineffective” rating on the Summative Evaluation.

“**Working Day**” shall mean a day when the employee would normally be working in that district or charter school.

11 DE Reg. 506 (10/01/07)

(Break in Continuity of Sections)

5.0 Appraisal Components and Appraisal Criteria

5.1 The following five (5) Appraisal Components, including the four (4) Appraisal Criteria specified for each, shall be the basis upon which the performance of a specialist shall be evaluated by a credentialed evaluator:

5.1.1 Planning and Preparation

5.1.1.1 Designing Coherent Programs or Services: Specialist designs activities and plans for services that support the needs of the students or clients served.

5.1.1.2 Demonstrating Knowledge of Best Practice and Models of Delivery: Specialist uses practices and models of delivery that are aligned with local and national standards.

5.1.1.3 Demonstrating Knowledge of Students or Clients: Specialist shows knowledge of the needs and characteristics of the students or clients, including their approaches to learning, knowledge, skills, and interests.

- 5.1.1.4 Demonstrating Knowledge of Resources: Specialist selects appropriate resources, either within or outside of the school, that support the needs of students or clients.
- 5.1.2 Professional Practice and Delivery of Services
 - 5.1.2.1 Creating an Environment to Support Student or Client Needs: Specialist creates an environment in which student or client needs are identified and valued. Specialist and student or client interactions show rapport that is grounded in mutual respect.
 - 5.1.2.2 Demonstrating Flexibility and Responsiveness: Specialist has a repertoire of instructional or professional strategies and makes modifications to services based on needs of the students or clients.
 - 5.1.2.3 Communicating Clearly and Accurately: Verbal and written communication is clear and appropriate to students' or clients' ages, backgrounds, needs, or levels of understanding.
 - 5.1.2.4 Delivering Services to Students or Clients: Specialist is responsive to the identified needs of the students or clients and meets standards of professional practice. The resources and materials are suitable and match the needs of the students or clients. The delivery of service is coherent.
- 5.1.3 Professional Collaboration and Consultation
 - 5.1.3.1 Collaborating with Others: Specialist develops partnerships with school or district staff or external agencies to provide integrated services that meet student or client needs.
 - 5.1.3.2 Serving as a Consultant to the School Community: Specialist shares expertise with school staff to assist them in their work or to respond to school wide issues, problems, or concerns.
 - 5.1.3.3 Providing Resources and Access: Specialist provides school, district or external based resources to appropriate staff, students, or clients or gives information about the effective use of the resources.
 - 5.1.3.4 Maintaining Standards of Professional Practice: Specialist adheres to his or her professional standards of practice, including issues surrounding confidentiality.
- 5.1.4 Professional Responsibilities
 - 5.1.4.1 Communicating with Families: Specialist shares information about district or school educational programs and expectations for student or client performance. Specialist develops a mechanism for two way communication with families about student or client progress, behavior, personal needs, or concerns.
 - 5.1.4.2 Developing a Record System: Specialist keeps student or client records relevant to their services and shares information with appropriate school personnel.
 - 5.1.4.3 Growing and Developing Professionally: Specialist chooses and participates in professional development that is aligned with his or her professional needs and aligned with the needs of the school, district or students.
 - 5.1.4.4 Reflecting on Professional Practice: Specialist engages in reflective thinking as an individual, as a team participant, or as a school and community member with the goal of improving professional practice and delivery of service.
- 5.1.5 Student Improvement
 - 5.1.5.1 Showing Student Improvement: Specialist uses school or district goals from the school or district improvement process to set his or her annual data driven goal(s) for student improvement. Data used to establish goals shall include school or district accountability data, State Assessment data where available, and other assessment data where available.
 - 5.1.5.2 Using Assessments to Promote Student or Client Improvement: Specialist uses assessments related to his or her field of expertise that accurately measure progress towards the student improvement goal(s).
 - 5.1.5.3 Measuring Student Improvement: Specialist has specific, measurable evidence to show progress towards or attainment of goal(s) for student improvement.

- 5.1.5.4 Reflecting on Student Improvement: Specialist reflects on goal setting process and outcomes for the purpose of continuous professional improvement and shares student improvement information with other staff as appropriate.

11 DE Reg. 506 (10/01/07)

6.0 Summative Evaluation Ratings

- 6.1 Each of the five (5) components pursuant to 5.0 shall be weighted equally and assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.
- 6.1.1 A satisfactory rating for each Appraisal eComponents shall mean the specialist demonstrates acceptable performance by meeting at least three (3) of the four (4) Appraisal Criteria specified in each of the five (5) components set forth in 5.1.
- 6.2 The Summative Evaluation shall also include one of three overall ratings: "Effective", "Needs Improvement" or "Ineffective".
- 6.2.1 "Effective" shall mean that the specialist has received Satisfactory Component ratings in at least four (4) out of five (5) components in accordance with the Appraisal Criteria in 5.0.
- 6.2.2 "Needs Improvement" shall mean that the specialist has received three (3) Satisfactory Component ratings out of the five (5) components in accordance with the Appraisal Criteria in 5.0.
- 6.2.3 "Ineffective" shall mean that the specialist has received two (2) or fewer Satisfactory Component ratings out of the five (5) components in accordance with the Appraisal Criteria in 5.0.
- 6.2.3.1 If a specialist's overall Summative Evaluation rating is determined to be "Needs Improvement" for the third consecutive year, the rating shall be re-categorized as "Ineffective".

11 DE Reg. 506 (10/01/07)

(Break in Continuity of Sections)

12.0 Effective Date

- 12.1 This regulation shall be in effect until the effective date of 14 DE Admin. Code 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.

*Please note that no additional changes were made to the regulation, therefore, the entire regulation is not being republished here. A copy of the entire regulation is available at:

[107 Specialist Appraisal Process Delaware Performance Appraisal System \(DPAS II\)](#)

OFFICE OF THE SECRETARY

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

107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

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

A. Type of Regulatory Action Required

New Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to adopt a new regulation 14 DE Admin. Code 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. This regulation will become effective July 1, 2011 and will replace 14 DE Admin. Code 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II). The changes from the current specialist appraisal

process include re-defining the Student Improvement component of DPAS II to require a showing of Student Growth. Changes were also made to the Summative Evaluation ratings, adding a new "Highly Effective" rating and amending the means of determining the Summative rating. The amendments also change some of the appraisal cycles.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before April 2, 2010 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The new regulation supports an increase in student achievement as measured against the state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The new regulation is intended to help ensure that all students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The new regulation does not specifically address the health and safety of students.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The new regulation is intended to ensure all students' legal rights continue to be 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 unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for specialist evaluation does not change with this 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 other state educational policies, in particular the educational policies related to achievement in the core academic subjects.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation at this time.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no anticipated increased costs to the State or to the local school boards for compliance with this regulation; however, reallocation of current resources may be needed.

107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

1.0 Effective Date

The Specialist Appraisal Process, Delaware Performance Appraisal System (DPAS II) Revised shall be effective for all school districts and charter schools beginning July 1, 2011, and shall, at such time, replace the current 14 DE Admin. Code 107 Specialist Appraisal Process, Delaware Performance Appraisal System (DPAS II).

2.0 Definitions

The following definitions shall apply for purposes of this regulation:

"Announced Observation" shall consist of the Pre-observation Form and conference with the evaluator, an observation by the evaluator at an agreed upon date and time, using the associated formative conferences and reports. The observation for the specialist may be a collection of data over

a specified period of time, up to four (4) weeks, or it may be an observation of sufficient length, at least thirty (30) minutes, to gather appropriate data and assess specialist performance.

“Board” shall mean a local board of education or a charter school board of directors.

“Credentialed Evaluator” shall mean the individual, usually the supervisor of the specialist, who has successfully completed the evaluation training in accordance with 10.0. The Credentialed Evaluator may also be referred to as Evaluator.

“DASA” shall mean the Delaware Association of School Administrators.

“DPAS II Revised Guide for Specialists” shall mean the manual that contains the prescribed forms, detailed procedures, specific details about the five (5) components of evaluation and other relevant documents that are used to implement the appraisal process.

“DSEA” shall mean the Delaware State Education Association.

“Experienced Specialist” shall mean a specialist who holds a valid and current Continuing or Advanced License, issued pursuant to Chapter 12 of Title 14 of the *Delaware Code*; or Standard or Professional Status Certificate issued prior to August 1, 2003 or holds a valid and current license from his or her respective licensure body.

“Improvement Plan” shall be the plan that a specialist and evaluator mutually develop in accordance with 8.0.

“Interim assessment” shall mean an assessment given at regular and specified intervals throughout the school year, and designed to evaluate students’ knowledge and skills relative to a specific set of academic standards, and the results of which can be aggregated (e.g., by course, grade level, school, or school district) in order to inform teachers, administrators, and specialists at the student, classroom, school, and district levels.

“Novice Specialist” shall mean a specialist who holds a valid and current Initial License issued pursuant to Chapter 12 of Title 14 of the *Delaware Code* or holds a valid and current license from his or her respective licensure body.

“Satisfactory Component Rating” shall mean the specialist’s performance demonstrates an understanding of the concepts of the component under Chapter 12 of Title 14 of the *Delaware Code*.

“Satisfactory Evaluation” shall be equivalent to the overall Highly Effective, Effective or Needs Improvement rating on the Summative Evaluation and shall be used to qualify for a continuing license.

“State Assessment” shall mean the Delaware Student Testing Program (DSTP) or its successor.

“Student Achievement” shall mean

- (a) For tested grades and subjects:
 - (1) A student’s score on the DSTP or successor statewide assessment; and, as appropriate,
 - (2) Other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across classrooms.
- (b) For non-tested grades and subjects: alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessment; and other measures of student achievement that are rigorous and comparable across classrooms. Such alternative measures shall be approved by the Department of Education and developed in partnership with input from the relevant specialist organizations or respective licensure body and the Delaware State Education Association (DSEA).

“Student Growth” shall mean the change in achievement data for an individual student between two points in time. Growth may also include other measures that are rigorous and comparable across classrooms.

“Summative Evaluation” shall be the final evaluation at the conclusion of the appraisal cycle.

“Unannounced Observation” shall consist of an observation by the evaluator at a date and time that has not been previously arranged using the associated formative conferences and reports. The observation shall be of sufficient length, at least thirty (30) minutes, to gather appropriate data and assess specialist performance.

“Unsatisfactory Component Rating” shall mean the specialist’s performance does not demonstrate an understanding of the concepts of the component.

“Unsatisfactory Evaluation” shall be the equivalent to the overall Ineffective rating on the Summative Evaluation.

“Working Day” shall mean a day when the employee would normally be working in that district or charter school.

3.0 Appraisal Cycles

- 3.1 Experienced specialists who have earned a rating of Highly Effective on their most recent Summative Evaluation shall receive a minimum of (1) Announced Observation each year with a Summative Evaluation at least once every two (2) years. The Student Improvement component for Highly Effective specialists shall be evaluated each year, regardless of whether or not a Summative Evaluation is conducted. If a Highly Effective specialist does not achieve a Satisfactory rating on the Student Improvement Component, the specialist shall receive a Summative Evaluation the following year, regardless of whether the specialist would otherwise be due for a Summative Evaluation pursuant to this section.
- 3.2 Experienced specialists who have earned a rating of Effective and have earned Satisfactory ratings on at least four (4) of the Appraisal Components found in 5.0, including Student Improvement, on his or her most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation each year with a Summative Evaluation at least once every two (2) years.
- 3.3 Experienced specialists who are not otherwise included in 3.1 or 3.2 shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative evaluation at the end of the one (1) year period. These specialists shall have an Improvement Plan which may require additional observations and other types of monitoring as outlined in the DPAS II Revised Guide for Specialists.
- 3.4 Novice specialists shall receive a minimum of two (2) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one year period. Novice specialists who have earned a rating of Needs Improvement or Ineffective on their most recent Summative Evaluation shall have an Improvement Plan which may require additional observations or other types of monitoring as outlined in the *DPAS II Revised Guide for Specialists*.

4.0 DPAS II Guide for Specialists

- 4.1 All districts and charter schools shall use the manual entitled *DPAS II Revised Guide for Specialists* as developed and as may be amended by the Department of Education in collaboration with DASA and DSEA to implement the appraisal system.
- 4.2 The manual shall contain, at a minimum, the following:
- 4.2.1 Specific details about each of the five (5) Appraisal Components listed in 5.1.
- 4.2.2 All forms or documents needed to complete the requirements of the appraisal process.
- 4.2.3 Specific procedures to implement the appraisal system.

5.0 Appraisal Components and Appraisal Criteria

- 5.1 The following five (5) Appraisal Components, including the four (4) Appraisal Criteria specified for each, shall be the basis upon which the performance of a specialist shall be evaluated by a credentialed evaluator:
- 5.1.1 Planning and Preparation
- 5.1.1.1 Designing Coherent Programs or Services: Specialist designs activities and plans for services that support the needs of the students or clients served.
- 5.1.1.2 Demonstrating Knowledge of Best Practice and Models of Delivery: Specialist uses practices and models of delivery that are aligned with local and national standards.

5.1.1.3 Demonstrating Knowledge of Students or Clients: Specialist shows knowledge of the needs and characteristics of the students or clients, including their approaches to learning, knowledge, skills, and interests.

5.1.1.4 Demonstrating Knowledge of Resources: Specialist selects appropriate resources, either within or outside of the school, that support the needs of students or clients.

5.1.2 Professional Practice and Delivery of Services

5.1.2.1 Creating an Environment to Support Student or Client Needs: Specialist creates an environment in which student or client needs are identified and valued. Specialist and student or client interactions show rapport that is grounded in mutual respect.

5.1.2.2 Demonstrating Flexibility and Responsiveness: Specialist has a repertoire of instructional or professional strategies and makes modifications to services based on needs of the students or clients.

5.1.2.3 Communicating Clearly and Accurately: Verbal and written communication is clear and appropriate to students' or clients' ages, backgrounds, needs, or levels of understanding.

5.1.2.4 Delivering Services to Students or Clients: Specialist is responsive to the identified needs of the students or clients and meets standards of professional practice. The resources and materials are suitable and match the needs of the students or clients. The delivery of service is coherent.

5.1.3 Professional Collaboration and Consultation

5.1.3.1 Collaborating with Others: Specialist develops partnerships with school or district staff or external agencies to provide integrated services that meet student or client needs.

5.1.3.2 Serving as a Consultant to the School Community: Specialist shares expertise with school staff to assist them in their work or to respond to school wide issues, problems, or concerns.

5.1.3.3 Providing Resources and Access: Specialist provides school, district or external based resources to appropriate staff, students, or clients or gives information about the effective use of the resources.

5.1.3.4 Maintaining Standards of Professional Practice: Specialist adheres to his or her professional standards of practice, including issues surrounding confidentiality.

5.1.4 Professional Responsibilities

5.1.4.1 Communicating with Families: Specialist shares information about district or school educational programs and expectations for student or client performance. Specialist develops a mechanism for two way communication with families about student or client progress, behavior, personal needs, or concerns.

5.1.4.2 Developing a Record System: Specialist keeps student or client records relevant to their services and shares information with appropriate school personnel.

5.1.4.3 Growing and Developing Professionally: Specialist chooses and participates in professional development that is aligned with his or her professional needs and aligned with the needs of the school, district or students.

5.1.4.4 Reflecting on Professional Practice: Specialist engages in reflective thinking as an individual, as a team participant, or as a school and community member with the goal of improving professional practice and delivery of service.

5.1.5 Student Improvement

5.1.5.1 Measuring Student Improvement: Specialist's students collectively demonstrate appropriate levels of Student Growth as benchmarked against standards set by the Secretary based on input from stakeholder groups.

6.0 Summative Evaluation Ratings

6.1 Each Appraisal Component shall be weighted equally and assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.

PROPOSED REGULATIONS

- 6.1.1 A satisfactory rating for each of the first four Appraisal Components shall mean the specialist demonstrates acceptable performance by meeting at least three (3) of the four (4) Appraisal Criteria specified in each of the five (5) components set forth in 5.1.
- 6.1.2 A satisfactory rating for the Student Improvement Component shall mean that the specialist demonstrates acceptable performance by meeting the standards set by the Secretary pursuant to 5.1.5.1.
- 6.2 The Summative Evaluation shall also include one of four overall ratings: Highly Effective, Effective, Needs Improvement or Ineffective.
- 6.2.1 Highly Effective shall mean that the specialist has earned a Satisfactory Component Rating in four (4) of the five (5) Appraisal Components in accordance with 5.0 and that the specialist's students on average achieve high rates of student growth, that is, more than one grade level improvement in an academic year.
- 6.2.2 Effective shall mean that:
- 6.2.2.1 The specialist has received a Satisfactory Component Rating in at least three (3) Appraisal Components including the Student Improvement Component, and
- 6.2.2.2 The specialist does not meet the requirements for a Highly Effective rating found in 6.2.1.
- 6.2.3 Needs Improvement shall mean that:
- 6.2.3.1 The specialist has received one (1) or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, including a Satisfactory rating in the Student Improvement Component, or
- 6.2.3.2 The specialist has received three (3) or four (4) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and the specialist has received an Unsatisfactory rating in the Student Improvement Component.
- 6.2.4 Ineffective shall mean that:
- 6.2.4.1 The specialist has received zero (0), one (1), or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and
- 6.2.4.2 The specialist has received an Unsatisfactory Component Rating in the School Improvement Component.
- 6.2.4.3 If a specialist's overall Summative Evaluation rating is determined to be "Needs Improvement" for the third consecutive year, the rating shall be re-categorized as "Ineffective".

7.0 Pattern of Ineffective Practice Defined

A pattern of ineffective practice shall be based on the most recent Summative Evaluation ratings of a specialist using the DPAS II process. Two consecutive ratings of Ineffective shall be deemed as a pattern of ineffective practice. The following chart shows the consecutive Summative Evaluation ratings that shall be determined to be a pattern of ineffective practice:

<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
<u>Ineffective</u>	<u>Ineffective</u>	
<u>Needs Improvement</u>	<u>Ineffective</u>	<u>Needs Improvement</u>
<u>Needs Improvement</u>	<u>Needs Improvement</u>	<u>Ineffective</u>
<u>Ineffective</u>	<u>Needs Improvement</u>	<u>Ineffective</u>
<u>Ineffective</u>	<u>Needs Improvement</u>	<u>Needs Improvement</u>
<u>Needs Improvement</u>	<u>Ineffective</u>	<u>Ineffective</u>

8.0 Improvement Plan

- 8.1 An Improvement Plan shall be developed for a specialist who receives an overall rating of Needs Improvement or Ineffective on the Summative Evaluation or a rating of Unsatisfactory on any component in 5.0 on the Summative Evaluation regardless of the overall rating.
- 8.1.1 An Improvement Plan shall also be developed if a specialist's overall performance during an observation is unsatisfactory. This unsatisfactory performance shall be noted by the evaluator on the Formative Feedback form by noting "PERFORMANCE IS UNSATISFACTORY" and initialing the statement.
- 8.2 The Improvement Plan shall contain the following:
 - 8.2.1 Identification of the specific deficiencies and recommended area(s) for growth;
 - 8.2.2 Measurable goals for improving the deficiencies to satisfactory levels;
 - 8.2.3 Specific professional development or activities to accomplish the goals;
 - 8.2.4 Specific resources necessary to implement the plan, including but not limited to, opportunities for the specialist to work with curriculum specialist(s), subject area specialist(s), instructional specialist(s) or others with relevant expertise;
 - 8.2.5 Procedures and evidence that must be collected to determine that the goals of the plan were met;
 - 8.2.6 Timeline for the plan, including intermediate check points to determine progress;
 - 8.2.7 Procedures for determining satisfactory improvement.
 - 8.2.8 Multiple observations and opportunity for feedback provided by a trained evaluator, a mentor, or lead specialist, or an instructional coach.
- 8.3 The Improvement Plan shall be developed cooperatively by the specialist and evaluator. If the plan cannot be cooperatively developed, the evaluator shall have the authority and responsibility to determine the plan as specified in 8.2 above.
- 8.4 The specialist shall be held accountable for the implementation and completion of the Improvement Plan.
- 8.5 Upon completion of the Improvement Plan, the specialist and evaluator shall sign the documentation that determines the satisfactory or unsatisfactory performance of the plan.

9.0 Challenge Process

- 9.1 A specialist may challenge any rating on the Summative Evaluation, either a Component Rating or the Overall Rating, or a specialist may challenge the conclusions of an observation if the statement PERFORMANCE IS UNSATISFACTORY has been included on the Formative Feedback form. To initiate a challenge, a specialist shall submit additional information specific to the point of disagreement in writing within fifteen (15) working days of the date of the specialist's receipt of the Summative Evaluation. Such written response shall become part of the appraisal record and shall be attached to the Summative Evaluation. All challenges together with the record shall be forwarded to the supervisor of the evaluator unless the supervisor of the evaluator is also in the same building as the specialist. In this situation, the challenge together with the record shall be forwarded to a designated district or charter school level credentialed evaluator.
 - 9.1.1 Within fifteen (15) working days of receiving the written challenge, the supervisor of the evaluator or the designated district or charter school level credentialed evaluator shall review the record which consists of all documents used in the appraisal process and the written challenge, and issue a written decision.
 - 9.1.2 If the challenge is denied, the decision shall state the reasons for denial.
 - 9.1.3 The decision of the supervisor of the evaluator or the designated district or charter school level credentialed evaluator shall be final.

10.0 Evaluator Credentials

- 10.1 Evaluators shall have completed the DPAS II training as developed by the Department of Education. Evaluators shall receive a certificate of completion which is valid for five (5) years and is renewable

upon completion of professional development focused on DPAS II as specified by the Department of Education.

- 10.2 The training for the certificate of completion shall include techniques for observation and conferencing, content and relationships of frameworks for practice and a thorough review of the *DPAS II Revised Guide for Specialists*. Activities in which participants practice implementation of DPAS II procedures shall be included in the training.
- 10.3 The credentialing process shall be conducted by the Department of Education.

11.0 Evaluation of Process

The Department of Education shall conduct an annual evaluation of the teacher appraisal process. The evaluation shall, at a minimum, include a survey of teachers and evaluators and interviews with a sampling of teachers and evaluators. Data from the evaluation and proposed changes to the DPAS II Revised Guide for Teachers shall be presented to the State Board of Education for review on an annual basis.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 701

701 Unit Count

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

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend 14 DE Admin. Code 701 Unit Count. The amendments include, but are not limited to, changes because of the revisions to the special education funding structure (Needs Based Funding), clarification related to choice and charter school students, and rules related to the Distance Learning/Twilight Programs.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before April 2, 2010 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is related to Unit Count and not specifically student achievement.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is related to Unit Count and not specifically students receiving an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation is related to Unit Count and not specifically to ensure that all students' health and safety are adequately protected.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation is related to Unit Count and not specifically legal rights.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation preserves the necessary authority and flexibility of decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates

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

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

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 related to Unit Count and not specifically to other 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 Unit Count in districts and charter schools.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no additional costs to the state or local boards for compliance with the amended regulation.

701 Unit Count

1.0 Forms and Record Keeping

- 1.1 All information submitted through the unit count process shall be on the forms provided by the Department of Education or in such other format as may be acceptable to the Department.
- 1.2 Each school shall maintain September enrollment records in a manner which will allow for efficient enrollment audits by the Department of Education and the State Auditor of Accounts. At the end of September, each school shall assemble a comprehensive enrollment file that contains all necessary support materials to substantiate the enrollments reported. This file shall be retained in the school for at least three years.
- 1.3 Records to substantiate ~~special education~~ students with disabilities included in the enrollment count shall contain: ~~student name, cohort age group, grade level, eligibility category, name of special education teachers serving the student in September, and number of hours of special education services received during the last week of school in September. Individual student case studies, evaluations, and reports of specialists do not need to be maintained as part of the September 30 enrollment file~~ a student Individual Education Program (IEP) in effect during the last week of school in September and eligibility documentation. However, individual student files may be reviewed by the Department of Education or State Auditor of Accounts to ascertain that the students reported are identified as special education students as per 14 **DE Admin. Code** 925.

8 DE Reg. 1473 (4/1/05)

2.0 Special Situations Regarding Enrollment

- 2.1 All exceptions and extenuating circumstances relating to the enrollment count are addressed to the Secretary of Education and shall be received by the Secretary for consideration prior to September 30.
- 2.2 Students with multiple disabilities shall be reported in the category that corresponds to their major eligibility category.
- 2.3 Students with disabilities included in the special education unit count under the placement provisions of Transfer Students ~~or Emergency Temporary Placement~~ or Change of Placement shall meet the evaluation and placement requirements found in 14 **DE Admin. Code** 925.
- 2.4 Students not assigned to a specific grade shall be reported in a grade appropriate for their age or their instructional level for purposes of the unit count.

8 DE Reg. 1473 (4/1/05)

3.0 Accounting for Students Not in Attendance the Last Ten Days in September

- 3.1 For students not in attendance at school during the last 10 school days of September during which students are required to be in attendance, the following information shall be on file to substantiate their inclusion in the enrollment count:
 - 3.1.1 Reason for absence, usually medical, and date of last direct contact with student or parent.

- 3.1.2 Reason to believe that student will be returning to school ~~before~~ prior to November 1st.
- 3.1.3 Districts and Charter Schools enrolling ~~a with an~~ intra-state transfer student during the last ~~ten~~ 10 school days of September during which students are required to be in attendance shall first determine if the student is currently obligated under a choice agreement or first year charter agreement before enrolling the student. If said obligation exists, "good cause" must be agreed upon by the sending and receiving district/charter school before the receiving district/charter school can enroll the student. Districts and charter schools enrolling an in state transfer student during the last 10 school days of September shall notify the student's previous district or charter school of such enrollment no later than the last student attendance day of September. The notification shall be by fax with a follow up letter to the previous district/charter school's unit count coordinator's office. The notification shall be clearly labeled Unit Count Transfer Students and include the student's name, grade, and previous school of attendance. A student enrolling with a formal notice of withdrawal from the previous district or charter school is exempted from this notification requirement. Failure to follow the notification procedure may result in including the same student in two different district or charter school enrollments and hence unit counts. If that occurs, the student will be disallowed from the receiving district or charter school's enrollment and unit count. Copies of the fax transmittals and follow up letters shall be on file to substantiate the student's inclusion in the receiving district or charter school's enrollment and unit count.

