

CALENDAR OF EVENTS/HEARING NOTICES

CALENDAR

October 2020

DEPARTMENT OF EDUCATION

PUBLIC NOTICE

On March 12, 2020, Governor Carney issued a declaration of a state of emergency for the state of Delaware due to a public health threat. The State of Emergency allows all public meetings of executive branch public bodies, including the SBE, to be conducted electronically, either by means of telephone conference call or video-conference call.

In accordance with the State of Emergency, the State Board of Education is currently holding meetings electronically. The meeting information can be accessed via the public meeting calendar (<https://publicmeetings.delaware.gov/Search?q=&AnyAll=Any&AgencyID=22&StartDateInclusive=2020-08-01>). Members of the public can join the meeting via the web or telephone.

Meeting materials are available on the State Board of Education's eBoard site (<https://simbli.eboardsolutions.com/index.aspx?s=190001>). (If you are having technical difficulties accessing the site, please try a different browser.)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Health Care Quality

PUBLIC NOTICE

3201 Skilled and Intermediate Care Nursing Facilities

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 11, Section 1119C, Delaware Health and Social Services (DHSS) / Division of Health Care Quality (DHCQ) is proposing regulations governing Skilled and Intermediate Care Nursing Facilities.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same to, the Division of Health Care Quality, 261 Chapman Road, Suite 200, Newark, Delaware 19702, by email to Corinna.Getchell@Delaware.gov or by fax to 302-292-3931 by 4:30 p.m. on November 2, 2020. Please identify in the subject line: Regulations Governing Skilled and Intermediate Care Nursing Facilities.

The action concerning the determination of whether to adopt the proposed regulations 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.

The purpose of this notice is to advise the public that Delaware Health and Social Services / Division of Health Care Quality is proposing regulations governing Skilled and Intermediate Care Nursing Facilities.

The Division of Health Care Quality plans to publish the "proposed" amendments to the regulations governing Skilled and Intermediate Care Nursing Facilities and hold them out for public comment per Delaware law. The amendments update the regulatory language to include the emergency regulations published on June 1, 2020. This language expands definitions, documentation, emergency preparedness, and testing requirements for assisted living facilities.

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services / Division of Health Care Quality gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on November 2, 2020.

Division of Health Care Quality

PUBLIC NOTICE
3225 Assisted Living Facilities

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 11, Section 1119C, Delaware Health and Social Services (DHSS) / Division of Health Care Quality (DHCQ) is proposing regulations governing Assisted Living Facilities.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same to, the Division of Health Care Quality, 261 Chapman Road, Suite 200, Newark, Delaware 19702, by email to Corinna.Getchell@Delaware.gov or by fax to 302-292-3931 by 4:30 p.m. on November 2, 2020. Please identify in the subject line: Regulations Governing Assisted Living Facilities.

The action concerning the determination of whether to adopt the proposed regulations 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.

The Division of Health Care Quality plans to publish the "proposed" amendments to the regulations governing Assisted Living Facilities and hold them out for public comment per Delaware law. The amendments update the regulatory language to include the emergency regulations published on June 1, 2020. This language expands definitions, documentation, emergency preparedness, and testing requirements for assisted living facilities.

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services / Division of Health Care Quality gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on November 2, 2020.

Division of Health Care Quality
PUBLIC NOTICE
3230 Rest (Residential) Home Regulations

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 11, Section 1119C, Delaware Health and Social Services (DHSS) / Division of Health Care Quality (DHCQ) is proposing regulations governing Rest (Residential) Home.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same to, the Division of Health Care Quality, 261 Chapman Road, Suite 200, Newark, Delaware 19702, by email to Corinna.Getchell@Delaware.gov or by fax to 302-292-3931 by 4:30 p.m. on November 2, 2020. Please identify in the subject line: Regulations Governing Rest (Residential) Home.

The action concerning the determination of whether to adopt the proposed regulations 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.

The Division of Health Care Quality plans to publish the "proposed" amendments to the regulations governing Rest (Residential) Home and hold them out for public comment per Delaware law. The amendments update the regulatory language to include the emergency regulations published on June 1, 2020. This language expands definitions, documentation, emergency preparedness, and testing requirements for assisted living facilities.

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services / Division of Health Care Quality gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on November 2, 2020.

Division of Public Health
PUBLIC NOTICE

4462 Public Drinking Water Systems

Pursuant to 16 **Del.C.** §122(3)(c), Health Systems Protection, Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Public Drinking Water Systems. On October 1, 2020, the Division of Public Health plans to publish as “proposed” revisions to the Public Drinking Water Systems regulations. The revisions include:

- EPA-required corrections for specific rule primacy;
- Fluoride requirements for systems required to provide fluoride under Delaware law;
- Definitions and a new chapter for cross-connections; and
- Minor clarifications and technical changes.

Copies of the proposed regulations are available for review in the October 1, 2020 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Alanna Mozeik by Monday, November 2, 2020, at:

Alanna Mozeik
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: Alanna.Mozeik@delaware.gov
Phone: (302) 744-4951

Division of Social Services PUBLIC NOTICE Defining Family Size For Child Care

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) is proposing to amend the Division of Social Services Manual regarding Child Care Subsidy Program, specifically, to define family size for child care.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on November 2, 2020. Please identify in the subject line: Defining Family Size for Child Care.

