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# Delaware Register of Regulations

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Issue Date: February 1, 2020

Volume 23 - Issue 8, Pages 591 - 692

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## IN THIS ISSUE:

Regulations:  
Proposed  
Final

General Notices

Calendar of Events &  
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before January 15, 2020.

Cover Photo by  
Dolores Michels  
*Snowy Pine at Killens Pond*



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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

- Governor's Executive Orders
  - Governor's Appointments
  - Agency Hearing and Meeting Notices
  - Other documents considered to be in the public interest.
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## CITATION TO THE DELAWARE REGISTER

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

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

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

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## SUBSCRIPTION INFORMATION

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

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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

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

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

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

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

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

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

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

| ISSUE DATE | CLOSING DATE | CLOSING TIME |
|------------|--------------|--------------|
| March 1    | February 17  | 4:30 p.m.    |
| April 1    | March 16     | 4:30 p.m.    |
| May 1      | April 15     | 4:30 p.m.    |
| June 1     | May 15       | 4:30 p.m.    |
| July 1     | June 15      | 4:30 p.m.    |

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

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| <b>Division of Debt and Cash Management</b>  |  |
| 1201 Statement of Objectives and Guidelines for the Investment of State of Delaware Funds.....   | 23 DE Reg. 297 (Prop.)<br>23 DE Reg. 584 (Final)                           |

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## Symbol Key

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

## Proposed Regulations

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

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### DEPARTMENT OF AGRICULTURE DELAWARE NUTRIENT MANAGEMENT COMMISSION

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

#### PUBLIC NOTICE

#### 1201 Nutrient Management Certification Regulations

The Delaware Nutrient Management Commission, pursuant to 3 **Del.C.** §2220(a), proposes to revise regulation 1201-9.3 to allow the Commission to waive the fee required to obtain a nutrient consultant or commercial nutrient handler certificate for good cause shown. Additional technical formatting and grammar changes to the regulatory text are included as well.

Written comments should be sent to Chris Brosch, Administrator of the Delaware Nutrient Management Commission, 2320 S. DuPont Highway, Dover DE 19901. Written comments will be accepted until March 2, 2020 pursuant to 29 **Del.C.** §10118(a).

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

<http://regulations.delaware.gov/register/february2020/proposed/23 DE Reg 601RFA 02-01-20.pdf>

#### 1201 Nutrient Management Certification Regulations

#### PREAMBLE

These regulations have been developed pursuant to 3 **Del.C.** Ch. 22. That statute established the Delaware Nutrient Management Commission and authorized the Commission to develop, review, approve, and enforce nutrient management regulations, including regulations governing the certification of persons who conduct certain activities that involve the generation or application of nutrients to lands or water, or who are involved in providing advice or consultation regarding such application of nutrients. These regulations were developed by the Commission and the Delaware Department of Agriculture. They are adopted with the guidance, advice, and

consent of the Commission.

## 1.0 Authority

These regulations are promulgated pursuant to the authority provided by 3 Del.C. Ch. 22, §2221.

## 2.0 Purpose

The purpose of these regulations is to establish certification requirements for certain generators or handlers of nutrients, or who engage in advising or consulting with others regarding the formulation, application, or scheduling of nutrients within the State of Delaware.

## 3.0 Definitions

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

**"Animal Feeding Operation"** or **"AFO"** means any area or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period.

**"Animal Unit"** ~~shall be~~ means **"Animal Unit"** as defined by the United States Department of Agriculture Natural Resources Conservation Service, and is approximately 1,000 lbs. "average" live body weight.

**"Applicant"** means any person seeking a certificate from the Commission.

**"Application Area"** means land under the control of a person, whether it is owned, licensed, or leased, which manure, litter or fertilizer may be applied.

~~"Apply, Applying"~~, **"Applying"**, or any derivation of the word **"apply"**, as it relates to the application of nutrients, means the human controlled mechanical conveyance of nutrients to land for the purpose of applying organic and/or inorganic nutrients.

**"Certification"** means the recognition by the Commission that a person has met the qualification standards established by the Commission and has been issued a written certificate authorizing such person to perform certain functions specified in these regulations.

**"Commercial Nutrient Handler"** means a person who applies organic or inorganic nutrients to lands or waters in the State as a component of a commercial or agricultural business in exchange for a fee or service charge.

**"Commercial Processor"** means any individual, partnership, corporation, association or other business unit that controls, through contracts, vertical integration or other means, several stages of production and marketing of any agricultural commodity.

**"Commission"** or **"DNMC"** means the Delaware Nutrient Management Commission.

**"Credit"** ~~represents~~ means a unit of measuring education for certification as defined by the Commission and is dependent upon such factors as curricula intensity and class time.

**"Direct Supervision"** ~~refers to~~ means actions by a person who is certified with the State Nutrient Management Program and directs individuals within the same organization/company in applying nutrients. Direct supervisors hold responsibility for nutrient application actions for those under his/her supervision.

**"Fertilizer"** means any synthetic or carbon based substance that is added to the soil to supply one or more plant nutrients.

**"Frozen"** ~~relates to~~ means frozen ground and is the top 2-inches of surface area receiving nutrients where the moisture has changed to ice for a period of 72 consecutive hours or a condition where any ice formation below the 2-inch zone restricts the natural flow of moisture through the soil profile.

**"Manure"** means fecal and urinary defecations of livestock and poultry; may include but is not limited to spilled feed, bedding, soil, and compost if commingled with manure.

**"Nutrient Consultant"** means a person who is engaged in the activities of advising or consulting with another person who is required to have a certificate under these regulations, regarding the formulation, application, or scheduling of organic or inorganic nutrients within the State. Provided, however, any employee of any federal, State or local government agency or the University of Delaware, or other

organization duly recognized by the Commission for such purpose, who provides advice or consultation in his/her capacity as such an employee, without compensation, shall not be deemed to be a nutrient consultant unless such advice and consultation constitutes a direct and substantial part of a nutrient management plan developed pursuant to these regulations.

**"Nutrient Generator"** means a person who owns or operates a facility within the State that produces organic or inorganic nutrients.

**"Nutrient Management Plan"** or **"plan"** means a plan by a certified nutrient consultant to manage the amount, placement, timing, and application of nutrients in order to reduce nutrient loss or runoff and to maintain the productivity of soil when growing agricultural commodities and turfgrass.

**"Nutrients"** means nitrogen, nitrate, phosphorus, organic matter, and any other elements necessary for or helpful to plant growth.

**"Person"** means any individual, partnership, association, fiduciary, or corporation or any organized group of persons, whether incorporated or not.

**"Private Nutrient Handler"** means a person in the State who applies organic or inorganic nutrients to lands or waters he/she owns, leases, or otherwise controls.

**"Production Area"** means that part of an AFO that includes the "animal confinement area", the "manure storage area", the raw materials storage area and the "waste containment areas", egg washing or processing facility and any area used in the storage, handling, treatment or disposal of mortalities. The Production Area should be defined in the operation's Nutrient Management Plan.

**"Program Administrator"** or **"Nutrient Management Program Administrator"** means the exempt employee of the Delaware Department of Agriculture who is responsible for the operation of the State Nutrient Management Program.

**"Secretary"** means the Secretary of the Delaware Department of Agriculture or ~~his/her~~ the Secretary's designee.

**"State Nutrient Management Program"** or **"SNMP"** means all the nutrient management program elements developed by the Commission, whether or not reduced to rules or regulations.

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

**"Stockpiling"** means the temporary location of manure piles in the production area for no more than 14 days unless the manure/litter is located under cover in an approved Manure Storage Structure. Stockpiling must be conducted and positioned in accordance with State Technical Standards.

**"Temporary Field Staging"** means the location of manure for 90 days or less prior to its application within the application area and is considered a part of the application process. Temporary Field Staging criteria and performance standards are further described in State Technical Standards. In addition, staging must be performed in accordance with site specific Nutrient Management Plans.

#### **4.0 Certification Categories And Activities Requiring Certification**

- 4.1 No later than January 1, 2004, any person who engages in any of the following activities must have the applicable certificate or certificates required by and issued pursuant to these regulations, as follows:
- 4.1.1 Nutrient generator certification - A nutrient generator who owns or operates any animal feeding operation in excess of eight animal units must have a nutrient generator certificate.
  - 4.1.2 Private nutrient handler certification - A private nutrient handler who, on an annual basis, applies nutrients to 10 acres or greater of land or waters owned, leased, or otherwise controlled by such handler must have a private nutrient handler certificate.
  - 4.1.3 Commercial nutrient handler certification - A commercial nutrient handler who, on an annual basis, applies nutrients to 10 acres or greater of land or waters of the state must have a commercial nutrient handler certificate.

- 4.1.4 Nutrient consultant certification - A nutrient consultant who is engaged in the provision of nutrient management advice or the formulation of a nutrient management plan or in nutrient management planning as it relates to the application or disposal of nutrients at or from a specific site in the State of Delaware must have a nutrient consultant certificate.
- 4.2 These certification requirements shall not apply to individuals who perform services under the direct supervision of a certified person, provided that the certified person assures that such individuals act in accordance with the standards or practices which the certified person would follow if such person performed the service. Nor shall the certification requirements of this section apply to persons who utilize a person certified under these regulations to conduct the activities identified in this section, provided that such persons do not engage in any of the activities themselves and the certified person is certified at the time the activities are undertaken.
- 4.3 Conditional certifications may be issued for any reason specified by the Commission and shall be issued for periods not to exceed one year.

## **5.0 Certification Requirements**

- 5.1 Any person who seeks a certification shall file with the Commission an application on a form provided by the Commission, along with the application fee. The minimum requirements for the certifications follow.
- 5.2 Nutrient generator certificates - To obtain a nutrient generator certificate, the applicant must take and successfully complete at least 6 credits of educational course work as approved by the Commission or Program Administrator. Proof of such completion of course work shall be submitted with the application.
- 5.3 Private nutrient handler - To obtain a private nutrient handler certificate, the applicant must take and successfully complete at least 9 credits of educational course work as approved by the Commission or Program Administrator. Proof of such completion of course work shall be submitted with the application.
- 5.4 Commercial nutrient handler - To obtain a commercial nutrient handler certificate the following criteria must be satisfied:
  - 5.4.1 The applicant must take and successfully complete at least 12 credits of educational course work as approved by the Commission or Program Administrator. Proof of such completion of course work shall be submitted with the application.
  - 5.4.2 The applicant must pass a written test approved by the Commission.
- 5.5 Nutrient consultant - To obtain a nutrient consultant certificate the following criteria must be satisfied:
  - 5.5.1 The applicant must take and successfully complete at least 12 credits of educational course work as approved by the Commission or Program Administrator. Proof of such completion of course work shall be submitted with the application.
  - 5.5.2 The applicant must pass a written test approved by the Commission.

## **6.0 Nutrient Handling Requirements**

- 6.1 As required by 3 **Del.C.** §2201 et.al, Nitrogen and Phosphorus fertilizers shall be applied according to an approved Nutrient Management plan.
- 6.2 For land areas not required to have a Nutrient Management plan, applications of Nitrogen and Phosphorus fertilizers by anyone holding a commercial nutrient handler or nutrient consultant certification, or anyone required to be certified at said level pursuant to 3 **Del.C.** §2242 and ~~section~~ Section 4.0 herein, are prohibited when one of the following conditions exist:
  - 6.2.1 The surface area of application is impervious such as sidewalks, roads and other paved areas and the misdirected fertilizer is not removed on the same day of application;
  - 6.2.2 The surface area is covered by snow or frozen; or
  - 6.2.3 The date of application is between December 7 and February 15.
- 6.3 Nutrient Storage and Staging Requirements

- 6.3.1 For any person required to develop and implement a nutrient management plan and who stores, handles, or stages any manure in any area that may be exposed to rainfall, the following requirements must be met.
- 6.3.2 Any outdoor storage of manure within the production areas, or staging within the application areas must be the result of exhausting manure storage structure space available by the nutrient generator or nutrient applicator of such manure. Stockpiling must be performed in accordance with State Technical Standards.
- 6.3.3 Any outdoor stockpiling of poultry manure within the production area or any area other than the application area will be limited to 14 days without a cover.
- 6.3.4 Any outdoor temporary field staging of poultry manure within the application area will be limited to 90 days.
  - 6.3.4.1 Authorization for exceeding the 90 day time period may be granted on a case by case situation if approved by the nutrient consultant and reported to the nutrient management program administrator. Please refer to State Technical Standards.
- 6.3.5 In order to prevent discharges of pollutants to surface waters, any outdoor staging of poultry manure within the application area shall be handled according to the following:
  - 6.3.5.1 The manure must be at least 6 feet high and in a conical cross section shape; and
  - 6.3.5.2 Poultry litter manure shall not consist of more than 5% crust out material; and
  - 6.3.5.3 The selection of the staging site must consider the highest, most practical site possible and shall not use the same site more than once every two years (unless allowable under conditions as described in the State Technical Standards). Refer to State Technical Standards; and
  - 6.3.5.4 The staging site must be located at least 100 feet from a public road, 100 feet from any surface water and 200 feet from any residence not located on the property; and
  - 6.3.5.5 The staging site must be at least 200 feet from a domestic well and 300 feet from a public water supply well; and
  - 6.3.5.6 Post litter removal treatment must include the removal of all litter and the top 1-2 inches of topsoil if the topsoil is co-mingled with the litter to prevent nutrient loads; and
  - 6.3.5.7 A production crop or vegetative cover crop must be established and maintained at the staging site as soon as practical following post removal treatment.

## **7.0 Reciprocity**

- 7.1 Notwithstanding the requirements of Section ~~5.0, supra~~, 5.0 of this regulation any person may obtain a certificate under these regulations if all the following requirements are satisfied.
- 7.2 The applicant must submit an application for the applicable certificate on a form provided by the Commission, along with the application fee.
- 7.3 The applicant must have a valid certificate or equivalent authorization, such as a license for the certificated activity, from another state or organization that requires qualifications at least as rigorous as those required under these regulations and approved by the Commission.
- 7.4 The applicant must pass a test approved by the Commission related to specific Delaware Nutrient Management requirements. The Commission may in its sole discretion waive this test requirement.

## **8.0 Continuing Education**

- 8.1 After a certificate is issued, the certificate holder must take and successfully complete continuing education courses approved by the Commission or Program Administrator in accordance with the following:
  - 8.1.1 Nutrient generator - 6 credits of continuing education in each three-year period following the issuance of the certification.
  - 8.1.2 Private nutrient handlers - 6 credits of continuing education in each three-year period following the issuance of the certification.

- 8.1.3 Commercial nutrient handlers - 6 credits of continuing education in each three-year period following the issuance of the certification.
- 8.1.4 Nutrient consultants - 5 credits of continuing education each year following the issuance of the certification.
- 8.2 Failure to satisfy the continuing education requirements may result in the revocation of a certificate or non-renewal of the certificate.
- 8.3 Any dispute regarding continuing education credits may be directed to the Commission which will determine whether a hearing is necessary to resolve the dispute.

#### **9.0 Duration Of Certificates And Certification Fees**

- 9.1 Certificates normally will be issued and renewed for periods of three years for nutrient generators, private nutrient handlers, and commercial nutrient handlers. Certified nutrient consultants will be issued and renewed certifications annually.
- 9.2 Certificate fees are due with the application. The fee for a one-year certificate issued to nutrient consultants shall be \$100.00. The certificate fee for commercial nutrient handlers for a three-year certificate shall be \$150.00. The Commission reserves the right to waive these fees for good cause shown.
- 9.3 No fee will be charged for certification of a nutrient generator or a private nutrient handler.

#### **10.0 Suspensions, Modifications, And Revocations**

- ~~10.1~~ The Commission may, after notice and opportunity for hearing, suspend, modify, or revoke any certificate where the Commission has reasonable grounds to believe that the certificate holder is responsible for violations of the nutrient management statute (Title 3, Chapter 22, of the **Delaware Code**) or Commission regulations. The Commission shall furnish the person accused of a violation with notice of the time and place of the hearing, which notice shall be served personally or by registered mail directly to such person's place of business or last known address with postage fully paid no sooner than 10 days but within 21 days of the time fixed for the hearing.

#### **11.0 Certification Renewals**

- 11.1 At least 45 days before the expiration of a certificate, the certificate holder shall file an application with the Commission for renewal of the certificate, along with the certification fee.
- 11.2 Nutrient consultants must file with the application and fee evidence that the consultant prepared at least one nutrient management plan during the preceding three-year period. If no such plan was prepared, the certificate shall not be renewed.
- 11.3 The certificate holders must also supply with the application and renewal fee evidence that they have complied with the continuing education and record keeping and reporting requirements contained in these regulations.
- 11.4 Absent good cause for failure to timely file an application for renewal in compliance with these requirements, the certificate holder must reapply for the certificate in the same manner required for the issuance of the original certificate.
- 11.5 Decisions to refuse renewal of a certificate shall be final and conclusive unless appealed to the Commission pursuant to Section ~~2262, Chapter 22,~~ 2262 of Title 3 of the **Delaware Code**.

#### **12.0 Appeals To The Secretary**

All decisions of the Commission under this regulation shall be final and conclusive unless appealed to the Secretary pursuant to Section ~~2263, Chapter 22,~~ 2263 of Title 3 of the **Delaware Code**. Provided, however, that the denial of a certificate pursuant to Sections ~~2243 or 2245, Chapter 22,~~ 2245 of Title 3 of the **Delaware Code** shall first be appealed to the Commission which shall hold a hearing.

#### **13.0 Record ~~Keeping.~~ Keeping**



- 13.1 Nutrient generators shall record and keep the following available for inspection by the Secretary or the Commission:
- 13.1.1 A contemporaneously recorded log that contains the dates, approximate quantities, locations, and disposition (stored, shipped, etc.) of nutrients that are applied to land or transported from land owned, leased or otherwise controlled by the Nutrient Generator.
  - 13.1.2 A copy of any applicable nutrient management plan.
- 13.2 Private nutrient handlers shall record and keep the following available for inspection by the Secretary or the Commission:
- 13.2.1 A contemporaneously recorded log showing the dates, locations, approximate quantities, acreage and methods of nutrient application.
  - 13.2.2 A copy of any applicable nutrient management plan.
- 13.3 Commercial nutrient handlers shall prepare and keep available for inspection by the Secretary or the Commission, a contemporaneously recorded log showing the dates, locations, approximate quantities, acreage, and methods of nutrient application.
- 13.4 Nutrient consultants shall prepare and/or keep available for inspection by the Secretary or the Commission, copies of any written materials prepared by the nutrient consultants or at their direction that establish how nutrients are to be managed at specific sites within Delaware, such as nutrient management plans.
- 13.5 The information required in this section shall be kept and maintained for a period of 6 years.