8 DE Reg. 1473 (4/1/05)

4.0 Programs, Situations and Program Types that Qualify for Inclusion in the Unit Count

- 4.1 Students in the following programs, situations and program types shall qualify for inclusion in the enrollment count:
- 4.1.1 Delaware Adolescent Program, Inc. (DAPI):
- 4.1.1.1 Students enrolled in DAPI shall be counted in the enrollment of the sending school.
- 4.1.1.2 Students shall ~~be reported for~~ receive the level of special education service as defined by the current IEP.
- 4.1.1.3 If a student was enrolled the previous year in a Career Technical Program in the reporting school, the students shall be reported as enrolled in the next career technical course in the program series.
- 4.1.2 Repeating seniors who are enrolled in school for a minimum number of instructional hours defined as three traditional courses or an equivalent time in a block schedule, shall be included in the unit count provided they meet the age and residency requirements. Students in the James H. Groves In school Credit Program (14 DE Admin. Code 915.2.4) and students in the Advanced Placement Program shall be enrolled and attend at least one full credit course in their high school to be included in the unit count provided they also meet the age and residency requirements.
- 4.1.3 Temporary problem, usually medical, which precludes school attendance prior to November 1st.
- 4.1.4 Supportive Instruction (Homebound): Students receiving supportive instruction (homebound) pursuant to 14 DE Admin. Code 930 qualify for inclusion in the unit count.
- 4.1.4.1 A child with a disability receiving supportive instruction (homebound) shall be included in the unit count as a ~~full-time~~ special education student if, in the child's placement immediately preceding the homebound placement, the child ~~was receiving instruction from a certified special education teacher for at least 12.5 hours per week~~ had an IEP in effect during the last week of school in September.
- 4.1.4.2 A child with a disability receiving supportive instruction (homebound) shall be included in the unit count as a ~~part time~~ special education student if, in the child's placement immediately preceding the homebound placement, the child ~~was receiving instruction from a certified special education teacher for less than 12.5 hours per week.~~
- 4.1.5 Stevenson House or New Castle County Detention Center: Students on a temporary basis pending disposition of case who are expected to return to school prior to November 1st.
- 4.1.6 Consortium Discipline Alternative Program:

- 4.1.6.1 Students enrolled at a Consortium Discipline Alternative Programs site shall be counted in the enrollment of the sending school pursuant to 14 **DE Admin. Code** 611.
- 4.1.6.2 Students shall be reported for the level of special education service as defined by the current IEP.
- 4.1.6.3 If a student was enrolled in the previous year in a Career Technical Program in the reporting school, the students shall be reported as enrolled in the next career technical course in the program series.
- 4.1.7 Students enrolled in kindergarten pursuant to 14 **DE Admin. Code** 940 shall be counted in the grade level enrollment group to which they are assigned.
- 4.1.8 Except as provided in section 5.0 and 7.2, all pre kindergarten children with disabilities shall be counted as full time in the appropriate eligibility category.
- 4.1.9 Students enrolled in residential facilities as of the last day of September. These students are included in the enrollment count of the district operating the instructional program in that facility. The facilities that are eligible shall be identified each year by the Department of Education.
- 4.1.10 Regular Programs, Regular programs include students who are enrolled in the regular elementary or secondary curriculum of the school, i.e., the core of the school subjects, which most students take.
- 4.1.11 ~~Full time Special Education Services;~~ Students who have been properly identified, and receive instruction from a certified special education teacher for at least 12.5 hours per week. Children and have an IEP in effect during the last week of school in September. Students with disabilities must have appropriate supporting documentation on file as required by the Identification, Evaluation and Placement Process in 14 **DE Admin. Code** 925.
- 4.1.12 ~~Part Time Special Education Services, Students who have been properly identified and receive instruction from a certified special education teacher for less than 12.5 hours per week. These children with disabilities must meet all other criteria for full time special education services. For unit count computation, they will have their time apportioned between a regular student in a specified grade and a special student in a specified category.~~
 - 4.1.12.1 ~~The apportioning is accomplished by dividing the number of hours that each student receives instruction from a certified special education teacher by 15. For example, if a second grade student eligible for special education services in the Learning Disabled category receives 11.5 hours of special education service per week, the student is counted as a .77 LD student ($11.5/15 = .77$) and a .23 second grade regular student. This accounts for one Full Time Equivalent Student ($.77 + .23 = 1.0$).~~
- 4.1.132 Career Technical Programs, A maximum of 900 minutes of vocational career and technical education time per week per student shall be credited toward the vocational career and technical education unit determination. However, units shall be counted on the basis of 1 unit for each 30 students or major fraction thereof for students enrolled in the New Castle County Votech School District, the POLYTECH School District and the Sussex Technical School District.

8 DE Reg. 1473 (4/1/05)

5.0 Programs and Situations that Do Not Qualify for the Unit Count

- 5.1 Students in the following programs and situations do not qualify for inclusion in the enrollment count:
 - 5.1.1 Students who have not attended school during the last 10 days of September
 - 5.1.2 Students who are enrolled in General Education Development (GED) programs
 - 5.1.3 Students who are enrolled in other than Department of Education approved programs
 - 5.1.4 Students who are transferred to a state residential facility during September shall not be included in the enrollment count of the District/Charter School unless that District/Charter School operates the facility's instructional program; otherwise the student must be treated as a withdrawal
 - 5.1.5 ~~Children eligible for special education under Developmentally Delayed Three Year Old Children and Preschool Speech Delayed 3 and 4 Year Old Children. Services will be provided for these~~

~~students through an annual appropriation to the Department of Education specifically for that purpose (14 Del.C. §1703).~~

5.1.65 Students enrolled in a Homeschool as defined in 14 Del.C. §2703A.

8 DE Reg. 1473 (4/1/05)

6.0 Nontraditional High School Schedules

6.1 For unit count purposes if ~~a student receiving special education services or~~ a career technical student in a school utilizing nontraditional schedules receives, during the course of the year, the same amount of instruction the student would have received under a traditional class schedule, the district shall average the time and calculate instructional time on a weekly basis; providing however, that a career technical student receives a minimum of 300 minutes of instruction per week ~~and a full-time special education student receives a minimum of 7.5 hours of instruction per week.~~

6.1.1 The following exemplifies a situation with the required minimum minutes and hours for a full time career technical ~~or special education~~ student and shows that the heavy concentration of minutes or hours could occur either in the fall or the spring of the year.

Fall and Spring Career Technical= 300 minutes per week
 Spring and Fall Career Technical= 1500 minutes per week
 $1800 / 2 = 900$ minutes
 per week

Fall and Spring Special Education= ~~7.5 hours per week~~
 Spring and Fall Special Education= ~~17.5 hours per week~~
 $=25.0 / 2 = 12.5$ hours per week

6.2 For unit count purposes a district shall meet the following criteria to include selected students participating in a district's Distance Education/Twilight Program in the September 30th unit count. For purposes of this section, a Distance Education/Twilight Program shall mean a district approved credit bearing program as follows:

6.2.1 Students must be currently suspended indefinitely or expelled by the district and enrolled in the district's alternative placement program;

or

6.2.2 Students with disabilities enrolled in the district's Distance Education/Twilight Program for credit recovery only must be receiving services as decided upon by the IEP team and reflected in the IEP on-site;

or

6.2.3 The inclusion of students with non-behavior issues and not special education in the unit count can only be included if there is not a break in educational service and they meet the entry criteria of the program and the additional criteria outlined in 6.2.4 through 6.2.11; and, in addition to either 6.2.1 through 6.2.3, all of the following:

6.2.4 Students and their parent(s)/guardian(s) must attend a mandatory program orientation session provided by the district staff. A sign in sheet and signed agreement will be kept on file and serve as sufficient evidence to meet this requirement.

6.2.5 Students must be enrolled for a minimum of three courses.

6.2.6 Students must be required to complete a minimum number of hours of active engagement each week that they are enrolled in the program. The minimum number of hours should not be less than three hours per week.

6.2.7 Students must be enrolled in eSchoolPLUS, the statewide pupil accounting system.

6.2.8 The district must keep records on file for the school year of the unit count on work completed and time spent working on the educational program for each enrolled student. The district must submit

a sample to the Department of Education that may serve as sufficient evidence to meet this requirement.

6.2.9 The district must provide evidence of staff monitoring the progress of each student and providing feedback to participating students and their parents/guardians.

6.2.10 The district must show evidence on how progress of students enrolled in the program is incorporated into their academic record for meeting the district's graduation requirements.

6.2.11 An audit file containing information listed in 6.2 and its subsections must be maintained on all students participating in the program and must be presented upon request to the Department of Education and/or the State Auditor's Office.

8 DE Reg. 1473 (4/1/05)

7.0 Charter Schools

7.1 Charter schools shall be allowed the following options in calculating their unit count:

7.1.1 Using the standard public school procedure: major fraction unit rounding rule in each category; or

7.1.2 Adding the fractional units in each category, fractional units will be funded

7.2 Funding for charter schools is limited to students lawfully enrolled in such grades K through 12 as the charter school may be approved to operate. Charter schools shall not include any Pre K students in their enrollment for unit count purposes. This section shall not be interpreted to authorize any charter school to enroll Pre K students.

8 DE Reg. 1473 (4/1/05)

8.0 Unit Adjustments After Audit

If, after the units are certified by the Secretary of Education, a student is disqualified through the auditing process from the unit count, the units will be recalculated without that student. Another eligible student shall not be substituted for the disqualified student. A special education student who has been identified and is receiving special education services and is disqualified from the unit count due to irregularities contained within supporting documentation, may then be included in the appropriate regular enrollment category provided the student meets eligibility requirements. Only a student disqualified by the audit process may be reassigned to another unit category. In no event can this adjustment result in a net increase in units for a district.

2 DE Reg. 382 (9/1/98)

5 DE Reg. 627 (9/1/01)

6 DE Reg. 74 (7/1/02)

8 DE Reg. 1473 (4/1/05)

DEPARTMENT OF FINANCE OFFICE OF THE STATE LOTTERY

Statutory Authority: 29 Delaware Code, Section 4805 (29 **Del.C.** §4805)

PUBLIC NOTICE

203 Video Lottery and Table Game Regulations

A. Type of Regulatory Action Required

Adoption of New Regulations

B. Synopsis of Subject Matter of the Regulations

The Office of the State Lottery will seek public comments on proposed new rules governing the operation of

video lottery and table games. It is the intent of the Delaware State Lottery to repeal the current video lottery regulations in their entirety and replace them with these new regulations. These regulations come as a result of recent legislation amending 29 Del. C., Chapter 48, which directs the Director of the Lottery to promulgate an initial regulatory framework for table games.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before March 31, 2010 to: Delaware State Lottery Office, 1575 McKee Road, Suite 102, Dover, DE 19904. A copy of these regulations is available from the above address or may be viewed at the Lottery business office at the same address.

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

[203 Video Lottery and Table Game Regulations](#)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES

Statutory Authority: 29 Delaware Code, Section 7909(A) (29 Del.C. §7909(A))

PUBLIC NOTICE

2101 Agency Appeal Process

A. Type of Regulatory Action Proposed:

Establishment of new regulation.

B. Synopsis of Subject Matter:

The Division of Developmental Disabilities (DDDS) intends to publish in regulation a description of the agency's appeal process. The regulations shall include a definition of appeal, issues that can be appealed, the time requirements for requesting an appeal, how the process works and how to request an appeal.

Any person who wishes to make written suggestions, submit compilations of data, briefs or other written materials concerning the proposed new regulations must submit same to Mary T. Anderson, M.S.W., Director of Policy Development, Division of Developmental Disabilities Services, 26351 Patriots Way, Georgetown, DE 19947 or by fax to (302) 934-8704 by March 30, 2010. The action concerning the determination of whether to adopt the proposed regulation will be based upon the Department and Division's analysis and consideration of the comments and written materials filed by interested persons.

2101 Agency Appeal Process

1.0 Definitions

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

"Appeal" means a DDDS internal evidentiary review of a decision by an objective committee assigned by the Division Director or designee.

"Applicant" means any person who is applying for services from the DDDS.

"Individual Rights Complaint" means the DDDS formal process for asserting that the rights of an individual served have been violated, an internal review concerning the reported rights violation and the identification of a plan to improve the situation.

"Risk Management Committee" means the internal Division committee responsible for reviewing identified focus areas situations that present actual or potential danger to individuals served and staff; subsequently developing risk reduction strategies.

2.0 Situations/issues that are eligible to be reviewed via the DDDS appeals process include the following:

- 2.1 Decisions that involve the omission of choice between institutional care and home and community based services.
- 2.2 Denial of eligibility for DDDS services.
- 2.3 Denial of service provider of choice.
- 2.4 Denial, reduction, suspension or termination of services.
- 2.5 Dissatisfaction with the outcome of an Individual Rights Complaint.

3.0 Efforts shall be made to resolve the situation being contested prior to requesting an appeal DDDS.

4.0 The implementation of a DDDS decision shall be postponed pending the decision of a DDDS appeal or Medicaid Fair Hearing, unless it has already been implemented.

5.0 A Medicaid recipient may request a Division of Social Services (DSS) Medicaid Fair hearing at any point in the appeals process, up to ninety (90) days following receipt of a written notice of the DDDS decision that the recipient decides to appeal.

6.0 The DDDS Appeals Committee chairperson shall make efforts to contact the appellant within five (5) working days of receiving the appeals request, unless that appeal is for a disputed eligibility decision. In that case, the DDDS Appeals Committee chairperson shall request a copy of the appellant's intake record within five (5) days of receiving the appeal request and make efforts to contact the appellant within five (5) working days of receiving a copy of the intake record.

7.0 The DDDS Appeals Committee chairperson shall review the appeals request with the appellant, provide clarification as necessary, explain the appeals process and schedule an appeal review at the following month's appeal hearing contingent on providing a 14 calendar days notice.

8.0 The DDDS Appeals Committee shall meet with the appellant in person, unless otherwise requested, and listen to the reason(s) that a decision is disputed. The appellant has the right to invite guests to the appeal hearing and present additional information for consideration. The appellant shall have the opportunity to ask questions, request clarification and receive answers. The person or designee who initially made the decision being disputed shall also appear at the appeal hearing and explain the rationale for his/her decision.

9.0 The Division Director shall be notified of the Appeals Committee's recommendations relative to the issue(s) being appealed, with five (5) working days of the appeal hearing.

10.0 The Division Director shall send written notification to the appellant of the final appeal disposition, within fifteen (15) working days of the appeal hearing. The notification shall include a notice regarding the right to request a Division of Social Services (DSS) Medicaid Fair Hearing, if the aggrieved person is a Medicaid recipient or applying for a Medicaid service.

11.0 A DDDS Appeal shall not be a pre-requisite for requesting a DSS Medicaid Fair Hearing.

12.0 The DDDS Risk Management Committee shall review appeal statistics and trends, on an annual basis or as requested by the committee chair or Division Director.

PROPOSED REGULATIONS

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

DMAP General Policy Manual: Utilization Control – Prior Authorization

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Medical Assistance Program (DMAP) General Policy Provider Manual.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by March 31, 2010.

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

SUMMARY OF PROPOSAL

The proposed revises the Division of Medicaid and Medical Assistance (DMMA) policy for *Prior Authorization*. This rulemaking is required to clarify what prior authorization is and how the DMMA uses prior authorization to determine eligibility to receive services and to determine that services are medically necessary.

Statutory Authority

- Social Security Act §1902(a)(30)(A) mandates that states “provide such methods and procedures relating to the utilization of, and payment for, care and services available under the plan ... as may be necessary to safeguard against unnecessary utilization of such care and services.”
- 42 CFR §440.230(d), *Sufficiency of amount, duration, and scope* provides that a state “may place appropriate limits on a service based on such criteria as medical necessity or on utilization control procedures.”
- 42 CFR Part 456 addresses *Utilization Control*, including methods and procedures relating to the utilization of, and the payment for, care and services.

Summary of Proposal

The purpose of this rule is to adopt revised prior authorization procedures and criteria to ensure that the Delaware Medical Assistance Program (DMAP) prior authorization process follows sound fiscal practices, meets the medical needs of our vulnerable population, and promotes a collaborative partnership with our DMAP providers, while holding all parties involved accountable for their role in the process.

The proposed rule, identified in the DMAP General Policy Provider Manual, primarily moves detailed prior authorization criteria for specific categories of services and procedures from General Policy to their own dedicated provider policy specific manual. The intent is to improve the logical organization of the prior authorization policy set and eliminate duplication of content and inconsistency; and, make corresponding adjustments to the rule text, as appropriate.

Fiscal Impact Statement

These revisions impose no increase in cost on the General Fund.

DMMA PROPOSED REGULATION #10-10

REVISIONS:

~~The practitioner must request prior authorization before a payment can be made (refer to Appendix M of this manual for required forms related to DMMA prior authorization). If prior authorization is granted, the billing provider~~

will receive notification of the prior authorization number. The following services require prior authorization:

1.21.1 Private Duty Nursing

1.21.1.1 The DMAP may cover private duty nursing for clients who require more individual and continuous care than is available from a visiting nurse or routinely provided by the nursing staff of the hospital or skilled nursing facility.

1.21.1.2 The DMAP may cover private duty nursing services for Medicaid clients who are exempt from managed care coverage.

1.21.1.3 All requests for private duty nursing must be prior authorized. (Refer to section 2.3 of this manual for procedures and refer to section 8.0 of this manual for required forms related to Diamond State Partners [DSP]).

1.21.1.3.1 Private duty nursing services for clients who are eligible for the Elderly and Disabled HCBS waiver or the Assisted Living Medicaid Waiver program, or the Acquired Brain Injury Waiver must be prior authorized by the nursing staff of the Division for Services for Aging and Adults with Physical Disabilities (DSAAPD). See the back of the General Policy for the appropriate address or telephone number.

1.21.1.3.2 All other requests should be directed to the Medical Review Team located in the Robscott Building (see Index in the back of General Policy for address and telephone number).

1.21.2 Pharmaceuticals

1.21.2.1 Certain pharmaceuticals require prior authorization. For further information refer to the Pharmacy or Practitioner Provider Specific Policy Manual.

1.21.3 Prescribed Pediatric Extended Care

1.21.3.1 The DMAP will cover Prescribed Pediatric Extended Care (PPEC) for medically and/or technology dependent children who can be maintained in the community as an alternative to inpatient hospital or nursing home care when supported by PPEC.

1.21.3.2 PPEC provides up to twelve hours of care daily (Monday through Friday) at the PPEC facility upon prescription from a child's primary General Policy Provider Policy Manual physician, thus allowing a child to obtain necessary medical services and monitoring without institutionalization.

1.21.3.3 PPEC services are authorized based on the level of nursing care and rehabilitative therapy needed.

1.21.3.4 The prescribing practitioner may request prior authorization by sending a letter with the following information to Medicaid's Physician Consultant:

1.21.3.4.1 Name of patient.

1.21.3.4.2 Patient's Delaware Medical Assistance ID number.

1.21.3.4.3 Date of birth.

1.21.3.4.4 Detailed medical history that documents the need for PPEC services.

1.21.3.4.5 Documentation that the child would require inpatient hospital or nursing home care in the absence of PPEC services.

1.21.3.4.6 Estimated amount and duration of required services (the number of days per week and the number of weeks/months that the patient is expected to need these services).

1.21.3.4.7 If home health services or private duty nurse services are ordered concurrently with PPEC, medical justification for the combination of services is required.

1.21.3.4.8 Name and address of the PPEC organization which will provide the care.

1.21.3.5 Reserved

1.21.3.6 All requests should be directed to the Medical Review Team located in the Robscott Building (see Index in the back of this manual for address and telephone number).

1.21.4 Out of State Services (Excluding Transplants)

PROPOSED REGULATIONS

- 1.21.4.1 ~~All services provided outside of Delaware require prior authorization for payment, except for services from the following providers in New Jersey, Pennsylvania, Maryland, or the District of Columbia:~~
- ~~NOTE: DMAP clients are required to receive prior authorization for related travel expenses regardless where the medical service is provided. Refer to the Related Travel Expenses (Meals/Lodging/Other) section of this manual for details.~~
- ~~1.21.4.1.1 Acute Care Hospital (inpatient and outpatient)~~
 - ~~1.21.4.1.2 DME/Oxygen Supplier~~
 - ~~1.21.4.1.3 Ground Ambulance~~
 - ~~1.21.4.1.4 Independent Laboratory~~
 - ~~1.21.4.1.5 Nurse Midwife~~
 - ~~1.21.4.1.6 Optician~~
 - ~~1.21.4.1.7 Optometrist~~
 - ~~1.21.4.1.8 Podiatrist~~
 - ~~1.21.4.1.9 Pharmacy~~
 - ~~1.21.4.1.10 Physician~~
 - ~~1.21.4.1.11 Ambulatory Surgical Centers~~
 - ~~1.21.4.1.12 Dialysis Centers~~
 - ~~1.21.4.1.13 Certified Nurse Practitioner~~
 - ~~1.21.4.1.14 Dentist~~
- 1.21.4.2 ~~All services not noted above require prior authorization to ensure compliance with the DMAP rules and regulations. However, in the following four circumstances, it may be necessary for the provider to render service before prior approval is obtained.~~
- ~~1.21.4.2.1 CATEGORY 1 If the service provided is the result of an out-of-state emergency.~~
 - ~~1.21.4.2.2 CATEGORY 2 If the client's health would be endangered if he/she were required to travel back to Delaware.~~
 - ~~1.21.4.2.3 CATEGORY 3 If the service to be rendered is *unavailable* in Delaware, New Jersey, Pennsylvania, Maryland, or the District of Columbia.~~
 - ~~1.21.4.2.4 CATEGORY 4 If the service is given to a foster child in an approved child care facility out of the State of Delaware.~~
- 1.21.4.3 ~~If services in one of the above four categories are provided before prior authorization is obtained, it is still the responsibility of the provider to obtain prior authorization before billing. Services that do not comply with the DMAP rules and regulations will not be authorized for payment even if they have already been rendered.~~
- 1.21.4.4 ~~The prescribing practitioner may request prior authorization by sending a letter with the following information to the Medical Review Team:~~
- ~~1.21.4.4.1 Name of the patient.~~
 - ~~1.21.4.4.2 Patient's Delaware Medical Assistance ID number.~~
 - ~~1.21.4.4.3 Date of birth.~~
 - ~~1.21.4.4.4 Detailed medical history that documents the need for out-of-state care.~~
- ~~All requests should be directed to the DMAP State office (refer to the back of this manual for the address, telephone and fax numbers).~~
- 1.21.5 Transplants
- 1.21.5.1 The DMAP will cover the following transplants:
 - 1.21.5.1.1 Heart
 - 1.21.5.1.2 Lung
 - 1.21.5.1.3 Liver
 - 1.21.5.1.4 Bone Marrow

- 1.21.5.1.5 Pancreas
- 1.21.5.1.6 Kidney
- 1.21.5.1.7 Intestinal
- 1.21.5.2 ~~ALL transplants (except those covered and paid by Medicare) must be approved by the Medical Review Team. If Medicare is covering the service, Medicaid review for the DMAP payment is not necessary.~~
- 1.21.5.3 ~~Requests for approval of any transplants must be submitted in writing and mailed or faxed to the Medical Review Team (refer to the Index in the back of this manual for the address, telephone and fax numbers to the DMAP State office).~~
- 1.21.5.4 ~~Failure to secure approval from the Medical Review Team can result in non-payment from the DMAP. Providers must include the prior authorization number issued by the Medical Review Team when submitting the claim.~~
- 1.21.5.5 ~~The attending specialist and the admitting facility must request prior authorization by sending a letter with the following information:~~
 - 1.21.5.5.1 ~~Name, address, age, and the Delaware Medical Assistance ID number of the client.~~
 - 1.21.5.5.2 ~~Name of the referring physician~~
 - 1.21.5.5.3 ~~Name and address of the physician and medical facility where the transplant is to be performed.~~
 - 1.21.5.5.4 ~~Type of transplant, including detailed information, i.e., method proposed, expected outcome, etc.~~
 - 1.21.5.5.5 ~~Diagnosis, prognosis, and a brief outline of all medical problems, history and indications for transplant.~~
 - 1.21.5.5.6 ~~Documentation must be provided by the appropriate attending specialist and admitting facility that all of the following conditions are met:~~
 - 1.21.5.5.6.1 ~~The facility performing the transplant must have approval for performing the surgery through the Certificate of Need (CON) process and must supply supporting documentation of this.~~
 - 1.21.5.5.6.2 ~~Current medical therapy has failed and will not prevent progressive disability and death.~~
 - 1.21.5.5.6.3 ~~The patient does not have other major systemic disease that would compromise the transplant outcome.~~
 - 1.21.5.5.6.4 ~~There is every reasonable expectation, upon considering all the circumstances involving the patient, that there will be strict adherence by the patient to the long term difficult medical regimen that is required.~~
 - 1.21.5.5.6.5 ~~The transplant is likely to prolong life for at least two years and to restore a range of physical and social function suited to activities of daily living.~~
 - 1.21.5.5.6.6 ~~The patient is not both in an irreversible terminal state (moribund) and on a life support system.~~
 - 1.21.5.5.6.7 ~~The patient has a diagnosis appropriate for the transplant.~~
 - 1.21.5.5.6.8 ~~The patient does not have multiple non-correctable severe major system congenital anomalies.~~
- 1.21.6 Durable Medical Equipment (DME) and Supplies

A practitioner may prescribe durable medical equipment and supplies when medically necessary to carry out a medical practitioner's written plan of care.
- 1.21.6.4 DME
 - 1.21.6.1.1 DME is defined as equipment that meets all of the following criteria:
 - 1.21.6.1.1.1 Can withstand use.
 - 1.21.6.1.1.2 Is primarily and customarily used to serve a medical purpose.
 - 1.21.6.1.1.3 Generally is not useful to a person in the absence of an illness or injury.

PROPOSED REGULATIONS

1.21.6.1.1.4 Is needed to maintain the client in the home.

1.21.6.1.2 Requests for items that are not primarily medical in nature are not covered. Most durable medical equipment is presumptively medical, such as hospital beds, wheelchairs, respirators, crutches, nebulizers, etc.

However, some items are not primarily medical in nature, such as physical fitness equipment, self-help devices, air conditioners, room heaters, humidifiers attached to home heating systems, or other environmental control items, etc. Additionally, the DMAP does not cover lifts for stairs or vans, wheelchair ramps, generators, or home/bathroom modifications under the DME scope of services. Even though nonmedical equipment may have some remote medically related use, the primary and customary use of such items is a non-medical one and thus they will not be covered.

1.21.6.1.3 When ordering durable medical equipment or supplies, the attending practitioner is required to provide the Medicaid client with a prescription.

In some instances, the practitioner will be required to detail the medical necessity in writing. The attending practitioner is also expected to sign and date a Medicaid Certificate of Medical Necessity (CMN) for the DME supplier. A Medicare CMN is required when requesting prior authorization for durable medical equipment for which there is a specific Medicare CMN. The Medicare CMN is to be submitted for ALL clients not only those who are Medicare eligible. The attending physician, not the DME supplier, is required to complete the Medicare CMN.

1.21.6.2 Supplies

1.21.6.2.1 The DMAP has established an upper limit on the number of each supply used in a three-month period. Practitioners may be requested to further document the medical necessity if the established limit is exceeded.

1.21.6.2.2 Supplies must be purchased economically and the quantity used must be reasonable for the period of time of the request.

1.21.6.2.3 Non-covered supplies include, but are not limited to:

Diapers routinely used for children under four years of age. The DMAP may consider the coverage for diapers that exceed the normal use for children under the age of four years if the attending practitioner details the child's diagnosis, the medical necessity for the diapers, and why the use is outside normal range. This service may be covered through the Early, Periodic, Screening, Diagnostic and Treatment (EPSDT) program. The DME provider will be required to submit a CMN signed and dated by the attending practitioner and the practitioner's letter of medical necessity. The practitioner's letter of medical necessity must address the child's diagnosis and why the excessive usage is medically necessary.

Bandages, Band-Aids, mouthwash, razors, etc. normally purchased for home use.

1.21.7 Positron Emission Tomography (PET) Scans

1.21.7.1 PET Scans will be provided in accordance with Section 50-36 of the Medicare Coverage Issues Manual. Refer to Practitioner Provider Specific Policy Manual for Section 50-36 of the Coverage Issue Manual.

1.21.7.2 All PET Scans must be prior authorized. Prior authorization requests for fee-for-service clients may be mailed or faxed to the Medical Review team located in the Lewis Building (see Index Addresses and Phone Numbers, Delaware Medical Assistance Program State Office in the back of the General Policy).

1.21.7.3 Prior authorization must be requested by the referring physician and must include:

1.21.7.3.1 Patient's name

1.21.7.3.2 Patient's Medicaid number

1.21.7.3.3 Patient's date of birth

1.21.7.3.4 Patient's diagnosis

1.21.7.3.5 Date of scheduled PET Scan

1.21.7.3.6 Results of previous tests (Pathology/biopsy reports, CT Scan, MRI, Ultrasound, X-ray, previous stress tests, etc.)

1.21.7.3.7 Detailed medical history that documents the need for PET Scan.

1.21.7.4 In addition, Diamond State Partner (DSP) providers must mail or fax a completed Request Form. Refer to Diamond State Partner section of this manual for policies and forms specific to DSP.

1.21.8 Home Health Services

1.21.8.1 Prior authorization is required for the following home health services if:

1.21.8.1.1 There are multiple clients in the same household requiring home health service from the same agency and/or multiple clients in the same household requiring home health services from multiple agencies.

1.21.8.1.2 Skilled nursing visits exceed two per day

1.21.8.1.3 Clients who may require home health aide service for more than two hours per day.

1.21.8.1.4 Additional home health services are requested for the same client from a second agency.

1.21.8.1.5 Mentally Retarded Waiver clients require skilled nursing, therapy, or aide services.

1.21.8.1.6 Skilled nursing visits are in locations other than the client's home

1.21.8.1.7 Individual resides in an adult foster/residential home

1.21.8.1.8 Client requires more than one skilled rehabilitation visit per day or more than one hour (4 units) in duration.

1.21.9 Oral and Facial Prosthetics

1.21.9.1 The DMAP will cover oral and facial prosthetics for eligible Medicaid clients who are age 21 or older when it is determined to be medically necessary and part of a rehabilitation plan to treat an anatomical deficiency caused by diagnosed conditions.

1.21.9.2 Refer to the Practitioner Provider Specific Policy Manual, Specific Criteria for Prosthodontists for additional information.

1.21.10 Bariatric Surgery

1.21.10.1 The DMAP may cover bariatric surgery for treatment of obesity in adults when the patient's obesity is causing significant illness and incapacitation and when all other more conservative treatment options have failed.

1.21.10.2 All requests for bariatric surgery must be prior authorized. This includes the surgeon, assistant surgeon (if medically necessary), anesthesiologist, and facility.