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 POC – Changing Providers And Charging Fees

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) is proposing to amend the Division of Social Services Manual regarding the Child Care Subsidy Program, specifically, to update policy related to changing child care providers and charging fees to Purchase of Care (POC) families.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written

materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on November 2, 2020. Please identify in the subject line: POC – Changing Providers and Charging Fees.

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
Office of the Commissioner
PUBLIC NOTICE
902 Prohibited Unfair Claim Settlement Practices

In the May 1, 2020 edition of the *Register of Regulations*, the Department published a proposal to update and clarify requirements concerning prohibited unfair claim settlement practices that are set forth in Regulation 902 (see 23 **DE Reg.** 920 (05/01/2020)). In that proposal, the Department proposed adding new subsection 3.1.14, which included a failure to promptly settle a claim as required under Regulation 903 as an unfair claim settlement practice. The Department also took the opportunity of the proposal to make grammatical and formatting edits throughout the regulation.

Upon further review, the Department determined not to proceed with proposed new subsection 3.1.14 and withdrew that proposal, as violations of Regulation 903 are already a defined unfair claims settlement practice.

Instead, the Department proposed to add new subsection 3.2, which would have specifically provided that three instances of an insurer's commission of a prohibited claim settlement practice within a 36-month period, as listed in subsection 1.2.1 (to be recodified at subsection 3.1), shall give rise to a rebuttable presumption that the insurer is in violation of this regulation and 18 **Del. C.** §2304(16)f. This first re-proposal was published in the June 1, 2020 edition of the *Register of Regulations* (see 23 **DE Reg.** 997 (06/01/2020)). The Department again took the opportunity of the re-proposal to make grammatical and formatting edits throughout the regulation.

The Department received several comments from insurance industry-related stakeholders, many of whom expressed surprise that the Department would propose such an amendment because the commenters were not aware of any negative market conduct trends in Delaware that would have led the Department to take such action.

One commenter objected that proposed new subsection 3.2 would discourage informal resolution of market conduct exam findings, "emphatically discourage self-reporting and self-remediation of claims processing errors or violations, even if unintentional and harmless to policyholders, and . . . would unfairly expose insurers to bad faith actions that are, on the merits, unfounded, based on a 'general practices' presumption of just three violations over 36 months.

Other commenters opined that proposed new subsection 3.2 makes Delaware's regulation exceed the expectations set forth in the 2008 National Association of Insurance Commissioners (NAIC) Model Unfair Claims Settlement Act. In that Act, the NAIC discussed defining "general business practice" but chose not to define it, instead opting to establish a statistically based benchmark error rate of seven percent for auditing claim practices and 10 percent for other trade practices. These commenters went on to opine that Delaware would be the only state in the nation to set numeric limits on numbers of claims over a specified time that would trigger the rebuttable presumption of an unfair trade practice.

The commenters also pointed out that, in their opinion, the specific number of claims (3) over a set time period (36 months) is unfair and untenable for companies that process thousands of claims per month, further stating that while some of the Department's regulations understandably contain "three strikes" provisions, those provisions are relegated to the health care arena. These commenters concluded that three claims in three years does not rise to the level of an unfair business practice; unfair business practice should be reserved for systemic violations, not for a mistake made due to human error.

On re-proposal, the Department has determined to revise proposed new subsection 3.2 to provide that:

An insurer's commission of prohibited unfair claim settlement practices listed in subsection 3.1 of this regulation in four percent or more of claims sampled by the Department during any investigation or examination of the insurer, shall give rise to a rebuttable presumption that the insurer is in violation of

this regulation and 18 Del. C. §2304(16)f.

The Delaware Code authority for the regulation and the proposed amendments is 18 Del.C. §§311 and 2312.

The Department has determined to hold a virtual public hearing on the proposed amendments to Regulation 902 on **October 22, 2020 at 9:00 a.m.** The hearing will be facilitated through WebEx at <https://stateofdelaware.webex.com/stateofdelaware/j.php?MTID=mcb66b1d7794ffd79b6a2b963bb23bb43> meeting number (access code): 173 669 0005 and meeting password: Fp7rW3juew9.

Holding a virtual public meeting is specifically permitted by Paragraph 5 of the Declaration of a State of Emergency for the State of Delaware due to a Public Health Threat issued by Governor John Carney on March 12, 2020 and extended monthly thereafter (see <https://governor.delaware.gov/health-soe/> for the complete list of modifications and extensions).