#### 14.0 ~~Effective Date.~~ Date

These regulations shall become effective on January 11, 2011

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## DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Chapter 11 (14 Del.C. Ch. 11)  
14 DE Admin. Code 240

### PUBLIC NOTICE

#### Education Impact Analysis

#### **240 Recruiting and Training of Professional Educators for Critical Curricular Areas**

#### A. TYPE OF REGULATORY ACTION REQUIRED

Repeal of Existing Regulation

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

Pursuant to 14 Del.C. Ch. 11, the Secretary of Education seeks the consent of the State Board of Education to repeal 14 DE Admin. Code 240 Recruiting and Training of Professional Educators for Critical Curricular Areas. The Department has reviewed the regulation in order to comply with 29 Del.C. §10407 which requires regulations to be reviewed on a recurring basis every four years and concluded that the regulation should be repealed as the content of this regulation is covered in other Department regulations and this regulation is no longer needed.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before March 3, 2020 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOEregulations.comment@doe.k12.de.us](mailto:DOEregulations.comment@doe.k12.de.us). A copy of this regulation may be viewed online at the Registrar of Regulation's website, <http://regulations.delaware.gov/>

[services/current\\_issue.shtml](#) or obtained at the Department of Education's Office of the Secretary, located at the address above.

## C. IMPACT CRITERIA

1. Will the regulation help improve student achievement as measured against state achievement standards? The content of this regulation is covered in other Department regulations and this regulation is no longer needed.
2. Will the regulation help ensure that all students receive an equitable education? The content of this regulation is covered in other Department regulations and this regulation is no longer needed.
3. Will the regulation help to ensure that all students' health and safety are adequately protected? The content of this regulation is covered in other Department regulations and this regulation is no longer needed.
4. Will the regulation help to ensure that all students' legal rights are respected? The content of this regulation is covered in other Department regulations and this regulation is no longer needed.
5. Will the regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The content of this regulation is covered in other Department regulations and this regulation is no longer needed.
6. Will the regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The content of this regulation is covered in other Department regulations and this regulation is no longer needed.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The content of this regulation is covered in other Department regulations and this regulation is no longer needed.
8. Will the 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 content of this regulation is covered in other Department regulations and this regulation is no longer needed.
9. Is there a less burdensome method for addressing the purpose of the regulation? The content of this regulation is covered in other Department regulations and this regulation is no longer needed.
10. What is the cost to the State and to the local school boards of compliance with the regulation? The content of this regulation is covered in other Department regulations and this regulation is no longer needed.

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

<http://regulations.delaware.gov/register/february2020/proposed/23 DE Reg 607RFA 02-01-20.pdf>

## 240 Recruiting and Training of Professional Educators for Critical Curricular Areas

~~The programs shall be administered in accordance with 14 Del.C. Ch. 11, and the following rules and regulations pursuant to the appropriation of funds in the annual Budget Bill.~~

### 4.0 ~~Designation of Critical Curricular Areas~~

~~Annually, on a date not later than the July meeting of the State Board of Education, the Secretary of Education shall present a recommendation to the State Board on the Critical Curricular Areas to be addressed during that fiscal year. This recommendation will be based upon supply and demand information obtained from local school districts and from state and national sources.~~

### 2.0 ~~Allocation of Funds~~

~~Annually, on a date not later than the July meeting of the State Board of Education, the Secretary of Education shall present a recommendation to the State Board of Education on the preliminary allocation of funds among the five programs authorized by Chapter 11. Final allocations will be based upon the total appropriation for that fiscal year and the number of eligible applicants for the five programs.~~

## **3.0 Applications**

All applicants for funds under any of the five programs shall be required to complete an application on a form prescribed by the Department of Education and shall be required to provide whatever information and documents the Department determines are necessary for the effective and efficient management of the programs.

## **4.0 Academic Year Institute**

The Academic Year Institute is an ongoing program specifically designed to meet certification requirements in the critical areas of teacher shortage as determined by the Department of Education. This is a part time program which shall be offered during the regular school year. Participants will register for a maximum of three semester hours of graduate or undergraduate college courses per semester. The Institute will be sponsored by the Department of Education and will be located at the University of Delaware and/or Delaware State University.

### **4.1 Eligibility**

4.1.1 The candidate shall be employed as a teacher in the public schools of Delaware or in another State agency offering secondary education programs.

4.1.2 The candidate shall submit a completed application and other documentation and information by the specified closing date for application.

4.1.3 The candidate shall express an intent to enroll in a course or courses which will lead to certification in one or more of the critical curricular areas.

### **4.2 Financial Aid**

4.2.1 Academic Year Institute participants shall receive full support for tuition, textbooks, laboratory fees and mileage for approved courses.

4.2.2 Depending upon the institution and the course or courses in which the participant is enrolled, the Department of Education shall either make direct payment to the institution for tuition and laboratory fees or will reimburse the participant for costs upon receipt of proper documentation of the participant's expenses.

4.2.3 The Department of Education shall reimburse the participant for expenditures for textbooks and mileage upon receipt of a completed personal reimbursement form.

### **4.3 Selection Procedures**

4.3.1 Participants shall be selected competitively from the eligible applicants for the program within the limits of the funds authorized for the program.

4.3.2 An application review panel, composed of Department of Education staff members, shall meet twice each year after the close of the application period for each semester to review applications and select participants.

## **5.0 Summer Inservice Program (Summer Institute)**

The Summer Institute Program is a summer program specifically designed to meet certification requirements in the critical areas of teacher shortage as determined by the Department of Education. The program will be offered during a six week period in the summer beginning not later than the last week in June. Participants shall register for a minimum of six semester hours of graduate and undergraduate credit in a specifically designed program focused on building skills and knowledge in the critical curricular areas. The Summer Institute, modeled after the National Science Foundation format, shall be sponsored by the Department of Education and will be located at the University of Delaware and/or Delaware State University.

### **5.1 Eligibility**

5.1.1 The candidate shall be employed as a teacher in the public schools of Delaware or in another State agency offering secondary education programs.

5.1.2 The candidate shall not be currently certifiable in the critical curricular area being addressed by the Summer Institute for which application is made.

5.1.3 The candidate shall submit a completed application and other required information and documentation by the closing date for application.

# PROPOSED REGULATIONS

- 5.1.4 The candidate shall express an interest and intent to pursue certification in one or more of the critical curricular areas for which he or she is not currently certifiable.
- 5.1.5 The candidate shall submit a letter of recommendation from the Superintendent or an appropriate supervisor of the candidate's school district or agency.

## 5.2 Financial Aid

- 5.2.1 Summer Institute participants shall receive full support for tuition, textbooks, and laboratory fees. Depending on the institution and the program in which the participant is enrolled, the Department of Education shall either make direct payment to the institution for these costs or shall reimburse the participant upon receipt of proper documentation of the participant's expenses.
- 5.2.2 The participants shall also receive a stipend as determined by the Department of Education. This stipend shall be paid by the Department of Education to the participant upon receipt of notification from the institution that the participant successfully completed all courses taken with a minimum grade of "C".

## 5.3 Selection Procedures

- 5.3.1 Participants shall be selected competitively from the eligible applicants for the program within the limits of the funds authorized for the program.
- 5.3.2 An application review panel, composed of Department of Education staff members, shall meet annually after the close of the application period to review applications and select participants.

## 6.0 Program For Persons From Other Professions Who Will Prepare To Teach

This program is designed to provide financial assistance to persons from other professions who possess the training and skills to teach in the critical curricular areas of teacher shortage as determined by the Department of Education but who lack the professional education courses required to qualify for a standard certificate. Participants shall be permitted to enroll in the institution of higher education of their choice and shall be reimbursed for the tuition costs, within limits specified below, for up to six semester hours of credit per semester.

### 6.1 Eligibility

- 6.1.1 The candidate shall be a resident of the State of Delaware.
- 6.1.2 The candidate shall have a graduate or undergraduate degree from an accredited institution of higher education in a field related to one or more of the critical curriculum areas.
- 6.1.3 The candidate shall first submit official transcripts to the Department of Education for evaluation.
- 6.1.4 Candidates who lack no more than six semester credits of coursework from meeting the content area requirements in one or more of the critical curriculum areas shall be invited to apply for participation in the program.
- 6.1.5 The candidate shall submit a completed application form and must express an interest and intent to pursue certification.
- 6.1.6 The candidate shall submit a plan outlining educational plans, including a timeline, to complete the professional education courses needed to obtain certification.

### 6.2 Financial Aid

- 6.2.1 The participant shall receive financial support for tuition costs for up to six semester hours of credit per semester.
- 6.2.2 The participant may receive assistance for a maximum of thirty semester credits of professional education courses but must update his or her application and receive approval in advance each semester.
- 6.2.3 The participant shall be reimbursed for tuition costs in an amount not greater than the tuition charged a Delaware resident by the University of Delaware for a course or courses of equal credit value.
- 6.2.4 The Department of Education shall reimburse the participant upon receipt of proper documentation of the participant's expenses and upon receipt of notification from the institution that the participant successfully completed the courses for which reimbursement is requested with a minimum grade of "C".

## 6.3 Selection Procedures

- 6.3.1 An application review panel, composed of Department of Education staff members shall meet on an as needed basis to review applications and select participants.
- 6.3.2 Participants shall be selected from eligible applicants on a first come basis, except that applicants approved for one semester will be given preference in future semesters until they complete their educational requirements, use their total eligibility, or are unsuccessful in achieving the minimum grade of "C" in approved courses.
- 6.3.3 Participants shall be limited and the approval process will be terminated when authorized funds for this program in any fiscal year have been allocated.

## 7.0 Teacher Scholarship Loan Programs

The Teacher Scholarship Loan Program is designed to meet certification requirements in the critical areas of teacher shortage as determined by the Department of Education. This is a full time program offered during the regular school year. As a minimum, participants shall register for the number of semester hours required of a full time student.

### 7.1 Eligibility

- 7.1.1 The candidate shall have taught in a Delaware public school for at least one year prior to the year in which the scholarship is to be used.
- 7.1.2 The candidate shall be employed as a teacher in a Delaware public school and/or must be a resident of the State of Delaware at the time of application.
- 7.1.3 The candidate shall express an interest and intent to pursue certification in one or more of the critical curricular areas identified by the Department of Education.
- 7.1.4 The candidate shall hold a standard Delaware teaching certificate but must not be currently certifiable in the critical curricular area specified in 7.1.3 above.
- 7.1.5 The candidate shall submit a completed application and other documentation and information by the specified closing date for application.
- 7.1.6 The candidate shall, if currently employed, have prior approval from his or her employing local district board of education.
- 7.1.7 The candidate shall be accepted into an approved program in an institution of higher education leading to certification in the critical curriculum area specified in 7.1.3 above.

### 7.2 Financial Aid

- 7.2.1 Teacher Scholarship Loan Program participant shall receive a scholarship in an amount equal to the salary he or she would receive for service as a teacher, as specified in 14 ~~Del.C.~~ Ch. 13.
- 7.2.2 A participant, who was employed by a Delaware public school district in the year prior to receipt of the scholarship and who is on leave of absence during the year of the scholarship, shall continue to receive all State supported employee benefits through a grant from the Department of Education to the employing district. (Such participants shall be considered to be on sabbatical leave and for purposes of salary increments and pension eligibility and computation, a year of leave shall be considered a year of experience as provided in 14 ~~Del.C.~~ §1325(9).
- 7.2.3 A participant may receive a local salary supplement and local employee benefits if the employing district elects to provide them at the expense of the employing district.
- 7.2.4 A district shall also be eligible to receive an interest free loan, in an amount to be determined by the Department of Education, which the participant may use to defray the cost of tuition and books. The actual amount of the loan will be dependent upon estimated costs of these two items and other financial resources available to the participant.
- 7.2.5 Participants receiving a loan shall execute a promissory note, in the amount of the loan, to the State Treasurer. This note will be forgiven at the rate of one third of the loan for each of three years of teaching in a Delaware public school after completion of the study authorized. In any year the teacher fails to meet the teaching obligation, the loan shall be due and payable for the unpaid balance plus interest specified in the note.

# PROPOSED REGULATIONS

## 7.3 Selection Procedures

- 7.3.1 Participants shall be selected competitively from the eligible applicants for the program within the limits of the funds authorized for the program.
- 7.3.2 The applicant review panel, composed of Department of Education staff members, shall meet once each year at the close of the application period to review applications.

## 8.0 Student Loan Program

The Student Loan Program is for Delaware residents who are accepted into an institution of higher learning to be trained as a teacher in the critical area of teacher shortage as determined by the Department of Education. A student selected for the program may attend any accredited college or university in the United States where the appropriate training will result in certification as a teacher for a critical area of teacher shortage as determined by the Department of Education.

### 8.1 Eligibility

- 8.1.1 The candidate shall have been a Delaware resident for a period of one year at the time of application.
- 8.1.2 The candidate shall have Scholastic Aptitude Test (SAT) scores of 500 verbal and 500 quantitative. Candidates already in a college or university program must be maintaining a "C" average or better in courses in the critical curriculum areas.
- 8.1.3 The candidate shall have been admitted to an accredited college or university program directed toward certification in a critical curricular area as determined by the Department of Education.
- 8.1.4 The candidate shall submit a completed application and other documentation and information by the specified date for application.

### 8.2 Financial Aid

- 8.2.1 Student Loan Program participants shall receive a loan, the amount to be determined by the Department of Education, for one year's study, less scholarship aid available from other sources.
- 8.2.2 The loan may be renewed from year to year through a four year training program.
- 8.2.3 Participants in the Student Loan Program shall execute a promissory note, in the amount of the loan, to the State Treasurer. The entire note will be forgiven on the basis of two years of teaching in a Delaware public school in a critical curriculum area for each year of loan granted.
- 8.2.4 Each year of the loan will be interest free to those who meet the two year teaching obligation for each year of loan granted.
- 8.2.5 In the event that the participant does not graduate, does not continue to study in the critical curriculum area, or does not meet the teaching obligation, the entire loan, with interest specified by the State Treasurer, shall be due and payable. Payment of the note and interest shall be in accordance with the time schedule specified in the note.

- 8.2.5.1 Pursuant to 14 ~~Del.C.~~ §1108(b) an exception may be made to 8.2.5 of this regulation in that the loan may be forgiven by the Secretary of Education if it is determined that the recipient is unable to meet his or her payment obligation because of total and permanent disability or death. For purposes of this regulation, total and permanent disability shall mean the loan recipient is unable to work and earn money because of an injury or illness that is expected to continue indefinitely or result in death. In order to qualify for this exception the loan recipient must provide documentation that has been completed, signed and certified by a licensed doctor of medicine or doctor of osteopathy with the following information:

"I certify, in my best professional judgment, the loan recipient \_\_\_\_\_ is unable to work and earn money because of an injury or illness that is expected to continue indefinitely or result in death. I understand that any recipient able currently or in the future to work and earn money, even on a limited basis, is not considered to have a Total or Permanent Disability.

I am a (check one)  doctor of medicine  doctor of osteopathy legally authorized to practice in the state of \_\_\_\_\_ and my professional license number issued by that state is \_\_\_\_\_.

\_\_\_\_\_  
Physician's signature

\_\_\_\_\_  
Name (printed)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Address City, State, Zip

(\_\_\_\_) \_\_\_\_\_  
Telephone

~~In the case of death, a surviving family member must provide a certified copy of the death certificate.~~

## ~~8.3 Selection Procedures~~

~~8.3.1 Participants shall be selected competitively from the eligible applicants for the program within the limits of the funds authorized for the program.~~

~~8.3.2 The applicant review panel, composed of Department of Education staff members, shall meet twice each year at the close of the application period for each semester to review applications.~~

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## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 121(a)(1) and 3110  
(14 Del.C. §§121(a)(1) & 3110)

## PUBLIC NOTICE

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

### 508 Multi-Tiered System of Support (MTSS)

#### A. TYPE OF REGULATORY ACTION REQUIRED

New Regulation

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

Pursuant to 14 Del.C. §§121(a)(1) and 3110, and the Individuals with Disabilities Education Act (2004), as amended, 20 U.S.C. §1400 *et seq.*, the Secretary of Education seeks the consent of the State Board of Education to establish a new regulation 14 DE Admin. Code 508 Multi-Tiered System of Support (MTSS). This new regulation guides local education agencies (LEAs) regarding scientific, evidence-based interventions that are required to identify needed supportive services for all students, including special education services available under the Individuals with Disabilities Education Act. Therefore, this new regulation is closely aligned with process and procedure language in 14 DE Admin. Code 925.

LEAs in Delaware may also know this framework as the Positive Behavior Intervention Supports (PBIS), Positive Behavior Supports (PBS) or RTI (Response to Intervention).

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before March 3, 2020 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOERegulations.comment@doe.k12.de.us](mailto:DOERegulations.comment@doe.k12.de.us). A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml) or obtained at the Department of Education's Office of the Secretary, located at the address above.

## C. IMPACT CRITERIA

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation is intended to help improve student achievement as measured against state achievement standards by ensuring local education agencies abide by processes that are scientific and evidence-based.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation intends to continue to help ensure all students receive an equitable education.

3. Will the new regulation help to ensure that all students' health and safety are adequately protected? The new regulation does not specifically address students' health and safety; however, students' behavioral and social emotional skills are addressed.

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

5. Will the new regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The new regulation does not change the decision making at the local board and school level.

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

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no expected material costs to implementing this new regulation.

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

<http://regulations.delaware.gov/register/february2020/proposed/23 DE Reg 613RFA 02-01-20.pdf>

### 508 Multi-Tiered System of Support (MTSS)

#### **1.0 Purpose**

Each local education agency shall implement procedures to determine when a student requires scientific, evidence-based interventions within a Multi-Tiered System of Support (MTSS) for: 1) Written Expression, 2) Reading, 3) Oral Expression, 4) Listening Comprehension, 5) Mathematics, 6) Behavior, and 7) Social-Emotional Skills.

#### **2.0 Definitions**

The following words and terms are applicable unless a specific regulation, statute or the context in which they are used clearly indicates otherwise:

**“Department”** means the Delaware Department of Education.

**“Evidence-based”** means strategies, activities, or approaches which have been shown through scientific research and evaluation to be effective at preventing or delaying a negative outcome.



"Local Education Agency" or "LEA" means a reorganized traditional school district, vocational-technical school district, or Charter School, legally constituted and established under Delaware law for either administrative control or direction of public elementary or secondary schools.

"Multi-Tiered System of Support" or "MTSS" means a framework that is designed to meet the needs of the whole child through an integrated multi-level prevention system that optimizes team-based leadership and data-driven decision making to meet the academic and non-academic needs of all students. High quality core academic instruction and non-academic practices are provided as universal supports to all children. Evidence-based intervention and supports are matched to student needs and informed by ongoing progress monitoring and additional formative assessments.