1.21.10.3 Requests for prior authorization of bariatric surgery must be submitted in writing. See Section 8.1 of this manual for the Prior Authorization Request Form for Diamond State Partners recipients and Section 18.2 of this manual for the Prior Authorization Request Form for Medicaid recipients who are not enrolled in managed care.

1.21.11 Sleep Studies/Polysomnography

1.21.11.1 The DMAP may cover Sleep Studies/Polysomnography for evaluation of sleep related disorders.

1.21.12 Computed Tomographic Colonography

1.21.12.1 The DMAP may cover computed tomographic colonography in the following instances:

1.21.12.1.1 For colonic evaluation of symptomatic patients with a known colonic obstruction.

1.21.12.1.2 For patients with an incomplete colonoscopy due to obstructive or stenosing colonic lesions.

1.21.12.1.3 For patients who are receiving chronic anticoagulation therapy that cannot be interrupted.

1.21 Services Requiring Prior Authorization

1.21.1 The Social Security Act at Section 1902(a)(30)(A) permits the DMAP to require prior authorization.

PROPOSED REGULATIONS

- 1.21.2 Providers must obtain prior authorization from the DMAP **before** initiating the service. The DMAP will deny payment for services that require prior authorization yet are initiated before DMAP approval except as specified in section 1.21.3.
- 1.21.3 Authorization may be granted after the service has been provided in the following circumstances. All other requirements for prior authorization of the service apply.
- 1.21.3.1 The service has been denied by Medicare or other insurance and the reason for the denial is documented on the EOB.
- 1.21.3.1.1 The DMAP does not cover services denied by Medicare as not medically necessary and will not authorize these services.
- 1.21.3.2 The provider was recently enrolled as an out-of-state or out-of-region provider and was required to provide a service to a Medicaid client prior to enrollment.
- 1.21.3.3 The client has been determined to be eligible for retroactive Medicaid.
- 1.21.3.4 The client has an urgent medical need for the service defined as:
- 1.21.3.4.1 A delay in service provision of three business days from the date the rendering provider initiates or receives the order for the service would place the health of the client in serious jeopardy OR
- 1.21.3.4.2 A delay in service provision of three business days from the date the rendering provider initiates or receives the order for the service would result in institutionalization of the client or prevent discharge of the client from an institution.
- 1.21.4 The DMAP must approve the treatment plan and services before the provider receives payment for urgent medical services provided prior to obtaining authorization.
- 1.21.5 Within one business day of the provision of the service, providers requesting authorization for urgent medical services provided prior to obtaining authorization must submit:
- 1.21.5.1 All documentation normally required for the service being authorized and
- 1.21.5.2 Patient history/treatment notes that document the urgent nature of the patient's condition or the necessity of the service to prevent institutionalization or to prevent a delay in discharge of the client from an institution. If the urgent medical need for the service is not substantiated, authorization of the service will be denied and no payment will be made.
- 1.21.5.3 Providers should designate the request as Urgent.
- 1.21.6 The following services require prior authorization. The list reflects the major categories of services that require prior authorization but is not all-inclusive. Refer to your provider specific policy manual for complete information on services requiring prior authorization. Refer to the designated provider-specific policy manuals for specific information required to support the prior authorization request for the services listed below. Prior authorization is not required if Medicare has paid for the service.
- 1.21.6.1 Private Duty Nursing Services– Refer to the Private Duty Nursing Provider Specific Policy Manual.
- 1.21.6.2 Pharmaceuticals – Certain pharmaceuticals require prior authorization. Refer to the Pharmacy Provider Specific Policy Manual.
- 1.21.6.3 Prescribed Pediatric Extended Care (PPEC) – Refer to the Prescribed Pediatric Extended Care Program Provider Specific Policy Manual.
- 1.21.6.4 Transplants – Refer to the Inpatient Hospital or Practitioner Provider Specific Policy Manual.
- 1.21.6.5 Durable Medical Equipment and Supplies – Certain equipment and supplies require prior authorization. Refer to the Durable Medical Equipment Provider Specific Policy Manual.
- 1.21.6.6 Positron Emission Tomography (PET) Scans – Refer to the Outpatient Hospital or Practitioner Provider Specific Policy Manual.
- 1.21.6.7 Home Health Services – Certain home health services require prior authorization. Refer to the Home Health Provider Specific Policy Manual.

-
- 1.21.6.8 Oral and Facial Prosthetics – Refer to the Specific Criteria for Prosthodontists section of the Practitioner Provider Specific Policy Manual.
 - 1.21.6.9 Bariatric Surgery - Refer to the Inpatient Hospital or Practitioner Provider Specific Policy Manual.
 - 1.21.6.10 Sleep Studies/Polysomnography - Refer to the Outpatient Hospital or Practitioner Provider Specific Policy Manual.
 - 1.21.6.11 Dental and Orthodontic Services – Certain dental and orthodontic services require prior authorization. Refer to the Dental Provider Specific Policy Manual.
 - 1.21.6.12 Elderly and Disabled Waiver Services – Refer to the Elderly and Disabled Waiver Provider Specific Policy Manual.
 - 1.21.6.13 Acquired Brain Injury Waiver Services – Refer to the Acquired Brain Injury Waiver Provider Specific Policy Manual.
 - 1.21.6.14 Extended Pregnancy (Smart Start) Services – Refer to the Extended Pregnancy (Smart Start) Services Provider Specific Policy Manual.
 - 1.21.6.15 Computed Tomographic (CT) Colonography - Refer to the Outpatient Hospital or Practitioner Provider Specific Policy Manual.
 - 1.21.6.16 Out-of-State Services
 - 1.21.6.16.1 All services provided outside of Delaware require prior authorization for payment, except for services from the following providers in New Jersey, Pennsylvania, Maryland, or the District of Columbia: NOTE: DMAP clients are required to receive prior authorization for related travel expenses regardless of where the medical service is provided. Refer to the Related Travel Expenses (Meals/Lodging/Other) section of this manual for details.
 - 1.21.6.16.1.1 Acute Care Hospital (inpatient and outpatient)
 - 1.21.6.16.1.2 DME/Oxygen Supplier
 - 1.21.6.16.1.3 Ground Ambulance
 - 1.21.6.16.1.4 Independent Laboratory
 - 1.21.6.16.1.5 Nurse Midwife
 - 1.21.6.16.1.6 Optician
 - 1.21.6.16.1.7 Optometrist
 - 1.21.6.16.1.8 Podiatrist
 - 1.21.6.16.1.9 Pharmacy
 - 1.21.6.16.1.10 Physician
 - 1.21.6.16.1.11 Ambulatory Surgical Center
 - 1.21.6.16.1.12 Dialysis Center
 - 1.21.6.16.1.13 Certified Nurse Practitioner
 - 1.21.6.16.1.14 Dentist
 - 1.21.6.16.2 All out-of state services not noted above require prior authorization to ensure compliance with DMAP rules and regulations.
-

PROPOSED REGULATIONS

DIVISION OF SOCIAL SERVICES

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

DSSM 7000, Cash Assistance Overpayments and DSSM 9095, Establishing Claims Against FSP Households

PUBLIC NOTICE

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding Delaware's Cash Assistance and Food Supplement programs.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by Wednesday, March 31, 2010.

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 PROPOSED CHANGES

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding Delaware's Cash Assistance and Food Supplement programs. The Division of Social Services (DSS) proposes placement of the food benefit overpayment and claims rules in its own dedicated section. The proposal primarily renumbers existing rules and makes corresponding adjustments to the rule text, as appropriate.

Statutory Authority

7 CFR §273.18, *Claims against households*

Summary of Proposed Changes

DSSM 7000, Cash Assistance Overpayments and DSSM 9095, Establishing Claims Against FSP Households: The purpose and effect of the proposed changes is to remove the Food Supplement Program (FSP) language from the current 7000 section. The intent of the proposal is to separate Cash Assistance and Food Benefit overpayment and claims policies, and place FSP claim policy in its own dedicated section 9095 (new section number). Additional changes are proposed to reformat and reorganize original text; remove/update obsolete text, and, to simplify language, correct spelling, grammar and typographical errors to improve readability.

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

[DSSM 7000, Cash Assistance Overpayments and DSSM 9095, Establishing Claims Against FSP Households](#)

DIVISION OF SOCIAL SERVICES

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

DSSM 9060: Income Deductions

PUBLIC NOTICE

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and

Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding the Food Supplement Program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by Wednesday, March 31, 2010.

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 PROPOSED CHANGES

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, *Income Deductions*.

Statutory Authority

- Food and Nutrition Act of 2008, Section 5(d)(6)
- 7 CFR §273.9(d), *Income deductions*

Summary of Proposed Changes

DSSM 9060: Determining Income Deductions: The purpose and effect of the proposed changes is: 1) to treat child support payments as an income deduction; and, 2) to add new homeless shelter deduction policy. The Division of Social Services (DSS) has elected to treat child support payments as an income exclusion off the gross income, instead of a deduction off the net income, which will allow more households to participate in the Food Supplement Program (FSP). DSS has also elected to allow a homeless shelter deduction of \$143.00 for homeless households with limited shelter expenses, which will give some homeless households more benefits. Additional changes are proposed to reformat and reorganize original text to simplify language and improve readability.

DSS PROPOSED REGULATION #10-12 REVISIONS:

9060 Determining Income Deductions

[273.9(d)]

~~Deductions from income will be allowed only for the following household expenses:~~

~~A. Standard Deduction – A standard deduction per household per month. (Refer to current October Cost-of-Living Adjustment Administrative Notice for amount of the standard deduction.)~~

~~B. Earned Income Deduction – Twenty percent, (20%) of gross earned income as defined at DSSM 9056. Earnings excluded in DSSM 9058 and DSSM 9059 will not be included in gross earned income deduction.~~

~~(Do not allow the earned income deduction for income under a work supplementation program.)~~

~~C. Excess Medical Deductions – That portion of unreimbursed medical expenses in excess of \$35 per month, excluding special diets, incurred by any household member who is 60 years of age or over or disabled as defined in DSSM 9013.1. Spouses or other persons receiving benefits as a dependent of the SSI or disability and blindness recipient are not eligible to receive this deduction, but persons receiving emergency SSI benefits based on presumptive eligibility are eligible for this deduction.~~

~~Allowable medical costs include: Medical and dental care including psychotherapy and rehabilitation services provided by a licensed practitioner or other qualified health professional, hospitalization, outpatient treatment, nursing home care (including payments by the household for an individual who was a household member immediately prior to entering a hospital or nursing home provided by a facility recognized by the State).~~

~~Prescription drugs and over-the-counter medication when approved by a licensed practitioner or other qualified health professional. Also the cost of medical supplies and sick room equipment (including rental costs) are deductible (when approved by a licensed practitioner or other health professional). Health and hospitalization insurance are deductible, but health and accident insurance policies such as income maintenance or death or dismemberment policies are not deductible.~~

~~Any Medicare premiums, cost-sharing or spend-down expenses incurred by Medicaid recipients, dentures, hearing aids and prosthetics are deductible as well as the costs of securing and maintaining a seeing eye or~~

hearing dog including dog food and veterinary bills. Eye glasses prescribed by a physician skilled in eye disease or by an optometrist and the reasonable costs of transportation and lodging to obtain medical treatment or services are deductible.

Reasonable transportation and lodging costs to obtain medical treatment or services are limited to costs incurred in order to obtain such treatment. These costs are to be verified. Reasonable costs of transportation include, but are not limited to, trips to the doctor, dentist, to fill prescriptions for medicine, dentures, hearing aids or eye glasses. Allowance for mileage in privately owned vehicles should be standard in a State. As for lodging costs, eligibility workers should use good judgment in determining the reasonableness of such costs based on the area and average costs.

Maintaining an attendant, homemaker, home health aide, housekeeper, or child care services necessary due to age, infirmity, or illness are deductible costs. In addition, an amount equal to the one person food stamp allotment shall be deducted if the household furnishes the majority of the attendant's meals. The allotment allowed shall be the amount in effect at the time of initial certification, and will not be updated until the time of the next scheduled recertification. If a household incurs attendant care costs that could qualify under both the medical deduction and dependent care deduction, the costs shall be treated as a medical expense.

D. Dependent Care— Payments for the actual costs for the care of a child or other dependent when necessary for a household member to seek, accept, or continue employment, comply with the employment and training requirements in DSSM 9018, or attend training or pursue education which is preparatory to employment.

E. Child support payments deduction— Legally obligated child support payments made to or for, children who live outside of the household. Only child support payments that are legally obligated can be allowed as a deduction. This also includes:

a) Amounts paid out of the household's current income to make up for months in which the household did not meet its obligation, except for amounts paid through tax intercept, and

The value of legally binding child support that is provided in-kind, such as payment of rent directly to the landlord.

Payments provided for health care,

Payments for education,

Payments for recreation,

Payments for clothing,

Payments to meet other specific needs of a child or children, and

Payments to cover attorney's fee, interest, and court costs.

The following are examples of how to treat child support payments:

1. Mr. A is court ordered to pay Mrs. A \$100 a week in child support. He also pays \$30 a month child support for arrears to make up the months he was not able to pay. Mr. A is eligible for a \$463 ($\$100 \times 4.33 = \$433 + \30) child support deduction from his current income.

2. Mr. C is court ordered to pay Mrs. C \$800 a month in child support. He pays \$500 a month directly to the landlord for Mrs. C's rent and \$100 directly to the utility company for Mrs. C's electric. Mrs. C receives the \$200 balance in cash. Mr. C is eligible for a \$800 child support deduction from his current income.

Alimony payments are not included in the child support deduction.

F. Shelter Costs— Monthly shelter costs in excess of 50% of the household's income after all other deductions in A, B, and C above have been allowed. The shelter deduction must not exceed the maximum excess shelter deduction limit. (Refer to the current October Cost of Living Adjustment Administrative Notice for the maximum excess shelter deduction.) This is applicable unless the household contains a member who is age sixty (60) or over, or disabled per DSSM 9013.1. Such households will receive an excess shelter deduction for the monthly costs that exceeds 50% of the household's monthly income after all other applicable deductions.

Shelter costs will include only the following:

1. Continuing charges for the shelter occupied by the household, including rent, mortgages, condo and association fees, or other continuing charges leading to the ownership of the shelter such as loan repayments for the purchase of a mobile home, including interest on such payments. A mortgage is defined as any loan which uses the house as collateral.

Households required to pay the "last month's rent" along with the first month's rent before they can move into the dwelling can claim both amounts in the month that the household is billed.

For example, a client rents an apartment in January and must pay January's and the next December's rent in January. Both rental amounts can be used for January's food stamp budget. A rent deduction would not be

allowed in December since it was paid in January.

Households required to pay a security deposit before they move into a dwelling cannot claim the deposit as a shelter cost.

For example, a client rents a home and must pay a \$450 security deposit and the first month's rent before she moves in. The security deposit will be refunded when she moves out if the home is in good condition. She cannot claim the deposit as a shelter cost for food stamp purposes.

2. Property taxes, State and local assessments and insurance on the structure itself, but no separate costs for insuring furniture or personal belongings. If separate insurance costs for furniture or personal belongings are not identified, use the total. (Local assessments include, but are not limited to, regular school taxes and an annual school capitation tax.)

3. Mandatory Utility and Phone Allowances

a. Heating and Cooling Standard Utility Allowance (HCSUA) — The HCSUA is mandatory for:

- households that incur heating or cooling costs separate and apart from their rent or mortgage payments;
- residents of private rental housing who are billed on a monthly basis by their landlords for actual usage as determined through individual usage or who are charged a flat rate;
- households receiving energy payments under the Low Income Home Energy Assistance (LIHEA);
- households receiving direct or indirect energy assistance payments like HUD utility reimbursements, other than LIHEA, that is excluded as income and who continue to incur any out-of-pocket heating or cooling expenses during any month in the previous twelve (12) months; and
- households living in a public housing unit or other rental housing unit which has central utility meters and charges the household only for excess heating or cooling costs.

Heating costs must be verified to use the HCSUA. For cooling costs, you must verify the utility, like electricity, that provides the air conditioning. Accept the household's statement that they pay for cooling unless it is questionable.

b. Limited Utility Allowance (LUA) — The LUA is mandatory for households that incur costs for two non-heat or non-cooling utilities like electric, gas cooking, water, sewerage, well and septic tank installation and maintenance, telephone and garbage or trash collection.

c. One-utility Standard — The one-utility standard is mandatory for households that incur only one non-heat, non-cooling, or non-phone utility.

d. Telephone Allowance — The standard telephone allowance will be used for households billed only for a telephone regardless of their actual cost.

Refer to the current October Cost of Living Adjustment Administrative Notice for the standard utility and phone allowance amounts.

There is no proration of the utility or phone allowance when more than one household shares living quarters. This means when two or more households share living costs each household may receive full utility or phone allowance. There is no proration of the utility or phone allowances when you have prorated deemers like ineligible aliens.

4. The shelter costs of the home if not occupied by the household because of employment or training away from home, illness or abandonment caused by a natural disaster or casualty loss. For costs of a home vacated by the household to be included in the household's shelter costs, the household must intend to return to the home; the current occupants of the home, if any must not be claiming the shelter costs for food stamp purposes; and the home must not be leased or rented during the absence of the household.

A household that has both an occupied home and an unoccupied home is only entitled to one standard utility allowance.

5) Charges for the repair of the home which was substantially damaged or destroyed due to a natural disaster such as a fire or flood. Shelter costs will not include charges for repair of the home that have been or will be reimbursed by private or public relief agencies, insurance companies, or from any other source. Repairs, other than those due to natural disasters, do not count as a deduction, even when tenants must pay for them or be evicted.

This policy applies to all households applying for food benefits.

DSS will deduct the following from the household's income.

- Standard deduction

PROPOSED REGULATIONS

- Earned income deduction
- Excess Medical
- Dependent Care
- Child Support Payments
- Shelter Costs
- Standard utility allowances
- Costs of Unoccupied Homes and Disaster Repairs

A. GIVING THE STANDARD DEDUCTION

This policy applies to all FSP households with income.

1. Give each household a standard deduction that is deducted from any income the household has.
2. FNS determines the amount of the standard deduction published each October in the Cost-of-Living

Adjustment Administrative Notice.

B. CALCULATING THE EARNED INCOME DEDUCTION

This policy applies to FSP households with earned income.

1. Allow all households with earned income a twenty percent (20%) earned income deduction.
2. Give the earned income deduction to self-employed individuals after the standard business deduction.

Exception: Do not give the earned income deduction to individuals with rental income when they do not manage the property at least 20 hours a week. The rental income is considered unearned income.

C. DETERMINING EXCESS MEDICAL DEDUCTION

This policy applies to individuals who are elderly or disabled and eligible for food benefits.

1. Give a medical deduction for unreimbursed medical expenses in excess of \$35 per month.
2. Give the medical deduction only to individuals who are age 60 or older or receiving a disability payment.
3. Do not give the medical deduction to spouses or other persons receiving benefits as a dependent of the disabled recipient.
4. Give the medical deduction to persons receiving emergency SSI benefits based on presumptive eligibility.
5. Allow the following medical expenses as a deduction:
 - Medical and dental care, including psychotherapy and rehabilitation services, provided by a licensed practitioner or other qualified health professional.
 - Hospitalization, outpatient treatment, nursing home care (including payments by the household for an individual who was a household member immediately prior to entering a hospital or nursing home provided by a facility recognized by the State).
 - Prescription drugs and over-the-counter medication when approved by a licensed practitioner or other qualified health professional.
 - Cost of medical supplies and sick room equipment (including rental costs) are deductible (when approved by a licensed practitioner or other health professional).
 - Health and hospitalization insurance are deductible, but health and accident insurance policies such as income maintenance or death or dismemberment policies are not deductible.
 - Medicare premiums, cost-sharing or spend down expenses incurred by Medicaid recipients.
 - Dentures, hearing aids and prosthetics.
 - Costs of securing and maintaining a seeing-eye or hearing dog, including dog food and veterinary bills.
 - Eye glasses prescribed by a physician skilled in eye disease or by an optometrist.
 - Reasonable costs of transportation and lodging in order to obtain medical treatment or services, which includes: trips to doctors or dentists, trips to fill prescriptions for medicine, dentures, hearing aids or eye glasses, and mileage using the standard state allowance privately-owned vehicles.

- Maintaining an attendant, homemaker, home health aide, housekeeper, or child care services necessary due to age, infirmity, or illness.
- An amount equal to the one-person food benefit allotment if the household furnishes the majority of the attendant's meals, update at recertification.

NOTE: If a household incurs attendant care costs that could qualify under both the medical deduction and dependent care deduction, treat the costs as a medical expense.

D. DETERMINING DEPENDENT CARE DEDUCTION

This policy applies for households with dependent care expenses.

1. Allow the dependent care costs only when necessary for employment, training or educational purposes.

Allow the dependent care costs when needed to:

- Seek employment.
- Accept employment.
- Continue employment.
- Comply with the employment and training requirements, or
- Attend training or pursue education which is preparatory to employment.

2. Give the actual costs the household pays for the dependent care deduction.

E. HOMELESS SHELTER DEDUCTION

This policy applies to households in which all members are homeless and have limited shelter expenses.

1. Allow homeless households with limited shelter expenses a homeless shelter deduction of \$143.

2. Give homeless households the \$143 homeless shelter deduction when their anticipated monthly shelter expenses are at or less than \$143.

3. Allow homeless households that incur monthly expenses greater than \$143 the regular shelter expense deduction.

4. Do not give the homeless shelter deduction to households that are provided free housing and utilities or households that work for their shelter.

F. DETERMINING SHELTER DEDUCTION

This applies to households who have shelter costs.

1. Give a shelter deduction for costs that exceed 50% of the household's countable income up to the maximum excess shelter limit.

2. Give households with a member who is age sixty or older or disabled (Per DSSM 9013) the excess shelter deduction for costs that exceed 50% of the household's countable income with no limit.

3. Allow continuing charges for the shelter occupied by the household that lead to the ownership of the shelter.

Continuing charges will include:

- Rent.
- Mortgages.
- Condo and association fees.
- Loan repayments for the purchase of a mobile home.
- Second mortgages.
- Home equity loans. and
- Interest on such payments.

A mortgage is defined as any loan which uses the house as collateral.

4. Do not allow security deposits as a shelter deduction.

5. Allow property taxes, state and local assessments, and insurance on the structure of the dwelling as shelter deductions.

- If separate insurance costs for furniture or personal belongings are not identified, use the total.
- Local assessments include, but are not limited to, regular school taxes and an annual school capitation tax.

G. DETERMINING THE MANDATORY UTILITY AND PHONE ALLOWANCE

PROPOSED REGULATIONS

This policy applies to households with utility or phone expenses.

1. Give the heating and cooling standard utility allowance (HCSUA) to the following households:
 - Households that have heating or cooling costs separate and apart from their rent or mortgage payments.
 - Residents of private rental housing billed on a monthly basis by their landlords for actual usage or who are charged a flat rate;
 - Households receiving energy payments under the Low Income Home Energy Assistance Program (LIHEAP);
 - Households receiving energy direct or indirect energy assistance payments like HUD utility reimbursements, other than LIHEAP, that is excluded as income and who continue to incur any out-of-pocket heating or cooling expenses during any month in the previous twelve (12) months; and
 - Households living in public housing or other rental housing units that has central utility meters and charges the household only for excess heating or cooling costs.

Accept the household's statement that they pay for cooling.

2. Give the limited utility allowance (LUA) to households that have costs for two non-heat or non-cooling utilities.
3. Give the one-utility standard to households that have only one non-heat, non-cooling, or non-telephone utility.
4. Give the telephone allowance to households with only telephone costs.
5. Do not prorate the utility or phone allowances when more than one household shares living quarters, including prorated deemers.

NOTE: Refer to the current October Cost-of-Living Adjustment Administrative Notice for the standard utility and phone allowance amounts.

H. ALLOWING DEDUCTIONS FOR UNOCCUPIED HOMES AND DISASTER REPAIRS

This policy applies to households claiming expenses for unoccupied homes.

1. Allow shelter costs of the home if not occupied by the household for the following reasons:
 - Employment or training away from home,
 - Illness, or
 - Abandonment caused by a natural disaster or casualty loss.
2. Allow the shelter costs for the unoccupied home with the following conditions:
 - The household must intend to return to the home;
 - The current occupants of the home, if any, must not be claiming the shelter costs for food benefit purposes; and
 - The home must not be leased or rented during the absence of the household.
3. Give only one standard utility allowance to households that have both an occupied home and an unoccupied home.
4. Allow deductions for charges for the repair of the home substantially damaged or destroyed by a natural disaster such as a flood or fire with the following conditions:
 - A. Shelter costs will not include charges for repair of the home that have been or will be reimbursed by private or public relief agencies, insurance companies, or from any other source.
 - B. Repairs, other than those due to natural disasters, do not count as a deduction, even when tenants must pay for them or be evicted.

12 DE Reg. 462 (10/01/08)

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314 & 1111 (18 Del.C. §§314, 1111)
18 DE Admin. Code 1408

1408 Standards for Prompt, Fair and Equitable Settlement of Claims for Long-Term Care Insurance

PUBLIC NOTICE

INSURANCE COMMISSIONER KAREN WELDIN STEWART, CIR-ML hereby gives notice of intent to adopt Department of Insurance Regulation 1408 relating to payment of long-term care services. The docket number for this proposed regulation is 1337.

The purpose of the proposed regulation 1408 is to require timely payment of claims involving Long Term Care insurance. The text of the proposed amendment is reproduced in the March 2010 edition of the Delaware Register of Regulations. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:00 p.m., Monday April 5, 2010, and should be addressed to Mitch Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.736.7979 or email to mitch.crane@state.de.us.

1408 Standards for Prompt, Fair and Equitable Settlement of Claims for Long-Term Care Insurance

1.0 Authority

This regulation is adopted by the Commissioner pursuant to 18 Del.C. §§311, 2304(16), and 2312 and 7107. It is promulgated in accordance with 29 Del.C. Ch. 101.

2.0 Scope

This regulation shall apply to all carriers as defined herein.

3.0 Definitions

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

“Carrier” means any entity that provides long-term care insurance in this State. "Carrier" also includes any 3rd-party administrator or other entity that adjusts, administers or settles claims in connection with long-term care plans.

“Days” means calendar days.

“Institutional Provider” means a hospital, nursing home, or any other medical or health-related service facility caring for the sick or injured or providing care or other coverage which may be provided in a long-term care policy. An entity must be a Provider under this Regulation in order to be an Institutional Provider.

“Policyholder,” “Insured,” or “Subscriber” means a person covered under a long-term care insurance policy or a representative (other than a provider) designated by such person and entitled to make claims on his behalf.

“Provider” means any entity or individual licensed, certified, or otherwise permitted by law pursuant to Titles 16 or 24 of the Delaware Code to provide long-term care services, irrespective of whether the entity or the individual is a participating provider pursuant to a written agreement with the carrier. When used alone, the term “provider” shall include individual providers and institutional providers.

4.0 Prompt Payment of Clean Claims

- 4.1 "Claim" means a request for payment of benefits under an in-force policy, regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met.
- 4.2 "Clean Claim" means a claim that has no defect or impropriety, including any lack of required substantiating documentation, such as satisfactory evidence of expenses incurred, or particular circumstances requiring special treatment that prevents timely payment from being made on the claim.
- 4.3 Within thirty (30) days after receipt of a claim for benefits under a long-term care insurance policy or certificate, an insurer shall pay such claim if it is a clean claim, or send written notice acknowledging the date of receipt of the claim and one of the following:
- 4.3.1 The insurer is declining to pay all or part of the claim and the specific reason(s) for denial; or
- 4.3.2 That additional information is necessary to determine if all or any part of the claim is payable and the specific additional information that is necessary.
- 4.4 Within thirty (30) days after the receipt of all the requested additional information, an insurer shall pay a claim for benefits under a long-term care insurance policy or certificate if it is a clean claim, or send a written notice that the insurer is declining to pay all or part of the claim, and the specific reason or reasons for denial.
- 4.5 If an insurer fails to comply with 4.3 or 4.4, such an insurer shall pay interest at the rate of 1% per month on the amount of the claim that should have been paid but that remains unpaid after forty-five (45) days after the receipt of the claim with respect to 4.3 or all requested additional information under 4.4. The interest payable pursuant to this sub-section shall be included in an late reimbursement without requiring the person who filed the original claim to make any additional claim for such interest.
- 4.6 These provisions shall not apply where the insurer has a reasonable basis supported by specific information that such claim was fraudulently submitted.
- 4.7 Any violation of this regulation by an insurer if committed flagrantly and in conscious disregard of the provisions of this regulation or with such frequency as to constitute a general business practice shall be considered a violation of 18 Del.C. §2304.