The proposed amendments appear below and may also be viewed on the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendments to the regulation. Any written submission in response to this notice and relevant to the proposed amendments must be received by the Department of Insurance no later than 4:30 p.m. EST, the 6th day of November 2020. Any such requests and any questions concerning connecting to the public hearing should be directed to:

Leslie W. Ledogar, Regulatory Specialist
Delaware Department of Insurance
ATTN: Docket 4259-2020
1351 West North Street, Suite 101
Dover, DE 19904
(302) 674-7379
Email: Leslie.Ledogar@delaware.gov

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Waste and Hazardous Substances Waste Management Section

PUBLIC NOTICE

1301 Regulations Governing Solid Waste

To provide greater environmental protection and to reduce human health risks, the Compliance and Permitting Section (CAPS) proposes to modify the DRGSW to adopt regulations to clarify the State's Single Use Plastic Bag Ban and At Store Recycling Program.

A virtual public hearing on the proposed amendments to DRGSW (Docket # 2020-R-WH-0025) will be held on **Wednesday, October 21, 2020, beginning at 6:00 PM.** A web link to the virtual hearing will be posted on the DNREC Public Hearings site at <https://de.gov/dnrehearings>. To access the audio-only portion of the virtual hearing, dial in at 1-408-418-9388 and enter event code 173 830 4476. Closed-captioning available by request if made at least 7 days before the event.

Those wishing to offer verbal comments during DNREC virtual public hearings must pre-register using the weblink posted on the DNREC Public Hearings site at <https://de.gov/dnrehearings> or by contacting Adam Schlachter.

The proposed amendments may be inspected online as of October 1, 2020 at http://regulations.delaware.gov/services/current_issue.shtml or in-person by appointment only by contacting contact Adam Schlachter by phone at 302-739-9403; or by email at Adam.Schlachter@delaware.gov.

The hearing record will remain open for at least 15 days following the date of the hearing. The Department will accept public comment through the close of business on Thursday, November 5, 2020 and comments pertaining to the above regulations will be accepted in written form via:

Email: DNRECHearingComments@delaware.gov

Online Form: <https://dnrec.alpha.delaware.gov/public-hearings/comment-form/>
or via USPS to the following address:

Theresa Newman, Hearing Officer
DNREC - Office of the Secretary
89 Kings Highway
Dover, DE 19901

DEPARTMENT OF STATE
Division of Professional Regulation
1900 Board of Nursing
PUBLIC NOTICE

The Delaware Board of Nursing, pursuant to 24 *Del. C.* § 1904(c), proposes to revise its regulations to add failing to practice nursing without discrimination to the list of examples of unprofessional conduct.

The Board will hold a public hearing on the proposed regulation changes on November 18, 2020 at 9:00 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Dr. Pamela Zickafoose, Executive Director of the Delaware Board of Nursing, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until December 3, 2020 pursuant to 29 *Del. C.* § 10118(a).

Division of Professional Regulation
2925 Real Estate Commission Education Committee
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §2906(a)(1), the Delaware Real Estate Commission ("Commission") has proposed revisions to its Education Guidelines ("Guidelines").

Specifically, Section 4.0 has been revised to state that prelicensing education and continuing education may be delivered in a traditional classroom setting or by distance learning, which may be asynchronous or synchronous. Asynchronous learning is "distance learning without the opportunity for real time interaction between the instructor and students." Synchronous learning is "distance learning that happens in real time where there is the opportunity for direct interaction between the instructor and students." The proposed revisions outline the requirements for each method of instruction. Inclusion of synchronous learning in Section 4.0 will expand educational opportunities for applicants and for licensees without compromising professional standards. This proposal strikes the current Section 4.0, including the amendment in subsection 4.5, which was adopted by emergency regulation as published in Register of Regulations on August 1, 2020, Volume 24, Issue 2.

A public hearing will be held on November 12, 2020 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Real Estate Commission, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address or at danielle.cross@delaware.gov.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be **November 30, 2020**. The Board will deliberate on all of the public comments at its regularly scheduled meeting.

Division of Professional Regulation
3800 Board of Dietetics/Nutrition
PUBLIC NOTICE

The Delaware Board of Dietetics/Nutrition, pursuant to 24 **Del.C.** §3805(1), proposes to revise its regulations. The proposed amendments to the regulations seek to wholly amend the continuing education requirements for

renewal to more closely align with the requirements of Commission on Dietetic Registration thus expanding the ways in which a licensee can obtain continuing professional education. In addition, the changes clarify the time a licensee may remain on inactive status and the procedures required to reactivate a license.

The Board will hold a public hearing on the proposed rule change on November 13, 2020 at 1:30 p.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Danielle Ridgway, Administrator of the Delaware Board of Dietetics/Nutrition, Cannon Building, 861 Silver Lake Blvd, Dover, DE 19904. Written comments will be accepted until November 30, 2020.

OFFICE OF THE STATE TREASURER

on behalf of the

Cash Management Policy Board

PUBLIC NOTICE

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

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

Members of the public may receive a copy of the proposed regulations at no charge by U.S. mail by writing, emailing or calling Mr. Jordan Seemans at the Office of the State Treasurer ("OST"), 820 N. French St., Suite 201, Wilmington, Delaware 19801, Jordan.W.Seemans@delaware.gov, (302) 577-4211. Members of the public may present written comments on the proposed regulations by submitting such written comments to Mr. Seemans at the address above. Written comments must be received on or before November 1, 2020.