"Parent" means a biological or adoptive parent of a child; a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives and for whom a Caregiver's School Authorization executed in compliance with 14 Del.C. §202 is on file; an individual who is otherwise legally responsible for the child's welfare; or a surrogate parent who has been appointed in accordance with 14 DE Admin. Code 926.19.0.

### **3.0 Instructional Resources**

LEAs shall evaluate and select instructional resources for Tier 1, and interventions for Tier 2 and Tier 3, for academic, behavioral and social-emotional skills which are of high quality, evidence-based and aligned with the State's appropriate content standards.

### **4.0 Assessment**

Screening, diagnostic assessment and progress monitoring processes shall be used as part of MTSS procedures. Any tools used shall be norm-referenced, criterion-referenced, or curriculum-based as appropriate.

### **5.0 Problem Solving Team**

- 5.1 LEAs will have a school-based problem-solving team at each of their schools consisting of three to five core members and shall include at least one of the student's classroom teachers.
- 5.2 The team shall review student data to identify individual student needs and make evidence-based decisions.
- 5.3 Using the student data, the problem-solving team will design an intervention plan as outlined in Section 7.0, which shall include, but is not limited to, specific baseline data, learning targets, type and frequency of intervention and data collection.
- 5.4 The team shall collect progress monitoring data at regular intervals. Data collection must include documentation of fidelity of implementation, consisting of differentiated, evidence-based instruction, pacing and appropriateness of instructional groupings.
- 5.5 The team shall hold meetings after the six to eight-week intervention cycle to monitor progress toward identified targets, the fidelity of implementation and determine the next steps.
- 5.6 LEAs shall have a process for providing parents with the MTSS intervention plan and data collected as part of the MTSS framework as described in Section 7.0.

### **6.0 MTSS Framework and Procedures**

- 6.1 The MTSS framework and procedures shall include the tiers, types and duration of services and interventions described in subsections 6.1.1 and 6.1.3.3.
  - 6.1.1 Tier 1 - Core classroom instruction which is aligned to Delaware adopted state standards and practices, shall be designed and delivered with fidelity to all students. Tier 1 core classroom instruction should be high quality, evidence-based and differentiated within flexible groupings and responsive to all students' needs. A multiple-gating procedure shall be implemented as follows:

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## PROPOSED REGULATIONS

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- 6.1.1.1 The first stage is a universal screening, which shall be conducted within the first four weeks of the school year or within four weeks of the student's entry into school. Universal screening will take place at least two more times during the school year at spaced intervals. For students who are identified through universal screening as needing additional supports, a second stage of screening is conducted within the next two weeks to specify the areas of need.
- 6.1.1.2 The second stage involves additional data analysis to confirm that there are specific areas of need for Tier 2 supports.
- 6.1.1.3 If twenty percent (20%) of students in a classroom are not meeting benchmark on any instructional screening, a school-based team, which may be an existing team, including a building level administrator, shall meet to consider the need for additional classroom, instructional and systems level supports and strategies.
- 6.1.1.4 Based on the results of the multiple-gating procedure, a problem-solving team shall design intervention plans for students who require Tier 2 support as described in subsection 6.1.2.
- 6.1.2 Tier 2 - Interventions shall be designed to be delivered in the student's primary, scheduled education setting, by the student's teacher or teachers, but may be delivered in other or additional settings or by other trained staff as appropriate to the specific intervention.
  - 6.1.2.1 After six to eight school weeks of Tier 2 intervention the problem-solving team shall conduct a review of the plan as described in Section 5.0 to determine whether additional assessments, as described in Section 4.0, are required, and whether changes to Tier 2 academic or non-academic methods are required; or the student should be provided Tier 3 intervention.
    - 6.1.2.1.1 If a student has made significant progress and is now on a trajectory to meet end-of-year benchmarks, a student may continue in Tier 2 intervention or be excused from Tier 2 intervention.
    - 6.1.2.1.2 If a student has made no progress toward benchmarks, or has made progress but is not on a trajectory to meet end-of-year benchmarks, a student may continue in Tier 2 intervention with increased intensity (e.g. smaller group, increased time of academic or non-academic intervention) or receive Tier 3 interventions.
- 6.1.3 Tier 3 - Interventions shall be designed to be delivered in the student's primary (scheduled) education setting, by the student's teacher or teachers, but may be delivered in other or additional settings or by other trained staff as appropriate to the specific intervention.
  - 6.1.3.1 After six to eight school weeks of Tier 3 intervention the problem-solving team shall conduct a review of the plan as described in Section 5.0 to determine whether additional assessments are required, changes to Tier 3 academic or non-academic methods are required; or the student should be referred for an initial evaluation for special education.
  - 6.1.3.2 If a student has made significant progress towards established targets, a student may continue in Tier 3 intervention with a new target or be provided Tier 2 intervention.
  - 6.1.3.3 If a student has made no progress towards established targets, or has made progress, but is not on a trajectory to meet established targets, a student may continue in Tier 3 intervention with increased intensity (e.g. smaller group, increased time of academic or non-academic intervention) or be referred for an initial evaluation for special education services as outlined in Regulation 925.

### **7.0 Program Effectiveness**

- 7.1 LEA shall provide a description of the methods used to implement and evaluate the effectiveness of the program upon the request of the Department.
  - 7.2 This regulation will go into effect August 1, 2020.
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## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 922

### PUBLIC NOTICE

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

#### 922 Children with Disabilities Subpart A, Purposes and Definitions

##### A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

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

Pursuant to 14 Del.C. §122(b), the Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 922 Children with Disabilities Subpart A, Purposes and Definitions. This regulation is being amended to specifically update definitions in the disability categories which include Autism, Deaf-Blindness, Developmental Delay, Emotional Disability, Hearing Impairment, Intellectual Disability, Multiple Disabilities, Orthopedic Impairment, Other Health Impairment, Specific Learning Disability, Speech or Language Impairment, and Traumatic Brain Injury. It is also being amended to add new definitions for Adverse Effect on Educational Performance and Multi-Tiered System of Support, and to remove the definition of Highly Qualified Special Education Teachers. The disability category definitions are being revised to align with the updated disability category criteria. The definition of Adverse Effect on Educational Performance is being added for further clarity. The definition of Multi-Tiered System of Support is being added as it is part of the eligibility criteria for several of the disability categories. The definition of Highly Qualified Special Education Teachers is being removed as it is no longer required under ESSA.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before April 1, 2020 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOEregulations.comment@doe.k12.de.us](mailto:DOEregulations.comment@doe.k12.de.us). A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml) or obtained at the Department of Education's Office of the Secretary, located at the address above. Note: This regulation will be out for public comment for sixty (60) days.

##### C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not specifically address the improvement of student achievement as measured against state achievement standards.

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

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation will help ensure 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 continues to help ensure that all students' legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the 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 any unnecessary reporting or administrative requirements or mandates on decision makers.

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the amended regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no material costs to implementing this amended regulation.

**\*Please Note:**

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

<http://regulations.delaware.gov/register/february2020/proposed/23 DE Reg 617RFA 02-01-20.pdf>

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

[922 Children with Disabilities Subpart A, Purposes and Definitions](#)

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**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Sections 122(a) and 3110 (14 **Del.C.** §§122(a) & 3110)  
14 **DE Admin. Code** 925

**PUBLIC NOTICE**

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

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

**A. TYPE OF REGULATORY ACTION REQUIRED**

Amendment to Existing Regulation

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

Pursuant to 14 **Del.C.** Chapter 31, the Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs. This regulation is being amended to revise eligibility determination criteria relative to subsections 6.6 Autism, 6.7 Developmental Delay, 6.8 Deaf-Blind, 6.9 Emotional Disability, 6.10 Hearing Impairment, 6.11 Specific Learning Disability, 6.12 Intellectual Disability, 6.13 Orthopedic Impairment, 6.14 Other Health Impairment, 6.15 Speech/Language Impairment, 6.16 Traumatic Brain Injury, and 6.17 Visual Impairment Including Blindness. This regulation is also being amended to make technical changes.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before April 4, 2020 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOEregulations.comment@doe.k12.de.us](mailto:DOEregulations.comment@doe.k12.de.us). A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml) or obtained at the Department of Education's Office of the Secretary, located at the address above. NOTE: IDEA Regulations are posted for a 60-day comment period.

**C. IMPACT CRITERIA**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not address improving student achievement as measured against state achievement standards.

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

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation will help ensure 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 will help ensure that all students' legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the 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 any unnecessary reporting or administrative requirements on decision-makers.

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

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 amendment is consistent with and not an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no material costs in implementing this amended regulation.

**\*Please Note:**

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

<http://regulations.delaware.gov/register/february2020/proposed/23 DE Reg 618RFA 02-01-20.pdf>

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

[925 Children with Disabilities Subpart D](#)

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)  
16 DE Admin. Code 10001

**PUBLIC NOTICE****Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T)**

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 Division of

Social Services Manual regarding Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T), specifically, to clarify policy and define terms.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@delaware.gov](mailto:Nicole.M.Cunningham@delaware.gov), or by fax to 302-255-4413 by 4:30 p.m. on March 2, 2020. Please identify in the subject line: Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T).

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

### SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services/Division of Social Services (DHSS/DSS) is proposing to amend Division of Social Services Manual regarding Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T), specifically, to clarify policy and define terms.

#### Statutory Authority

- 7 CFR §273.7
- 7 CFR §271.2

#### Background

DSS is proposing to change the name of policy section DSSM 10000 from “Food Stamp Employment and Training (FS E&T)” to “Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T)”. This change will align with federal terminology and remove the outdated term “food stamp”.

DSS is proposing to amend policies DSSM 10001 and 10001.1 to reflect the current operations of the SNAP E&T program and to improve the formatting of the policies. DSS modified DSSM 10001.1 by adding new program terms and removing program terms that are no longer relevant.

#### Summary of Proposal

##### *Purpose*

The proposed rules explain the purpose of Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T) services provided to food benefit recipients and define SNAP E&T program terms.

##### *Summary of Proposed Changes*

Effective for services provided on and after April 11, 2020 Delaware Health and Social Services/Division of Social Services proposes to amend Division of Social Service Manual to Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T), specifically, to clarify policy and define terms.

##### *Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services/Division of Social Services (DHSS/DSS) 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 March 2, 2020.

#### Fiscal Impact

There is no fiscal impact associated with this policy change.

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

<http://regulations.delaware.gov/register/february2020/proposed/23 DE Reg 619RFA 02-01-20.pdf>

**POLICY – AMENDMENT**

Delaware Department of Health and Social Services  
Division of Social Services  
Policy and Program Development Unit

**10000 ~~Food Stamp~~ Supplemental Nutrition Assistance Program Employment and Training (~~FSE&T~~) (SNAP E&T)**

**POLICY – AMENDMENT**

Delaware Department of Health and Social Services  
Division of Social Services  
Policy and Program Development Unit

**10001 ~~Purpose and Definitions~~ Defining the SNAP E&T Program**

7 CFR 273.7

~~The Delaware Division of Social Services (DSS) administers a statewide employment and training program for Food Stamp only recipients under the umbrella of the Food Stamp Employment and Training Program. The purpose of the FSE&T Program is to assist capable mandatory and voluntary Food Stamp only recipients gain skills and receive training or experience that will lead to regular, paid employment. By so assisting Food Stamp households, we hope to help increase the purchasing power of low-income families and thereby, contribute to raising the overall levels of nutrition among the population of Delaware.~~

~~The Food Stamp Employment and Training Program for Delaware began on April 1, 1987. From the beginning, this program combined the activities of both the Division and local service providers in giving Food Stamp recipients needed encouragement, counseling and academic/life skills training to enhance employability. In addition, the Program has been run in concert with our Temporary Assistance to Needy Families (TANF) Program. Together, these two programs have increased the opportunities for the economically disadvantaged population of Delaware and enabled portions of this population to become self-sufficient.~~

The statewide SNAP E&T program supports SNAP recipients by providing skill development, training, and work experience opportunities that can lead to self-sustaining employment.

**1. The SNAP E&T program promotes the self-sufficiency of SNAP recipients by:**

- Offering education and training to increase knowledge and skills;
- Assisting with job search methods;
- Removing barriers to employment; and
- Increasing the employability of SNAP recipients.

**POLICY – AMENDMENT**

Delaware Department of Health and Social Services  
Division of Social Services  
Policy and Program Development Unit

**10001.1 ~~Programmatic Terms and Definitions~~ Defining SNAP E&T Program Terms**

## PROPOSED REGULATIONS

The Food Stamp Employment and Training Program has a list of commonly used terms and definitions. Below is a list of these commonly used terms. Please note that the definition of some terms provides important policy information:

- A. ABE—Adult Basic Education.
  - B. Component—An allowable activity under Food Stamp Employment and Training.
  - C. Custodial Parent—A parent who lives with a child.
  - D. DCIS—Delaware Client Information System.
  - E. Dependent Care—Same as child care.
  - F. DHHS—Department of Health and Human Services (federal).
  - G. DHSS—Delaware Health and Social Services.
  - H. DOE—Department of Education.
  - I. DOL—Department of Labor.
  - J. DPIC—Delaware Private Industry Council: Representatives of the public and private (PIC) sector appointed to plan job training and employment service programs at the Service Delivery Area (SDA).
  - K. DSS—Division of Social Services.
  - L. E & T—Employment and Training.
  - M. E & T MIS—Employment and Training Management Information System.
  - N. ESL—English as a Second Language.
  - O. Exempt—Not required to participate in Food Stamp Employment and Training as a condition of continuing eligibility.
  - P. FNS—Food and Nutrition Services—The federal agency responsible for administration of the Food Stamp Program.
  - Q. FY—Fiscal Year: The Delaware State Fiscal Year is July 1 through June 30; the Federal Fiscal Year (FFY) is October 1 through September 30.
  - R. GED—General Equivalency Diploma.
  - S. Mandatory/Nonexempt—A Food Stamp recipient who, as a condition of **continuing** eligibility for assistance, is required to participate in Food Stamp Employment and Training.
  - T. MCI—Master Client Index.
  - U. NOAA—Notice of Adverse Action, the notice used to inform registrants who will be sanctioned.
  - V. Sanction—Excluding a non-exempt or mandatory participation from the Food Stamps Program for failure to participate in Food Stamp Employment and Training without good cause.
  - W. TANF—Temporary Assistance To Needy Families—A state/federal funded financial assistance program for families and their dependent children.
  - X. VR—Vocational Rehabilitation.
  - Y. WIA—Workforce Investment Act.
  - Z. Work Registrant—a Food Stamp applicant or recipient who is registered for the Food Stamp Employment and Training Program.
- 7 CFR 271.2, 7 CFR 273.7

This policy contains terms and definitions for the SNAP E&T program.

“**ABAWD**” means an able-bodied adult without dependents. An ABAWD is a SNAP applicant or recipient who is:

- Age 18 to 49;
- Physically and mentally capable of employment; and



- Not responsible for or living in a household with a minor child.

**“ABAWD Work Requirement”** means a mandatory condition that an ABAWD client must comply with to maintain eligibility for food benefits that includes completing 20 or more hours per week in one or a combination of the following activities:

- Working;
- Participating in and complying with the requirements of the SNAP E&T program; or
- Participating in and complying with the requirements of a work program approved by DSS.

**“Adult Basic Education”** or **“ABE”** means academic instruction in basic skills to improve an individual’s employability.

**“Adverse Action”** means a negative action to a client’s benefit case.

**“Application for Social Services and Internet Screening Tool”** or **“ASSIST”** means an online self-service portal that allows individuals to apply for health and social service benefits in Delaware.

**“Assessment”** means an in-depth evaluation of an individual’s skills and employment interests.

**“ASSIST Worker Web”** or **“AWW”** means the system that DSS uses to screen and determine benefit eligibility.

**“At-risk ABAWD”** means an ABAWD client who is in the third month of the three-month time limit for receiving food benefits while not complying with the ABAWD work requirement.

**“Case Management”** means a process that includes assessment, planning, monitoring, and service coordination to assist an individual in achieving employment goals.

**“Component”** means an approved element or activity for SNAP E&T participants.

**“Custodial Parent”** means a parent who has custody of a child and is primarily responsible for the daily care of the child.

**“Delaware JobLink”** means a web-based employment and labor market information system maintained by the Delaware Department of Labor. Delaware JobLink provides job postings, employment resources, and training opportunities.

**“Department of Education”** or **“DOE”** means the Delaware agency that the SNAP E&T program collaborates with to provide basic education programs to SNAP E&T participants.

**“Department of Health and Social Services”** or **“DHSS”** means the Delaware agency that administers services that promote health and well-being, foster self-sufficiency, and protect vulnerable populations.

**“Department of Labor”** or **“DOL”** means the Delaware agency that the SNAP E&T program collaborates with to provide employment and training resources to SNAP E&T participants.

**“Dependent Care”** means child care or adult care.

**“Division of Social Services”** or **“DSS”** means a division within DHSS that is responsible for administering certain public assistance programs, including SNAP food benefits and the SNAP E&T program.

**“Education”** means educational programs intended to enhance an individual’s employability and includes:

- Basic and foundational skills instruction;
- Work readiness trainings;
- Vocational trainings; and
- Career and technical education programs.

**“English as a Second Language”** or **“ESL”** means the study of the English language by individuals who have a limited ability in speaking, reading, writing, or understanding the English language.

**“Exempt”** means a SNAP applicant or recipient is not required to comply with SNAP work requirements or with the SNAP E&T program.

**“Federal Fiscal Year”** or **“FFY”** means the period of October 1 through September 30.

**“Food and Nutrition Service”** or **“FNS”** means the federal agency within the United States Department of Agriculture (USDA) that is responsible for the administration of SNAP.

**“Food Supplement Program”** or **“FSP”** means Delaware’s nutrition assistance program that provides SNAP food benefits to eligible individuals.

**“General Educational Development”** or **“GED”** means a credential that certifies that an individual has academic knowledge and skills equivalent to a high school graduate.

# PROPOSED REGULATIONS

**“Good Cause”** means an adequate or substantial reason why an individual has not taken an action. DSS will determine good cause on a case-by-case basis.

**“Job Retention”** means services intended to help an individual maintain employment.

**“Job Search”** means job-seeking activities intended to enhance an individual’s employability.

**“Sanction”** means a penalty for failing to comply with SNAP work requirements without good cause.

**“SNAP Employment and Training”** or **“SNAP E&T”** means the DSS program that supports food benefit recipients by providing skill development, training, and work experience opportunities that can lead to self-sustaining employment. This program is also known as Food Benefit Employment and Training (FB E&T).