5.0 Waiver

The provisions of this regulation may not be waived, voided, or nullified by contract.

6.0 Causes of Action

This regulation shall not create a private cause of action for any person or entity, other than the Delaware Insurance Commissioner, against a carrier or its representative based upon a violation of 18 Del.C. §2304.

7.0 Separability

If any provision of this regulation, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of such provisions, and the application of such provisions to any person or circumstance other than those as to which it is held invalid, shall not be affected.

8.0 Effective Date

This regulation become effective for all claims submitted for payment on or after July 1, 2010.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(e)(2)(a) (7 **Del.C.** §903(e)(2)(a))
7 **DE Admin. Code** 3511

REGISTER NOTICE SAN# 2010-01

1. Title of the Regulations:

Tidal Finfish Regulations

2. Brief Synopsis of the Subject, Substance and Issues:

The Summer Flounder Fishery Management Plan details the annual process that the Summer Flounder Fishery Management Board, the Mid Atlantic Fishery Management Council and the National Marine Fisheries Service are to use for conservation equivalency in the recreational summer flounder fishery. These agencies agreed at their joint meeting on December 8, 2009 that the states would implement conservation equivalent measurers rather than a coastwide management program for summer flounder in 2010. The total allowable harvest quota has been increased for 2010 based on the latest scientific data that indicates that the stock is not overfished and overfishing is not occurring. Delaware's harvest cap for 2010 will be 80,000 fish which is higher than the 65,000 fish target in 2009. In addition, it is estimated, based on the Marine Recreational Fisheries Statistics survey data, that approximately 82,000 summer flounder were harvested in Delaware during the 2009 fishing season. As such, a number of options will be considered that are designed to restrain the harvest at or below the harvest cap for 2010. These measures may include size limits that range from 18.5 inches to 19.5 inches in conjunction with creel limits that could range from two to eight fish. In addition, management options may include a partial harvest season closure designed to restrain the harvest for 2010 at or below the 80,000 fish target.

3. Possible Terms of the Agency Action:

Delaware is required to comply with specific Fishery Management Plans approved by the Atlantic States Marine Fisheries Commission. Failure to do so could result in complete closure of a specific fishery in Delaware.

4. Statutory Basis or Legal Authority to Act:

7 **Del.C.** § 903, (e)(2)(a)

5. Other Regulations That May Be Affected By The Proposal:

None

6. Notice of Public Comment:

Individuals may present their comments or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, (302) 739-9914. A public hearing on these proposed amendments will be held on March 23, 2010 at 7:00 P.M. in the DNREC Auditorium, 89 Kings Highway, Dover, DE 19901. The record will remain open for written comments until 4:30 PM, March 31, 2010.

7. Prepared By:

Richard Cole
richard.cole@state.de.us
Ph: (302)739-4782
Fax: (302) 739-6780
January 26, 2010

3500 Tidal Finfish**3511 Summer Flounder Size Limits; Possession Limits**

(Penalty Section 7 **Del.C.** §936(b)(2))

- 1.0 It shall be unlawful for any recreational fisherman to have in possession more than ~~four (4)~~ summer flounder at or between the place where said summer flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging. (Note: creel limit to be determined in combination with size limit and season.)
- 2.0 It shall be unlawful for any person, other than qualified persons as set forth in section 4.0 of this regulation, to possess any summer flounder that measure less than ~~eighteen and one half (18.5)~~ inches between the tip of the snout and the furthest tip of the tail. (Note: creel limit to be determined in combination with size limit and season.)

7 DE Reg. 1575 (5/1/04)**12 DE Reg. 1430 (05/01/09)**

- 3.0 It shall be unlawful for any person while on board a vessel, to have in possession any part of a summer flounder that measures less than ~~eighteen and one half (18.5)~~ inches between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed. (Note: creel limit to be determined in combination with size limit and season.)
- 4.0 Notwithstanding the size limits and possession limits in this regulation, a person may possess a summer flounder that measures no less than fourteen (14) inches between the tip of the snout and the furthest tip of the tail and a quantity of summer flounder in excess of the possession limit set forth in this regulation, provided said person has one of the following:
 - 4.1 A valid bill-of-sale or receipt indicating the date said summer flounder were received, the amount of said summer flounder received and the name, address and signature of the person who had landed said summer flounder;
 - 4.2 A receipt from a licensed or permitted fish dealer who obtained said summer flounder; or
 - 4.3 A bill of lading while transporting fresh or frozen summer flounder.
 - 4.4 A valid commercial food fishing license and a food fishing equipment permit for gill nets.
- 5.0 It shall be unlawful for any commercial finfisherman to sell, trade and or barter or attempt to sell, trade and or barter any summer flounder or part thereof that is landed in this State by said commercial fisherman after a date when the de minimis amount of commercial landings of summer flounder is determined to have been landed in this State by the Department. The de minimis amount of summer flounder shall be 0.1% of the coast wide commercial quota as set forth in the Summer Flounder Fishery Management Plan approved by the Atlantic States Marine Fisheries Commission.
- 6.0 It shall be unlawful for any vessel to land more than 200 pounds of summer flounder in any one day in this State.
- 7.0 It shall be unlawful for any person, who has been issued a commercial food fishing license and fishes for summer flounder with any food fishing equipment other than a gill net, to have in possession more than ~~four (4)~~ summer flounder at or between the place where said summer flounder were caught and said person's personal abode or temporary or transient place of lodging. (Note: creel limit to be determined in combination with size limit and season.)

Note: Proposed options for creel limits and minimum size limits and seasons to restrict the recreational summer flounder harvest in Delaware during 2010.

Option	Season Closure	Number of Open Days	Bag Limit	Minimum Size-inches
1	Oct 13 - Dec 31	285	4	18.5
2	Oct 26 - Dec 31	298	3	18.5
3		365	2	18.5
4		365	4	19.0

- 1 DE Reg. 1767 (05/01/98)
- 2 DE Reg. 1900 (04/01/99)
- 3 DE Reg. 1088 (02/01/00)
- 4 DE Reg. 1552 (03/01/01)
- 5 DE Reg. 462 (08/01/01)
- 5 DE Reg. 2142 (05/01/02)
- 6 DE Reg. 1358 (04/01/03)
- 7 DE Reg. 1575 (05/01/04)
- 8 DE Reg. 1488 (04/01/05)
- 9 DE Reg. 1759 (05/01/06)
- 10 DE Reg. 1722 (05/01/07)
- 11 DE Reg. 1493 (05/01/08)
- 12 DE Reg. 1430 (05/01/09)

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(e)(2)(a) (7 Del.C. §903(e)(2)(a))
7 DE Admin. Code 3900

REGISTER NOTICE SAN# 2010-11

1. Title of the Regulation:

3900 Wildlife

2. Brief Synopsis of the Subject, Substance and Issues:

1.0 Definitions

This action will clearly define the term Quality Buck for Delaware Hunters. This is needed to assist hunters in knowing what type of deer they can tag with the Delaware Quality Buck tag.

2.0 Method of Take

This action will 1. Allow crossbows to be used anytime a longbow may be used for deer hunting 2. Establish a minimum draw weight for longbows 3. Eliminate the maximum pull weight for crossbows and allow scopes on crossbows 4. Make it unlawful to carry a crossbow in a locked position within a motor vehicle. 5. Clarify when trapping equipment may be placed in the field and when it must be removed 6. Allow pellet rifles to be used for gray squirrel hunting. 7. Clarify what firearms may be used for red fox hunting. 8. Restrict firearms that can be used for red fox hunting during deer season.

3.0 Federal Laws and Regulations Adopted

This action will 1. Require non-toxic shot for hunting rails, snipe and moorehens 2. Restrict mute swan hunting to the general waterfowl season and shooting hours.

4.0 Seasons

This action will establish a hunting season for red fox in accordance with Section 8 of 3902 and § 788 of Title 7.

7.0 Deer

This action will 1. Clarify that only 2 antlered deer may be taken during any given license year running from July 1 – June 30th. 2. Eliminate the requirement that deer hides must be tagged in order to be sold 3. Eliminate physical deer check stations and require hunters to register deer by phone or online and write their registration number on field tags 4. Lengthen the crossbow season.

21.0 Guide License Requirements

This action will exempt non-residents from the guide license requirement when they are guiding for snow goose hunting in Delaware. Guides must be licensed in guide in another state or Canadian Province that extends the same exemption to Delaware residents.

22.0 Hunter and Trapper Identification Number

This action will require Delaware license exempt hunters to acquire a free hunter or trapper identification number. This will provide the Division with an accurate count of the total number of hunters hunters in Delaware and provide an additional database for surveying.

3. Possible Terms of the Agency Action:

N/A

4. Statutory Basis or Legal Authority to Act:

7 Delaware Code, Chapter 1, Sections 102 & 103

5. Other Regulations That May Be Affected By the Proposal:

None

6. Notice of Public Comment:

The changes to regulation 3900 Wildlife will be presented in a series of public hearings on March 25th. 2010 beginning at 6:30 p.m., DNREC Auditorium, 89 Kings Highway, Dover, Delaware. The hearing record for these proposed Regulations will remain open until 4:30 p.m. March 31, 2010

The order of hearings is as follows:

- 3901 - Definitions
- 3902 - Method of Take
- 3903 - Federal Laws and Regulations Adopted
- 3904 - Seasons
- 3907 - Deer
- 3921 - Guide License Requirements
- 3922 - Hunter and Trapper Identification Number

Written comments for the hearing record should be addressed to Kenneth Reynolds, 6180 Hay Point Landing Road, Smyrna, DE 19977 or to Kenneth.Reynolds@state.de.us. The record will remain open for written public comment until 4:30 P.M. March 31, 2010.

7. Prepared By:

Kenneth M. Reynolds, 6180 Hay Point Landing Road, Smyrna, DE 19977
Kenneth.Reynolds@state.de.us
(302) 735-3600

3901 Definitions

For purposes of Regulations 1.0 through 16.0, the following words and phrases shall have the meaning ascribed to them, unless the context clearly indicates otherwise:

“Administered by the Division” shall mean owned, leased or licensed by the Division.

“Antlered Deer” shall mean any deer with one or more antlers three inches long or longer, measured from the base of the antler where it joins the skull to the tip of the antler following any curve of the antler.

“Antlerless Deer” shall mean any deer that has no antlers or antlers less than three inches in length.

“Bait” shall mean any nontoxic food material, compound or mixture of ingredients which wildlife is able to consume.

“Baited Field” shall include any farm field, woodland, marsh, water body or other tract of land where minerals, grain, fruit, crop or other nontoxic compounds have been placed to attract wildlife to be hunted.

“Black Powder” shall mean a manufacturer’s approved muzzleloading propellant.

“Deer” shall mean white-tailed deer (*Odocoileus virginianus*) and/or Sika deer (*Cervus nippon*).

“Director” shall mean the Director or Acting Director of the Division.

“Division” shall mean the Division of Fish and Wildlife of the Department.

“Established Blind” shall mean a structure or pit constructed for the purpose of hunting migratory waterfowl by a landowner on his or her property or by another person with the permission of the landowner or the landowner’s duly authorized agent.

“Established Road” shall mean a road maintained for vehicular use by the Division and designated for such use by the Division on current wildlife area maps.

“Liberated Game” shall mean cottontail rabbits and game birds, including bobwhite quail, mallard duck, chukar and pheasant released pursuant to § 568 of Title 7.

“Loaded Muzzle-Loading Rifle” shall mean the powder and ball, bullet or shot is loaded in the bore. A muzzle-loading rifle shall not be considered loaded if the cap, primer, or priming powder (in a flintlock) is removed and:

The striking mechanism used to ignite the cap, primer or priming powder is removed or rendered inoperable; or

The rifle is enclosed in a case.

“Lure” shall mean any mixture of ingredients, element or compound that attract wildlife, but the wildlife is unlikely to consume.

“Longbow” shall mean a straight limb, reflex, recurve or compound bow. All crossbows or variations thereof and mechanical holding and releasing devices are expressly excluded from the definition.

“Nongame Wildlife” shall mean any native wildlife, including rare and endangered species, which are not commonly trapped, killed, captured or consumed, either for sport or profit.

“Possession” shall mean either actual or constructive possession of or any control over the object referred to.

“Quality Buck” shall mean an antlered deer with an outside antler spread of at least 14 inches. This measurement is taken across the outside of the main beams at their widest point; this measurement’s path must be perpendicular to the center line of the skull and parallel to the top of the skull plate.

“Refuge” shall mean an area of land, whether in public or private ownership, designated by the Department as a refuge. Land shall only be designated with the permission of the landowner and if such designation is thought to be in the best interest of the conservation of wildlife. Refuges shall normally be closed at all times to all forms of hunting, except as permitted by the Director in writing for wildlife management purposes.

“Roadway” shall mean any road, lane or street, including associated right-of-ways, maintained by this State or any political subdivision of this State.

“Season” shall mean that period of time during which a designated species of wildlife may be lawfully hunted or a designated species of fish may be lawfully fished.

“**Vehicle**” shall include any means in or by which someone travels or something is carried or conveyed or a means of conveyance or transport, whether or not propelled by its own power.

“**Wildlife**” shall mean any member of the animal kingdom, including without limitation, any amphibian, arthropod, bird, mammal or reptile.

3 DE Reg. 289 (8/1/99)

3 DE Reg. 1738 (6/1/00)

11 DE Reg. 334 (09/01/07)

3902 Method of Take

(Penalty Section 7 Del.C. §103(d))

2.1 General.

Unless otherwise provided by law or regulation of the Department, it shall be unlawful to hunt any protected wildlife with any weapon or firearm other than a longbow or shotgun (10 gauge or smaller), except that:

- 2.1.1 ~~A crossbow may be used in lieu of a shotgun to hunt deer during that part of the November shotgun season that runs from Monday through Saturday of each year and in any shotgun or muzzleloader deer season open in December or January; Crossbows may be used during all deer seasons.~~
- 2.1.2 A muzzle-loading rifle with a barrel length of at least twenty inches and loaded with black powder may be used to hunt deer during muzzleloader and shotgun deer seasons;
- 2.1.3 A .22 caliber rimfire pistol may be used to hunt raccoons and opossums and to take wildlife lawfully confined in a trap;
- 2.1.4 A hook, spear or gig may be used to take frogs; and
- 2.1.5 A spear, gig, trap or fyke net may be used to take snapping turtles.
- 2.1.6 A single shot an antique or authentic reproduction black powder Sharps rifle of 45 to 60 caliber shall be lawful for use during shotgun deer seasons using paper patched bullets.
- 2.1.7 No person shall place in the field any set or unset equipment associated with the trapping of game animals until the opening day of any state approved trapping season.
- 2.1.8 Any person who sets or makes use of any trap, snare or other approved wildlife capture device during any lawful trapping season, shall remove all trapping equipment by the last day of the approved trapping season.

2.2 ~~Bow and Arrow.~~ Archery and Crossbow

- 2.2.1 General. No person shall use or have in his or her possession, while hunting, any: poison arrow, arrow with an explosive tip, or any longbow drawn and held by mechanical means (draw locking device), ~~except the Director may issue permits to hunters who are permanently disabled to use crossbows, provided:~~ with a minimum pull less than 35 pounds.
 - 2.2.1.1 ~~The applicant has a physician's certification that he or she is unable to use conventional archery equipment;~~
 - 2.2.1.2 ~~The applicant has a disability that requires the use of a wheelchair;~~
 - 2.2.1.3 ~~The applicant is a single or double amputee above the elbow, or a double amputee below the elbow;~~
 - 2.2.1.4 ~~The applicant has a permanent physical disorder which cannot be surgically corrected and prevents the use of an arm or hand;~~
 - 2.2.1.5 ~~The applicant has lung disease to the extent that forced (respiratory) expiatory volume for one (1) second when measured by spirometer is less than one (1) liter or arterial oxygen tension (po) is less than 60 mm/Hg on room air at rest; or~~
 - 2.2.1.6 ~~The applicant has cardiovascular disease to the extent that functional limitations are classified in severity as class III or class IV according to standards accepted by the American Heart Association.~~

- 2.2.2 Crossbows. Crossbows used for deer hunting must ~~be between~~ have a minimum pull weight of 125 and 200 pounds of pull weight, be manufactured after 1980, and have a mechanical safety. Crossbows may be equipped with a scope.
- 2.2.2.1 It shall be unlawful to transport a crossbow on or within any vehicle while the crossbow is in the cocked position.
- 2.3 Hunting from Boats.
- 2.3.1 Distance from Blinds. During the season for the hunting of migratory waterfowl, it shall be unlawful for any person to hunt from a boat of any kind that is within 1500 feet of an established blind, except that:
- 2.3.1.1 Any person may use a boat to tend lawfully set traps for fur-bearing wildlife;
- 2.3.1.2 Any person may retrieve crippled waterfowl by the use of a boat in accordance with federal regulations;
- 2.3.1.3 Any person may use a boat for transportation to and from an established blind lawfully used by such person;
- 2.3.1.4 Any person may hunt from a boat that is firmly secured and enclosed in an established blind.
- 2.3.2 Notwithstanding the provisions of subsection 2.2.1 of this section, any person may hunt migratory waterfowl within 1500 feet of an established blind, from a boat, with permission of the blind owner.
- 2.3.3 Gunning Rigs.
- 2.3.3.1 During the season for hunting migratory waterfowl, it shall be unlawful for any person to hunt within 900 feet of the shoreline (high tide line) of the Delaware River and Bay, between the Appoquinimink River and the Smyrna River, without written permission of the closest adjoining landowner(s).
- 2.3.3.2 During the season for hunting migratory waterfowl, it shall be unlawful for any person to hunt within 1500 feet of the shoreline (high tide line) of the Delaware River and Bay, between the Smyrna River and the Murderkill River, without written permission of the closest adjoining landowner(s).
- 2.3.4 Tender Boats. It shall be unlawful for tender boats servicing gunning (layout) rigs to be further than 1500 feet from the rig or to conduct any activity, except to pick up downed birds or service the rig.
- 2.3.5 During the season for hunting migratory waterfowl, it shall be unlawful for any person to hunt from a boat, or a floating or fixed blind in the Little River in areas bounded on both sides by land administered by the Division, except as permitted in writing by the Director.
- 2.4 Leghold Traps.
- 2.4.1 It shall be unlawful for any person to set a leghold trap at any time in this State, except from December 1 through March 10 (March 20 on embanked meadows) in New Castle County and December 15 through March 15 in Kent and Sussex counties.
- 2.4.2 Notwithstanding subsection 2.4.1 of this section, it shall be lawful to trap raccoons with leghold traps in New Castle County or Kent County from the southerly boundary of New Castle County Route 380 and east and southeast of the center line of U.S. Route No. 13, thence following said center line of U.S. Route No. 13 to the point where U.S. Route No. 13 forms a junction with U.S. Route No. 113 and thence along the center line of U.S. Route No. 113 to a line dividing Kent County from Sussex County during any time of the year, except on Sundays. Notwithstanding the foregoing, this subsection shall not apply to lands in Kent County lying east of the center line of Rt. 113, north of the Sussex County line and south of the St. Jones River.
- 2.4.3 It shall be unlawful for any person to set long-spring traps, "Stop-Loss" traps or jump traps larger than No. 1½ or coil-spring traps larger than No. 1 in any location, except:
- 2.4.3.1 In any marsh ordinarily subject to the rise and fall of the tide;
- 2.4.3.2 In a diked marsh that was formerly tidal;
- 2.4.3.3 Below the mean high tide line in a river ordinarily subject to the rise and fall of the tide;
- 2.4.3.4 On an island surrounded by tidal marsh or diked marsh that was formerly tidal; or

2.3.4.5 In the areas described in subsection 2.4.2 of this section.

The term "diked marsh" shall not include millponds or any stream running into a millpond.

- 2.4.4 In addition to the areas listed in subsection 2.4.3 of this section, traps described in said subsection may be set for river otter and/or beavers in tax ditches, millponds and streams leading into such ponds only by underwater sets.
- 2.4.5 It shall be unlawful for any person to set or make use of long-spring traps, "Stop-Loss" traps or jump traps larger than No. 1½ or coil-spring traps larger than No. 1 without first permanently attaching a metallic tag on each trap, bearing:
- 2.4.5.1 The words "Trapping License, Delaware", the number of the trapping license issued to the owner of the traps and the year of issuance; or
- 2.4.5.2 The owner's name and address.
- 2.4.6 It shall be unlawful for any person to set a long-spring trap, "Stop-Loss" trap, jump trap No. 1½ or smaller or a coil-spring trap No. 1 or smaller in any location in this State, except in the areas described in subsections 2.4.3 and 2.4.4 of this section and in the following locations:
- 2.4.6.1 A ditch;
- 2.4.6.2 A stream; or
- 2.4.6.3 On land not subject to cultivation of crops due to a normally marshy condition.
- 2.4.7 For the purposes of subsection 2.4.6 of this section, the term "ditch" shall mean a long, narrow channel dug into the earth as a trough for drainage or irrigation of the soil that normally contains flowing water.
- 2.4.8 For the purposes of subsection 2.4.6 of this section, the term "normally marshy condition" shall mean land with one or more of the following associated plant groupings growing upon it: cordgrass, sedges, rushes, cattails, threesquare or phragmites.
- 2.4.9 When information is furnished to a Fish and Wildlife Agent from the owner, tenant or sharecropper of any land that any species of wildlife is detrimental to crops, property or other interests on land on which he or she resides or controls, upon investigation, that Fish and Wildlife Agent may issue a permit to such person or his or her agent for the use of leghold traps to control said species of wildlife. Said permit may be issued at any time of the year.
- 2.4.10 The setting of each trap in violation of this section shall be a separate offense.
- 2.5 Gray Squirrel.
Hunting gray squirrels with a ~~.17 caliber rimfire rifle, a through~~ .22 caliber rimfire rifle or pellet firearm with a rifled barrel, or muzzle-loading rifle not larger than .36 caliber is permitted south of the Chesapeake and Delaware Canal.
- 2.6 Muskrats.
It shall be unlawful for any person to shoot muskrats at any time, except with written permission of the Director.
- 2.7 Otters.
Each otter trapped in Delaware must be tagged by an authorized representative of the Division. Each otter sold in Delaware or shipped out of the State must be tagged in accordance with the requirements of the Convention on International Trade in Endangered Species.
- 2.8 Red Fox.
2.8.1 Red foxes may be killed in accordance with § 788 of Title 7 with the following: ~~bow and arrow longbow and crossbow; shotgun with shot up to size 2 lead or T steel; rimfire rifle or centerfire rifle up to .25 caliber, using hollow point bullets with a maximum bullet weight of 75 grains;~~ or a muzzle-loading rifle.
2.8.2 Notwithstanding subsection 2.8.1 of this section, during any deer firearms season, it shall be unlawful to hunt red fox with any firearm that is not also legal for deer hunting.

3 DE Reg. 289 (8/1/99)

6 DE Reg. 536 (10/1/02)

11 DE Reg. 334 (09/01/07)

3903 Federal Laws and Regulations Adopted

(Penalty Section 7 Del.C. §103(d))

3.1 Federal Laws.

It shall be unlawful for any person to hunt, buy, sell or possess any protected wildlife or part thereof, except in such manner and numbers as may be prescribed by the following federal laws and regulations promulgated thereunder: Airborne Hunting Act (16 USC § 742j-1 et seq.), Eagle Act (16 USC § 668 et seq.), Endangered Species Act (16 USC 1531 et seq.), Lacey Act (16 USC § 3371 et seq.), Marine Mammal Protection Act (16 USC § 1361 et seq.), and the Migratory Bird Treaty Act (16 USC § 703 et seq.). Notwithstanding the foregoing, the federal laws and regulations shall be superseded by more stringent restrictions prescribed by State law or regulation of the Department.

3.2 Sea Ducks.

Scoters, eiders and old squaw ducks may be taken during their special season not less than 800 yards seaward from the Delaware Bay shore beginning at an east/west line between Port Mahon and the Elbow Cross Navigation Light south to the Atlantic Ocean or in the Atlantic Ocean.

3.3 Non-toxic Shot.

3.3.1 Required Usage. Non-toxic shot, as defined by federal regulations, shall be required for hunting waterfowl, rails, snipe, and moorhens ~~hunting~~ in Delaware. It shall be unlawful for any person to possess shells loaded with lead shot while ~~waterfowl~~ hunting waterfowl, rails, snipe, and moorhens.

3.3.2 Maximum Shot Size. It shall be unlawful for any person to hunt, except for deer, in Delaware with any size non-toxic shot (as defined by federal regulations) pellet(s) larger than size T (.20 inches in diameter).

3.4 Special Mallard Release Areas.

The Division may issue permits to allow the taking of captive-reared mallards during the established waterfowl season under applicable federal regulations. Permits shall only be issued to persons who: control at least 100 acres of land on which there is suitable waterfowl habitat; agree to follow a management plan and federal regulations; and maintain a log of guests and birds harvested. Failure to follow the management plan or a violation of State or federal laws may result in the revocation of a Special Mallard Release Area Permit. Waterfowl may only be hunted on Special Mallard Release Areas from one-half hour after sunrise to one hour before sunset.

3.5 Mute Swans (*Cygnus olor*)

3.5.1 Mute swans shall be considered an exotic, invasive species that is not subject to state protection. Mute swans may only be taken during legal waterfowl hunting seasons and shooting hours. The method of take for mute swans is restricted to shotguns no larger than 10 gauge and with non-toxic ammunition no larger than size T.

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

3.5.3 It shall be unlawful to release any mute swan into the wild.

3.6 Special Shotgun Season for Young and Disabled Hunters

3.6.1 Waterfowl may be hunted on a special day established annually by the Division for disabled (non-ambulatory) hunters using a wheelchair for mobility and hunters 10 years of age or older but less than 16 years of age (10-15 years inclusive). Hunters 13-15 years of age must have completed an approved course in hunter training and possess a Delaware Resident or Non-Resident Junior Hunting License. Young hunters must be accompanied by a licensed non-hunting adult who is 21 years of age or older. Young hunters must be of sufficient size, physical strength and emotional maturity to safely handle a shotgun.

3 DE Reg. 289 (8/1/99)

6 DE Reg. 536 (10/1/02)

12 DE Reg. 496 (10/01/08)

3904 Seasons

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

4.1 Season Dates.

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

4.2 General.

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

4.3 Protected Wildlife.

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

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

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

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

4.4 Beaver.

4.4.1 Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to hunt or trap beaver during any period of the year, however, from December 1 through March 20, landowners (or their agents) may take up to eight beavers from their property without a permit, provided the beavers are causing crop or property damage.

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

4.5 Bullfrogs.

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

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

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

4.6 Crows.

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

4.7 Gray Squirrel.

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

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

4.8 Opossum.

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

4.9 Pheasant.

4.9.1 Season. Male pheasant may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of pheasant: from the Monday that immediately precedes

Thanksgiving through the first Saturday in February, provided that during a deer firearms season hunter orange is displayed in accordance with §718 of Title 7.

- 4.9.2 Female Pheasant. It shall be unlawful for any person to hunt or possess any female pheasant at any time, except as permitted on game preserves, by licensed game breeders or as otherwise permitted by law.
- 4.9.3 Male Pheasant Limit. It shall be unlawful for any person to hunt or possess more than two (2) male pheasants in any one day during the pheasant season, except as permitted by law.
- 4.9.4 Scientific or Propagating Purposes. It shall be unlawful for any person to possess pheasants for scientific and propagating purposes without a valid permit from the Director.
- 4.9.5 Game Preserves. Nothing in this regulation shall be construed so as to limit the number or sex of pheasants that may be harvested by any one person on licensed game preserves.
- 4.10 Quail.
- 4.10.1 Season. Bobwhite quail may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of bobwhite quail: from the Monday that immediately precedes Thanksgiving through the first Saturday of February, provided that during a deer firearms season hunter orange is displayed in accordance with § 718 of Title 7.
- 4.10.2 Limit. It shall be unlawful for any person to take more than six (6) quail in any one day.
- 4.11 Rabbit.
- 4.11.1 Season. Rabbits may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of rabbits: from the Monday that immediately precedes Thanksgiving through the last day of February or the last Saturday of February if February ends on a Sunday provided that during a deer firearms season hunter orange is displayed in accordance with § 718 of Title 7.
- 4.11.2 Limit. It shall be unlawful for any person to take more than four (4) rabbits in any one day.
- 4.12 Raccoon.
- 4.12.1 Trapping Season. Raccoon may be trapped in accordance with the statutes and regulations of the State of Delaware governing the trapping of raccoon: from December 1 through March 10 (March 20 on embanked meadows) in New Castle County; and from December 15 through March 15 in Kent and Sussex counties. The season is open throughout the year on private land, except on Sundays, in eastern New Castle and Kent counties pursuant to § 786 of Title 7 and Section 4(b) of WR-2.
- 4.12.2 Hunting Season. Raccoon may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of raccoon: from September 1 (September 2, if September 1 is a Sunday) through October 31 for chase only whereby it shall be unlawful to kill raccoon and opossum; from November 1 through the last day of February; and from March 1 through March 31 for chase only whereby it shall be unlawful to kill raccoon and opossum. The season is open throughout the year on private land in eastern New Castle and Kent counties, except on Sundays, pursuant to § 786 of Title 7.
- 4.12.3 Notwithstanding subsection 4.3.2 of this section, it shall be unlawful for any person to hunt raccoon or opossum during any period when it is lawful to hunt deer with a firearm, except that it shall be lawful to hunt raccoon from 7:00 p.m. until midnight during the December and January firearm deer seasons.
- 4.13 Red Fox.
- 4.13.1 Harvest Season. Red fox may be ~~hunted~~ killed in accordance with the statutes and regulations of the State of Delaware governing the hunting of red fox: from ~~October 1 through April 30 for chase only whereby it shall be unlawful to kill red fox, except no red fox hunting shall be lawful during any period when it is lawful to hunt deer with a firearm~~ November 1 through the last day of February, excluding Sundays. Notwithstanding the foregoing, red foxes may be killed in accordance with Section 8 of WR-2 and § 788 of Title 7.
- 4.14 Ruffed Grouse.
- It shall be unlawful for any person to hunt for ruffed grouse during any period of the year.

4.15 Snapping Turtles.

4.15.1 Season. It shall be unlawful for any person to hunt for snapping turtles during any period of the year, except between and including June 15 and May 15.

4.15.2 Size. It shall be unlawful for any person to sell, offer for sale or kill any snapping turtle with a carapace length of less than eight inches, measured on the curvature.

4.16 Terrapin.

4.16.1 Season. It shall be unlawful for any person to hunt for diamondback terrapin during any period of the year, except between and including September 1 and November 15.

4.16.2 Limit. It shall be unlawful for any person to take more than four (4) diamondback terrapin in any one day.

3 DE Reg. 289 (8/1/99)

3 DE Reg. 1738 (6/1/00)

6 DE Reg. 536 (10/1/02)

8 DE Reg. 352 (8/1/04)

11 DE Reg. 334 (09/01/07)

13 DE Reg. 941 (01/01/10)

(Break in Continuity of Sections)

3907 Deer

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

7.1 Limit.

7.1.1 Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to:

7.1.1.1 Kill or take or attempt to kill or take more than four antlerless deer in any license year;

7.1.1.2 Kill or take four antlerless deer in any license year without at least two of the four deer being female deer; or

7.1.1.3 Possess or transport an antlered deer that was unlawfully killed.

7.1.1.4 Possess or transport an antlerless deer that was unlawfully killed.

7.1.1.5 Kill any antlered deer without first purchasing a Delaware Resident Combination Hunter's Choice Deer tag and Quality Buck Deer Tag, a Delaware Non Resident Antlered Deer Tag, or a Non-Resident Quality Buck Deer Tag except that persons exempt from purchasing a hunting license shall be entitled to take one Hunter's Choice deer at no cost.

7.1.1.6 No hunter may harvest more than two antlered deer during a license year between July 1st and June 30th of the next calendar year.

7.1.2 For the purposes of this section, a person "driving deer" and not in possession of any weapon or firearm shall not be treated as if they are hunting deer, provided they are assisting lawful hunters.

7.1.3 It shall be unlawful for any person to purchase, sell, expose for sale, transport or possess with the intent to sell, any deer or any part of such deer at any time, except that hides from deer lawfully killed and checked may be sold ~~when tagged with a non-transferable tag issued by the Division. Said tag must remain attached to the hide until it leaves the State or is commercially processed into leather.~~ This subsection shall not apply to venison approved for sale by the United States Department of Agriculture and imported into Delaware.

7.1.4 Notwithstanding subsection 7.1.1 of this section, a person may purchase Antlerless Deer Tags for \$10 each to kill or take additional antlerless deer during the open season. Hunters may take additional antlerless deer on Antlerless Deer Damage Tags an no cost.

7.1.5 Notwithstanding subsection 7.1.1 of this section, a person may use one Quality Buck tag to take an antlered deer with a minimum outside antler spread of fifteen inches, provided the tag is valid for the season in which it is used. Hunters exempt from the requirement to purchase a hunting

license must purchase a Quality Buck tag in order to take a second antlered deer in any one license year.

7.2 Tagging and Designated Checking Stations.

7.2.1 Attaching Tags. Each licensed person who hunts and kills a deer shall, immediately after the killing and before removing the deer from the location of the killing, attach an approved tag to the deer and record in ink the date of harvest on the tag. An approved tag shall mean an Antlerless Deer Tag or Doe Tag received with the hunting license, a Delaware Resident Quality Buck Deer Tag, a Delaware Resident Hunter's Choice Deer Tag, a Delaware Non Resident Quality Buck Deer Tag, a Delaware Non Resident Antlered Deer Tag, an Antlerless Deer Damage Tag, or an Antlerless Tag purchased in addition to the hunting license tags. Any unlicensed person not required to secure a license shall make and attach a tag to the deer that contains the person's name, address and reason for not having a valid Delaware hunting license.

7.2.2 Retention of Tag. The tag required by subsection 7.1.1 of this section shall remain attached to the deer until the deer is ~~presented to an official checking station for examination and tagging or registered by phone or over the internet, as prescribed by subsection 7.1.3 of this section processed for consumption.~~

7.2.3 ~~Checking Stations Registering Deer.~~ Each person who hunts and kills a deer shall, within 24 hours of killing said deer, ~~present the deer to a checking station designated by the Division or to an authorized employee of the Division. Hunters may also check~~ register their deer by phone or over the internet through systems authorized by the Division. After registering a deer, hunters will be given a deer registration number. This number must be recorded in ink on the approved tags listed in subsection 7.2.1 of this section. It shall be unlawful to knowingly enter incorrect information when registering a deer.

7.2.4 Dressing. It shall be unlawful for any person to remove from any deer any part thereof, except those internal organs known as the viscera, or cut the meat thereof into parts, until such deer has been ~~examined by an authorized employee of the Division or a checking station, as prescribed by subsection 7.1.3 of this section or registered using the phone or internet system~~ authorized by the Division.

7.2.5 ~~Receipt Tag.~~ ~~The Division shall issue, at a checking station or otherwise, an official receipt tag proving the deer was examined by an authorized employee of the Division or a checking station, as prescribed by subsection 7.1.3 of this section. The receipt tag shall remain with the deer until such time as the deer is processed for consumption or prepared for mounting. Deer checked over the phone or internet will be given a registration number. These deer shall be tagged by the hunter, butcher or taxidermist with the registration number, hunter's first and last name, hunter's date of birth, and date of kill. This tag may be homemade or be one provided by the Division and~~ Deer Registratin Number. The Deer Registration number provided by the automated phone/internet system must remain with the head and/or carcass until the mount is picked up from the taxidermist or the meat is processed and stored as food.

7.3 Method of Take.

7.3.1 Shotgun. It shall be unlawful for any person to hunt deer during the shotgun season using a shotgun of a caliber smaller than 20 gauge, or have in his or her possession any shell loaded with shot smaller than what is commonly known as "buckshot."

7.3.2 ~~Bow and Arrow~~ Archery and Crossbow Seasons. It shall be unlawful for any person to hunt deer during the ~~longbow~~ archery season or crossbow season and have in his or her possession any weapon or firearm other than a knife, a longbow or crossbow and sharpened broadhead arrows having minimum arrowhead width of 7/8 of an inch.

7.3.3 Muzzle-loading Pistols. A single shot muzzle-loading pistol of .42 caliber or larger using a minimum powder charge of 40 grains may be used to provide the coupe-de-grace on deer during the primitive firearm season.

7.3.4 Refuge in Water. It shall be unlawful for any person to shoot, kill or wound or attempt to shoot, kill or wound any deer that is taking refuge in or swimming through the waters of any stream, pond, lake or tidal waters.

- 7.3.5 Dogs. It shall be unlawful for any person to make use of a dog for hunting during the shotgun or muzzleloader seasons for deer (in each county), except as permitted in the hunting of migratory waterfowl from an established blind or for hunting dove, quail, raccoon or rabbit on properties closed to deer hunting with firearms during December and January.
- 7.4 Illegal Hunting Methods; Baiting.
It shall be unlawful for any person to set, lay or use any trap, snare, net, or pitfall or make use of any artificial light, or other contrivance or device, for the purpose of hunting deer. This subsection does not preclude the use of bait for the purpose of attracting deer in order to hunt them on private land.
- 7.5 Seasons.
- 7.5.1 Shotgun Seasons. Deer may be hunted with shotgun in accordance with the statutes and regulations of the State of Delaware governing the hunting of deer: from the Friday in November that precedes Thanksgiving by thirteen (13) days through the second Saturday succeeding said Friday; and from the Saturday that precedes the third Monday in January through the following Saturday in January.
- 7.5.2 Archery Seasons. Deer may be hunted with longbow in accordance with statutes and regulations of the State of Delaware governing the hunting of deer: from September 1 (September 2, if September 1 is a Sunday) through the last day of January, provided hunter orange is displayed in accordance with § 718 of Title 7 when it also lawful to hunt deer with a ~~firearm~~ gun.
- 7.5.3 Muzzleloader Seasons. Deer may be hunted with muzzle-loading rifles in accordance with the statutes and regulations of the State of Delaware governing the hunting of deer: from the Friday that precedes the second Monday in October through the second Saturday that succeeds the Friday opening day; and from the Monday that follows the close of the January shotgun season through the next Saturday.
- 7.5.4 Special Antlerless Season. Antlerless deer may be hunted with a shotgun in accordance with the statutes and regulations of the State of Delaware governing the hunting of deer during all Fridays, Saturdays and Mondays in October except for during the October Muzzleloader season and the last Monday prior to the opening Friday of the October Muzzleloader season. Notwithstanding the foregoing, antlered deer may be taken with archery equipment that is legal during this October shotgun season. Antlerless deer may be hunted with shotgun in accordance with the statutes and regulations of the State of Delaware governing the hunting of deer: from the second Saturday in December through the third Saturday in December.
- 7.5.5 Crossbow Seasons. ~~Crossbows may be used in lieu of shotguns during that part of the November shotgun season that runs from Monday through Saturday of each year and in any shotgun or muzzleloader deer season open in December or January. Deer may be hunted with crossbows in accordance with statutes and regulations of the State of Delaware governing the hunting of deer: from September 1 (September 2, if September 1 is a Sunday) through the last day of January, provided hunter orange is displayed in accordance with 718 of Title 7 when it also lawful to hunt deer with a gun.~~
- 7.5.6 Special Shotgun Season for Young and Disabled Hunters. Deer may be hunted on the first Saturday of November by disabled (non-ambulatory) hunters using a wheelchair for mobility, and hunters 10 years of age or older but less than 16 years of age (~~42~~ 10 to 15 inclusive). Hunters 13-15 years of age must have completed an approved course in hunter training and possess a Delaware Resident or Non-Resident Junior Hunting License. Young hunters must be accompanied by a licensed non-hunting adult who is 21 years of age or older. Young hunters must be of sufficient size, physical strength and emotional maturity to safely handle a shotgun.
- 7.6 Carcass Importation Ban.
- 7.6.1 Importation. It shall be unlawful to import or possess any carcass or part of a carcass of any member of the family Cervidae (deer) originating from a state or Canadian province in which Chronic Wasting Disease has been found in free-ranging or captive deer. Notwithstanding the foregoing, the following parts may be imported into the state:
- 7.6.1.1 Boned-out meat that is cut and wrapped;
- 7.6.1.2 Quarters or other portions of meat with no part of the spinal column or skull attached;

- 7.6.1.3 Hides or capes with no skull attached;
- 7.6.1.4 Clean (no meat or tissue attached) skull plates with antlers attached;
- 7.6.1.5 Antlers (with no meat or tissue attached);
- 7.6.1.6 Upper canine teeth (buglers, whistlers, or ivories); and
- 7.6.1.7 Finished taxidermy products.

7.6.2 Carcass Notification. Any person who imports into Delaware any deer carcass or parts described in subsection 7.6.1 of this section and is notified that the animal has tested positive for Chronic Wasting Disease must report the test results to the department within 72 hours of receiving the notification. In order to facilitate the proper disposal of any infected material, the department may take into possession any imported carcass or carcass part of an animal if the animal has tested positive for Chronic Wasting Disease.

3 DE Reg. 289 (8/1/99)

6 DE Reg. 536 (10/1/02)

8 DE Reg. 352 (8/1/04)

11 DE Reg. 334 (09/01/07)

12 DE Reg. 496 (10/01/08)

(Break in Continuity of Sections)

3921 Guide License

Penalty Section 7 **Del.C.** §103(d))

21.1 Persons required to obtain a Delaware Guide License

21.1.1 All individuals receiving monetary or in-kind compensation for providing personal guide services to hunters are required to have a Delaware Guide License.

21.2 Age Requirement

21.2.1 Persons acquiring a guide license, must be 18 years of age or older

21.3 Fish and Wildlife Violations

21.3.1 Persons acquiring a guide license must not have been convicted for violations of any wildlife or fisheries statutes or regulations within the last three years prior to applying for a Delaware Guide License.

21.4 Reporting

21.4.1 All persons possessing a Delaware Guide License are required to complete and submit an annual report to the Division within seven days after the close of the season to include the following information which must be readily available for inspection by enforcement officers: full name of each hunter, address of each hunter in the party, hunting license number for each hunter, date, number and species of each animal harvested, location of hunts and the name and license number of the guide.

21.5 Record Retention

21.5.1 The guide shall retain all hunting field records for a period of three years.

21.6 General Hunting License

21.6.1 A resident or non resident hunting license is not required for persons holding a valid Delaware Guide License.

21.6.2 A nonresident shall be exempt from the guide licensing requirement of this section only while guiding hunters for snow geese (light geese), provided:

21.6.2.1 The nonresident is properly licensed to guide in another state or Canadian province which extends the same exemption to Delaware residents;

21.6.2.2 The nonresident guide purchases a Delaware migratory waterfowl stamp and obtains a Delaware H.I.P. permit.

12 DE Reg. 496 (10/01/08)

PROPOSED REGULATIONS

3922 Hunter and Trapper Identification Number

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

Hunters and trappers who are exempt from purchasing a license to hunt or trap in Delaware are required to obtain an annual Hunting and Trapping Identification Number from the Division, at no cost. This number must be present on the hunter or trappers person while engaged in hunting and trapping activities.

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

100 Board of Accountancy

Statutory Authority: 24 Delaware Code, Section 105(a)(1) (24 **Del.C.** §105(a)(1))
24 **DE Admin. Code** 100

PUBLIC NOTICE

Pursuant to 24 **Del.C.** §105(a)(1), the Board of Accountancy has proposed revisions to its rules and regulations.

A public hearing will be held on April 21, 2010 at 9:15 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. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Accountancy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board has proposed numerous revisions to the rules and regulations. A number of revisions implement amendments to the Board's licensing law, Chapter 1 of Title 24 of the Delaware Code, including the addition of the practice privilege set forth at 24 **Del.C.** §108. In addition, the amendments set forth the licensure requirements that will go into effect on August 1, 2012.

Further, specific course requirements for licensure are revised. There are various amendments to the Rules pertaining to continuing professional education. Specifically, the proposed amendments will expressly give the Board authority to sanction licensees who do not comply with continuing professional education requirements.

The Board also proposes various grammatical and typographical revisions.

The Board will consider promulgating the proposed rules and regulations at its regularly scheduled meeting following the public hearing.

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

100 Board of Accountancy

DIVISION OF PROFESSIONAL REGULATION

2500 Board of Pharmacy

Statutory Authority: 24 Delaware Code, Section 2509 (24 **Del.C.** §2509)
24 **DE Admin. Code** 2500

PUBLIC NOTICE

The Delaware Board of Pharmacy ("the Board"), in accordance with 24 *Del.C.* §2509, is proposing to amend regulations **1.0 Pharmacist Licensure Requirements, Regulation 5.0 Dispensing, Regulation 9.0 Hospital Pharmacy, Regulation 10.0 Sterile Pharmaceuticals and Antineoplastic Agents, and 19.0 Technicians:**

Qualifications, Training, and Duties. A public hearing is scheduled for Wednesday, April 21, 2010, at 10:00 a.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, DE 19904.

Members of the public may offer verbal comments on the proposal at the hearing. Written comments may be submitted to the Board prior to the hearing care of Nancy Fields, Administrative Specialist II, at the above address. Written comments may be submitted until the public hearing begins. Anyone wishing to obtain a copy of the proposal or to make comments at the public hearing should contact Nancy Fields at the above address or call (302) 677-7318.

The Board will consider promulgating the proposed changes immediately following the public hearing.

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

[2500 Board of Pharmacy](#)

DEPARTMENT OF TRANSPORTATION DIVISION OF TRANSPORTATION SOLUTIONS

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

PUBLIC NOTICE

2402 Delaware Manual on Uniform Traffic Control Devices, Parts 2, 3, and 6

Under Title 17 of the **Delaware Code**, Sections 134 and 141, as well as 21 **Delaware Code** Chapter 41, the Delaware Department of Transportation (DelDOT), adopted a Delaware version of the Federal Manual on Uniform Traffic Control Devices (MUTCD). The Department has now drafted revisions to Parts 2, 3, and 6 of the Delaware MUTCD. A description of the proposed changes accompanies this notice.

The Department will take written comments on the draft changes to the Delaware MUTCD from March 1, 2009 through March 31, 2009. Copies of the Draft Delaware MUTCD Revisions to Parts 2, 3, and 6 can be obtained by reviewing or downloading a PDF copy at the following web address: <http://regulations.delaware.gov/>

Questions or comments regarding these proposed changes should be directed to: Donald Weber, P.E. Assistant Director of Transportation Engineering Division of Transportation Solutions Delaware Department of Transportation 169 Brick Store Landing Road Smyrna, DE 19977 (302) 659-2002 (telephone) (302) 653-2859 (fax) don.weber@state.de.us

A summary of the proposed changes is described below:

DelDOT MUTCD Parts 2, 3, and 6	
Proposed Revisions	
February 2, 2010	
Proposed Revision	Chapter Number/ Section Number/ Figure Number
Part 2	
Insert Chapter 2G - Tourist-Oriented Directional Signs and referenced Delaware's "Standards for Agricultural Tourism Attraction Guide Signs."	Chapter 2G

Revise Chapter 2H to reference Delaware's Standards for Brown Guide Signs for Attractions and guidance regarding other recreational and cultural interest areas including gaming facilities.	Chapter 2H
Part 3	
Delete Figures 3A-1A and 3A-1B and all references to the DelDOT-specific guidance for black contrast pavement markings.	Section 3A.05 and Figures 3A-1A and 3A-1B
Revise the length of no passing zones on the approaches to and departures from intersections.	Section 3B.02 and Figure 3B-1
Revise the last standard in this section to indicated that a single yellow line shall be installed adjacent to medians with colored or patterned pavement.	Section 3B.03
Delete references to DelDOT's Recessed Pavement Marker Guidelines.	Section 3B.11
Revise this statement from an "Option" to a "Standard": When patterned pavement or other similar treatments are used to depict crosswalks, 300 mm (12 in) solid white lines shall be used to define the crosswalk.	Section 3B.17
Part 6	
Revise the NCHRP Report 350 Compliance Requirements to include AASHTO's Manual for Assessing Safety Hardware (MASH) requirements.	Section 6A.01
Revise the standard to state that either Type B lights or reflectorized panels meeting the sheeting requirements shall be required when the lead end of barrier is protected by an attenuating device.	Section 6F.81
Revise Case 15 to reflect DelDOT's current "best practices" for detour plans.	Case 15
Add note to Case 20-B: "Use of Truck-Mounted Attenuators (TMAs) shall be required if the posted speed is greater than or equal to 45 MPH. Use of TMAs is optional if the posted speed is less than 45 MPH, unless otherwise directed by the Chief Traffic Engineer or designee." Revise the legend in the figure for Case 20-B to require the use of TMAs for posted speeds greater than or equal to 45 MPH. Remove the reference to multi-lane highways in the title of the notes and figure for Case 20-B.	Case 20-B

***Please Note: Due to the size of the proposed regulation, the DelDOT Manual on Uniform Traffic Control Devices, Parts 2, 3, and 6 is not being published here. A PDF version is available at the following location:**

[2402 Delaware Manual on Uniform Traffic Control Devices, Parts 2, 3, and 6](#)

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 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** 612

REGULATORY IMPLEMENTING ORDER**612 Possession, Use or Distribution of Drugs and Alcohol****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** 612 Possession, Use or Distribution of Drugs and Alcohol to clarify parents or legal custodians shall not be required to provide or sign a form of release where the student's use and possession of an asthmatic quick relief inhaler or autoinjectable epinephrine is determined by the student's IEP or Section 504 Team to be necessary for the student's educational placement. In addition, except as provided for in a student's Section 504 Plan or IEP, the school nurse may not unilaterally impose limitations or restrictions on a student's use and possession of an asthmatic quick relief inhaler or autoinjectable epinephrine if a Section 504 or IEP Team has determined the use of the medication is necessary for the student's educational placement.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Tuesday, January 5, 2010, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens recommending a change to §§ 3.11.1 and 3.11.2 that would change the language from "student's educational placement" to "student". Upon review of the correspondence to the Office of Civil Rights, the language proposed in the January *Register of Regulations* is the language agreed upon with the Office of Civil Rights.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 612 Possession, Use or Distribution of Drugs and Alcohol in order to clarify parents or legal custodians shall not be required to provide or sign a form of release where the student's use and possession of an asthmatic quick relief inhaler or autoinjectable epinephrine is determined by the student's IEP or Section 504 Team to be necessary for the student's educational placement. In addition, except as provided for in a student's Section 504 Plan or IEP, the school nurse may not unilaterally impose limitations or restrictions on a student's use and possession of an asthmatic quick relief inhaler or autoinjectable epinephrine if a Section 504 or IEP Team has determined the use of the medication is necessary for the student's educational placement.

III. Decision To Amend The Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 612 Possession, Use or Distribution of Drugs and Alcohol. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 612 Possession, Use or Distribution of Drugs and Alcohol attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 612 Possession, Use or Distribution of Drugs and Alcohol 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** 612 Possession, Use or Distribution of Drugs and Alcohol amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 612 Possession, Use or Distribution of Drugs and Alcohol 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 February 18, 2010. 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 18th day of February 2010.

DEPARTMENT OF EDUCATION

Lillian M. Lowery, Ed.D., Secretary of Education

Approved this 18th day of February 2010

STATE BOARD OF EDUCATION

Teri Quinn Gray, President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Dennis J. Savage

Dr. Terry M. Whittaker

Dr. James L. Wilson

***Please note that no changes were made to the regulation as originally proposed and published in the January 2010 issue of the *Register* at page 882 (13 DE Reg. 882). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[612 Possession, Use or Distribution of Drugs and Alcohol](#)

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 by adding a new regulation 736 Local School District and Charter School Citizen Budget Oversight Committees pursuant to the requirements of House Substitute No. 1 to House Bill No. 119 of the 145th General Assembly. The regulation was first published in the November 2009 *Register of Regulations* and is now being re-published. The Department received several comments from several constituencies including citizens, lawmakers and the Governors Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. This republication reflects most of the concerns raised. The most common comments related to the selection committee and the ability to reject a locally developed policy. The Department did not incorporate any changes in relation to comments related to compensation for the committee members or indemnification since this is an advisory board.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Tuesday, January 5, 2010, in the form hereto attached as Exhibit "A". Comments were received from Governor's Advisory Council for Exceptional Citizens, the State Council for Persons with Disabilities, and two citizens. The Councils commented that the stated two hours of training is considered insufficient and that the oversight committee be provided insurance coverage or right to indemnification. The Department has provided for additional training as outlined in 6.1. In addition, this section can be revisited and amended based on any feedback from the districts and charter schools and their committee members on this training component. The citizen comments included a suggestion to add language to §3.1, which the Department has incorporated, and a suggestion that the committee reports be posted on the district or charter school website. At this time, the Department will not require website posting of committee reports.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 DE Admin. Code by adding a new regulation 736 Local School District and Charter School Citizen Budget Oversight Committees pursuant to the requirements of House Substitute No. 1 to House Bill No. 119 of the 145th General Assembly.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 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 February 18, 2010. 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 18th day of February 2010.

DEPARTMENT OF EDUCATION

Lillian M. Lowery, Ed.D., Secretary of Education

Approved this 18th day of February 2010

736 Local School District and Charter School Citizen Budget Oversight Committees**1.0 Purpose**

- 1.1 The purpose of this regulation is to outline procedures, criteria and responsibilities related to the local school district and charter school Citizen Budget Oversight Committees required pursuant to 14 Del.C. §1508. The Citizen Budget Oversight Committee is solely established to oversee the financial position of the local school district or charter school it is assigned to oversee. The local school board or 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.

"Charter School" shall mean a school pursuant to 14 Del.C., Ch. 5.

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

"Trainer" means an individual approved by the Secretary of Education to provide the Citizen Budget Oversight Committee training.

3.0 Committee Members for Local School Districts

- 3.1 Each Local School District shall be required to establish a 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 Local School District 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 [as permitted by the state's Freedom of Information Act].
- 3.2 The Committee shall have at least five (5) members with representation from parents, educators and taxpayers residing in the district. 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.
- 3.3 Each Local School district may establish its own policy for its Citizen Oversight Budget Committee. 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 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 3.4
- 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 The Department's Citizen Budget Oversight Committee membership provisions shall be as follows:
- 3.4.1 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:
- 3.4.1.1 Membership pursuant to 3.2;
- 3.4.1.2 Conflict of interest, and disqualification from membership upon identification thereof, criteria;
- 3.4.1.3 Selection, or removal, of the Chairperson to be determined by a majority of the membership of the committee;
- 3.4.1.4 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
- 3.4.1.5 Experience and statement for reason for participation on the Committee.
- 3.4.2 Post the request for Committee members for at least fifteen (15) work days on its website and all school building main entrance doors;
- 3.4.3 Identify and post on its website the Selection Committee that consists of one educator from the district, one local school board member, one member of the local teacher's union, and at least two parents or community members who are not district employees or local school board members; and
- 3.4.4 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.

(Break in Continuity of Sections)

***Please note that no additional changes were made to the regulation as originally proposed and published in the January 2010 issue of the *Register* at page 886 (13 DE Reg. 886). A copy of the final regulation is available at:**

[736 Local School District and Charter School Citizen Budget Oversight Committees](#)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 805

REGULATORY IMPLEMENTING ORDER

805 The School Health Tuberculosis (TB) Control Program

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 DE Admin. Code 805 School Health Tuberculosis (TB)

Control Program to update the types of testing for tuberculosis and to provide guidance for asymptomatic individuals. The Department engaged the Division of Public Health on review of the regulation and the proposed amendments.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Friday, Tuesday, January 5, 2010, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. The Department has incorporated most of the recommendations including a clarification to 2.1.2, and grammar changes. The Department has not incorporated a cross reference to Department of Public Health (DPH) guidelines as these are subject to change. The Department, through health services, keeps the school nurses and appropriate personnel update to date with the current DPH guidelines and criteria.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 805 School Health Tuberculosis (TB) Control Program in order to update the types of testing for tuberculosis and to provide guidance for asymptomatic individuals.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 805 School Health Tuberculosis (TB) Control Program. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 805 School Health Tuberculosis (TB) Control Program attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 805 School Health Tuberculosis (TB) Control Program 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** 805 School Health Tuberculosis (TB) Control Program amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 805 School Health Tuberculosis (TB) Control 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 on February 18, 2010. 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 18th day of February 2010.

DEPARTMENT OF EDUCATION

Lillian M. Lowery, Ed.D., Secretary of Education

Approved this 18th day of February 2010

805 The School Health Tuberculosis (TB) Control Program

1.0 Definitions

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

or facility identified by the Delaware Division of Public Health as an area at risk for ~~TB~~ tuberculosis exposure.

"School Staff and Extended Services Personnel" means all persons hired as full or part time employees in a public school ~~who are receiving compensation to work directly with students and staff.~~ This includes, but is not limited to teachers, administrators, substitutes, contract employees, bus drivers and student teachers whether compensated or not.