**“SNAP Work Requirements”** mean mandatory conditions that a work registrant must comply with to maintain eligibility for food benefits that include:

- Registering for work;
- Providing DSS with information regarding employment status and work availability;
- Accepting a referral or an offer of suitable employment;
- Agreeing to not voluntarily and without good cause quit a job of 30 or more hours per week or reduce the amount of work hours to less than 30 hours per week; and
- Participating in the SNAP E&T program if it is deemed mandatory by DSS.

**“Suitable Employment”** means employment that has an adequate wage and acceptable working conditions. DSS will determine the suitability of employment on a case-by-case basis.

**“Supplemental Nutrition Assistance Program”** or **“SNAP”** means the federal program that provides nutrition assistance to low-income individuals and families so they can purchase healthy food and move toward self-sufficiency.

**“Supportive Service”** means a service provided to an individual that is necessary for participation in the SNAP E&T program or for employment.

**“Temporary Assistance for Needy Families”** or **“TANF”** means a state and federally funded program established by Title IV-A of the Social Security Act and authorized by Title 31 of the Delaware Code to provide benefits to low-income families with dependent children.

**“Vocational Rehabilitation”** or **“VR”** means a program that helps individuals with physical or mental disabilities to obtain and retain employment.

**“Work Experience”** means activities such as on-the-job training, pre-apprenticeship, apprenticeship placements, and internships that allow an individual to learn vocational skills.

**“Work Registrant”** means a non-exempt SNAP applicant or recipient mandated to comply with SNAP work requirements.

**“Workfare”** means supervised work performed at a public or private non-profit organization in which an individual receives compensation in the form of a monthly food benefit allotment instead of wages. Workfare is for ABAWD clients only.

**“Workforce Innovation and Opportunity Act”** or **“WIOA”** means federal legislation that coordinates workforce development programs and funding streams.

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## DIVISION OF SOCIAL SERVICES

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

16 DE Admin. Code 11006

### PUBLIC NOTICE

#### Child Care Subsidy Program

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,

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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 clarify policy related to subsidized child care provider reimbursement.

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

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

### **SUMMARY OF PROPOSAL**

The purpose of this notice is to advise the public that Delaware Health and Social Services/Division of Social Services (DHSS/DSS) is proposing to amend Division of Social Services Manual regarding Division of Social Services Manual regarding the Child Care Subsidy Program, specifically, to clarify policy related to subsidized child care provider reimbursement.

#### **Statutory Authority**

- 45 CFR §98.45(l)(2)(iii)
- 45 CFR §98.40
- 11 **Del.C.** Ch. 85
- 31 **Del.C.** Ch. 3

#### **Background**

DSS is proposing to amend DSSM 11006.4.1 Paying for Absent Days and Holidays in Child Care to update the formatting of the policy and to add information about how the new child care copayment factors into payments to providers for absent days for authorized children.

DSS is proposing to amend DSSM 11006.5.1 Terminating Providers and Self-Arranged Clients to update the formatting and clarify the text of the policy. DSS changed the health and safety training hours and timeframe for relative care providers to reflect the current requirements. DSS also added a separate section explaining the reasons DSS will terminate services to parents and caretakers who have self-arranged child care.

#### **Summary of Proposal**

##### *Purpose*

The proposed rules explain the guidelines for when DSS will pay Purchase of Care (POC) providers for absent days and holidays for authorized child care services. The proposed rules also explain when DSS will terminate, from the Child Care Subsidy Program, a provider, a relative child care provider, or a parent or caretaker who has self-arranged child care.

##### *Summary of Proposed Changes*

Effective for services provided on and after April 11, 2020 Delaware Health and Social Services/Division of Social Services proposes to amend Division of Social Service Manual regarding the Child Care Subsidy Program, specifically, to clarify policy related to subsidized child care provider reimbursement.

##### *Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services/Division of Social Services (DHSS/DSS) 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 March 2, 2020.

## Fiscal Impact

There is no fiscal impact associated with this policy change.

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

<http://regulations.delaware.gov/register/february2020/proposed/23 DE Reg 624RFA 02-01-20.pdf>

## POLICY – AMENDMENT

Delaware Department of Health and Social Services  
Division of Social Services  
Policy and Program Development Unit

### 11006.4.1 Paying for Absent Day Policy Days and Holidays in Child Care

45 CFR 98.45(l)(2)(iii)

DSS pays for up to five absent days per month. The number of paid absent days per month is the same as the number of days authorized for care in one week (up to a maximum of five days per month). The specific number of paid absent days is indicated on each child's Authorization Form.

Payment may be made for the major holidays listed in the contract for any child who attended at least one day during the month.

No payment is made to a provider for a holiday that occurs before the start date of the authorization at that provider's site.

This policy explains provider payments for absent days and holidays during authorized child care.

1. The number of paid absent days per month for a child is the same as the number of days authorized for care in one week, up to a maximum of five days per month.
2. DSS will pay for absent days for an authorized child after the family's copayment has been paid and there is a remaining balance due to the provider.
3. DSS will pay for up to five absent days per month for an authorized child who does not have an assigned copayment.
4. DSS will pay for the six major holidays per year that the provider has chosen. The authorized child must be attending the provider's site prior to the date of the holiday for the provider to receive payment for the holiday.

## POLICY – AMENDMENT

Delaware Department of Health and Social Services  
Division of Social Services  
Policy and Program Development Unit

### 11006.5.1 Terminating Providers and Self-Arranged Clients

45 CFR 98.40, 11 Del.C. Ch. 85, 31 Del.C. Ch. 3

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This policy applies to all Purchase of Care (POC) providers, including and clients who have self-arranged clients child care.

~~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:~~

**1. DSS may terminate a provider from the POC program if the provider:**

A. ~~Has a suspended, closed~~ closed, or terminated Office of Child Care Licensing (OCCL) ~~license-~~  
license:

B. ~~Commits fraud against DHSS.~~ DHSS;

C. ~~Charges fees not allowed by the Child Care Contract, Division policy, or a Division approved waiver; DSS, has failed to reimburse these fees and/or unallowable child care fees, or has repeated offenses in this area.~~ area;

D. ~~Charges Purchase of Care POC Plus fees when she or he~~ the provider is not a DSS authorized POC Plus ~~provider.~~ provider;

E. ~~Does not keep accurate records per the DSS Child Care Contract; has had repeated offenses; POC contract, has been counseled and has failed to meet the requirements of a corrective action plan agreed upon with the Child Care Monitor.~~ POC program, or has repeated offenses in this area; or

F. ~~Does not keep an open bank account to receive direct deposit payments from the Child Care Subsidy Program~~ POC 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:~~

**2. In addition to the conditions listed in section 1, DSS may terminate a relative care provider from the POC program if the relative care provider:**

A. ~~Does not complete the 47~~ 28 hours of mandatory health and safety training hours within ~~48~~ 12 months of becoming a relative ~~or non-relative~~ care provider, or the training requirements as outlined in the initial POC orientation session. ~~session; or~~

B. ~~Has an unsuitable criminal history~~ history, or a member of the provider's household has an unsuitable criminal history. ~~DSS uses Office of Child Care Licensing (OCCL)~~ the OCCL's guidelines and Title 11, Chapter 85 of the Delaware Code to determine unsuitable criminal history.

**3. DSS may terminate a parent or caretaker who has self-arranged child care from the POC program if the parent or caretaker:**

A. Submits fraudulent attendance records to DSS;

B. Does not keep an open bank account to receive direct deposit payments from the POC program as required to participate in self-arranged child care; or

C. Does not attend the mandatory orientation to become a self-arranged client.

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# PROPOSED REGULATIONS

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## DEPARTMENT OF INSURANCE

### OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 314, 2304(26) and 2741 and 21 Delaware Code, Section 2118 (18 **Del.C.** §§314, 2304(26) and 2741; 21 **Del.C.** §2118)  
18 **DE Admin. Code** 606

#### PUBLIC NOTICE

#### 606 Proof of Automobile Insurance

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

Proposal of amendments to Regulation 606 - Proof of Automobile Insurance.

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

Pursuant to the authority conferred by 18 Delaware Code, Sections 314, 2304(26) and 2741 and 21 Delaware Code, Section 2118, the Delaware Department of Insurance (the Department), in coordination with the Delaware Division of Motor Vehicles, is proposing to amend Regulation 606 to update and clarify requirements concerning insurer submission of notices of automobile insurance cancellation and termination.

The Department is also taking the opportunity of this proposal to make grammatical and formatting edits throughout the regulation.

##### C. Notice and Public Comment

The Department does not plan to hold a public hearing on the proposed amendments to Regulation 606. The proposed amendments appear below and may also be viewed at 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 2<sup>nd</sup> day, March 2020. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist

Delaware Department of Insurance

ATTN: Docket 4232-2019

1351 West North St., Ste. 101

Dover, DE 19904

(302) 674-7379

Email: [Leslie.Ledogar@delaware.gov](mailto:Leslie.Ledogar@delaware.gov)

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

<http://regulations.delaware.gov/register/february2020/proposed/23 DE Reg 628RFA 02-01-20.pdf>

#### 606 Proof of Automobile Insurance

##### 1.0 Authority

This regulation is adopted under the authority of 18 **Del.C.** §§314, ~~2304(26)~~ and 2741; 21 **Del.C.** §2118~~(e)~~, and adopted in cooperation with the Division of Motor Vehicles. This regulation is promulgated under the provisions of the Administrative Procedures Act, 29 **Del.C.** Ch.101.

##### 2.0 Purpose

2.1 The purpose of this regulation is to:

- 2.1.1 ~~establish~~ Establish requirements to govern the form of the standardized insurance identification (ID) card for each insured vehicle pursuant to Delaware law;
- 2.1.2 ~~establish~~ Establish the procedure by which automobile insurers shall notify the Division of Motor Vehicles when automobile insurance coverage is terminated or when insurers pay claims for uninsured motorists; and
- 2.1.3 ~~provide~~ Provide procedures for the submission of insurance company data to the Division of Motor Vehicles for administrative efficiency.

### **3.0 Definitions**

To the extent necessary, the definitions contained in 21 Del.C. §101 shall apply to all terms not otherwise defined in Section 3.0 of this regulation. The following words and terms, when used in this regulation, shall have the following meaning unless the context in which they are used clearly indicates otherwise:

**"Commercial auto coverage", "commercial vehicle coverage" or "commercial lines policy"** is means any coverage provided to an insured, regardless of the number of vehicles or entities covered, under a commercial auto, garage, or truckers coverage form and/or rated from either a commercial manual or rating rule as filed and approved by the Delaware Department of Insurance. Vehicle type and ownership are not necessarily the primary factors in either underwriting the coverage or rating the coverage. The rating may be subject to individual risk characteristics including but not limited to experience rating, schedule rating, loss rating or deductible rating.

**"Fleet"** ~~shall mean~~ means five or more vehicles under single ownership or lease used for commercial purposes.

**"Personal lines auto coverage,"** ~~personal lines vehicle coverage" or "personal lines policy"~~ shall apply to **"personal lines vehicle coverage" or "personal lines policy"** means any insured or insurance policy that does not fall within commercial lines.

~~To the extent necessary, the definitions contained in 21 Del.C. §101 shall apply to all terms not otherwise defined herein.~~

### **4.0 Insurance Identification Card**

- 4.1 All companies licensed to write automobile insurance in the State of Delaware must furnish Insurance Identification ~~Cards.~~ Cards to their insureds in accordance with the following:
  - 4.1.1 If the insured and insurance company both consent, the insurance identification card may be produced in electronic ~~format.~~ format;
  - 4.1.2 Acceptable electronic formats include display of electronic images on a cellular phone or any other type of portable electronic ~~device.~~ device;
  - 4.1.3 At least one written card or card in electronic format must be issued for each vehicle for which liability insurance is in ~~effect.~~ effect; and
  - 4.1.4 Delaware policyholders who are members of the military and are stationed outside of Delaware may be issued a card of that state provided their coverage meets Delaware requirements.
- 4.2 If an insurance identification card is produced in written format, insurers may use uniform ACORD format or may prepare the ACORD format as described below:
  - 4.2.1 The size, weight, and color of the card shall be as below:
    - 4.2.1.1 Size: Not smaller than 3-1/2" x 2-1/4" or larger than 3" x 5"
    - 4.2.1.2 Weight: Optional
    - 4.2.1.3 Color: White

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

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

## PROPOSED REGULATIONS

- 5.1.1 The statement "The ID card must be carried in the vehicle at all times" shall be shown on the face of the card if space is available; otherwise this statement may appear on the back of the ~~card-~~  
card;
- 5.1.2 Card shall be identified as "Identification ~~Card-~~ Card";
- 5.1.3 The insurance company name shall be printed on the face of the card. If the insurer is part of a group, the group name may be printed on the card so long as the card clearly identifies the name of the insurer issuing the ~~insurance-~~ insurance;
- 5.1.4 Insurer's ~~five-digit~~ five-digit National Association of Insurance Commissioners ("NAIC") company identification ~~number-~~ number;
- 5.1.5 ~~Named Insured. This name~~ The name of the named insured, which must be ~~match the name of the~~  
named insured as carried in the insurer's ~~records-~~ records;
- 5.1.6 The ~~insurer may, at its option, include the address of the insured-~~ insured, to be included at the  
insurer's option;
- 5.1.7 Policy ~~Number-~~ Number;
- 5.1.8 Effective date ~~of~~ and the time period during which the policy shall be in ~~effect-~~ effect;
- 5.1.9 Expiration Date. The insurance identification card shall be valid for no more than the term stated in the policy but not to exceed 6 months. Notwithstanding the foregoing limitation, an insurance identification card may be issued for a period of 12 months if the premium has been written on an annual basis and the premium is being paid in installments of no more than for a ~~42-month~~ 12-month period. The expiration date shall be stated in such manner that the exact date of expiration can be clearly identified. For purposes of ~~this section~~ subsection 5.1.9 of this regulation, a policy renewed in the same company with a lapse in coverage of 30 days or less shall be considered to have been continuously insured by a licensed insurance company during the preceding six ~~months-~~ months; and
- 5.1.10 ~~Vehicle(s)~~ Vehicle or Vehicles Insured. Information shall be completed by indicating any of the following, depending on the type of policy or vehicle involved:
- 5.1.10.1 Year, Make, and Vehicle Identification Number ("VIN") of the ~~vehicle(s)~~ vehicle or vehicles insured. Model of the vehicle may be shown as the Make. The ~~Year,~~ Year and Make of the vehicle may be abbreviated, but the complete VIN must be shown.
- 5.1.11 Items which are not obvious as to meaning shall be appropriately captioned.
- 5.2 The order of the information to be contained on the ID card may be rearranged at the option of the company, provided there is no drastic change and the rearrangement is necessary to accommodate a fixed printout system already established by a company.
- 5.3 At least one ID card shall be issued for each vehicle insured under the policy for which liability insurance is in effect.
- 5.4 If a vehicle is specifically described on the ID card, the company must issue a new card upon either a change of vehicle or the acquisition of any additional one. If a different policy number is assigned upon renewal, a new ID Card must also be issued. The expiration date requirement of ~~section~~ subsection 5.1.9 ~~above~~ of this regulation shall apply to an insured's replacement or additional insured vehicle in a manner similar to the previously owned or insured vehicle. The owner of the vehicle shall so inform the insurer of the additional or replacement vehicle. Only after the insurer is so informed, shall the insurer be obligated to issue an ID card to the insured for the additional or replacement vehicle.
- 5.5 A letter or notification should accompany every ID card advising the insured that the card is required to register the vehicle, to obtain new tags, and to serve as evidence of insurance for the law enforcement authorities, e.g., in cases involving accidents, moving traffic violations or road spot checks. This notification may be printed on the back of the ID card. Delaware law requires the ID card to be in the vehicle when it is being operated.
- 5.6 The Division of Motor Vehicles will accept for registration purposes a copy of the application for insurance or the assignment notice or binder pending issuance of insurance or the assignment notice pending issuance of the ID card. However, such evidence of insurance will be accepted for registration purposes only if it has been dated prior to the date and no later than the day preceding the date of



application for registration. For Assigned Risk coverage, insurers shall instruct their agents to place an insurer identification code of "99999" on applications to indicate placement with the Assigned Risk Plan.

- 5.7 Insurance ID cards shall be issued in conformance with ~~section~~ subsection 5.1 above of this regulation. The Insurance Commissioner may exercise his statutory authority to investigate and examine the compliance of insurance carriers with this regulation. The Insurance Commissioner may, after notice and hearing, impose and enter an order as follows:
- 5.7.1 For each occasion where the Insurance Commissioner determines that an ID card was issued inadvertently in non-compliance with ~~section~~ subsection 5.1.9 above of this regulation, the insurer shall be fined \$100. No fine, however, shall be imposed if the ID card was validly issued.
- 5.7.2 For each occasion where the Insurance Commissioner determines an ID card was issued with disregard of the requirements of ~~Section~~ subsection 5.1.9 above of this regulation, but with no pattern of conscious disregard, the insurer shall be fined \$1,000.
- 5.7.3 For each occasion where the Insurance Commissioner determines an ID card was issued as part of a pattern of conscious disregard of the requirements of ~~section~~ subsection 5.1.9 above of this regulation, the insurer shall be fined \$2,000.
- 5.8 "Date of issuance" of an insurance card shall be the effective date of that card.

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

- 6.1 Unless otherwise covered in Section 5.0 of this regulation, the ID card for each vehicle insured under each commercial lines policy, which shall include any insurance issued for fleet vehicles, shall contain the following information, whether the card is provided in written or electronic format:
- 6.1.1 ~~the~~ The information set forth in ~~sections~~ subsections 5.1.1 through 5.1.4, section subsection 5.1.6 and section subsection 5.1.11 of this regulation;
- 6.1.2 ~~the~~ The name of the commercial entity or registrant that owns or leases the fleet as carried in the insurer's records. The insurer, at its option, may include the name of any parent company involved or, in the case of vehicles not operated by the registrant, an indication that the vehicle is "owned or operated by \_\_\_\_\_";
- 6.1.3 ~~the~~ The policy number with any appropriate designations required by the insurer for commercial or fleet vehicles; and
- 6.1.4 ~~the~~ The effective and expiration dates of the policy.
- 6.2 The expiration date for ID cards shall be no more than twelve months from the effective date of the policy and the expiration date shall be stated by day, month and year or month, day and year, so long as the exact date of expiration can be clearly identified.
- 6.3 ID cards subject to the requirements of this ~~section 6~~ Section 6.0 of this regulation shall also be subject to the requirements set forth in ~~sections~~ subsections 5.2 through 5.6 of this regulation.
- 6.4 Insurance ID cards shall be issued in conformance with ~~section~~ subsection 6.1 above of this regulation. The Insurance Commissioner may exercise ~~his~~ the Commissioner's statutory authority to investigate and examine the compliance of insurance carriers with this regulation. The Insurance Commissioner may, after notice and hearing, impose and enter an order as follows:
- 6.4.1 For each occasion where the Insurance Commissioner determines that an ID card was issued inadvertently in non-compliance with ~~section~~ subsection 6.2 above of this regulation, the insurer shall be fined \$100. No fine, however, shall be imposed if the ID card was validly issued.
- 6.4.2 For each occasion where the Insurance Commissioner determines an ID card was issued with disregard of the requirements of ~~section~~ subsection 6.2 above of this regulation, but with no pattern of conscious disregard, the insurer shall be fined \$1,000.
- 6.4.3 For each occasion where the Insurance Commissioner determines an ID card was issued as part of a pattern of conscious disregard of the requirements of ~~section~~ subsection 6.2 above of this regulation, the insurer shall be fined \$2,000.
- 6.5 "Date of issuance" of an insurance card shall be the effective date of that card.