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

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

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

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

2.0 School Staff and Extended Services Personnel

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

3.0 Volunteers

- 3.1 Volunteers shall complete the *Delaware Department of Education's TB Health Questionnaire for Volunteers in Public Schools* prior to their assignment and every fifth year thereafter.

3.1.1 If the volunteer answers affirmatively to any of the questions, he/she shall provide, within two (2) weeks, verification from a licensed health care provider or the Division of Public Health that the individual does not pose a threat of transmitting tuberculosis to the students or staff.

3.2 Each public school nurse shall collect and monitor all documentation related to the volunteer's School Health Tuberculosis (TB) Control Program and store them in the school nurse's office in a confidential manner.

4.0 New School Enterers

4.1 New school enterers shall ~~show~~ proof of tuberculin provide tuberculosis screening results as described in 4.1.1 and 4.1.2 including from either results from the Mantoux Tuberculin test or the results of a tuberculosis risk assessment a Tuberculosis Test or the results of a Tuberculosis Risk Assessment administered within the past 12 months prior to school entry. Multipuncture skin tests will not be accepted.

4.1.1 If the new school enterer is in compliance with the other school entry health requirements, a school nurse who is trained in the use of the *Delaware Department of Education TB Risk Assessment Questionnaire for Students* may administer the questionnaire to the student's parent(s), guardian(s) or Relative Caregiver or to a new school enterer who has reached the statutory age of majority (18).

4.1.1.1 If a student's parent(s), guardian(s) or Relative Caregiver or a student 18 years or older answers affirmatively to any of the questions, he/she shall, within two (2) weeks, provide proof of ~~Mantoux tuberculin skin test~~ tuberculosis testing results or provide verification from a licensed health care provider or the Division of Public Health that the student does not pose a threat of transmitting tuberculosis to staff or other students.

4.2 School nurses shall record and maintain documentation relative to the School Health Tuberculosis (TB) Control Program.

5.0 Tuberculosis Status Verification and Follow up

5.1 Tuberculosis Status shall be determined through the use of a ~~tuberculosis risk assessment, tuberculin skin test and other testing, which may include x-ray~~ Tuberculosis Risk Assessment, Tuberculosis Test or other testing, which may include x-ray or sputum culture. Individuals who either refuse the ~~tuberculin skin test~~ Tuberculosis Test or have positive reactions to the same, or give positive responses to a tuberculosis risk assessment shall provide verification from a licensed health care provider or the Division of Public Health that the individual does not pose a threat of transmitting tuberculosis to staff or other students.

5.1.1 Verification shall include Mantoux results recorded in millimeters (if test ~~were~~ was administered), or other Tuberculosis Test results, current disease status (i.e. contagious or noncontagious), current treatment (or completion of preventative treatment for ~~TB~~ tuberculosis) and date when the individual may return to his/her school assignment without posing a risk to the school setting.

5.1.2 Verification from a health care provider or Division of Public Health shall be required only once if treatment was completed successfully.

5.1.3 Updated information regarding disease status and treatment shall be provided to the public school by October 15 every fifth year if treatment was previously contraindicated, incomplete or unknown.

5.1.4 Persons with a positive Tuberculosis Test, without active disease, who do not receive prophylactic treatment shall be excluded from school in the event of showing any signs or symptoms of active, infectious disease as described by the Division of Public Health.

5.2 In the event an individual shows any signs or symptoms of active ~~TB~~ tuberculosis infection, he/she ~~must~~ shall be excluded from school until all required medical verification is received by the school. During the specified verification and follow-up an [asymptomatic asymptomatic] individual, as described by the Division of Public Health, may remain in school until testing and evaluations are completed, but no longer than six (6) weeks.

1 DE Reg. 1971 (6/1/98)

3 DE Reg. 440 (9/1/99)
8 DE Reg. 1134 (2/1/05)

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

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

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

ORDER

DSSM: 3033 Interim Assistance Reimbursement

Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding Delaware's Cash Assistance Program. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the January 2010 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2010 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposed Change

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding Delaware's Cash Assistance Program. The proposed change adds new policy language to the *Technical Eligibility for Cash Assistance* section. Specifically, the proposed rule requires clients to participate in the Interim Assistance Reimbursement process that allows Delaware to be reimbursed for cash assistance benefits paid to cash assistance recipients while their approval for SSI benefits was pending.

Statutory Authority

- Social Security Act, Section 1631(g), *Reimbursement to States for Interim Assistance Payments*
- 20 CFR §§416.1901 – 416.1922, *Interim Assistance Provisions*
- P. L. 94-365, *The authority to repay the State for interim assistance is made permanent*
- P.L. 100-203, *Extends interim assistance reimbursement to situations in which payments are made by States or political subdivisions to persons whose SSI payments were suspended or terminated and who subsequently are found to be eligible for such benefits. Also clarifies that the payment from which the interim assistance reimbursement is paid must be the first payment of benefits relating to the interim period.*

Background

Section 1631(g) of the Social Security Act provides that a state may enter into an agreement with the Social Security Administration (SSA) to have the SSA transmit an individual's Interim Assistance Reimbursement (IAR) payment directly to the state as reimbursement for interim assistance to a Supplemental Security Income (SSI) applicant while a decision upon his/her SSI application is pending. Delaware has an Interim Assistance Reimbursement agreement with the Social Security Administration.

Summary of Proposed New Rule

DSSM 3033.1, *Interim Assistance Reimbursement – Requirements for Receipt of Cash Assistance by SSI*

Applicants: **Interim Assistance Reimbursement (IAR)** is the process used by the Social Security Administration to reimburse a State for the basic assistance provided by a State to an individual while either the individual's application for SSI was pending or during the period in which an individual's SSI benefits were suspended. A portion of the individual's SSI payments are sent to the State as reimbursement if: (1) the State has an agreement with SSA to participate in IAR, (2) the individual has given SSA written authorization to have his/her SSI payment sent to the State as reimbursement, and (3) the individual is found eligible for SSI benefits or has had his/her benefits reinstated for the same period of suspense. Effective January 1, 2010, the proposed rule requires non-federally funded cash recipients to assign SSI benefits to the State for the purpose of reimbursing the State for assistance paid to the client while SSI eligibility determination was pending.

Summary of Comments Received With Agency Response

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of Social Services (DSS) has considered each comment and responds as follows.

These standards will implement the Federal law authorization for states to be reimbursed for "assistance financed from State ...funds and furnished for meeting basic needs" from a subsequent SSI award to a beneficiary. The GACEC would like to share the following observations.

First, the DSS regulation only applies to "non-federally funded cash assistance recipients". [§3033.1.1.] This would seemingly include General Assistance since it is State-funded. See 16 DE Admin Code Part 3000, §3018. It may also include some Emergency Assistance. See 16 DE Admin Code Part 6000, §6001. TANF is federally funded and seemingly not covered. For clarity, it would be helpful if DSS identified in the regulation or regulatory note which programs are included.

Agency Response: As you noted, the regulation only applies to non-federally funded cash assistance recipients. Currently the State's agreement with the Social Security Administration (SSA) allows Delaware to receive reimbursement only for assistance paid to General Assistance recipients who have been determined eligible for SSI. Delaware also uses State funds to pay for the cash assistance received by disabled TANF families who are not subject to the federal time limit for TANF assistance. The regulation was written with the flexibility to allow the State to seek an agreement with SSA to allow reimbursement for assistance paid for that and other populations that may be identified.

No change to the regulation was made as a result of this comment.

Second, it is common for employers and employer insurers to require employees placed on disability or a disability pension to sign an agreement to reimburse the employer/insurer from future SSDI and SSI funds. Such an individual who also receives State cash assistance could be beset by competing employer/insurer and DSS claims. If DSS has a legal basis for claiming priority to SSI benefits, it may wish to address this in the regulation or consider introducing legislation in this context. In a "worst case" scenario, the State would intercept benefits and an employer would demand reimbursement from the individual for the intercepted benefits based on a contract claim. Alternatively, the employer/insurer could suspend disability payments until the "shortfall" is repaid.

Agency Response: Thank you for identifying the potential issue of competing claims against an SSI recipient's assistance. We will initiate discussions with SSA to determine if a payment priority order is established and if there is a means to identify competing or additional claims against an SSI recipient's assistance.

No change to the regulation was made as a result of this comment.

Third, the federal law only allows DSS to retain authorized amounts defined in §1631(g)(3) and to pay the individual the balance. This concept is absent from the regulation. It would be preferable to include a reference to the reimbursable amount the State is entitled to retain and an affirmative recital that any balance will be paid to the individual within ten working days.

Agency Response: As you noted previously federal law allowed DSS to only retain authorized amounts defined in §1631(g)(3) and to pay the individual the balance. The SSA is instituting a new process named e-IAR, designed to automate the current IAR paper check process by utilizing an SSA secure website. More information about this new process can be found at the following website.

<http://www.ssa.gov/gso/gsowelcome.htm>.

In the past States would receive the entire initial SSI assistance payment and would forward to the client any funds remaining after reducing the payment by the amount of State assistance the client received while their SSI application was pending. This new process results in SSA only sending the State the amount that represents the assistance received while the SSI application was in review. The remainder of the SSI assistance is paid directly to the client by SSA.

No change to the regulation was made as a result of this comment.

Findings of Fact:

The Department finds that the proposed changes as set forth in the January 2010 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding *Interim Assistance Reimbursement – Requirements for Receipt of Cash Assistance by SSI Applicants* is adopted and shall be final effective March 10, 2010.

Rita M. Landgraf, Secretary, DHSS, 2/8/10

***Please note that no changes were made to the regulation as originally proposed and published in the January 2010 issue of the *Register* at page 894 (13 DE Reg. 894). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[DSSM: 3033 Interim Assistance Reimbursement](#)

DIVISION OF SOCIAL SERVICES

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

ORDER

DSSM: Child Care Subsidy Program 11006.5.1 Terminating Providers

Nature of the Proceedings:

Delaware Health and Social Services (“Department”) / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program. The Department’s proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the January 2010 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2010 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposed Change

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program.

Statutory Authority

- 45 CFR §98.40, *Compliance with applicable State and local regulatory requirements*; and,
- 11 **Del.C.** Ch. 85, *State Bureau of Identification*

Summary of Proposed Change

DSSM 11006.5.1, *Terminating Providers*: this new rule, effective April 1, 2010, outlines the reasons the Division of Social Services may terminate the contract of any child care provider, including self-arranged clients.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations summarized below. The Division of Social Services (DSS) has considered each comment and responds as follows.

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) reviewed the Division of Social Services (DSS) proposal to adopt a new regulation establishing standards for termination of providers from continued participation in the Child Care Subsidy Program. We endorse the proposed regulation since the reasons for termination appear to be fairly straightforward and reasonable.

Agency Response: DSS thanks both Councils for their endorsement.

Findings of Fact:

The Department finds that the proposed changes as set forth in the January 2010 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding *Terminating Providers in the Child Care Subsidy Program* is adopted and shall be final effective March 10, 2010.

Rita M. Landgraf, Secretary, DHSS, 2/8/10

DSS FINAL ORDER REGULATION #10-09**NEW:****45 CFR 98.40, 11 Del.C. Ch. 85****11006.5.1 Terminating Providers**

This policy applies to all providers, including self-arranged clients.

DSS May Terminate Providers with Just Cause

1. The Division of Social Services may terminate any provider or self-arranged client from the Child Care Subsidy Program (Purchase of Care) if she or he:
 - A. Has a suspended, closed or terminated Office of Child Care Licensing (OCCL) license.
 - B. Is convicted of committing fraud against DHSS.
 - C. Charges fees not allowed by the Child Care Contract, Division policy, or a Division approved waiver; has failed to reimburse those fees and has repeated offenses in this area.
 - D. Charges Purchase of Care Plus fees when she or he is not a DSS authorized POC Plus provider.
 - E. Does not keep accurate records per the DSS Child Care Contact; has had repeated offenses, has been counseled and has failed to meet the requirements of a corrective action plan agreed upon with the Child Care Monitor.
 - F. Does not keep an open bank account to receive direct deposit payments from the Child Care Subsidy Program. Direct deposit is mandatory for all DSS child care subsidy providers effective May 1, 2008.
2. In addition to the items mentioned above, the Division of Social Services may terminate any relative care provider from the Child Care Subsidy Program (Purchase of Care) if she or he:
 - A. Does not complete the 45 hours of mandatory health and safety training hours within 18 months of becoming a relative or non-relative care provider as outlined in the initial orientation session.
 - B. Has an unsuitable criminal history or a member of the provider's household has an unsuitable criminal history. DSS uses Office of Child Care Licensing (OCCL) guidelines and Title 11, Chapter 85 of the Delaware Code to determine unsuitable criminal history.

DEPARTMENT OF JUSTICE DELAWARE VIOLENT CRIMES COMPENSATION BOARD

Statutory Authority: 11 Delaware Code, Section 9004 (11 Del.C. §9004)

ORDER

Summary of the Evidence and Information Submitted

Legislation passed by the 145th General Assembly and signed by the Governor on August 7, 2009, rewrote Chapter 90 of Title 11 of the Delaware Code. Based on this legislation, House Bill 253 as amended by House amendments 2 and 3, numerous changes were required to be made to the regulations governing the Violent Crimes Compensation Board, most notably renaming of the Board to the Victim's Compensation Assistance Program Advisory Council. These changes are exempt from the formal procedural requirements of the Administrative Procedures Act pursuant to 29 Del.C. 10113(b)(5.)

Findings of Fact

For the foregoing reasons the Council finds that it is appropriate to publish as final the amendments required by this legislation.

Text and Citation

The text of the amendments shall be in the form at attached hereto.

AND NOW, in accordance with the unanimous vote of the Victim's Compensation Assistance Program Advisory Council ("the Council") on November 17, 2009 and 29 Del.C. section 10113(b), it is hereby ordered that:

1. the Council adopts final regulations in the form attached hereto as Exhibit A;
2. the effective date of this Order is 10 days following the date of its publication in the *Delaware Register of Regulations*; and
3. the Council reserves unto itself the authority to issue such other and further regulations as may be required to carry out the mandate of 11 Del.C. ch. 90.

IT IS SO ORDERED, this 2nd day of February, 2010.

~~301 Violent Crimes Compensation Board~~ Victims' Compensation Assistance Program Rules and Regulations

1.0 Statement Of Goals (Formerly Rule III)

- 1.1 The ~~Violent Crimes Compensation Board~~ Victims' Compensation Assistance Program, hereby, declares that it serves a public purpose, and is of benefit to the victims of violent crimes committed within the State of Delaware, and to Delaware residents who are victims of crimes committed in States that do not have a funded Victim Compensation Program offering equivalent benefits. It is the purpose of the ~~Violent Crimes Compensation Board~~ Victims' Compensation Assistance Program to promote the public welfare by establishing a means of meeting the additional hardships imposed upon the innocent victim of certain crimes, and the family and dependents of those victims and Delaware residents who are victimized by terrorist attacks committed inside or outside the United States.

12 DE Reg. 1193 (03/01/09)

2.0 Definitions (Formerly Rule I)

- 2.1 The definitions set forth in 11 ~~Del.C. Ch. 90 of the Delaware Criminal Code~~ are, hereby adopted by this ~~Board~~, and incorporated by reference in these ~~Rules which reads as follows: Section 9002.~~ "The following words, terms and phrases, when used in ~~this Act~~ these Rules, shall have the meanings ascribed to them except where the context clearly indicates a different meaning:

"Agency" shall mean the Victims' Compensation Assistance Program, or VCAP.

"Appeals Board" shall mean the ~~Violent Crimes Compensation Board as established by this Act;~~ Victims' Compensation Assistance Program Appeals Board, or VCAPAB.

'**Child**', shall mean an unmarried person who is under eighteen years of age, and shall include the step-child or adopted child of the victim, or child conceived prior to, but born after, the personal injury or death of the victim.

"Council" shall mean the Victims' Compensation Assistance Program Advisory Council, or VCAPAC.

'**Crime**' for purposes of this Chapter shall mean:

(1) any specific offense set forth in Chapter 5 of Title 11 of the Delaware Criminal Code as the same appears in Chapter 497, Volume 58, **Laws of Delaware**, if the offense was committed after the effective date of said Criminal Code and contains the characteristics of murder, rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, manslaughter, assault, kidnapping, arson, burglary, riot, robbery, unlawful use of explosives, [or] unlawful use of firearms, stalking, endangering the welfare of a child, driving under the influence of any alcohol or drug or driving with a prohibited blood alcohol concentration, or hit-and-run, or any act of domestic violence or abuse;

(2) any specific offense set forth in Chapter 3, Title 11 of the Delaware Code if such offense was committed prior to the effective date of the Delaware Criminal Code, as set forth in Chapter 497, Volume 58, **Laws of Delaware**, and contains the characteristics of murder, rape, manslaughter, assault, kidnapping, arson, burglary, robbery, riot, unlawful use of explosives, or unlawful use of firearms;

(3) Any specific offense occurring in another state possession or territory of the United States in which a person whose domicile is in Delaware is a victim, if the offense contain the characteristics of murder, rape, manslaughter, assault, kidnapping, arson, burglary, riot robbery, unlawful use of explosives or unlawful use of firearms as set forth in Chapter 5 of this title. (66 **Del. Laws**, c. 269, Section 11.)

(4) Any specific act of delinquency by a child, which if committed by an adult would constitute a specific offense set forth in Chapter 5 of this Title, and contains the characteristics of murder, rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, manslaughter, assault, kidnapping, arson, burglary, robbery, riot, unlawful use of explosives or unlawful use of firearms;

(5) An act of terrorism, as defined in 18 *U.S.C. §2331*, **committed outside, or inside**, the United States against a resident or domiciliary of this State.

'**Dependent**' shall mean a person wholly or substantially dependent upon the income of the victim at the time of the victim's death, or would have been so dependent but for the incompetency of the victim due to the injury from which the death resulted, and shall include a child born after the death of such victim;

"Executive Director" shall mean the Executive Director of the Victims' Compensation Assistance Program. [~~§9005(b)~~]

'**Guardian**' shall mean a person, governmental instrumentality, or private organization entitled by law or legal appointment to care for and manage the person or property, or both, of a child or incompetent;

'**Incompetent**' shall mean a person who is incapable of managing his own affairs, as determined by the Board or by a court of competent jurisdiction;

'**Personal Injury**' shall mean bodily harm, mental, emotional, or psychological harm, and shall include pregnancy of the victim resulting from the crime.

'**Pecuniary Loss**' in instances of personal injury shall include medical expenses, including psychiatric care, non-medical remedial care and treatment rendered in accordance with a religious method of healing; hospital expenses; loss of past earnings; crime scene cleanup, moving expenses, essential personal safety property, insurance deductibles, and loss of future earnings, including, but not limited to, reimbursement for vacation, sick, and compensatory time because of a disability resulting from such personal injury. 'Pecuniary Loss' in instances of death of the victim shall include funeral and burial

expenses and loss of support to the dependents of the victim. Pecuniary loss includes any other expenses actually and necessarily incurred as a result of the personal injury or death, but it does not include property damage. Pecuniary loss", as defined in §9002, shall include only the net amount of enumerated expenses actually and necessarily sustained as a result of personal injury or death occurring due to a crime. Compensation for increased rent or mortgage payments due to relocation of the victim as a result of the crime shall be limited to the net amount of any increase.

~~"Permanent and total disability" for purposes of §9007(d) shall mean that a victim has sustained a personal injury that prevents the victim from working or functioning, and from which no recovery is expected, within reasonable medical certainty.~~

"**Secondary Victim**" shall mean any parent, stepparent, grandparent, son, daughter, spouse, sibling, half-sibling, fiancée, caretaker of the victim; any child who resides on a regular or semi-regular basis with any adult who is the victim of, or convicted of, any crime involving an act of domestic violence; the parents of a victim's spouse; or any other person who resided in the victim's household at the time of the crime or at the time of the discovery of the crime.

'**Victim**' shall mean a person who is injured or killed by the act of any other person during the commission of a crime as defined in this Chapter.

12 DE Reg. 1193 (03/01/09)

3.0 Quorum (Formerly Rule XXIII)

- 3.1 ~~Three members shall constitute a quorum for all hearings and business of the Appeals Board, except a hearing in which the claimant has requested no more than \$5,000.00 compensation and in that instance a quorum of the Board shall be one (1) member. Where an opinion is divided, the majority shall prevail.~~
- 3.2 A single member of the Appeals Board shall be contacted, and, if available, shall participate with VCAP in the review of an emergency claim pursuant to 11 Del.C. §9006(c)(1).
- 3.3 Pursuant to 11 Del.C. §9006(c)(2), a single Appeals Board member shall, in conjunction with the Agency, determine the award for any claim exceeding \$12,500.
- 3.4 When an Appeals Board member has been involved in the initial determination of a claim pursuant to Rules 3.2 or and 3.3, that member is obligated to recuse himself or herself from any subsequent consideration by the Appeals Board of that claim.
- 3.5 Any Appeals Board member with a direct or indirect interest in a matter before the Appeals Board shall recuse himself or herself from any consideration of that matter, and such recusal shall be noted in the record of the pending matter.

12 DE Reg. 1193 (03/01/09)

4.0 Meetings Advisory Council (Formerly Rule XXIV)

- 4.1 Meetings of the Council shall be held upon notice by the Chairman or the Executive Director mailed by the Council to all interested persons and agencies at least ten days before the meeting date, at such time and place directed set by the Council.
 - 4.1.1 ~~The Board Council will maintain a running agenda of all business matters to be discussed and acted upon. Following the hearing of claims, the Board, at its discretion and as time permits, may convene a session to address any matters on its running agenda.~~
 - 4.1.2 A meeting solely for the purpose of addressing Board business shall be held within 30 days. Adopted October 17, 1991. Revised January 7, 1993.
- 4.2 Records of the Council shall be maintained by the Executive Director. All requests for official information, copies of official records, or opportunity to inspect public records of the Council shall be made to the Executive Director. Public access to records maintained by the Advisory Council shall be governed by the Freedom of Information Act, 29 Del.C. Ch. 100.
- 4.3 All minutes, findings, orders and other actions of the Council shall be authenticated or signed by the Chair of the Council or such other person designated by the Council.

12 DE Reg. 1193 (03/01/09)

5.0 Seal (Formerly Rule XXV)

- 5.1 The Appeals Board shall have a seal for authentication of its orders, awards and proceedings, upon which shall be inscribed the words ~~VIOLENT CRIMES COMPENSATION BOARD~~ **VICTIMS' COMPENSATION ASSISTANCE PROGRAM APPEALS BOARD**, STATE OF DELAWARE.

12 DE Reg. 1193 (03/01/09)

~~6.0 Rules Of Evidence (Formerly Rule IX)~~

~~The Board is not bound by the Rules of Evidence. Hearsay evidence is admissible.~~

~~12 DE Reg. 1193 (03/01/09)~~

~~76.0 Availability Of Rules (Formerly Rule XX)~~

~~The rules of the VCAP, the Council, and the Appeals Board shall be available to the public at the office of the Violent Crimes Compensation Board VCAP, and online through the Board's VCAP website. A copy of these rules and regulations shall be on file with all County law libraries.~~

12 DE Reg. 1193 (03/01/09)

~~87.0 Construction Of Rules (Formerly Rule XXI)~~

~~These rules shall be liberally construed to accomplish the purpose of 11 Del.C. Ch. 90, as amended, and the goals set forth in Rule 1.~~

12 DE Reg. 1193 (03/01/09)

~~98.0 Amendments Of Rules (Formerly Rule XXII)~~

- 98.1 New rules may be adopted and any rules may be amended or rescinded by the ~~Board~~ Council at a regular or special meeting, pursuant to 11 **Del.C.** §9004(a).
- 98.2 New rules, amendments, or revisions shall become effective ~~the date approved by the Board~~ according to 11 **Del.C.** Ch. 90, §9004(d), which reads as follows: "The Board shall have the following functions, powers, and duties:

~~Section 9004(d) 'to adopt, promulgate, amend, and rescind such rules and regulations as are required to carry out the provisions of this Chapter.'~~ pursuant to the provisions of the Administrative Procedures Act, 29 Del.C. Chapter 101.

12 DE Reg. 1193 (03/01/09)

~~109.0 The Secretary; Filing Of Papers (Formerly Rule IV)~~

- 109.1 The ~~Secretary~~ Executive Director shall have custody of the Appeals Board's seal and the official records of VCAP and the Appeals Board, and shall be responsible for the maintenance and custody of the docket, files, and records, ~~of the Board, and of its findings, determinations, reports, opinions, and orders rules, regulations and approved forms of VCAP and the Appeals Board [§9005(c)].~~
- 109.2 All orders and other actions of VCAP and the Appeals Board shall be authenticated or signed by the ~~Secretary or other person as may be authorized by the Board~~ Executive Director.
- 109.3 All pleadings or papers required to be filed with VCAP or the Appeals Board shall be filed in the office of ~~the Board~~ VCAP within the time limit, if any, fixed by law or ~~Board~~ rule for such filing; ~~and similarly all requests for official information, copies of official records, or opportunity to inspect public records shall be made to the Secretary of the Board.~~
- 109.4 All requests for official information, copies of official records, or opportunity to inspect public records shall be made to the Executive Director. Crime Public access to crime victims' case files and records maintained by VCAP and the Violent Crimes Compensation Appeals Board shall fall under be governed by the open records provision of the Freedom of Information Act, 29 Del.C. Ch. 100, and specifically 29 Del.C. §10002(g)(14).
- 109.5 Communications addressed to VCAP and the Appeals Board and all petitions, and other pleadings, all reports, exhibits, dispositions, transcripts, orders and other papers or documents, received or filed in

the office kept by the ~~Secretary~~ Executive Director, shall be stamped showing the date of the receipt or filing thereof.

12 DE Reg. 1193 (03/01/09)

140.0 Forms (Formerly Rule XIII)

The ~~Board~~ VCAP shall prepare and furnish claim forms and brochures, and shall provide for the online filing of claims.

12 DE Reg. 1193 (03/01/09)

121.0 Filing Of Claims (Formerly Rule V)

121.1 In addition to all other statutory requisites, claims must be filed in the office of VCAP on official forms which include subrogation, authorization, and consent agreements. Except for claims on behalf of a child victim subject to Section 9010(d), claims must be filed in the office of the Violent Crimes Compensation Board, within one year of the date of the crime, unless an extension is granted by the Agency.

121.2 If ~~the Board~~ VCAP, in its investigation of a claim, requires further documentation from the claimant, such documentation must be submitted to ~~the Board~~ VCAP no later than 45 days of the date of ~~the Board's~~ VCAP's request.

121.3 A victim who seeks compensation for temporary housing, rent, security deposit, furniture and/or moving expenses must submit documentation, to include an old and new lease, within 45 days of ~~the Board's~~ VCAP's request therefor, unless an extension is granted by the Agency.

121.4 If the victim seeks compensation for an injury sustained while in the course and scope of employment, the victim must submit a claim for worker's compensation, and provide documentation thereof, before making application to ~~the Board~~ VCAP for compensation.

12 DE Reg. 1193 (03/01/09)

132.0 ~~Publication Of Claims~~ Access to Records (Formerly Rule XIX)

VCAP, the Advisory Council, and ~~the~~ Appeals Board shall maintain confidentiality of records in accordance with the open records provision of the Freedom of Information Act, 29 Del.C. Ch. 100, and specifically 29 Del.C. §1004(g)(7).

12 DE Reg. 1193 (03/01/09)

143.0 ~~Investigation Of~~ Determination of Claims (Formerly Rule VIII)

143.1 All claimants must fully cooperate with investigators or representatives of ~~this agency~~ VCAP in order to be eligible for an award. In the event that cooperation is refused or denied, ~~the Board~~ VCAP may deny a claim for lack of cooperation.

143.2 Any claimant who is dissatisfied with the initial decision of the Agency may, within 15 days of the date a decision is mailed, request reconsideration of the claim by the Agency. The request should include any additional information from the claimant that supports the claim request. The Executive Director shall review the request and any information provided by the claimant, and render a final decision. [§9009(d); §9012(c)]

143.3 The Agency may arrange for a physical or mental health examination of an injured person filing a claim, to be performed by a physician or practitioner selected by the Agency. A written report of such examination shall be filed by the attending physician with the Agency. The physicians's fee shall be paid directly by the Agency.