## 7.0 Violations and Penalties

- 7.1 If an insurer ~~shall violate~~ violates any of the provisions of this regulation, the Commissioner shall give written notice to the insurer of the violation and ~~said the~~ notice shall inform the insurer of the right to request a hearing pursuant to 18 **Del.C.** §323.
- 7.2 If the Commissioner determines that an insurer ~~shall be determined to be~~ is in violation by consent or after a hearing, the Commissioner may impose ~~such~~ penalties as permitted pursuant to the Insurance Code.

## 8.0 Notice of Cancellation or Termination

- 8.1 When an insurer determines to cancel or terminate a personal lines insurance policy ~~is cancelled or terminated~~ and that cancellation or termination is final under 18 **Del.C.** ~~§3904 (a) (1)~~ §3904(a), then, within 6 months of the original date of issuance, the insurer ~~must~~ shall file a Notice of Cancellation with the Division of Motor Vehicles.
- 8.2 The insurer shall file the notice ~~shall be filed of cancellation or termination~~ with the Division of Motor Vehicles within 30 days following the effective date on which cancellation has become ~~final~~ final, and in accordance with the following:
- 8.2.1 For purposes of subsection 8.2 of this regulation, "Final" means the date after which coverage cannot be reinstated except by the issuance of a new ~~policy.~~ policy; and
- 8.2.2 The insurer shall file the notice of cancellation or termination in accordance with instructions posted by the Division of Motor Vehicles on the Division's website.
- 8.3 The notice shall be a form with the size, content, and format ~~consistent with the attached forms or as otherwise~~ approved by the Division of Motor Vehicles.

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

- 9.1 An insurer shall furnish within ~~30~~ 21 days of a request by the Division of Motor Vehicles prescribed information on each motor vehicle insured in the State of ~~Delaware.~~ Delaware in accordance with the following:
- 9.1.1 The information shall be provided in the form and manner approved by the Division of Motor ~~Vehicles.~~ Vehicles, as more fully set out in instructions posted by the Department of Motor Vehicles on the Department's website.
- 9.2.2 All information submitted by the insurer shall include the insurer's most current Delaware consumer complaint contact designee as submitted by the insurer to the National Association of Insurance Commissioners State Based Systems data base.

## 10.0 Random Selection/Verification

- 10.1 Pursuant to 21 **Del.C.** §2118 the Division of Motor vehicles shall periodically randomly select on an annual basis at least 10 percent of the vehicle registrations and send them to the insurers of record for verification of liability insurance.
- 10.2 All responses from the insurers shall be delivered to the Delaware Division of Motor Vehicles within 30 days of the mailing date of the verification request.
- 10.3 The random selection/verification process shall be done no more than twelve times and no less than four times annually.

## 11.0 Notification of Uninsured Drivers

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

**12.0 Additional Required Proofs of Insurance**

~~Each~~ When the Department of Motor Vehicles requests that an insured provide verification of insurance coverage, an insurer licensed to write automobile liability insurance in this State shall furnish to their insureds verification of the insurance in force at the request of to the Division of Motor Vehicles by use of using a form and filing methods that are approved by the Division of Motor Vehicles. Each insurer is to utilize such measures as may be necessary to assure delivery of these forms to qualified insured drivers only.

**13.0 Severability**

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

**14.0 Effective Date**

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

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

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL****DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Sections 901(b), (c) and (d); 903(a), (b), (e)(2)a.4 and (e)(2)b.3, 4 and 6 (7 **Del.C.** §§901(b), (c) & (d); 903(a), (b), (e)(2)a.4 & (e)(2)b.3, 4 & 6)  
**7 DE Admin. Code 3502**

**REGISTER NOTICE****SAN #2019-10**

Hearing Docket No.: 2019-R-F-0026

**Bass (Striped Bass; Black Sea Bass)****3502 Striped Bass Spawning Season and Area Restrictions****1. TITLE OF THE REGULATIONS:**

Amend 7 **DE Admin. Code** 3502 Striped Bass Spawning Season and Area Restrictions.

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

Several commercial striped bass gill net fishermen proposed adjustments to the seasonal fixed gill net exclusion area in the Delaware River to facilitate striped bass capture efficiency and to reduce drift gill net conflicts with recreational boaters and anglers. This action proposes to expand the current allowable area where fixed gill nets can be used by opening approximately 1.75 nautical miles (linear) of the Delaware River to fixed gill net fishing during the months of January through May. The current seasonal fixed gill net exclusion area extends from Liston Point (Delaware River) northward. This action would adjust the lower boundary of the exclusion area northward (upstream) to the southern shore of Appoquinimink River mouth at latitude 39°26'51.00"N and longitude 75°34'46.00"W.

The proposed action is consistent with the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for the Striped Bass, its amendments and addenda. The Advisory Council on Tidal Fisheries endorsed development of this action at their September 25, 2019 meeting. Striped bass landings will be unaffected by this amendment, as the commercial striped bass fishery is managed through and limited by an annual commercial quota with mandatory harvester and weigh station tagging and reporting.

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

N/A

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

7 Del.C. §901(b), (c) & (d); §903(a) & (b); §903(e)(2)a.4; §903(e)(2)b.3, 4 & 6

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

N/A

**6. NOTICE OF PUBLIC COMMENT:**

The hearing record on the proposed changes to 7 DE Admin. Code 3502 Striped Bass Spawning Season and Area Restrictions opens February 1, 2020 (Hearing Docket No. 2019-R-F-0026). A public hearing on the proposed amendment will be held on Wednesday, February 26, 2020 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Individuals may submit written comments regarding the proposed changes via e-mail to [DNRECHearingComments@delaware.gov](mailto:DNRECHearingComments@delaware.gov), or via USPS to the DNREC Hearing Officer, 89 Kings Highway, Dover, DE 19901. Public comments will be received until close of business Thursday, March 12, 2020.

**7. PREPARED BY:**

Stewart Michels

Email: [Stewart.Michels@delaware.gov](mailto:Stewart.Michels@delaware.gov)

Ph: (302)739-9914

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

[http://regulations.delaware.gov/register/february2020/proposed/23 DE Reg 633RFA 02-01-20.pdf](http://regulations.delaware.gov/register/february2020/proposed/23%20DE%20Reg%20633RFA%2002-01-20.pdf)

**3502 Striped Bass Spawning Season and Area Restrictions.**

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 The spawning season for striped bass (*Morone saxatilis*) in Delaware shall begin at 12:01 A.M. on April 1 and continue through midnight on May 31 of each calendar year.
- 2.0 It is unlawful for any person to take and retain any striped bass during the striped bass spawning season from the Nanticoke River or its tributaries, the Delaware River and its tributaries to the north of a line extending due east beginning at and including the south jetty at the mouth of the C & D Canal, or the C & D Canal or its tributaries.
- 3.0 It is unlawful for any person to fish a fixed gill net in the Nanticoke River or its tributaries or the C & D Canal or its tributaries during the striped bass spawning season.
- 4.0 It is unlawful for any person to fish during the striped bass spawning season in the Nanticoke River or its tributaries or the C & D Canal or its tributaries with a drift gill net of multi- or mono-filament twine larger than 0.28 millimeters in diameter (size #69) or a stretched mesh size larger than five and one-half (5 1/2) inches.
- 5.0 It is unlawful for any person to fish any fixed gill net in the Delaware River north of a line beginning at ~~Liston Point (River Mile 48.06)~~ the southern shore of Appoquinimink River at latitude 39°26'51.00"N and longitude 75°34'46.00"W and continuing due east to the boundary with New Jersey during January, February, March, April or May.
- 6.0 It is unlawful for any person to fish during the striped bass spawning season defined in 3502 ~~section~~ Section 1.0 and in the areas defined in 3502 ~~section~~ Section 2.0 with natural bait using any hook other than a non-offset circle hook when said hook measures greater than three-eighths (~~3/8~~) (3/8) inches as measured from the point of the hook to the shank of the hook.

**DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Sections 901 and 903(a), (b) & (e)  
(7 Del.C. §§901 & 903(a), (b) & (e))

**REGISTER NOTICE**

**SAN #2019-07**

Hearing Docket No.: 2020-R-F-0002

**3550 Cobia (*Rachycentron canadum*)**

**1. TITLE OF THE REGULATIONS:**

Amend 7 **DE Admin. Code** 3500 Tidal Finfish to include a new 3550 Cobia (*Rachycentron canadum*).

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

The Atlantic States Marine Fisheries Commission adopted the Interstate Fishery Management Plan for Atlantic Migratory Group Cobia (FMP) in November 2017. The most recent stock assessment indicated that Cobia biomass has declined over the past two decades, but the stock is not overfished and overfishing is not occurring. The FMP requires that states adopt the precautionary management measures contained in the FMP to prevent overfishing.

Cobia presence in Delaware waters is sporadic, but they are targeted by anglers when known to be present. Delaware had no reported commercial or recreational Cobia landings in the three years preceding adoption of the FMP. Therefore, Delaware qualifies for *de minimis* status under the FMP criteria and may adopt either of the following two management options:

Delaware's proposed Cobia management options.

|                  | <b>Option 1</b>   |            | <b>Option 2</b>                |            |
|------------------|-------------------|------------|--------------------------------|------------|
|                  | <i>De Minimis</i> |            | Nearest Non- <i>De Minimis</i> |            |
|                  | Recreational      | Commercial | Recreational                   | Commercial |
| Min. Length      | 32                | 37         | 40                             | 37         |
| Possession Limit | 1                 | 2          | 1                              | 2          |
| Vessel Limit     | 1                 | 6          | 3                              | 6          |
| Open Season      | All Year          | All Year   | June 1 - Sept. 15              | All Year   |

Option 1 reflects the *de minimis* management measures outlined in the FMP and Option 2 reflects the management measures in place for the nearest non-*de minimis* jurisdiction (VA). The commercial fishing management measures are identical in both options; however, the recreational management measures differ by the minimum length, maximum vessel limit and season.

Adoption of either option will ensure compliance with the FMP, as required by the Atlantic Coastal Fisheries Cooperative Management Act (16 USC §§5101, *et seq.*). The proposed action is expected to complement federal management in a consistent manner throughout the management unit and provide for the long-term stability of the stock. Given the sporadic occurrence of Cobia in Delaware waters, it is unlikely that the proposed action will have significant, measurable or predictable costs to the affected Delaware fisheries or their dependent businesses.

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

N/A

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

7 Del.C. §901 & §903(a), (b) & (e)

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

N/A

**6. NOTICE OF PUBLIC COMMENT:**

The hearing record on the proposed changes to 7 **DE Admin. Code** 3500 Tidal Finfish to include a new 3550 Cobia opens February 1, 2020 (Hearing Docket No. 2019-R-F-0002). A public hearing on the proposed amendment will be held proceeding the adjournment of the public hearing on proposed amendments to 7 **DE Admin. Code** 3502 Striped Bass Spawning Season and Area Restrictions (SAN # 2019-10; Hearing Docket No. 2019-R-F-0026) on Wednesday, February 26, 2020 at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Individuals may submit written comments regarding the proposed changes via e-mail to [DNRECHearingComments@delaware.gov](mailto:DNRECHearingComments@delaware.gov), or via USPS to the DNREC Hearing Officer, 89 Kings Highway, Dover, DE 19901. Public comments will be received until close of business Thursday, March 12, 2020.

**7. PREPARED BY:**

Stewart Michels

Email: [Stewart.Michels@delaware.gov](mailto:Stewart.Michels@delaware.gov)

Ph: (302) 739-9914

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

[http://regulations.delaware.gov/register/february2020/proposed/23 DE Reg 635RFA 02-01-20.pdf](http://regulations.delaware.gov/register/february2020/proposed/23%20DE%20Reg%20635RFA%2002-01-20.pdf)

**3500 Tidal Finfish**  
**3550 Cobia (*Rachycentron canadum*)**

**1.0 Recreational Possession Limits**

- 1.1 It is unlawful for a recreational fisherman to take and reduce to possession more than one Cobia per day or per trip, whichever is longer.
- 1.2 Except in accordance with 3.0 of this section, it is unlawful to have aboard any boat or vessel more than one Cobia.

**2.0 Recreational Size Limit**

It is unlawful for a recreational fisherman to possess a Cobia that measures less than 32 inches in total length.

**3.0 Commercial Possession Limits**

- 3.1 A commercial fisherman may take and reduce to possession no more than two Cobia per day or per trip, whichever is longer, using commercial fishing gear for which said fisherman is lawfully permitted.
- 3.2 It is unlawful for a commercial fisherman to possess more than two Cobia per day or per trip, whichever is longer.
- 3.3 Notwithstanding subsections 3.1 and 3.2, a commercial fishing vessel may have up to six Cobia per day or per trip, whichever is longer, onboard provided the number of Cobia does not exceed twice the number of commercial fishermen onboard that vessel.

**4.0 Commercial Size Limit**

It is unlawful for a commercial fisherman to possess, trade, barter or sell or attempt to trade, barter or sell any Cobia that measure less than 37 inches in total length.

OR

**1.0 Recreational Seasons**

- 1.1 It is unlawful for a recreational fisherman to possess any Cobia during the periods of January 1 through May 31 and September 16 through December 31.

1.2 It is lawful for a recreational fisherman to possess Cobia during the period of June 1 through September 15 in accordance with sections 2.0 and 3.0.

## **2.0 Recreational Possession Limits**

- 2.1 It is unlawful for a recreational fisherman to possess more than one Cobia per day or per trip, whichever is longer.
- 2.2 Except in accordance with 4.0 of this section, it is unlawful to have aboard any vessel more than three Cobia.

## **3.0 Recreational Size Limit**

It is unlawful for a recreational fisherman to possess any Cobia that measures less than 40 inches in total length.

## **4.0 Commercial Possession Limits**

- 4.1 A commercial fisherman may take and reduce to possession no more than two Cobia per day or per trip, whichever is longer, using commercial fishing gear for which said fisherman is lawfully permitted.
- 4.2 It is unlawful for a commercial fisherman to possess more than two Cobia per day or per trip, whichever is longer.
- 4.3 Notwithstanding subsections 4.1 and 4.2, a commercial fishing vessel may have up to six Cobia per day or per trip, whichever is longer, onboard provided the number of Cobia does not exceed twice the number of commercial fishermen onboard that vessel.

## **5.0 Commercial Size Limit**

It is unlawful for a commercial fisherman to possess, trade, barter or sell or attempt to trade, barter or sell any Cobia that measure less than 37 inches in total length.

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## **DEPARTMENT OF SAFETY AND HOMELAND SECURITY DELAWARE COUNCIL ON POLICE TRAINING**

Statutory Authority: 11 Delaware Code, Sections 8402 & 8404(a)(14) (11 Del.C. §§8402, 8404(a)(14))  
1 DE Admin. Code 801

### **PUBLIC NOTICE**

#### **801 Regulations of the Delaware Council on Police Training**

The Council on Police Training (COPT), pursuant to 11 Del.C. §8404(a)(14), proposes to revise its regulations. The proposed amendments, which were voted on in a regular meeting by the COPT on January 14, 2020, seek to update information regarding firearms training and qualifications.

The COPT will allow for the submission of written comments, suggestions, or other materials regarding the proposed rules to the Department of Safety and Homeland Security Attn: Christopher Klein, Public Safety Building Suite 220, P.O. BOX 818, Dover, Delaware 19903-0818 or e-mail [Christopherm.klein@delaware.gov](mailto:Christopherm.klein@delaware.gov). Any written submission in response to this notice and the relevant proposed regulations must be received by the Department of Safety and Homeland Security no later than 4:30 p.m. (EST) on March 02, 2020. A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml).

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# PROPOSED REGULATIONS

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## DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the statutory authority and for the reasons sent forth above, the Council on Police Training does hereby ORDER that the regulations be, and that they hereby are, proposed to be enacted as set forth below.

Robert M. Coupe, Chairman COPT

**\*Please Note:**

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

<http://regulations.delaware.gov/register/february2020/proposed/23 DE Reg 637RFA 02-01-20.pdf>

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

[801 Regulations of the Delaware Council on Police Training](#)

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### DELAWARE COUNCIL ON POLICE TRAINING

Statutory Authority: 11 Delaware Code, Sections 8402 & 8404(a)(14) (11 Del.C. §§8402, 8404(a)(14))

#### PUBLIC NOTICE

#### **803 COPT Firearms Instructors Standards and Requirements**

The Council on Police Training (COPT), pursuant to 11 Del.C. §8404(a)(14), proposes to create regulations. The proposed regulations, which were voted on in a regular meeting by the COPT on January 14, 2020, seek to establish standards and requirements for Firearms Instructors.

The COPT will allow for the submission of written comments, suggestions, or other materials regarding the proposed rules to the Department of Safety and Homeland Security Attn: Christopher Klein, Public Safety Building Suite 220, P.O. BOX 818, Dover, Delaware 19903-0818 or e-mail [Christopherm.klein@delaware.gov](mailto:Christopherm.klein@delaware.gov). Any written submission in response to this notice and the relevant proposed regulations must be received by the Department of Safety and Homeland Security no later than 4:30 p.m. (EST) on March 02, 2020. A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml).

## DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the statutory authority and for the reasons sent forth above, the Council on Police Training does hereby ORDER that the regulations be, and that they hereby are, proposed to be enacted as set forth below.

Robert M. Coupe, Chairman COPT

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

<http://regulations.delaware.gov/register/february2020/proposed/23 DE Reg 638RFA 02-01-20.pdf>

#### **803 COPT Firearms Instructors Standards and Requirements**

#### **1.0 Intent and Purpose**

To establish basic requirements for COPT firearms instructors that include standards for both sworn and civilian

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sponsored instructors.

## **2.0 Definitions**

As used in this chapter:

**“Ammunition”** means a projectile designed to be fired from a weapon such as a handgun or rifle.

**“Armorer”** means a person who has received specialized training related to conducting detailed inspections and repairs to specific weapons.

**“Certification”** means the official approval by the Council on Police Training for an officer to act in a specified capacity, due to the officer’s credentials or level of achievement.

**“Chief of Police”** means any colonel, chief of police or any officer who is the highest-ranking officer of a legislatively authorized police department within this State.

**“Council on Police Training”** or **“COPT”** means the regulatory body established by 29 **Del.C.** §8205 to consider matters relating to police training and such other matters as may be referred to it by the Governor or the Secretary of the Department.

**“Firearms Instructor”** means a law enforcement officer that has received specialized training related to firearms including knowledge of the types of firearms used in law enforcement; appropriate shooting and tactical techniques; instruction methods; and the ability to perform inspection of weapons and range equipment for safety issues. A firearms instructor is not required to be an armorer.

**“Law Enforcement Agency”** or **“LEA”** means any police force or organization functioning within this State or any other state which has by statute or ordinance the responsibility of detecting crime and enforcing the criminal or penal laws of this State or any other state.

**“Law Enforcement Officer”** means a sworn member of a police force or other law-enforcement agency of this State or of any county or municipality who is responsible for the prevention and the detection of crime and the enforcement of laws of this State or other governmental units within the State as defined in 11 **Del.C.** §8401(5)(a)(b), irrespective of the number of the hours worked.

**“Master Firearms Instructor”** means any certified firearms instructor approved by the COPT to be a certifying instructor for a firearms instructor course.

**“Qualification”** means a level of skill or ability that an officer must achieve to be allowed to maintain certification to carry departmentally assigned or approved weapons, as specified in 1 **DE Admin. Code** 801 Section 12.0 for all weapon systems responsible for training.

**“Recertification”** means the renewal of the original certification based on additional training, testing, or a combination of both.

**“Sponsorship”** means any former COPT certified law enforcement officer, as defined in this section, who retired or separated in good standing from a Delaware law enforcement agency and has been contracted by a Delaware law enforcement agency to provide firearms instruction to Delaware law enforcement officers.

## **3.0 COPT Firearms Instructor Certification Requirements**

3.1 No firearms instructor shall be utilized by any law enforcement agency for purposes of certifying firearms instructors unless the certifying instructor has been approved by the Council on Police Training.

3.2 All sworn law enforcement officers seeking Firearms Instructor Certification must submit proof of successful completion of the following requirements to the COPT Administrator prior to being brought before the COPT:

3.2.1 Proof of successful completion of a COPT Certified Instructor Course.

3.2.2 Minimum of three years’ experience as a sworn law enforcement officer.

3.2.3 Those who, by their special knowledge and preparation, are suited to instruct certain courses requiring such special knowledge and education may have the three-year minimum experience waived.

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# PROPOSED REGULATIONS

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3.2.4 Proof of successful completion of an approved COPT Firearms Instructor Course, taught by a COPT Master Firearms Instructor, at a firearms instructor course previously approved by the COPT, or other firearms instructor courses if recommended for approval by the COPT Firearms Instructor Subcommittee and subsequently approved by Council.

3.2.5 A signed letter of endorsement from the Chief of Police of their respective law enforcement agency.

3.3 A firearms instructor is not required to be an armorer and being an armorer does not qualify you to be a firearms instructor.

## **4.0 Sponsored Firearms Instructor Certification Requirements**

4.1 No firearms instructor shall be utilized by any police department for purposes of certifying firearms instructors unless the certifying instructor has been approved by the Council on Police Training.

4.2 All non-sworn individuals seeking Sponsored Firearms Instructor Certification must submit proof of successful completion of the following requirements to the Chief of Police of the sponsoring LEA for submission to the COPT Administrator prior to being brought before the COPT:

4.2.1 Proof of Certification as a COPT firearms instructor.

4.2.2 Proof of being an active COPT certified instructor at the time of retirement or separation.

4.2.3 Proof of retirement or separation in good standing.

4.3 The Chief of Police sponsoring an individual must submit an endorsement letter of the individual to the COPT along with acknowledging compliance with these regulations as set forth.

## **5.0 Firearms Instructor Course Requirements**

5.1 Firearms instructor courses must provide the candidate the necessary education and training in the safe and proper use of firearms, knowledge and skills necessary to teach others to shoot, and additional skills and techniques needed to organize and instruct.

5.2 Firearms instructor courses must be a minimum of 40 hours of education and training to be considered eligible for approval by the COPT.

5.3 Firearms instructor courses must meet the following minimum curricula requirements to be considered by the COPT Firearms Instructor Subcommittee for approval:

5.3.1 Basic Marksmanship Instruction

5.3.2 Target Analysis

5.3.3 Instructional Techniques & Training Aids

5.3.4 Range Organization & Administration

5.3.5 Weapons Nomenclature & Function

5.3.6 Fundamentals of Close Quarters Combat

5.3.7 Introduction to Ammunition & Ballistics

5.3.8 Judgment & Decision-Making Training

5.3.9 Shooting Position, Movement, and Target Engagement

5.3.10 Range & Weapon Safety

5.3.11 Use-Of- Force & Legal Issues

5.3.12 Coaching skills development

## **6.0 Firearms Instructors Training Requirements**

6.1 An eight-hour firearms recertification course will be held annually and will include: legal updates, use of force, and review of Council on Police Training standards.

6.2 Instructors must attend a minimum of one recertification course every three years and complete sixteen hours of additional training in firearms usage or complete sixteen hours of academy level instruction, or a combination of training and instruction in the same three-year period.

- 6.3 All firearms instructors must also annually meet the standards established in 1 DE Admin. Code 801 Section 12.0 for all weapon systems responsible for training.

## **7.0 COPT Master Firearms Instructor Requirements**

- 7.1 A COPT Certified Firearms Instructor seeking Master Firearms Instructor certification shall provide the following to the COPT Firearms Instructor Subcommittee:
- 7.1.1 Current Curriculum Vitae (CV) or Resume indicating all relevant work history, training, certifications, experience and education.
  - 7.1.2 Proof of successful completion of a COPT approved Firearms Instructor Course and proof of successful completion of a COPT Master Instructor Course, or
  - 7.1.3 Proof of successful completion of a COPT approved Firearms Instructor Course and:
    - 7.1.3.1 Seven years or more as a COPT Certified Firearms Instructor or a minimum of 2000 hours of combined firearms instruction and training.
    - 7.1.3.2 Proof of Firearms related administrative responsibilities such as lesson planning, record keeping, etc..
    - 7.1.3.3 A signed letter of endorsement from the Chief of Police of their respective law enforcement agency.
    - 7.1.3.4 Proof of successful completion of an Advanced or "Master" Firearms Instructor course, at least 40 hours in length, from an approved vendor as agreed upon by the COPT Firearms Instructor Subcommittee.
- 7.2 The COPT Firearms Instructor Subcommittee will review each request and required documentation. After a full review, the COPT Firearms Instructor Subcommittee shall either endorse or not endorse the request at the next regularly scheduled COPT Board meeting.
- 7.3 The COPT will be responsible for voting on all certifications for Master Firearms Instructors.

## **8.0 Training, Qualification and Records**

- 8.1 Complete records should reflect all firearms training, qualification, and re-evaluation activities, as well as the performance and proficiency of the law enforcement officer during such activities.
- 8.2 Copies of all training course schedules, curricula, and lesson plans must be maintained along with the records of individual trainees.

## **9.0 Training Site or Facility Requirements**

The training site or facility should provide the environment necessary to conduct all aspects of the training and qualification as approved by the COPT, including appropriate simulation exercises.

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## **DEPARTMENT OF STATE**

### **OFFICE OF THE STATE BANK COMMISSIONER**

Statutory Authority: 5 Delaware Code, Section 121(b) (5 Del.C. §121(b))  
5 DE Admin. Code 2301

#### **PUBLIC NOTICE**

#### **2301 Operating Regulation**

#### **Summary**

The State Bank Commissioner proposes to amend Regulation 2301 (Sale of Checks and Transmission of Money – Operating Regulation). The proposed amendments implement the changes to Title 5, Chapter 23 from House Bill 199, signed by the Governor on 6/27/2019, by providing for license applications to be processed

through the Nationwide Multistate Licensing System and Registry. The proposed amendments are not substantially likely to impose additional costs or burdens upon individuals and/or small businesses. Other Regulations issued by the State Bank Commissioner are not affected by this proposal. The State Bank Commissioner is issuing this proposed amended Regulation in accordance with Title 5 of the Delaware Code. This Notice is issued pursuant to the requirements of Title 29 of the Delaware Code, Chapter 11, Subchapter III, Chapter 101, Subchapter II, and Chapter 104, Sections 10404A(b)(1) and 10404B(b)(1).

**Comments**

Copies of the proposed amended Regulation are being published in the February 1, 2020 edition of the Delaware *Register of Regulations*. Copies are also on file in the Office of the State Bank Commissioner, 1110 Forrest Avenue, Dover, DE 19904 and are available for inspection during regular office hours. Copies are available upon request.

Interested parties may offer comments on the proposed amended Regulation or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner at the above address as to whether the proposed amended Regulation should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before March 3, 2020. Written materials submitted will be available for inspection at the above address.

**Adoption of Proposed Amended Regulations**

On or after March 3, 2020, following review of the public comment, the State Bank Commissioner will determine whether to adopt the proposed amended Regulation, or make additional changes because of the public comments received.

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

<http://regulations.delaware.gov/register/february2020/proposed/23 DE Reg 641RFA 02-01-20.pdf>

**2301 Operating Regulation**  
5 Del.C. Ch. 23

5 Del.C. §2318

Effective Date: ~~June 11, 2013~~ XX/XX/XXXX

**1.0 Compliance with Applicable Laws**

- 1.1 All licensees shall comply with 5 **Del.C.** Ch. 23, all regulations issued thereunder, and all other applicable State and federal statutes and regulations.
- 1.2 The manager and appropriate staff of each licensee shall familiarize themselves with all such statutes and regulations.
- 1.3 Each licensee shall maintain either by paper copy or through electronic access, 5 **Del.C.** Ch. 23 and the following regulations:
  - 1.3.1 Regulation 101, Retention of Financial Institution Records;
  - 1.3.2 Regulation 2301, Operating Regulation;
  - 1.3.3 Regulation 2302, Exemptions; and
  - 1.3.4 Regulation 2303, Report of Delaware Volume.

**2.0 Minimum Required Records**

- 2.1 Each licensee shall maintain any records necessary to verify the licensee's compliance with 5 **Del.C.** Ch. 23, all regulations issued thereunder, and all other applicable State and federal statutes and regulations.
- 2.2 All such records shall be made available to the Commissioner's staff when requested.

- 2.3 Records may be maintained at any suitable location but must be available within a reasonable period of time upon request.
- 2.4 All such records may be maintained by paper copy or in an electronic format.
- 2.5 All records shall be maintained in accordance with the time periods specified in Regulation 101, Retention of Financial Institution Records.
- 2.6 The Commissioner may grant written approval for variations from this section to accommodate specific record keeping systems. Requests for such approvals must be in writing and provide sufficient information concerning the system to ensure that the requirements of this section are satisfied and that the records will be readily available when requested.

### **3.0 Expired Identification**

Licensees shall not accept from a customer any form of identification that has expired.

### **4.0 Advertising**

A licensee shall not advertise in any way that is false, misleading, or deceptive.

### **5.0 Examination Fees and Supervisory Assessments**

- 5.1 The Commissioner may examine licensees and their agents pursuant to 5 **Del.C.** §122. The costs of such examinations are assessed in accordance with 5 **Del.C.** §127(a). A licensee shall remit payment not later than 30 days after the date of the examination invoice.
- 5.2 The Commissioner shall assess each licensee a supervisory assessment that is due and payable on August 1 each year, in accordance with 5 **Del.C.** §127(b).
- 5.3 Failure to remit timely payment of any examination fee or supervisory assessment will result in a penalty of 0.05 percent of the amount unpaid for each day that such fee or assessment remains unpaid after the due date, in accordance with 5 **Del.C.** §§127(a) and 127(b).

### **6.0 Examination Responses**

A licensee shall send the Commissioner a written response to every violation specified in a report of examination no later than 30 days after the date of the report.

### **7.0 License Applications/ Nationwide Multistate Licensing System and Registry**

- 7.1 The Nationwide Multistate Licensing System and Registry, as the multi-state automated licensing system in which the Commissioner is participating pursuant to 5 **Del.C.** §2319, is authorized to act on behalf of the Commissioner to facilitate the application and licensing processes of 5 **Del.C.** Ch. 23, and in that capacity, the System may, with respect to that chapter:
  - 7.1.1 Process licensing applications;
  - 7.1.2 Collect licensing payments;
  - 7.1.3 Submit fingerprints and any other information required for a criminal history background check to the Federal Bureau of Investigation or other law-enforcement agency;
  - 7.1.4 Receive information and maintain records regarding applicants and licensees; and
  - 7.1.5 Share information it maintains regarding applicants and licensees subject to the System with any other state participating in the System, if that state could have obtained that same information directly from the applicant or licensee under its own law for the purpose of licensing, regulating, or supervising that same applicant or licensee under a statute similar to 5 **Del.C.** Ch. 23.
- 7.2 Any person seeking an initial or renewal license to engage in a business that requires a license under 5 **Del.C.** Ch. 23 shall submit the appropriate application and fees to the Commissioner through the Nationwide Multistate Licensing System and Registry.
- 7.3 All applications shall contain such information, and be submitted on such forms and in such manner as the Commissioner may designate. The Commissioner may change and update application forms as

the Commissioner deems appropriate. The Commissioner may also require additional information in connection with any particular application.

- 7.4 All applications, whether for a main company location or a branch location, must be submitted with the investigation fee of \$172.50, the annual licensing fee of \$230.00, plus \$4.60 for each additional location, and the Nationwide Multistate Licensing System and Registry processing fee of \$100 (main company location) or \$20 (branch location) (or such other amount as the System may charge). The Nationwide Multistate Licensing System and Registry processing fee and the investigation fee are non-refundable.
- 7.5 No application shall be deemed complete until the Commissioner has received all required information, documents and fees.
- 7.6 If the Commissioner determines that an application is incomplete, the Commissioner shall send written notification to the applicant indicating the items that must be addressed to continue the application review process. If the Commissioner does not receive a complete response fully addressing all such items within 30 days after sending that notice, the Commissioner may consider the application withdrawn.
- 7.7 Any person seeking an initial license following withdrawal of an application shall submit a new application that includes all information, documents and fees required for an initial license.

#### **8.0 Reports**

Each licensee shall submit to the Nationwide Multistate Licensing System and Registry such reports of condition at such times, in such form and containing such information as that System or the Commissioner shall require.

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## Symbol Key

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

## Final Regulations

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

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

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## DEPARTMENT OF EDUCATION

### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 4111 (14 Del.C. §4111)  
14 DE Admin. Code 251

### REGULATORY IMPLEMENTING ORDER

### 251 Family Educational Rights and Privacy Act (FERPA)

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §4111, the Secretary of Education intends to amend 14 DE Admin. Code 251 Family Educational Rights and Privacy Act (FERPA). This regulation is being amended to comply with 29 Del.C. §10407 which requires regulations to be reviewed on a recurring basis every four years and to update references to federal programs.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on December 1, 2019, in the form hereto attached as *Exhibit "A"*. Comments were received from the State Council for Persons with Disabilities requesting: (1) the Department leave in the sentence explaining that Student Privacy Policy Office (SPPO) will investigate and review alleged FERPA violation complaints that are filed with its office. The Department believes that the proposed replacement language in subsection 4.1 addresses the investigation and review of alleged FERPA violation complaints; and (2) that the zip code listed on the SPPO's website be corrected in the proposed regulation. The Department appreciates the Council identifying this error and has corrected it in the regulation. Also, for further clarification and identification the Department edited language in subsection 4.1 to be more prominent and include the website and phone number for the SPPO.

#### II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 251 Family Educational Rights and Privacy Act (FERPA) in order to comply with 29 Del.C. §10407 which requires regulations to be reviewed on a recurring basis every four years and to update references to federal programs.

### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 251 Family Educational Rights and Privacy Act (FERPA). Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 251 Family Educational Rights and Privacy Act (FERPA) attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 251 Family Educational Rights and Privacy Act (FERPA) 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** 251 Family Educational Rights and Privacy Act (FERPA) amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 251 Family Educational Rights and Privacy Act (FERPA) 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 January 15, 2020. 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 15<sup>th</sup> day of January 2020.

#### Department of Education

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

Approved this 15<sup>th</sup> day of January 2020

### 251 Family Educational Rights and Privacy Act (FERPA)

#### 1.0 Authority and Incorporation of Federal Regulations

4.4 The Department of Education ("Department") is authorized by 14 **Del.C.** §4111, to adopt rules and regulations regarding the educational records of students in public and private schools in Delaware. This regulation is intended to govern access to, the confidentiality of, and the amendment of educational records in a manner consistent with the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. 1232g, and its implementing regulations at 34 CFR part 99, and the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq. and its implementing regulations.

#### 2.0 Use and Adoption of FERPA by School Districts, Charter Schools, and Private Schools

- 2.1 Each school district, charter ~~school~~ school, and private school shall develop, adopt, and maintain a written policy regarding the educational records of its students. This policy shall address access to such records, the confidentiality of such records, and the method by which the records may be amended. The policy shall comply with FERPA and its implementing regulations.
- 2.2 Each school district, charter [~~school~~ **school**,] and private school shall periodically review and revise its policy on educational records to ensure continued compliance with FERPA.
- 2.3 Nothing in this regulation shall preclude a school district, charter school, or private school from adopting additional policies regarding educational records so long as those regulations are consistent with FERPA. Nothing in this regulation shall alter a school [~~district~~ **district's**] or a charter school's duties regarding educational records of children with disabilities pursuant to the Individuals with Disabilities Education Act.

#### 3.0 State Adoption of FERPA

3.1 Except as otherwise provided, the Department of Education adopts the federal regulation implementing FERPA (34 CFR part 99), including any subsequent amendment or revision to that



regulation, to the extent the Department maintains educational records on students in attendance in Delaware schools.