143.4 Except as set forth in Section 9009 (11) and (13), and in cases of sexual abuse of a minor by an adult, the Agency shall not reopen or reinvestigate a case after the expiration of two (2) years from the date of the final determination rendered by the Agency. The standard governing such an application shall be that set forth in Superior Court Civil Rule 60 (b), namely that relief shall be granted only in the event of mistake, excusable neglect, newly-discovered evidence, fraud, illegality, or other grounds recognized by the Agency. [Source: §9009(j)]

- 143.5 Where the Agency has made an initial determination and award, a victim or claimant may submit additional requests for compensation arising out of the same crime within two years of the date of the initial determination by the Agency.
- 143.6 Where a victim applies for additional compensation for expenses incurred more than one year from the crime occurrence, the Agency may require a new physical or mental examination, in order to ascertain causal connection to the original occurrence.
- 143.7 Under the circumstances set forth in subsection (13) of 11 Del.C. §9009, as amended, a victim or secondary victim may apply for reimbursement for: the cost of mental health counseling services, not to exceed fifty sessions; reasonable expenses incurred due to attendance at criminal proceedings; and expenses for essential personal safety property, not to exceed \$1,500; provided that such costs were incurred within one year before or two years after the date of the reopened investigation, judicial or administrative proceeding, release, or execution.

12 DE Reg. 1193 (03/01/09)

154.0 Burden Of Proof (Formerly Rule VI)

- 154.1 In compensation cases, the burden of proof shall be upon the petitioner claimant. It is also the victim's burden to prove that he or she was an innocent victim of a violent crime, and that he or she cooperated in the apprehension and/or conviction of the perpetrator of the crime.
- 154.2 The victim claimant also has the burden of proving that he/she sustained a loss or incurred an expense as a result of a violent crime that is compensable according to the statutory authority and the Rules of the Board Victims' Compensation Assistance Program.

12 DE Reg. 1193 (03/01/09)

165.0 Exhibits (Formerly Rule VII)

Exhibits and case file documents submitted prior to, during, or after the ~~Violent Crimes Compensation Appeals Board's~~ **Violent Crimes Compensation Appeals Board's** hearings shall be maintained in accordance with the provisions of the Department of State, Bureau of Archives and Records Management.

12 DE Reg. 1193 (03/01/09)

176.0 Subpoenas, Etc. (Formerly Rule XIV)

- 176.1 Any Appeals Board member, and the Executive Director, shall have the power to administer oaths, subpoena witnesses, and compel the production of books, papers, and records relevant to any investigation or hearing authorized by 11 Del.C. §9045 9019.
- 176.2 The Appeals Board or any staff member may take, or request, affidavits and depositions of witnesses residing within or without of the State.

12 DE Reg. 1193 (03/01/09)

187.0 Hearings (Formerly Rule X)

- 187.1 Notice of hearings shall be posted in the office of the ~~Violent Crimes Compensation Board~~ VCAP and online at the ~~Board~~ Agency website at least seven days prior to the scheduled hearing dates. Special meetings or rescheduled hearings shall be posted no later than 24 hours prior to the scheduled time.
- 187.2 The Appeals Board is not bound by the Rules of Evidence. Hearsay evidence is admissible, if deemed reliable by the Appeals board.
- 18-27.3 The Appeals Board may receive as evidence, any statements, documents, information or material, it finds are relevant and of such nature as to afford the parties a fair hearing. The Board may also accept police reports, hospital records and reports, physicians reports, etc., as proof of the crime and injuries sustained, without requiring the presence of the investigating officer or attending physician at the hearing.
- 18.3 Any claimant may request to be heard by the Board following the initial claim hearing, if he/she is dissatisfied with the decision of the Board. The request to be heard before the Board must be in writing

and must be received in the office of the ~~Violent Crimes Compensation Board~~ within 15 days of the Board's decision. The written statement must include any and all reasons for the dissatisfaction.

- 187.4 The Board may arrange for a medical or mental health examination by a physician designated by the Board. A written report of such examination shall be filed by the attending physician with the Board. The physician's fee shall be paid directly by the Board. The Appeals Board shall have the discretion to exclude plainly irrelevant, immaterial, insubstantial, cumulative, and privileged evidence. [Source 29 Del.C. §10125(b)(3) and (4). Former Rule 6.0]
- 187.5 All witnesses shall testify under oath (or by affirmation), and a record of the proceedings shall be recorded. The Appeals Board members may examine the claimant and all witnesses.
- 187.6 Claim Appeals Board hearings shall be open to the public. However, the Appeals Board may hold private deliberations under the following circumstances:
 - 187.6.1 When the claim to be considered derives from any sexual offense;
 - 187.6.2 When the claim to be considered derives from any offense by a child, unless such child has been deemed amenable to the jurisdiction of a criminal court;
 - 187.6.3 When the claim to be considered derives from any matter not yet adjudicated.
- 187.7 A claim under \$5,000.00 may be heard by one Board Member. Within 90 days of the conclusion of any and all hearings before the Appeals Board, the Appeals Board shall mail a written final decision to the claimant. The decision shall state whether the claim had been denied or an award has been made to the claimant, shall set forth the contentions of the parties, and the findings of fact and the conclusions of law reached by the Appeals Board, and shall set forth any and all conditions governing an award.
- 187.8 A request to reopen a claim may be heard by one Member if the reopen request for compensation is less than \$5,000.00. If the reopen request for compensation is more than \$5,000.00, the request to reopen shall be heard by a quorum of the Board.
- 187.9 If a claim is filed more than one (1) year after the crime occurrence, or if the claim was reported to law enforcement more than 72 hours after the commission of the crime, the claim may be reviewed by one member to accept or deny for processing.
- 187.10 Under no circumstances shall the Board reopen or reinvestigate a case after the expiration of two (2) years from the date of decision rendered by the Board.
- 187.11 Where a victim applies for additional compensation for expenses incurred more than one year from the crime occurrence, the Board may require a new physical or mental examination, in order to ascertain causal connection to the original occurrence.

12 DE Reg. 1193 (03/01/09)

198.0 Attorneys (Formerly Rule XI)

- 198.1 Claimants have the right to be represented before the Agency and the Appeals Board by an attorney, who is licensed to practice in the State of Delaware. The attorney shall file a notice of appearance.
- 198.2 Service upon the claimant's attorney shall be deemed as service on the party he represents.
- 18.3 An attorney licensed in a jurisdiction other than Delaware who seeks to represent a client before the Agency or the Appeals Board must first comply with the Rules of the Supreme Court of the State of Delaware regarding pro hac vice admission to practice.

12 DE Reg. 1193 (03/01/09)

2019.0 Attorney Fees (Formerly Rule XII)

- 2019.1 The attorney representing a claimant before ~~this~~ the Appeals Board must submit an affidavit setting forth the total number of hours expended and describe the nature of the work performed.
- 2019.2 The Attorney's fees shall not exceed \$1,000.00.
- 2019.3 Attorney's fees shall be awarded at the discretion of the Appeals Board.
- 2019.4 Attorney's fees may be 15% of the total amount awarded to the victim, but not to exceed \$1000.00; or a fee based on the number of hours spent in representing the claimant. The hourly fee rate will be determined by the Appeals Board.

~~2019.5~~ No prior agreement between an attorney and a client to pay the attorney a fee out of the client's award will be honored by the Appeals Board. Any such arrangement is unlawful.

~~2019.6~~ Upon application to the Appeals Board for attorney's fees, the service rendered the injured victim, as well as the time spent and uniqueness of the case, will be considered in determining the allowance of attorney's fees.

~~2019.7~~ The amount of any attorneys fee award shall not be included within the total compensation subject to the limits set forth in §9007(d).

12 DE Reg. 1193 (03/01/09)

240.0 Appeal of Appeals Board Decisions (Formerly Rule XXII)

240.1 All questions relating to an appeal shall be determined in accordance with Chapter 90, Section ~~9005~~ 9009, Title 11, of the Delaware Code.

240.2 Any claimant who is aggrieved by the Appeals Board's decision concerning compensation or any conditions attached to the award of such compensation, may appeal to the Superior Court within (30) thirty days of the decision of the Board. Any appeal to Superior Court shall not be de novo.

12 DE Reg. 1193 (03/01/09)

221.0 Denial Of Claim; Reduction (Formerly Rule XVIII)

221.1 All questions relating to denial of a claim shall be determined in accordance with Chapter 90, Title 11, Section ~~9006~~ 9010, of the **Delaware Code**.

221.2 ~~The Board is~~ The Agency and the Appeals Board are not compelled to provide compensation in any case, nor ~~is it~~ are they compelled to award the full amount claimed. ~~The Board~~ The Agency and the Appeals Board may make ~~its~~ an award of compensation dependent upon such condition or conditions as ~~it~~ they deems desirable.

12 DE Reg. 1193 (03/01/09)

232.0 Dependency (Formerly Rule XVI)

232.1 All questions relating to dependency shall be determined in accordance with 11 **Del.C.** Ch. 90 §9002 which reads as follows:

232.2 Section 9002(~~ef~~) "Dependent shall mean a person who is wholly or substantially dependent upon the income of the victim at the time of the victim's death, or would have been so dependent but for the incompetence of the victim due to the injury from which the death resulted, and shall include a child born after the death of such victim."

12 DE Reg. 1193 (03/01/09)

243.0 Emergency Awards (Formerly Rule XV)

~~The Board~~ The Agency will make an emergency award only upon a showing of dire necessity. The claimant, must, in writing, request an emergency award when submitting his claim form and show just cause as to why such an award should be considered. No such award will be made until the police report or other official documentation from the appropriate law enforcement agency is acquired. An Appeals Board member shall be contacted and, if available, participate in the determination of any such emergency award.

12 DE Reg. 1193 (03/01/09)

254.0 Mental Health Practitioner Qualifications/Licensure (Formerly Rule XXIX)

254.1 To be eligible for crime victim's compensation for psychological assessments and mental health counseling treatment, within and without the State of Delaware, a practitioner possessing an advanced degree in an applied mental health discipline must provide assessment and treatment. The advanced degree should be in Psychiatry, Psychology, Social Work, Counseling, or Psychiatric Nursing.

- 254.2 To be eligible for crime victim's compensation for psychological assessments and mental health counseling treatment in the State of Delaware, a licensed mental health practitioner must provide services. The five disciplines recognized by the ~~Violent Crimes Compensation Board Agency~~ for payment of mental health counseling benefits are: Licensed Psychiatrist, Licensed Psychologist, Licensed Clinical Social Worker, Licensed Mental Health Counselor, and Licensed Clinical Nurse Specialist.
- 254.3 Payment for mental health treatment received outside the State of Delaware will be evaluated for practitioner's licensure on a case-by-case basis by the ~~Violent Crimes Compensation Board~~ VCAP.
- 254.4 ~~The Violent Crimes Compensation Board~~ VCAP may consider payment for mental health counseling services rendered by an unlicensed provider if the provider is practicing under the direct supervision of a licensed practitioner in one of the disciplines recognized by ~~the Violent Crimes Compensation Board~~ VCAP, as set forth in Rule 26.1 ~~above~~ below. ~~The Violent Crimes Compensation Board~~ VCAP will decide claims for payment of services rendered by an unlicensed practitioner on a case-by-case basis.

2 DE Reg. 1670 (3/1/99)

12 DE Reg. 1193 (03/01/09)

265.0 Burial Awards (Formerly Rule XXVII)

The aggregate award for funeral and burial shall not exceed \$8,500.00

12 DE Reg. 1193 (03/01/09)

276.0 Child Victim Counseling and Assessment Program (CCAP) Provisions (Formerly Rule XXX)

For the purposes of section ~~9020~~ 9024(c), up to \$1,200.00 may be paid from the victim's compensation fund on behalf of each child victim of crime for reasonable costs incurred for psychological assessments and short-term counseling.

2 DE Reg. 1670 (3/1/99)

287.0 Collateral Sources of Compensation; Subrogation

- 287.1 Any award made by ~~the Board~~ VCAP shall be reduced by the amount, if any, of compensation the claimant has received or will receive as indemnification from any other source, including insurance of any kind. The proceeds of any life insurance policy shall not be deducted from the award. [Source: §9005(1)]
- 287.2 ~~the Board~~ VCAP shall deduct from its award the amount of any compensation for personal injury of death arising from the crime or incident and received by the victim, or by the victim's dependents. Such compensation includes payments by or on behalf of the offender, from any insurer, and from any governmental entity. The amount of compensation to be deducted from ~~the Board~~ VCAP award shall be the net amount of compensation paid to the victim, after deductions for costs or attorney fees. The proceeds of any life insurance policy shall not be deducted from the award. [Source: §9008(d)]
- 287.3 Where an award has been made, and the claimant subsequently receives reimbursement from any source set forth above, with the exception of life insurance, ~~the Board~~ VCAP may recover reimbursement from the claimant, up to the amount of the award.
- 287.4 Prior to making an award, ~~the Board~~ VCAP shall require the claimant to execute an agreement acknowledging the claimant's understanding that any award is net of funds received from collateral sources, and further acknowledging the claimant's obligation to reimburse the Board to the extent of any such funds received from collateral sources.
- 287.5 Any attorney representing a client before the Board is bound by the Rules set forth herein regarding collateral sources of compensation.

2 DE Reg. 1670 (3/1/99)

12 DE Reg. 1193 (03/01/09)

FINAL REGULATIONS

**DEPARTMENT OF STATE
DIVISION OF THE ARTS**Statutory Authority: 29 Delaware Code, Section 8729(c) (29 **Del.C.** §8729(c))**ORDER**

Proposed changes to the **Division of the Arts Assistance for the Development of the Arts Regulations** were published in the *Delaware Register of Regulations* on August 1, 2009. The comment period remained open until September 1, 2009. There was no public hearing on the proposed changes to the regulations. Public notice of the proposed changes was in conformity with Delaware law.

Summary of Evidence and Information Submitted

No comments were submitted by the public.

Findings of Fact

Based upon Delaware law and the record in this docket, I make the following findings of fact:

The purpose of these regulations is clarify the procedures used to evaluate and award grants for arts funding in the State of Delaware, as authorized pursuant to 29 **Del.C.** §8729(c) and in compliance with Delaware's Administrative Procedures Act, 29 **Del.C.** §10115. Pursuant to § 8729, the Director and the Delaware State Arts Council shall establish such rules and regulations as are necessary to determine the eligibility of any instrumentality, or agency or political subdivision, private or public nonprofit association for participation in contracts authorized by this section. A private or public nonprofit association shall submit a letter of exemption from the Internal Revenue Service as proof of nonprofit status.

The Division hereby adopts these regulations effective February 2, 2010.

Text and Citation

The text of the proposed regulations last appeared in the *Register of Regulations* Vol, 13, Issue 2, pages 231-235.

IT IS SO ORDERED this 2nd Day of February, 2010.

Paul Weagraff, Director
Delaware Division for the Arts

***Please note that no changes were made to the regulation as originally proposed and published in the August 2009 issue of the *Register* at page 231 (13 DE Reg. 231). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

[1001 Assistance for the Development of the Arts Regulations](#)

DIVISION OF PROFESSIONAL REGULATION

1770 Respiratory Care Advisory Council Of The Delaware Board Of Medical Practice
Statutory Authority: 24 Delaware Code, Section 1775 (c) (24 **Del.C.** §1775 (c))
24 **DE Admin. Code** 1770

ORDER

AND NOW, to-wit, this 2nd day of February, 2010;

WHEREAS, the Board has considered the attached Report of the Respiratory Care Practice Advisory Council concerning the hearing on the proposed modifications of the Rules and Regulations of the Respiratory Care Practice Advisory Council; and

WHEREAS, the Board has determined to accept such Report and approve the proposed Rule and Regulation modifications set forth in the attached report.

NOW THEREFORE:

1. The proposed modifications to the Rules and Regulations of the Respiratory Care Practice Advisory Council as set forth on the attached report are hereby approved.

IT IS SO ORDERED:

Anthony M. Policastro, M.D., President

Raymond L. Moore, Sr., Public Member, Vice President

Gregory Adams, M.D.

John Banks, Public Member

George Brown, Public Member

Stephen Cooper, M.D.

Vance Daniels, Public Member

Vincent Lobo, D.O

Thomas Desperito, M.D.

Galicano Inguito, M.D.

Sophia Kotliar, M.D.

Karl McIntosh, M.D.

Oluseyi Senu-Oke, M.D., Secretary

Daryl Sharman, M.D.

Sharon Jones, Public Member

Karl McIntosh, M.D.

Report

The Respiratory Care Advisory Council ("Council") established to assist the Board of Medical Practice ("Board") in the performance of its duty relating to the regulation of Respiratory Care Practitioners is authorized by 24 *Del. C.* § 1775(c) to promulgate rules and regulations governing the practice of respiratory care.

Pursuant to 24 *Del. C.* § 1775(c), the Council proposes to modify Regulation **8.0 Continuing Education** to require that at least 10 of the required 20 hours of continuing education be obtained from traditional programs attended either in person or remotely by with the use of interactive telecommunication technology that allows the attendee to ask questions of the presenter during the presentation. The regulations are also being amended to provide for the licensee to attest online to the completion of continuing education at the time of licensure renewal. The amendments also add a new **Regulation 12.0 Unlicensed Home Equipment Personnel** that clarifies that unlicensed personnel engaged in home medical equipment set up are prohibited from performing patient assessments. Finally, several minor technical changes have been made to the regulations.

Pursuant to 29 *Del. C.* § 10115, notice of the proposed amendments to the rules and regulations was published on December 1, 2009 in the *Delaware Register of Regulations*, Volume 13, Issue 6. Public notice of these proposed modifications to the Rules and Regulations was also published in two (2) newspapers of general circulation.

Pursuant to such notice a public hearing was conducted by the Council on January 12, 2010.

Summary of the Evidence and Information Submitted

No members of the public attended the hearing. No written comments were received in response to the proposed regulations.

Findings of Fact With Respect to the Evidence and Information Submitted

There was no public comment received at the public hearing. No written comments were received in response to the proposed regulations.

The Council finds interactive instruction is beneficial to licenses. The amendments to Regulation 8.0 are necessary to clarify that at least ten (10) of the required twenty (20) hours of continuing education must be obtained from traditional programs attended either in person or remotely by the use of interactive telecommunication technology that allows the attendee to ask questions of the presenter during the presentation. The additional amendments to Regulation 8.0 enable licensees to renew their licenses online and attest that they have completed the required continuing education. Documentation of having completed the required continuing education must still be maintained by the licensee but it will only be required to be produced in the event the licensee is randomly selected for continuing education audit. Regulation 8.0 will benefit licensees by further delineating the audit process for continuing education and informing the licensees of minimum penalties that the Council will recommend to the Board for unjustified non-compliance with the continuing education requirements.

The Council finds that the adoption of new Regulation 12.0 dealing with unlicensed personnel engaged in home medical equipment set up is necessary to protect the public by clarifying that such individuals are prohibited from performing patient assessments. This is an area about which the Council frequently receives questions and has been the subject of at least one disciplinary hearing before the Council.

The Council finds that the remaining changes are technical changes.

The Medical Practice Act *Statement of Purpose* at 24 Del. C. §1701 provides:

“Recognizing that the practice of medicine and the practice of certain other healthcare professions are privileges and not natural rights, it is hereby considered a matter of policy in the interest of public health, safety and welfare to provide laws covering the granting of those privileges and their subsequent use and control to provide regulations to the end that the public health, safety and welfare are promoted and that the public is properly protected from the unprofessional, improper, unauthorized, or unqualified practice of medicine and practice of certain other healthcare professions and from unprofessional conduct by persons unauthorized to practice medicine or to practice certain other healthcare professions.”

The Council finds that the proposed amendments meet the Council’s primary objectives of protecting the public and ensuring minimum standards of practitioner competency necessary to promote the public health, safety and welfare.

In summary, the Council finds that adopting the proposed amendments to regulation **8.0 Continuing Education** and implementing the provisions of new regulation **12.0 Unlicensed Home Equipment Personnel** meet the objectives of protecting the public as set forth in 24 Del. C. §1701 and are in the best interest of the citizens of the State of Delaware.

The Law

The Board’s rulemaking authority is provided by 24 Del. C. §1775(c).

Recommendation

Based on these findings, conclusions and the above discussion, it is the recommendation of the undersigned members of the Respiratory Care Practice Advisory Council to the Board of Medical Practice that the Board approve these changes to the Rules and Regulations of the Respiratory Care Practice Advisory Council to be effective ten (10) days after their final publication in the *Delaware Register of Regulations*.

Respectfully submitted this 12th day of January, 2010:

Dawn M. Selhorst, RRT, Chairperson, Presiding

Joel M. Brown, II, RRT, Vice Chairperson

Karen Bartuski, RRT

Thomas Blackson, RRT

Nashreen Khan, D.O.

Theresa Q. Thompson, RRT

*Please note that no changes were made to the regulation as originally proposed and published in the December 2009 issue of the *Register* at page 815 (13 DE Reg. 815). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[1770 Respiratory Care Advisory Council Of The Delaware Board Of Medical Practice](#)

DEPARTMENT OF TRANSPORTATION DIVISION OF MOTOR VEHICLES

Statutory Authority: 21 Delaware Code, Section 302, (21 Del.C. §302)
2 DE Admin. Code 2201

2201 Procedure for Re-licensing Investigations Character Background Review

ORDER

Proposed Regulation 2201 establishes administrative procedures regarding the character background review process for an individual whose license has been revoked for an alcohol-related violation pursuant to 21 Del.C. §2742, §2743, and §4177. The proposed regulation was published in the *Delaware Register of Regulations* on January 1, 2010. The comment period remained open until January 31, 2010. There was no public hearing on proposed Regulation 2201.

Summary of the Evidence and Information Submitted

The Department received no public comments on the proposed regulation.

Findings of Fact

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

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

Decision and Effective Date

Based on the provisions of 21 Del.C. §302, §2742, §2743, and §4177, and the record in this docket, I hereby adopt Regulation 2201 and as may more fully and at large appear in the version attached hereto to be effective on March 10, 2010.

Text and Citation

IT IS SO ORDERED THIS 23rd day of February 2010.

Carolann Wicks, Secretary of Transportation

2201 Procedure for Re-licensing Investigations Character Background Review

*Please note that no changes were made to the regulation as originally proposed and published in the January 2010 issue of the *Register* at page 908 (13 DE Reg. 908). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[2201 Procedure for Re-licensing Investigations Character Background Review](#)

FINAL REGULATIONS

DIVISION OF MOTOR VEHICLES

Statutory Authority: 21 Delaware Code, Sections 302, 2711 and 3102 (21 **Del.C.** §§302, 2711 and 3102)

2 DE Admin. Code 2217

2217 Driver License and Identification Card Application Procedures for Delaware Compliant and Delaware Non-Compliant Identification Documents

ORDER

Proposed regulation 2217 establishes regulations and procedures used when issuing Delaware compliant and non-compliant driver licenses and identification cards based on 21 **Del.C.** Sections 302, 2711 and 3102 and the Department of Homeland Security's final regulation published in 6 CFR Part 37 or its equivalent, as amended from time to time. The proposed regulation was published in the Delaware Register of Regulations on January 1, 2010. The comment period remained open until January 31, 2010. There was no public hearing on proposed Administrative Code 2217.

Summary of the Evidence and Information Submitted

The Department received no public comments on the proposed regulation.

Findings of Fact

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

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

Decision and Effective Date

Based on the provisions of 21 **Del.C.** §302, §2742, §2743, and §4177, and the record in this docket, I hereby adopt Regulation 2217 and as may more fully and at large appear in the version attached hereto to be effective on March 10, 2010.

Text and Citation

IT IS SO ORDERED THIS 23rd day of February 2010.

Carolann Wicks, Secretary of Transportation

***Please note that no changes were made to the regulation as originally proposed and published in the January 2010 issue of the *Register* at page 911 (13 DE Reg. 911). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[2217 Driver License and Identification Card Application Procedures for Delaware Compliant and Delaware Non-Compliant Identification Documents](#)

EXECUTIVE DEPARTMENT DELAWARE ECONOMIC DEVELOPMENT OFFICE

Statutory Authority: 29 Delaware Code, Section 5005(11), (29 Del.C. §5005(11))
1 DE Admin. Code 402

402 Procedures Governing the Delaware Strategic Fund

ORDER

Proposed changes to Regulation 402 relating to the fees for submitting an application for economic assistance under the Delaware Strategic Fund Strategic were published in the *Delaware Register of Regulations* on October 1, 2009. The comment period remained open until October 30, 2009. There was no public hearing on the proposed changes to Regulation 402. Public notice of the proposed changes to Regulation 402 in the *Register of Regulations* was in conformity with Delaware law.

Summary of the Evidence and Information Submitted

No comments were submitted by the public.

Findings of Fact

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

The purpose of these Regulations is to establish criteria for the administration of the Fund. The Regulations contain procedures governing the process for applying to the Authority for economic assistance under the Fund, pre-closing and post-closing procedures and criteria for the Authority's approval or disapproval of an application for economic assistance under the Fund. The requirements of the amended Regulation 402 best serve the interests of the public in that they reflect the actual costs to process an application.

Decision and Effective Date

Pursuant to 29 Del.C. §§5027-5029 (the "Act"), as amended, the Delaware Strategic Fund (the "Fund") was established. The Fund was created to assist the Delaware Economic Development Office (the "Office") through The Delaware Economic Development Authority (the "Authority") with efficiently administering financing programs as well as with developing new programs to retain, attract and expand Delaware employment. Section 5029(a) of the Act directs the Authority to draft rules and regulations pertaining to Fund eligibility. The following regulations (the "Regulations") have been adopted by the Authority pursuant to the foregoing provision of the Act. 29 Del.C. §5005(11) also gives the Director of the Office general power to promulgate rules and regulations governing the Office.

The Authority hereby adopts these regulations effective December 14, 2009.

Text and Citation

The text of the proposed amendments to Regulation 402 last appeared in the *Register of Regulations* Vol. 13, Issue 4, pages 489-493.

IT IS SO ORDERED this 14th day of December 2009.

Alan B. Levin
Chairman, The Delaware Economic Development Authority

*Please note that no changes were made to the regulation as originally proposed and published in the October 2009 issue of the *Register* at page 489 (13 DE Reg. 489). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[402 Procedures Governing the Delaware Strategic Fund](#)

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

**EXECUTIVE ORDER
NUMBER SIXTEEN**

TO: HEADS OF ALL STATE DEPARTMENTS AND AGENCIES

RE: NAMING LINDA L. AMMONS TO LEAD INDEPENDENT REVIEW OF DELAWARE'S POLICIES AND PROCEDURES FOR SEXUAL ASSAULT CASES

WHEREAS, on December 16, 2009, Lewes, Delaware Pediatrician Dr. Earl B. Bradley was arrested and charged with various felonies based on allegations that Dr. Bradley had sexually assaulted children in his care; and **WHEREAS**, allegations of sexual abuse and misconduct against Dr. Bradley first came to the attention of law enforcement in 1998: and

WHEREAS, allegations of sexual abuse and misconduct against Dr. Bradley may have come to the attention of licensees of the Delaware Board of Medical Practice several years prior to his arrest; and

WHEREAS, it is advisable and in the best interests of the State that an independent review be conducted of the State's policies and procedures into the State's statutory and administrative procedures governing child sexual abuse and exploitation, and that, as a result of this review, recommendations be made that will foster a child protection community of collaboration and accountability to protect our children from predators;

NOW, THEREFORE, I, JACK A. MARKELL, GOVERNOR OF THE STATE OF DELAWARE, DO HEREBY ORDER AND DECLARE AS FOLLOWS:

1. Linda L. Ammons, Associate Provost and Dean of The Widener University School of Law, is hereby named to lead an independent review into the State's statutory and administrative procedures governing child abuse and exploitation.

2. Dean Ammons may consult with the Attorney General, recognized experts in criminal justice, sexual assault and child protection, and any other person to assist her in her review.

3. The issues to be addressed in Dean Ammons' independent review include but are not limited to the following:

(a) Proper communication and coordination between law enforcement agencies, professional regulators and the medical community;

(b) Professional reporting requirements for suspected incidents of misconduct and the enforcement thereof;

(c) Professional licensing requirements, procedures and enforcement, including comprehensive background checks and procedures for on-going review;

(d) Medical standards and protocols concerning proper pediatric care and the publication thereof to ensure that doctors, medical staff and parents have clear guidance;

(e) The sufficiency of outreach efforts regarding reporting requirements, so that those with legal obligations to report questionable behavior do so; and

(f) Ensuring that adequate services are provided for the protection and treatment of children suspected of being sexually abused in order to protect them from harm.

4. Dean Ammons shall issue a final report to the Governor's Office, the Senate Public Safety Committee and the House Public Safety and Homeland Security Committee as soon as practicable. The report shall make recommendations to improve the administrative handling of child abuse and sexual exploitation cases focused on reducing child trauma, enhancing the effectiveness of administrative action, and reforming state laws and regulations to meet these objectives.