- 3.2 Notwithstanding ~~section~~ subsection 3.1, and except as noted herein, the Department shall not be required to annually notify parents or eligible students of their rights under FERPA or this regulation. School districts, charter schools, and private schools shall continue to be responsible for such notification. The Department may also disclose directory information from the educational records it maintains without prior public notification.
- 3.2.1 The Department shall annually notify parents or eligible students of their rights under FERPA or this regulation where said student is in the Delaware Department of Correction system and receiving educational services through the Department's Prison Education Program.
- 3.3 Notwithstanding ~~section~~ subsection 3.1, and except as noted herein, the Department shall not be required to provide a hearing to a parent or eligible student seeking to amend their educational records as provided in Subpart C of the FERPA regulation.
- 3.3.1 The Department shall provide a hearing to a parent or eligible student seeking to amend their educational records as provided in Subpart C of the FERPA regulation where said student is in the Delaware Department of Correction system and receiving educational services through the Department's Prison Education Program.

## 4.0 Federal Complaints and Investigations

- [4.4]** ~~The Family Policy Compliance Office ("FPCO") of the U.S. Department of Education is responsible for monitoring compliance with FERPA by agencies to which federal education funds have been made available. That office will investigate, process and review violations and complaints that may be filed with it concerning the privacy rights of parents and students of covered agencies. The following is the address of the office: The Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202-4605. The U.S. Department of Education's Office of the Chief Privacy Officer ("OCPO") provides leadership, oversight, and coordination to ensure Departmental compliance with government initiatives regarding the acquisition, release and maintenance of information. OCPO oversees the administration of FERPA. The Student Privacy Policy Office ("SPPO") leads U.S. Department of Education efforts to protect student privacy by providing leadership, oversight, and coordination to ensure Department and field compliance with several Federal privacy laws and regulations, most notably FERPA. [The following is the address of the office: Student Privacy Policy Office, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202-4605. Parents and students who need assistance may contact the SPPO through the website below or via mail or phone:~~

**Student Privacy Policy Office  
U.S. Department of Education  
400 Maryland Avenue, S.W.,  
Washington, D.C. 20202-5920  
<https://studentprivacy.ed.gov>  
Phone: 1-800-USA-LEARN]**

Families of students attending schools to which federal education funding has not been made available may also find FPCO's SPPO's interpretations and policy letters useful in understanding their rights under the policies required by this regulation.

Nonregulatory note: 14 **DE Admin. Code** 927 Children with Disabilities Subpart F, Monitoring, Enforcement and Confidentiality of Information addresses this subject for students with disabilities further.

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 1508 and 1803 (14 **Del.C.** §§1508 & 1803)  
14 **DE Admin. Code** 734

## REGULATORY IMPLEMENTING ORDER

**734 Financial Responsibility Training for District School Board, Charter School Board and Citizen Budget Oversight Committee Members****I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

Pursuant to 14 **Del.C.** §§1803 and 1508, the Secretary of Education intends to amend 14 **DE Admin. Code** 734 Financial Responsibility Training for District School Board, Charter School Board and Citizen Budget Oversight Committee Members. This regulation is being amended to include school district and charter school leaders per House Bill 225 of the 150<sup>th</sup> General Assembly, to ensure that two individuals always have Financial Responsibility Training and to update the title of the regulation.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on October 1, 2019, in the form hereto attached as *Exhibit "A"*. No comments were received. The Department did remove the word "Leader" in Section 5.1.1, as it is the school district or charter school, not necessarily the school leader, who is to designate a secondary person to have Financial Responsibility Training. Also changes were made in Section 5.0 to clarify the required date of completion for the training. Other minor changes were made to Delaware Code citations in the Section 2.0 to align with the *Delaware Administrative Code Drafting and Style Manual*.

**II. FINDINGS OF FACTS**

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 734 Financial Responsibility Training for District School Board, Charter School Board and Citizen Budget Oversight Committee Members to include school district and charter school leaders per House Bill 225 of the 150<sup>th</sup> General Assembly, to ensure that two individuals always have Financial Responsibility Training and to update the title of the regulation.

**III. DECISION TO AMEND THE REGULATION**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 734 Financial Responsibility Training for District School Board, Charter School Board and Citizen Budget Oversight Committee Members. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 734 Financial Responsibility Training for District School Board, Charter School Board and Citizen Budget Oversight Committee Members attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 734 Financial Responsibility Training for District School Board, Charter School Board and Citizen Budget Oversight Committee Members hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

**IV. TEXT AND CITATION**

The text of 14 **DE Admin. Code** 734 Financial Responsibility Training for District School Board, Charter School Board and Citizen Budget Oversight Committee Members amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 734 Financial Responsibility Training for District School Board, Charter School Board and Citizen Budget Oversight Committee Members 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 January 15, 2020. 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 15<sup>th</sup> day of January 2020.

## Department of Education

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

Approved this 15<sup>th</sup> day of January 2020

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

#### **1.0 Purpose**

The purpose of this regulation is to outline the criteria and process for the required one-time Financial Responsibility Training for members of ~~district school boards~~ School District boards, including vocational technical school ~~boards and the boards~~, boards of charter schools pursuant to 14 ~~Del.C. §1803~~§1803, and for members of the Citizen Budget Oversight ~~Committee~~ Committees (CBOC) pursuant to 14 ~~Del.C. §1508~~, and School District and Charter School Leaders. Financial Responsibility Training provides instruction to members of school ~~boards and boards~~, CBOCs and School District and Charter School Leaders as to how to properly ensure that public funds are appropriately managed and expended, as well as to provide training on state and local funding of public education.

#### **2.0 Definitions**

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

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

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

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

**"Charter School Leader"** means the head of school or chief financial officer of a charter school.

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

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

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

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

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

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

**"School District Board"** means reorganized School District Board or vocational technical school district boards duly appointed or elected pursuant to 14 ~~Del.C. Ch. 10~~.

**"School District Leader"** means the superintendent of a School District or the chief financial officer.

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

### 3.0 Financial Responsibility Training Components

- 3.1 The Financial Responsibility Training shall be developed and coordinated by the Department's Finance Office. This ~~one-time~~ training may be provided in person or online at the discretion of the Department and shall cover the following topics:
- 3.1.1 Overview of education budget process and timelines;
  - 3.1.2 Instruction in the basic rules of budgeting, including State of Delaware funds, local funds, and federal funds;
  - 3.1.3 Information regarding the State's financial management system; and
  - 3.1.4 Reporting requirements.

### 4.0 ~~District School Board, Charter School Board and CBOC Member Requirements~~

- 4.1 Each member of a ~~District School~~ District Board or Charter School Board shall attend and receive a Certificate of Completion for Financial Responsibility Training within three (3) months of election, appointment, or voluntary service to a ~~District School~~ District Board or Charter School Board. Provided further, additional training may be required from time to time as determined by the Department. Notification of any additional training shall be provided to the district or charter school.
- 4.2 Each member of a CBOC shall attend and receive a Certificate of Completion for the Financial Responsibility Training within three (3) months of appointment to a CBOC. Provided further, additional training may be required from time to time as determined by the Department. Notification of any additional training shall be provided to the district or charter school.
- 4.3 Each School District Leader shall attend and receive a Certificate of Completion for the Financial Responsibility Training within three (3) months of appointment to their position. Provided further, additional training may be required from time to time as determined by the Department. Notification of any additional training shall be provided to the district.
- 4.4 Each Charter School Leader shall attend and receive a Certificate of Completion for the Financial Responsibility Training within three (3) months of appointment to their position. Provided further, additional training may be required from time to time as determined by the Department. Notification of any additional training shall be provided to the charter school.

### 5.0 ~~Financial Responsibility Training Schedule~~ School District and Charter School Leaders

~~The Department shall communicate training opportunities to Local School Districts and Charter Schools as they are scheduled. The Financial Responsibility Training shall be conducted by a Trainer as defined in this regulation, and approved by the Department's Finance Office.~~

- 5.1 Effective ~~[July 1, 2019]~~ June 30, 2020, each School District and Charter School Leader is required to complete Financial Responsibility Training.
- 5.1.1 In the event that an individual has a dual capacity such as serving as both the school leader and chief financial officer, the School District or Charter School ~~[Leader]~~ shall designate a designee, so that two (2) individuals at all times have completed Financial Responsibility Training.
- 5.2 Any individual employed in a School District or Charter School Leader position prior to July 1, ~~[2019]~~ 2020] is not required to complete Financial Responsibility Training.

### 6.0 ~~Notification of Attendance~~ Financial Responsibility Training Availability

- 6.1 ~~The Department shall periodically, but not less than annually, provide a list of those School Board and CBOC members that have not satisfied the requirement of subsections 4.1 and 4.2 to their respective District School Board or Charter School Board President, the Office of Management and Budget, and Controller General's Office.~~ provide the required training opportunity in a self-paced, online format as approved by the Department's Finance Office.
- 6.2 Financial Responsibility Training shall be available to any additional employees, volunteers or stakeholders as requested by any School District or Charter School.

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## 7.0 **Notification of Attendance**

- 7.1 The Department shall periodically, but not less than annually, provide a list of those School Board members, CBOC members and School District and Charter School Leaders that have not satisfied the requirement of subsections 4.1 and 4.2 to their respective School District or Charter School.
- 7.2 The Department shall notify the School District or Charter School upon successful completion of the Financial Responsibility Training by any School District or Charter School Leader.
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### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(2) (14 **Del.C.** §122(b)(2))  
14 **DE Admin. Code** 877

### REGULATORY IMPLEMENTING ORDER

#### 877 Tobacco Policy

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §122(b)(2), the Secretary of Education intends to amend 14 **DE Admin. Code** 877 Tobacco Policy. The Department has reviewed the regulation to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years and concluded that the regulation should be amended. Amendments include adding a purpose and definitions, expanding the scope of the regulation to include smoking, and aligning the regulation with 16 **Del.C.**, Chapter 29, Delaware's Clean Indoor Air Act.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on December 1, 2019, in the form hereto attached as *Exhibit "A"*. Comments were received from the State Council for Persons with Disabilities suggesting the Department include language in the regulation that this regulation does not limit any treatment rights afforded under 16 **Del.C.** Chapter 49A (The Delaware Medical Marijuana Act) related to prohibiting the use/smoking of medical marijuana on school grounds. The regulation is limited to smoking tobacco and tobacco related products so including reference to medical marijuana in this regulation is not necessary.

#### II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 877 Tobacco Policy in order to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years, to add a purpose and definitions, expand the scope of the regulation to include smoking, and align the regulation with 16 **Del.C.**, Chapter 29, Delaware's Clean Indoor Air Act.

#### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 877 Tobacco Policy. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 877 Tobacco Policy attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 877 Tobacco Policy 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** 877 Tobacco Policy amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 877 Tobacco Policy 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 January 15, 2020. 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 15<sup>th</sup> day of January 2020.

**Department of Education**

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

Approved this 15<sup>th</sup> day of January 2020

**877 Tobacco and Smoking Policy**

**1.0 Purpose**

- 1.1 The purpose of this regulation is to specify for district and charter schools the elements of a required Tobacco and Smoking Policy, including specifying areas where the policy is in effect, and outlining reporting requirements and timelines.
- 1.2 This regulation aligns with 16 Del.C., Chapter 29, Delaware's Clean Indoor Air Act, and 11 Del.C., Chapter 5, Subchapter V.

**2.0 Definitions**

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

“Electronic Smoking Device” means any product containing or delivering nicotine or any other similar substance intended for human consumption that can be used by a person to simulate Smoking through inhalation of vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor or as this term may be amended by 16 Del.C. §2902.

“Smoking” means:

- a. The burning of a lighted cigarette, cigar, pipe or any other matter or substance that contains tobacco; or
- b. The use of an Electronic Smoking Device which creates an aerosol or vapor, in any manner or in any form or as this term may be amended by 16 Del.C. §2902.

“Tobacco Product” means:

- a. Any product that is made from or derived from tobacco or that contains nicotine, including: cigarettes, cigars, pipe tobacco, hookah tobacco, chewing tobacco, snuff, snus, or smokeless tobacco and is intended for human consumption by any means including Smoking, heating, chewing, absorbing, dissolving, inhaling, or ingesting as this term may be amended by 11 Del.C. §1115; or
- b. A component or accessory used in the consumption of a Tobacco Product, including filters, rolling papers, and pipes or as this term may be amended by 11 Del.C. §1115.

Tobacco Product does not mean a drug, device, or combination product authorized for sale by the United States Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §301 et seq.) or as this term may be amended by 11 Del.C. §1115.

“Tobacco Substitute” means:

- a. An Electronic Smoking Device employing a mechanical heating element, battery, or circuit to produce aerosol or vapor for inhalation into the body of an individual or as this term may be amended by 11 Del.C. §1115, or
- b. A liquid used in a device under paragraph a. above, including liquids that contain nicotine and liquids that do not contain nicotine or as this term may be amended by 11 Del.C. §1115.

Tobacco Substitute does not mean a drug, device, or combination product authorized for sale by the United States Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.) or as this term may be amended by 11 Del.C. §1115.

## **4-03.0 Required Policy**

- 3.1 In order to To improve the health of ~~students and~~ students, school personnel, and visitors, each school district and charter school in Delaware shall have a ~~policy~~ Tobacco and Smoking Policy which at a minimum:
- 4-13.1.1 Prohibits smoking and the use of or distribution of tobacco products and electronic smoking devices in school buildings, on school grounds, in school leased or owned vehicles, even when they are not used for student purposes, and at all school affiliated functions.
- 4-23.1.2 Includes procedures for communicating the policy to students, school staff, parents, guardians or ~~Relative Caregivers~~ relative caregivers, families, visitors and the community at large.
- 4-33.1.3 Makes provisions for or refers individuals to voluntary cessation education and support programs that address the physical and social issues associated with nicotine addiction.

## **2-04.0 The Tobacco and Smoking Policy Shall Apply to**

- 2-14.1 Any building, property or vehicle leased, owned or operated by a school district, charter school or assigned contractor.
- 2-14.1.1 School bus operators under contract shall be considered staff for ~~the purpose of~~ this policy.
- 2-24.2 Any private building or other property including automobiles or other vehicles used for school activities when students and staff are present.
- 2-34.3 Any ~~non-educational~~ non-educational groups utilizing school buildings or other educational assets.
- 2-44.4 Any individual or a volunteer who supervises students off school grounds.

## **3-05.0 No School or School District Property May Be Used for the Advertising of any Tobacco Product, Tobacco Substitute or Electronic Smoking Device**

## **4-06.0 Reporting Requirements and Timelines**

- 4-16.1 Each ~~public~~ school district and charter school shall have an electronic copy of its current ~~tobacco policy~~ Tobacco and Smoking Policy on file with the Department of Education.
- 4-26.2 Each ~~public~~ school district and charter school shall provide an electronic copy of any ~~tobacco policy~~ Tobacco and Smoking Policy within ninety (90) days of such ~~revision(s)~~ revisions regardless of whether said revisions were made as a result of changes to ~~Federal~~ federal, state or local law, regulations, guidance or policies.

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### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 920

### REGULATORY IMPLEMENTING ORDER

### 920 Educational Programs for English Language Learners (ELLs)

#### **I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

Pursuant to 14 **Del.C.** §122(b), the Secretary of Education intends to amend 14 **DE Admin. Code** 920 Educational Programs for English Language Learners (ELL). This regulation is being amended to include the statutory authority, to make minor corrections, update definitions and terminology, and to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on November 1, 2019, in the form hereto attached as *Exhibit "A"*. Comments on the proposed amendments were received from the Governor's Advisory Council for Exceptional Citizens which suggested the Department consider the following:

- (1) Not removing the definition of "bilingual programs" as there has been a proven positive effect that these

programs have resulted in long-term achievements for students whose first language is not English. **Response:** The Department expanded the definition of Language Instruction Education Program (LIEP) to more clearly outline bilingual education and to align it with the federal definition.

(2) Aligning the definition of LIEP with the federal definition, which includes bilingual education or otherwise ensuring that the definition of LIEP contemplates bilingual approaches, as well as ESL instruction. **Response:** The Department expanded the definition of Language Instruction Education Program (LIEP) to more clearly outline bilingual education and to align it with the federal definition.

(3) Changing the definition of English Language Learners, specifically, the definition is made too vague by the use of the term “among other things” and the use of “standardized entrance and exit procedures” or “state assessments.” **Response:** The Department believes the definition is sufficient and aligns with Delaware’s ESSA Plan.

(4) Removal of the requirement that programs selected for the education of English Learners be research-based. **Response:** The Department prefers to use the existing language as it aligns with Delaware’s ESSA Plan.

(5) A possible change to the language in Section 7.0 regarding communication with family members only be required to be in a language understood by the family member “to the extent practicable.” **Response:** The Department removed the language “to the extent practicable” in Section 7.0 to clarify that the communication to parents, guardians and relative caregivers should be in English or the language that these individuals clearly understand.

The Department also removed the acronym “WIDA” in the definition of “WIDA English Language Development (ELD) Standards” as it is duplicative in the definition. It also removed “(ELD)” in this definition as the abbreviation is not used in the regulation and is not needed.

The State Board of Education has agreed to and approved WIDA standards at its December 19, 2019 meeting. This was added at the end of Section 1.0.

## II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 920 Educational Programs for English Language Learners (ELL) in order to include the statutory authority, to make minor corrections, update definitions and terminology, and to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 920 Educational Programs for English Language Learners (ELL). Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 920 Educational Programs for English Language Learners (ELL) attached hereto as *Exhibit “B”* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 920 Educational Programs for English Language Learners (ELL) 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** 920 Educational Programs for English Language Learners (ELL) amended hereby shall be in the form attached hereto as *Exhibit “B”*, and said regulation shall be cited as 14 **DE Admin. Code** 920 Educational Programs for English Language Learners (ELL) 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 January 15, 2020. 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 15<sup>th</sup> day of January 2020.

**Department of Education**

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



Approved this 15<sup>th</sup> day of January 2020

## 920 Educational Programs for English Language Learners (ELLs) (ELs)

This regulation shall apply to any district or charter school applying for or receiving funds to provide services or programs for English Language Learners (ELLs) (ELs).

### 1.0 Definitions

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

“ACCESS” means a suite of secure, large-scale, summative English language proficiency assessments.

~~“Bilingual Programs” Bilingual programs are programs that provide instruction using the student's native language and English across all subject areas or provide instruction in English across all subject areas with support in the native language.~~

~~“English as a Second Language (ESL) Programs” English as a Second Language Programs are programs providing instruction in English across all subject areas. This program takes into account the student's level of English proficiency and builds on the language skills and academic subject knowledge the student has acquired in his or her native language.~~

“Department” means the Delaware Department of Education.

~~“English Language Learners (ELLs)” or “ELs” English Language Learners are students with limited English proficiency (also referred to as (LEP) Limited English Proficient Students). ELLs are individuals who, by reason of foreign birth or ancestry, speak a language other than English, and either comprehend, speak, read or write little or no English, or who have been identified as English Language Learners by a valid English language proficiency assessment approved by the Department of Education for use statewide means individuals who, among other things, have English language speaking, reading, writing, or understanding difficulties sufficient to deny the individual the ability to meet challenging state academic standards as defined using Delaware's standardized entrance and exit procedures.~~

“ESSA Plan” means a document that reflects the goals of the Delaware education system that are in compliance with applicable federal requirements outlined in the Elementary and Secondary Education Act (ESEA) of 1965, reauthorized in December 2015 as the Every Student Succeeds Act (ESSA).