5. Any executive agency with pertinent information shall cooperate fully with Dean Ammons and shall promptly provide information to her as requested.

6. To facilitate the candid and forthright sharing of information from victims and other involved persons, Dean Ammons shall preserve applicable confidences and privileges to the extent necessary to undertake a complete and thorough investigation. The completed report of Dean Ammons shall be a public document.

APPROVED this 4th day of February, 2010
Jack A. Markell, Governor

**EXECUTIVE ORDER
NUMBER SEVENTEEN**

TO: HEADS OF ALL STATE DEPARTMENTS AND AGENCIES

RE: ALLOCATION AND SUB-ALLOCATION OF STATE PRIVATE ACTIVITY BOND VOLUME CAP FOR CALENDAR YEAR 2010 AND REALLOCATION OF STATE PRIVATE ACTIVITY BOND VOLUME CAP FOR CALENDAR YEAR 2009

WHEREAS, the Internal Revenue Service issued Revenue Procedure 2009-50, which provides the State of Delaware (the "State") with \$273,775,000 in private activity bond volume cap ("Volume Cap") for 2010, and pursuant to 29 Del. C. § 5091(a), the State's 2010 Volume Cap is to be allocated among the various State and local government issuers; and

WHEREAS, the Governor hereby confirms the initial allocation of the 2010 Volume Cap as set forth in 29 Del. C. § 5091(a) to various State and local government issuers; and

WHEREAS, pursuant to 29 Del. C. § 5091(b), the State's allocation of 2010 Volume Cap of \$136,885,000 is to be sub-allocated by the Governor between the Delaware State Housing Authority and the Delaware Economic Development Authority; and

WHEREAS, pursuant to 29 Del. C. § 5091(d), the Governor has the right, by Executive Order, to modify the allocations made under 29 Del. C. § 5091(a), provided that no such modification shall cause any obligation issued prior to the date of such modification to lose its qualification for tax-exempt treatment under the Internal Revenue Code of 1986, as amended; and

WHEREAS, the allocation of Volume Cap for 2009 in Executive Order Five is subject to modification by further Executive Order; and

WHEREAS, pursuant to Executive Order Number Five, \$136,635,000 of 2009 Volume Cap that had been allocated to the State of Delaware was further sub-allocated between the Delaware Economic Development Authority and the Delaware State Housing Authority; and

WHEREAS, also pursuant to Executive Order Number Five, \$136,635,000 of 2009 Volume Cap which had been allocated to local government issuers as described in 29 Del. C. § 5091(a) has been reassigned as follows:

New Castle County has reassigned \$47,825,000 of its unallocated Volume Cap for 2009 to the State of Delaware;

Kent County has reassigned \$27,325,000 of its unallocated Volume Cap for 2009 to the State of Delaware;

Sussex County has reassigned \$27,325,000 of its unallocated Volume Cap for 2009 to the State of Delaware;

The City of Wilmington has reassigned \$34,160,000 of its unallocated Volume Cap for 2009 to the State of Delaware; and

WHEREAS, the Secretary of Finance recommends: (i) that the State's \$136,885,000 of 2010 Volume Cap be allocated equally between the Delaware State Housing Authority and the Delaware Economic Development Authority; and (ii) that the \$136,635,000 of unallocated 2009 Volume Cap reassigned to the State of Delaware by local issuers be sub-allocated to the Delaware Economic Development Authority for carry forward for use in future years; and

WHEREAS, the Chairperson of the Delaware Economic Development Authority and the Chairperson of the Delaware State Housing Authority concur in the recommendation of the Secretary of Finance; and

NOW, THEREFORE, I, JACK A. MARKELL, by the authority vested in me as Governor of the State of Delaware, do hereby DECLARE and ORDER that:

1. The \$136,885,000 allocation to the State of Delaware of the 2010 Volume Cap is hereby sub-allocated:

\$68,442,500 to the Delaware State Housing Authority and \$68,442,500 to the Delaware Economic Development Authority.

2. \$136,890,000 of the 2010 Volume Cap is hereby allocated to the various local government issuers as follows:

\$47,910,000 of the 2010 Volume Cap is hereby allocated to New Castle County;

\$34,220,000 of the 2010 Volume Cap is hereby allocated to the City of Wilmington;

\$27,380,000 of the 2010 Volume Cap is hereby allocated to Kent County; and

\$27,380,000 of the 2010 Volume Cap is hereby allocated to Sussex County.

3. The \$136,635,000 of unallocated 2009 Volume Cap that has been reassigned by New Castle County, Kent County, Sussex County and the City of Wilmington to the State of Delaware is hereby re-allocated to the Delaware Economic Development Authority for carry forward use. In addition, the \$68,317,500 of 2009 Volume Cap previously sub-allocated to the Delaware Economic Development Authority under Executive Order Number Five is to be carried forward for a total carry forward amount of \$204,952,500. Further, total carry forward of 2009 Volume Cap by the Delaware State Housing Authority is \$68,317,500.

4. The aforesaid sub-allocations have been made with due regard to actions taken by other persons in reliance upon previous sub-allocations to bond issuers.

APPROVED this 15th day of February, 2010

Jack A. Markell, Governor

**EXECUTIVE ORDER
NUMBER EIGHTEEN**

TO: HEADS OF ALL STATE DEPARTMENTS AND AGENCIES

RE: LEADING BY EXAMPLE TOWARDS A CLEAN ENERGY ECONOMY & SUSTAINABLE NATURAL ENVIRONMENT

WHEREAS, the transition to a cleaner energy, low-carbon economy and the importance of addressing climate change present Delaware with unprecedented challenges and opportunities to strengthen the State's economic competitiveness, create thousands of well-paying jobs, improve public health, protect the environment, and enhance the quality of life; and

WHEREAS, an important part of the State's economic development strategy is advancing climate prosperity, through which companies and individuals can become more prosperous by seizing market opportunities in the State's emerging clean energy economy and using resources more efficiently; and

WHEREAS, State government must lead by example as it works towards transforming Delaware into a national model clean energy economy built on economic growth, environmental protection, energy conservation and efficiency, renewable energy, cleaner transportation options, and sustainable buildings and operations; and

WHEREAS, the State government faces significant budget challenges that require creative solutions to reduce and stabilize operating expenses, including reducing the more than \$35 million expended annually on energy; and

WHEREAS, the Governor's Energy Advisory Council has made numerous recommendations worthy of adoption, including the State of Delaware focusing on leading by example; and

WHEREAS, the steps identified in this order have the potential to reduce greenhouse gas emissions from State government operations and demonstrate that the adoption of responsible policies to minimize our impact on the environment can simultaneously reduce operating expenses and create a more efficient government;

NOW, THEREFORE, I, JACK A. MARKELL, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby DECLARE and ORDER that:

Energy Conservation and Efficiency

1. All State executive branch agencies, departments and offices shall achieve, subject to funding opportunities and constraints, an overall collective reduction, from fiscal year 2008 levels, in energy consumption of at least 10% by the end of fiscal year 2011, 20% by the end of fiscal year 2013, and 30% by the end of fiscal year 2015.

a. All State executive branch agencies, departments and offices shall, as appropriate in both state-owned and state-leased buildings, reduce operating expenses through energy conservation practices, including but not limited to:

Energy Conservation from Lighting, Appliances, and Computer Equipment

i. Eliminating unnecessary lighting by turning off unused lights, reducing lighting in common areas, eliminating non-essential outdoor lighting taking into consideration safety and protection of individuals;

ii. Eliminating the use of portable appliances unless approved by a Cabinet Secretary or an agency's Sustainability Manager, as defined in Section 11 of this Order;

iii. Following Green Computing Practices as outlined by the Department of Technology and Information ("DTI"), including but not limited to:

1. Enabling the power management tools on all personal computers in accordance with DTI guidelines;

2. Enabling, where possible, duplex printing (printing front and back of all pages) as the default for network printers;

3. Acquiring printers and copiers capable of duplex printing when appropriate; and

4. Formatting documents to reduce the number of printed pages when possible.

iv. Evaluating additional activities that consume large amounts of energy and implement conservation measures to reduce consumption.

Thermostat Controls

i. Operating heating systems with temperature settings not to exceed 68-70 degrees during normal working hours. Lobby, corridor and restroom areas shall be kept at a temperature setting of 65 – 67 degrees during working hours if possible. Building entrances and storage areas shall be kept at a temperature setting of 60 – 62 degrees if possible. Temperature settings shall also not exceed 55 degrees in those facilities that are unoccupied during the non-business hours of 6:00 p.m. to 7:00 a.m. workdays, as well as weekends and holidays.

ii. Operating air conditioning no more than is necessary to maintain a temperature setting of 75 - 78 degrees during normal working hours. Lobby, corridor and restroom areas shall be kept at a temperature setting of 78 - 80 degrees during working hours if possible. In facilities that are unoccupied during non-business hours, weekends and holidays, the air conditioning temperature should be no less than is required to maintain the integrity and operation of the system.

iii. Agencies can exempt specific facilities from these restrictions if such temperatures threaten life, health, or safety; however conservation measures shall be applied wherever systems permit. Additionally, any area that houses equipment requiring precise climate controlled conditions in order to operate efficiently shall also be exempt.

b. All State executive branch agencies, departments and offices shall pursue opportunities to reduce operating expenses further through energy efficiency or other measures:

i. The Office of Management and Budget ("OMB"), in collaboration with the Department of Natural Resources and Environmental Control ("DNREC"), is directed to establish a system and procedures to benchmark, monitor and track the energy use and carbon emissions of all State-owned and State-leased facilities, and to make such data and tools available to agencies for their use in promoting energy conservation and greenhouse gas emission monitoring and reporting. The benchmarking system shall:

1. Require all State executive branch agencies, departments and offices that own or operate facilities to enter energy and utility usage and cost data into a tool or system provided by OMB and DNREC;

2. Require historic energy usage and cost data for the last two fiscal years to be compiled for all state-owned and state-leased facilities. The information will be used to rank each facility's energy usage and enable benchmarking against facilities of a similar age, size, construction and function;

3. Target facilities with the highest energy use and identify no or low-cost operational changes that can reduce consumption without capital investment;

4. Be used to prioritize energy efficiency and distributed renewable energy projects based on

energy savings, cost savings and environmental benefit;

5. Quantify, on a facility-by-facility basis, the estimated cost and work necessary to reduce energy consumption by 10%, 20% and 30%; and

6. Evaluate the feasibility of installing on-site wind, photovoltaic, co-generation or other cleaner energy systems that can be implemented using a simple payback period not to exceed 20 years.

ii. OMB is further directed to work with DNREC, the Agency Sustainability Managers designated pursuant to Section 11 below, and in consultation with the Sustainable Energy Utility ("SEU"), in preparation of a plan to audit State facilities for energy efficiency opportunities. Said plan shall include a timetable for such audits and identify appropriate funding for energy efficiency projects, including resources from the American Recovery and Reinvestment Act, Regional Greenhouse Gas Initiative auction proceeds, and tax-exempt financing and other programs administered by the SEU. A preliminary plan is to be delivered to the Cabinet Committee on Energy by May 31, 2010.

iii. Larger State facilities that utilize 50% or more of the aggregate energy used in State buildings shall be benchmarked by December 31, 2010, with the remainder completed by December 31, 2011. All reasonably available efficiency upgrades must be implemented before or coincident with investment in renewable energy technologies.

Use of Clean, Renewable Energy

2. For buildings owned or operated by State executive branch agencies, the State shall target at least 20% of its overall annual electric energy demand from clean, renewable sources by the end of fiscal year 2012, and 30% of its overall annual electric energy demand from clean, renewable sources by the end of fiscal year 2013.

a. OMB, through statewide procurement of energy services, shall utilize procurement strategies that maximize clean and renewable energy purchases and minimize costs over the long term to achieve the targets within the limits of appropriations. OMB is further directed to maximize stabilization of energy costs through utilization of offshore wind energy as the resource is being developed.

b. All State executive branch agencies, departments and offices, in cooperation with OMB and DNREC, are further directed to maximize the use of local distributed renewable energy generation or other clean energy solutions at State facilities in helping to achieve the targets. OMB shall work with DNREC to assess State facilities and appropriate public lands for potential distributed generation sites and evaluate a wide-range of funding sources and mechanisms that maximize the State's return on investment.

Environmentally Responsible and Energy Conscious Construction

3. The State shall integrate the U.S. Green Building Council's Leadership in Energy and Environmental Design ("LEED") practices into all new construction, renovation and the operation of state facilities, with a particular focus on integrating technologies and design/material/construction elements that generate lower long-term operating expenses. Throughout the project planning, building design, construction and operation phases of a project, state agencies, departments and offices shall incorporate best practices to reduce the environmental effects associated with capital improvements. State agencies, departments and offices shall work with architects and engineers working on the design and construction of capital projects to design projects to meet or exceed LEED Silver standards. All projects will pursue that standard and third party certification unless it is determined that such certification cannot be done at a reasonable cost. To meet this goal, architects and engineers working on the design and construction of capital projects shall consider incorporation of the following goals into each project:

a. Maximize the incorporation of design elements and technologies to increase energy efficiency, improve indoor air quality, and reduce potable water usage.

b. Maximize the integration of renewable resources, as geothermal, solar, and wind, into new construction.

c. Manage stormwater on-site through green infrastructure best practices to prevent flooding, reduce water pollution, and promote aquifer recharge.

d. Reduce solid waste generation during construction and integrate recycled content materials.

e. Protect and enhance biodiversity, restore and preserve natural habitats, wetlands and agricultural lands, and withstand and adapt to climate change effects, including sea-level rise.

f. Integrate best land use practices into project design by modeling smart growth approaches to development, including supporting walkable and cyclable communities, prioritizing infill development close to existing infrastructure, ensuring access to public transit, and reducing urban heat island effects.

Recycling

4. All State executive branch agencies, departments and offices shall reduce, reuse, and recycle materials to achieve a 50% rate of diverted waste from landfills by the end of fiscal year 2011, and a 75% rate of diverted waste from landfills by the end of fiscal year 2012, for office, construction and demolition debris and other state activities or wastes. Insofar as achievement of this standard is subject to current contractual obligations and funding constraints, it should be integrated into all future contractual arrangements.

a. The Agency Sustainability Managers designated pursuant to Section 11 below, with the aid of other staff as appropriate, shall jointly determine the appropriate base year and current diversion rates for achievement of these standards and shall report that information to the Cabinet Committee on Energy on or before May 31, 2010.

Clean Transportation

5. All agencies shall improve air quality and reduce the operating expenses from State vehicle use with the goal of reducing, from fiscal year 2008 levels, petroleum consumption by 25%, vehicle emissions by 25%, and vehicle miles traveled by 15% by the end of fiscal year 2012.

a. To reduce energy consumption and air pollution, particularly ground-level ozone, resulting from State fleet vehicle usage, it shall be a priority of the State that, on and after March 1, 2010, new or replacement light duty cars and trucks purchased by State executive branch agencies, departments and offices shall be hybrid vehicles, alternative fuel vehicles, high fuel economy or low-emission vehicles, except if such goal compromises public health, safety, or law enforcement needs. OMB shall annually prepare a life cycle cost analysis for fleet vehicle purchases, and that analysis shall take into consideration the external costs of fossil-fueled vehicles.

b. Develop procedures for diesel vehicles in the State fleet to use biodiesel of the highest percentage content practical.

c. State executive branch agencies, departments and offices shall implement measures to reduce the number of vehicle miles traveled and emissions from idling by State employees, to the extent feasible, in personal and fleet vehicles resulting from job-related travel.

d. State executive branch agencies shall also foster a work environment, to the extent feasible, which enables a voluntary reduction in employee commuting miles, including the promotion of car-pooling, van-pooling, telecommuting, and public transportation incentives.

Environmentally Sensitive Procurement

6. OMB shall work with DNREC, DTI and the Department of Health and Social Services to develop an environmentally sensitive procurement policy for State executive branch agencies, departments and offices. The policy shall encourage such agencies, to the extent permitted by relevant law, to give appropriate consideration to use of environmentally preferable products and services, especially those that will improve the health and productivity of State employees. These products shall include, but not be limited to, goods that consist of fewer toxic substances, reduce the amount of toxic substances disposed or consumed, improve indoor air quality, contain recycled content, minimize waste, lessen the impact to public health, conserve energy, and/or conserve water. Examples include Energy Star rated appliances and technology equipment capable of utilizing recycled paper and duplex printing. OMB shall implement procurement preference programs favoring the purchase of these products and services. The policy shall be completed on or before August 30, 2010 and implemented as existing state contracts expire.

Implementation

7. The Secretary of DNREC shall lead and direct the implementation of the Governor's energy agenda. In this capacity, the Secretary will lead the efforts of the Cabinet Committee on Energy as Chair, review, and implement as appropriate, the recommendations of the Governor's Energy Advisory Council, and oversee the State's involvement in the SEU. Further, all energy-related programs will be coordinated by DNREC, including the Weatherization Assistance Program and the Low-Income Home Energy Assistance Program, unless otherwise required by Delaware law.

8. The Cabinet Committee on Energy, established pursuant to 29 Del. C. § 8054, shall review the progress towards achieving the six goals and standards in this Order, identify and address any barriers to achievement of these goals and standards, and recommend any new goals for future years as may be necessary and desirable.

9. OMB, in coordination with DNREC and the Agency Sustainability Managers designated pursuant to Section 11 below, shall develop a program to educate State employees about strategies and tactics to achieve the six goals. The program shall emphasize the benefits to managing energy consumption in both the workplace and at home and shall be provided to the Cabinet Committee on Energy.

GOVERNOR'S EXECUTIVE ORDERS

10. Each Cabinet Secretary shall report on a quarterly basis on the progress his or her agency has made towards the goals in this executive order.

11. Each Cabinet Secretary shall designate, by February 28, 2010, a sustainability manager tasked with coordinating with DNREC and OMB on program implementation and reporting. Agency Sustainability Managers shall coordinate their agency's activities in the areas described in this Order.

12. The progress of each executive branch agency, department and office shall be measured and top performers shall be considered for recognition by the Cabinet Committee on Energy.

13. The Agency Sustainability Managers shall collectively develop implementation guidelines for review by the Cabinet Committee on Energy, including recommendations to maximize the financial savings associated with the measures in this order. Said guidelines shall be developed by May 31, 2010.

14. Executive Order No. Eighty-Four, issued by Governor Michael N. Castle, is hereby rescinded.

APPROVED this 17th day of February, 2010

Jack A. Markell, Governor

DELAWARE RIVER BASIN COMMISSION**PUBLIC NOTICE**

The Delaware River Basin Commission will hold a public hearing and business meeting on Wednesday, March 3, 2010 beginning at 10:30 a.m. at the Commission's office building, 25 State Police Drive, West Trenton, New Jersey. For more information visit the DRBC web site at www.drbc.net or contact Pamela M. Bush, Esq., Commission Secretary and Assistant General Counsel, at 609 883-9500 extension 203.

DELAWARE SOLID WASTE AUTHORITY**PUBLIC NOTICE**

Pursuant to 7 **Del.C.** §§ 6403, 6404, 6406 and other pertinent provisions of 7 **Del.C.** Ch. 64; the Delaware Solid Waste Authority ("DSWA") is proposing a new Statewide Solid Waste Management Plan (the "Plan") to replace the Plan adopted May 26, 1994.

A public hearing will be held Wednesday, March 24, 2010 at 5:30 p.m., in the DSWA board room located in the main administrative offices of the DSWA at 1128 South Bradford St., Dover, DE 19903. The hearing is to provide an opportunity for public comment on the proposed amendments.

The DSWA will receive written comments, suggestions briefs or other written material until the close of business, March 30, 2010. Written comments, suggestions, compilations of data or other written material shall be submitted to Michael D. Parkowski, Manager of Business Services and Government Relations, Delaware Solid Waste Authority, 1128 South Bradford Street, PO Box 455, Dover, Delaware 19903. Anyone wishing to obtain a copy of the proposed amendments may obtain a copy from the Delaware Solid Waste Authority, 1128 South Bradford Street, PO Box 455, Dover, Delaware 19903, (302) 739-5361.

DEPARTMENT OF EDUCATION**PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, February 18, 2010 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF FINANCE**OFFICE OF THE STATE LOTTERY****PUBLIC NOTICE**

The Office of the State Lottery will seek public comments on proposed new rules governing the operation of video lottery and table games. It is the intent of the Delaware State Lottery to repeal the current video lottery regulations in their entirety and replace them with these new regulations. These regulations come as a result of recent legislation amending 29 Del. C., Chapter 48, which directs the Director of the Lottery to promulgate an initial regulatory framework for table games.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before March 31, 2010 to: Delaware State Lottery Office, 1575 McKee Road, Suite 102, Dover, DE 19904. A copy of these regulations is available from the above address or may be viewed at the Lottery business office at the same address.

CALENDAR OF EVENTS/HEARING NOTICES

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF MANAGEMENT SERVICES****BIRTH TO THREE EARLY INTERVENTION SYSTEM****PUBLIC NOTICE**

The Birth to Three Early Intervention System of the Delaware Department of Health and Social Services is seeking public comment on its annual federal grant application under Part C of the Individuals with Disabilities Education Improvement Act of 2004. Public Comment is being accepted from March 8 ~ April 8, 2010, and the federal grant application will be available until May 8, 2010.

Please contact the Part C Birth to Three office at 302-255-9134 (call collect from Kent and Sussex) to secure a copy of grant application. Send your written comments to Part C/Birth to Three, DMS/DHSS, 2nd floor, Main Building, Suite 249, 1901 N. DuPont Hwy, New Castle, DE 19720 or fax to 302-255-4407.

DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES**PUBLIC NOTICE**

The Division of Developmental Disabilities (DDDS) intends to publish in regulation a description of the agency's appeal process. The regulations shall include a definition of appeal, issues that can be appealed, the time requirements for requesting an appeal, how the process works and how to request an appeal.

Any person who wishes to make written suggestions, submit compilations of data, briefs or other written materials concerning the proposed new regulations must submit same to Mary T. Anderson, M.S.W., Director of Policy Development, Division of Developmental Disabilities Services, 26351 Patriots Way, Georgetown, DE 19947 or by fax to (302) 934-8704 by March 30, 2010. The action concerning the determination of whether to adopt the proposed regulation will be based upon the Department and Division's analysis and consideration of the comments and written materials filed by interested persons.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Medical Assistance Program (DMAP) General Policy Provider Manual.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by March 31, 2010.

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 SOCIAL SERVICES**PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding Delaware's Cash Assistance and Food Supplement Programs.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written

materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by Wednesday, March 31, 2010.

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

DEPARTMENT OF INSURANCE
PUBLIC NOTICE

INSURANCE COMMISSIONER KAREN WELDIN STEWART, CIR-ML hereby gives notice of intent to adopt Department of Insurance Regulation 1408 relating to payment of long-term care services. The docket number for this proposed regulation is 1337.

The purpose of the proposed regulation 1408 is to require timely payment of claims involving Long Term Care insurance. The text of the proposed amendment is reproduced in the March 2010 edition of the Delaware Register of Regulations. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:00 p.m., Monday April 5, 2010, and should be addressed to Mitch Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.736.7979 or email to mitch.crane@state.de.us.

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

The Summer Flounder Fishery Management Plan details the annual process that the Summer Flounder Fishery Management Board, the Mid Atlantic Fishery Management Council and the National Marine Fisheries Service are to use for conservation equivalency in the recreational summer flounder fishery. These agencies agreed at their joint meeting on December 8, 2009 that the states would implement conservation equivalent measurers rather than a coastwide management program for summer flounder in 2010. The total allowable harvest quota has been increased for 2010 based on the latest scientific data that indicates that the stock is not overfished and overfishing is not occurring. Delaware's harvest cap for 2010 will be 80,000 fish which is higher than the 65,000 fish target in 2009. In addition, it is estimated, based on the Marine Recreational Fisheries Statistics survey data, that approximately 82,000 summer flounder were harvested in Delaware during the 2009 fishing season. As such, a number of options will be considered that are designed to restrain the harvest at or below the harvest cap for 2010. These measures may include size limits that range from 18.5 inches to 19.5 inches in conjunction with creel limits that could range from two to eight fish. In addition, management options may include a partial harvest season closure designed to restrain the harvest for 2010 at or below the 80,000 fish target.

Individuals may present their comments or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, (302) 739-9914. A public hearing on these proposed amendments will be held on March 23, 2010 at 7:00 P.M. in the DNREC Auditorium, 89 Kings Highway, Dover, DE 19901. The record will remain open for written comments until 4:30 PM, March 31, 2010.

CALENDAR OF EVENTS/HEARING NOTICES

DIVISION OF FISH AND WILDLIFE
PUBLIC NOTICE

The changes to regulation 3900 Wildlife will be presented in a series of public hearings on March 25th. 2010 beginning at 6:30 p.m., DNREC Auditorium, 89 Kings Highway, Dover, Delaware. The hearing record for these proposed Regulations will remain open until 4:30 p.m. March 31, 2010

The order of hearings is as follows:

- 3900.1 - Definitions
- 3900.2 - Method of Take
- 3900.3 - Federal Laws and Regulations Adopted
- 3900.4 - Seasons
- 3900.7 - Deer
- 3900.21 - Guide License Requirements
- 3900.22 - Hunter and Trapper Identification Number

Written comments for the hearing record should be addressed to Kenneth Reynolds, 6180 Hay Point Landing Road, Smyrna, DE 19977 or to Kenneth.Reynolds@state.de.us. The record will remain open for written public comment until 4:30 P.M. March 31, 2010.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
Board of Accountancy
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §105(a)(1), the Board of Accountancy has proposed revisions to its rules and regulations.

A public hearing will be held on April 21, 2010 at 9:15 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. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Accountancy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board has proposed numerous revisions to the rules and regulations. A number of revisions implement amendments to the Board's licensing law, Chapter 1 of Title 24 of the Delaware Code, including the addition of the practice privilege set forth at 24 **Del.C.** §108. In addition, the amendments set forth the licensure requirements that will go into effect on August 1, 2012.

Further, specific course requirements for licensure are revised. There are various amendments to the Rules pertaining to continuing professional education. Specifically, the proposed amendments will expressly give the Board authority to sanction licensees who do not comply with continuing professional education requirements.

The Board also proposes various grammatical and typographical revisions.

The Board will consider promulgating the proposed rules and regulations at its regularly scheduled meeting following the public hearing.

DIVISION OF PROFESSIONAL REGULATION
Board of Pharmacy
PUBLIC NOTICE

The Delaware Board of Pharmacy ("the Board"), in accordance with 24 *Del. C.* § 2509, is proposing to amend regulations **1.0 Pharmacist Licensure Requirements, Regulation 5.0 Dispensing, Regulation 9.0 Hospital**

Pharmacy, Regulation 10.0 Sterile Pharmaceuticals and Antineoplastic Agents, and 19.0 Technicians: Qualifications, Training, and Duties. A public hearing is scheduled for Wednesday, April 21, 2010, at 10:00 a.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, DE 19904.

Members of the public may offer verbal comments on the proposal at the hearing. Written comments may be submitted to the Board prior to the hearing care of Nancy Fields, Administrative Specialist II, at the above address. Written comments may be submitted until the public hearing begins. Anyone wishing to obtain a copy of the proposal or to make comments at the public hearing should contact Nancy Fields at the above address or call (302) 677-7318.

The Board will consider promulgating the proposed changes immediately following the public hearing.

DEPARTMENT OF TRANSPORTATION
DIVISION OF TRANSPORTATION SOLUTIONS
PUBLIC NOTICE

Under Title 17 of the **Delaware Code**, Sections 134 and 141, as well as 21 **Delaware Code** Chapter 41, the Delaware Department of Transportation (DelDOT), adopted a Delaware version of the Federal Manual on Uniform Traffic Control Devices (MUTCD). The Department has now drafted revisions to Parts 2, 3, and 6 of the Delaware MUTCD. A description of the proposed changes accompanies this notice.

The Department will take written comments on the draft changes to the Delaware MUTCD from March 1, 2009 through March 31, 2009. Copies of the Draft Delaware MUTCD Revisions to Parts 2, 3, and 6 can be obtained by reviewing or downloading a PDF copy at the following web address: <http://regulations.delaware.gov/>

Questions or comments regarding these proposed changes should be directed to: Donald Weber, P.E. Assistant Director of Transportation Engineering Division of Transportation Solutions Delaware Department of Transportation 169 Brick Store Landing Road Smyrna, DE 19977 (302) 659-2002 (telephone) (302) 653-2859 (fax) don.weber@state.de.us