“Home Language Survey” means a questionnaire that is given to a student's parent, guardian or relative caregiver to help schools and local education agencies identify students who are potential ELs, and who will require assessment of their English language proficiency to determine whether they are eligible for a LIEP.

~~“Language Instruction Education Program” or “LIEP” means [programs providing instruction in English across all subject areas. This program takes into account the student's level of English proficiency and supports the acquisition of increased English language skills with the goal of attaining English language proficiency and supports the learner in meeting challenging academic standards~~ an instruction course: (1) in which an English learner is placed for the purpose of developing and attaining English proficiency while meeting challenging State academic standards; and (2) that may make instructional use of both English and a child's native language to enable the child to develop and attain English proficiency and may include the participation of English proficient children if such course is designed to enable all participating children to become proficient in English and a second language].

~~“WIDA English Language Development (ELD) Standards” or “WIDA” “WIDA English Language Development Standards”] means the social, instructional, and academic language that students need to engage with peers, educators, and the curriculum in schools.~~

## 2.0 Home Language Survey

- 2.1 A state standardized home language survey or the questions contained in the survey shall be administered as part of the registration process for all registering students and shall elicit from the student's parent, guardian or ~~Relative Caregiver~~ relative caregiver the student's first acquired language and the ~~language(s)~~ language or languages spoken in the student's home or by the student.
- 2.2 ~~Any For any student for whom a language other than English is reported on the home language survey or on the registration form as the student's first acquired language or as a language used in the student's home or by the student shall be administered an English language proficiency assessment survey, the school or district shall follow Delaware's statewide entrance criteria as outlined in Delaware's approved ESSA Plan and further described in Delaware's English Learner Guidebook. The~~ When appropriate, an initial screening assessment of English language proficiency shall be conducted as soon as practicable, but not later than twenty five-twenty-five (25) school days after enrollment and shall be conducted by qualified personnel trained in the administration of the assessment instrument.
- 2.2.1 The English language proficiency screening assessment shall be based on the WIDA English Language Proficiency Development Standards for English Language Learners K to 12 and shall ~~assess listening, speaking, reading and writing.~~ The assessment shall be validated for this purpose and approved by the Department of ~~Education~~ for use statewide.
- 2.2.2 Any student who achieves a score on the English language proficiency screening assessment that is lower than the eligibility cut off score ~~in listening, speaking, reading and writing~~ established by the Department of ~~Education~~ shall be identified as an ~~ELL~~ EL and shall be entitled to a program of instruction for ~~ELLs~~ ELs.

## 3.0 Programs of Instruction for ~~ELLs~~ ELs

- 3.1 Programs of instruction for ~~ELLs~~ ELs shall include formal instruction ~~in to increase~~ English language ~~development proficiency~~; and instruction in academic subjects which is designed to provide ~~ELLs~~ ELs with access to the regular curriculum. All instruction for ELs must be aligned to the WIDA English Language Development Standards as adopted by the State Board of Education. In selecting a ~~program(s) programs,~~ each district ~~or charter school~~ shall choose programs that ~~are research-based and that~~ have been demonstrated to be effective in the education of ~~ELLs~~ ELs.
- 3.2 Programs shall be implemented consistent with the goal of prompt acquisition of full English proficiency. Programs shall include instruction in academic subjects which is equivalent in scope to the instruction that is provided to students who are not ~~limited in English proficiency~~ ELs.
- 3.3 Instruction shall be delivered by individuals who meet Department of ~~Education~~ licensure and certification requirements and who are trained in the delivery of instruction to ~~ELLs~~ ELs.
- 3.4 The student's parent, guardian or ~~Relative Caregiver~~ relative caregiver has a right to refuse placement of their ~~child(ren) in either the Bilingual or the ESL program~~ child or children in a LIEP, and also has the right to withdraw an identified student from either program. Parents, guardians or ~~Relative Caregivers~~ relative caregivers of eligible students who refuse placement of their student in either program or withdraw students from either program shall do so in writing.

## 4.0 English Language Proficiency Assessment

- 4.1 Every student identified as an ~~ELL~~ EL will be administered ~~an~~ the ACCESS English language proficiency assessment annually.
- 4.2 Any student who achieves a score on the annual ACCESS English language proficiency assessment that is higher than the eligibility cut off score ~~in listening, speaking, reading and writing~~ established by the Department of ~~Education~~ shall be ~~transitioned~~ reclassified as fully English proficient and ~~placed in a regular classroom.~~
- 4.2.1 For at least two school years following the ~~identification of the student as fully English Proficient~~ reclassification, the district or charter school shall monitor the academic performance of the student. Students who experience academic difficulty in the regular classroom during the transition period shall, based on further ~~assessment re-enter~~ assessment, reenter a ~~Bilingual or ESL~~

program LIEP or shall be provided with additional instructional services as necessary and appropriate.

## 5.0 Annual Evaluation

Each district and charter school ~~receiving funds to provide services or programs for ELL's with ELs shall prepare an annual evaluation of~~ annually evaluate its program(s) program and make programmatic changes as necessary. This evaluation shall be part of the district's annual evaluation process under and in compliance with the Consolidated Application.

## 6.0 Data and Information Required

Each district and charter school shall enter such data and information concerning ~~ELLs~~ ELs as instructed by the Department of Education and as otherwise required by the Department into the statewide database.

## 7.0 Communication

Each district and charter school shall ensure that communication with parents, guardians and ~~[Relative Caregivers, relative caregivers,]~~ including notices of eligibility for programs for ~~ELLs~~ ELs, notices about the student's educational performance and progress in such programs, and school information that is made available to other parents, guardians and ~~Relative Caregivers~~ relative caregivers shall be provided in English or ~~[to the extent practicable]~~ in a language the parent, guardian or ~~Relative Caregiver~~ relative caregiver can understand.

## 8.0 Inclusion in Delaware ~~Student Testing Program~~ System of Student Assessments

~~ELLs~~ ELs and students ~~transitioned~~ reclassified as fully English proficient shall be included in the Delaware ~~Comprehensive Assessment System (DCAS)~~ System of Student Assessments (DeSSA) as provided for in the Department of Education document ~~Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency~~, as the same may from time to time be amended hereafter Department's Accessibility Guidelines for the Delaware System of Student Assessments, or any amended version thereafter.

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF MEDICAID AND MEDICAL ASSISTANCE Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

### ORDER

### Drug Utilization Review (DUR)

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XIX Medicaid State Plan regarding the DUR, specifically, to update provisions included in section 1004 of the SUPPORT Act. 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 December 2019 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2019 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### SUMMARY OF PROPOSAL

Effective for services provided on and after October 1, 2019 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Section 4.26 of Title XIX Medicaid State Plan regarding the DUR, specifically, to update provisions included in section 1004 of the SUPPORT Act.

**Background**

All states, with a Medicaid program that include a drug benefit are required to have a Drug Utilization Review (DUR) program. New provisions for the DUR were included in Section 1004 of the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for patients and Communities Act (P.P. 115-271) as requirements of the state plan. States were required to describe how they met the requirements for claim review limitations, programs to monitor antipsychotic medications to children and fraud and abuse identification.

**Statutory Authority**

- 42 CFR. §456.703
- SUPPORT Act (P.P. 115-271)

**Public Notice***Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on December 31, 2019.

*Centers for Medicare and Medicaid Services Review and Approval*

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

*Provider Manuals and Communications Update*

Also, there may be additional provider manuals that may require updates as a result of these changes. The applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals and/or Delaware Medical Assistance Portal will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding DMAP updates. DMAP updates are available on the Delaware Medical Assistance Portal website: <https://medicaid.dhss.delaware.gov/provider>

**Fiscal Impact Statement**

There is no anticipated fiscal impact associated with this policy change.

**Summary of Comments Received with Agency Response and Explanation of Changes**

The following summarized comments were received:

**Comment:** Two commenters expressed support.

**Agency Response:** DMMA appreciates the support.

**Comment:** One commenter expressed concern that the proposed regulation could create processes that require increased oversight and prior approvals for initial or continuing prescriptions of buprenorphine.

**Agency Response:** To address the Opioid Epidemic, in July 2017 Delaware Medicaid removed restrictions, such as prior authorization, from buprenorphine products to ensure access to treatment at point of sale (POS) and Medication-Assisted Treatment (MAT) (methadone, buprenorphine, and extended-release naltrexone drugs). With open access to SUD treatment, Delaware continues to monitor drug use information against predetermined standards.

**Comment:** One commenter recommended that a board certified physician be appointed to the Drug Utilization Review (DUR) board.

**Agency Response:** The Drug Utilization Review board consist of three physicians who are licensed and actively practicing in Delaware. The complete board composition can be found at <https://dhss.delaware.gov/dhss/dmma/drugutilizationreviewboard.html>

**Comment:** Two commenters inquired about the removal of section (d) “Managed Care Organization (MCO) Requirements,” which appeared in the version of the regulation published 23 **DE Reg.** 184 (09/01/19) (Prop.) and was not included in the regulation published in 23 **DE Reg.** 427 (12/01/19).

**Agency Response:** The section was removed due to CMS clarification which indicated that specifications regarding MCO SUPPORT Act compliance should not be included on the state FFS plan pharmacy DUR pages.

DMMA is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given by:

- Christiana Care Health System
- Governor’s Advisory Council for Exceptional Citizens (GACEC)
- State Council for Persons with Disabilities (SCPD)

## FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the December 2019 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding the DUR, specifically, to update provisions included in section 1004 of the SUPPORT Act, is adopted and shall be final effective February 11, 2020.

1/14/2020

\_\_\_\_\_  
Date of Signature

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

**\*Please Note: Due to the formatting requirements of the regulation, it is being attached here as a PDF document:**

**DMMA DUR Final**

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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 and 29 Delaware Code, Section 7931  
(31 **Del.C.** §512 & 29 **Del.C.** §7931)

## ORDER

### **DSSM 80000 Authorization and Regulation of Medicaid/CHIP Accountable Care Organizations**

## NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance initiated proceedings to amend Division of Social Services Manual (DSSM) regarding Accountable Care Organizations, specifically, to set standards for the authorization and regulation for Medicaid/CHIP beneficiaries in the State of Delaware to improve health outcomes while reducing costs. 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 December 2019 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2019 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

## SUMMARY OF PROPOSAL

Effective for services provided on and after February 11, 2020 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend section 80000 of Division of Social Services

Manual (DSSM) regarding Accountable Care Organizations, specifically, to set standards for the authorization and regulation for Medicaid/CHIP beneficiaries in the State of Delaware to improve health outcomes while reducing costs.

### Background

Four years ago, the Centers for Medicare & Medicaid Services (CMS) awarded Delaware a State Innovation Model grant to achieve five state-defined objectives, one of which was to engage payers to move health care payment to a pay-for-value model based on total cost of care budgeting. Since that time, and following considerable intensive stakeholder work, it has become apparent there are limits to the scope and pace of progress through voluntary adoption of payment and delivery reform by payers and providers. In states that have initiated or implemented reform, state government and stakeholders have collaborated to create mechanisms that bolster and accelerate system transformation.

In its 2017 Report to the Delaware General Assembly on Establishing a Health Care Benchmark, DHSS identified five strategies to advance the adoption of value-based payment (VBP) models, one of which was the implementation of total cost of care alternative payment models within Medicaid managed care contracts and the State Employee Benefit Contracts. In 2018, DHSS increased its focus on alternative payment strategies by adding VBP requirements to its Medicaid managed care contracts for calendar year 2018. Furthermore, in 2019, DHSS released a request for information on the design and development of Medicaid Accountable Care Organizations (ACOs) in Delaware.

In an effort to improve health outcomes for Medicaid patients, lower health care costs, and increase provider accountability for quality and cost, Delaware DHSS is now creating a Medicaid ACO program in which ACOs will work with Medicaid managed care organizations (MCOs) as part of their network providers. An ACO is a group arrangement in which health care practitioners (e.g., hospitals, physicians, and other health care providers) agree to assume responsibility for the quality, outcomes and cost of health care for a designated group of Medicaid and/or CHIP beneficiaries.

### Statutory Authority

- 42 CFR 438.6(c)(i)
- 29 Del.C. §7931(c)

### Purpose

The purpose of these regulations is to set forth standards for the authorization and regulation of ACOs for Medicaid/CHIP beneficiaries in the State of Delaware to improve health outcomes while reducing costs.

### Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on December 31, 2019.

### Provider Manuals and Communications Update

A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. Updates are available on the Delaware Medical Assistance Portal website: <https://medicaid.dhss.delaware.gov/provider>

### Fiscal Impact Statement

ACOs will be required to contract with MCOs; will not be contracting with DHSS. DHSS only reviews and authorizes them to contract with the MCOs.

### Summary of Comments Received with Agency Response and Explanation of Changes

The following summarized comments were received:

**Comment:** Two commenters questioned the impact of subsections 4.1.2. and 4.1.3 and the range of services

for which the ACO will be responsible as well as the requirement to have a plan to support care coordination. They questioned if the ACO would be responsible to provide services to Medicaid/CHIP beneficiaries outside of what is included in the Medicaid benefits package, unless there is funding to support social services or recognition of such services as medical or other expense.

**Agency Response:** ACOs will not be required to provide services to Medicaid/CHIP beneficiaries outside of what is included in the Medicaid benefits package, nor will these services be included in total cost of care calculations. However, ACOs will be required to support care coordination, including to address health-related social needs, and identifying/screening for social needs and providing referrals to communications is one strategy to pursue this goal. However, it is only one strategy, as ACOs may voluntarily decide to provide such services or arrange for such services to be provided as part of a strategy to improve quality and/or lower costs. DMMA plans to elaborate on ACO requirements related to identifying and addressing health-related social needs in the forthcoming ACO Application. Through this Application, ACOs will need to demonstrate experience, ability and skill to perform these types of functions to gain approval status. Then the approved ACOs will need to negotiate agreements with Medicaid managed care organizations (MMCOs) for specific activities.

**Comment:** One commenter was concerned that subsection 4.1.7, which allows for “any additional requirements” that the agency deems necessary, is an open-ended option to include new requirements and should be eliminated, as there are no specifics to comment upon, and potential ACOs need the assurance that the regulatory process is transparent.

**Agency Response:** DMMA will keep this language in the regulation and provide additional program guidance in the forthcoming ACO Application. DMMA considers it essential for the success of the Medicaid ACO Program that requirements may need to be updated from time to time to ensure that Medicaid/CHIP beneficiaries served by Medicaid ACOs are receiving high quality, cost-effective care.

DMMA recognizes that many Delaware payers and providers have negotiated, or are negotiating, value-based contracts for Medicaid and intend the ACO program to advance efforts toward value-based payment. This regulation is specific to entities that voluntarily apply to DHSS for authorization and are subsequently recognized as authorized ACOs. The Medicaid ACO Program will not preclude provider organizations that are not participating in the Medicaid ACO Program from entering into value-based payment arrangements with financial risk with MMCOs.

**Comment:** One commenter questioned if the regulation applies to providers, such as health systems and their employed providers, or to other CINs or ACOs seeking to assume financial risk with Medicaid beneficiaries independent of this ACO process.

**Agency Response:** This regulation is specific to entities that voluntarily apply to DHSS for authorization and are subsequently recognized as authorized Medicaid ACOs. The Medicaid ACO program will not preclude provider organizations that are not participating in the Medicaid ACO program from entering into other value-based payment arrangements with financial risk with MMCOs.

**Comment:** Several commenters raised questions about the frequently ACOs will need to seek certification, ACO compliance with certification and clarity around refusal to certify ACOs or withdraw of certification.

**Agency Response:** Through this regulation, DMMA will approve ACOs to have the opportunity to enter into contract(s) with Medicaid Managed Care Organizations (MMCOs). DMMA’s ACO approval will not be explicitly time limited. Approved ACOs can continue to perform as an ACO until the entity no longer satisfies the applicable requirements. “Recertification” is not required at this time, but if DMMA changes approval requirements in the future, ACOs will need to meet those requirements or potentially lose approval status.

**Comment:** A few commenters suggested that ACO contracts be made available for public comment sufficiently in advance before they are adopted.

**Agency Response:** DMMA-approved ACOs will have an opportunity to enter into contract(s) with MMCOs. Specific details of the subsequent contract(s) will be negotiated between the MMCOs and ACOs. This regulation does not change existing Delaware policy or regulation concerning how agreements between MMCOs and third-party entities are handled (e.g., MMCO provider/vendor agreements are not subject to public comment).

**Comment:** A few commenters suggested that ACOs share, for public comment, how it plans to achieve and distribute cost savings and payments, as these plans have implications for patient care. For example, plans should not penalize providers for treating patients with complex conditions that result in higher costs.

**Agency Response:** DMMA-approved ACOs will have an opportunity to enter into contract(s) with the MMCOs. Specific details of those subsequent contract(s) will be negotiated between the MMCOs and ACOs. This regulation does not change existing Delaware policy or regulation concerning how agreements between MMCOs and third

party entities are handled (e.g., MMCO provider/vendor agreements are not subject to public comment).

**Comment:** A few commenters suggested that the data that ACOs compile should be reported publicly on an annual basis.

**Agency Response:** DMMA is not intending to require approved ACOs to post data publicly at this time, but will take this suggestion into consideration.

**Comment:** Several commenters suggest that ACOs should be required to capture, track and report on quality and care measures and share both clinical and administrative data to allow for transparency and integration.

**Agency Response:** DMMA agrees that Medicaid ACOs must be able to share data, as well as capture, track, and report on quality metrics to successfully achieve the goals of the Medicaid ACO program. The proposed regulation specifies that each ACO seeking authorization must be able to support care coordination across the continuum of care, and have a plan in place to monitor, report, and improve health outcomes and quality. DMMA believes that data sharing and quality reporting are essential elements of demonstrating these needed capabilities. DMMA will require that the MMCOs incorporate a limited number of appropriate quality measures (e.g., Common Scorecard, Statewide benchmarks, etc.) in their agreements with approved ACOs.

**Comment:** One commenter recommend a revision of subsection 4.1.4. The subsection requires an electronic health record (EHR) and capabilities to exchange data with payers and DHSS, as well as other designated entities such as the Delaware Health Information Network (DHIN). Because CINs or ACOs may include providers using different EHR systems, the commenter suggested the regulation include:

- language that clarifies electronic health records as plural;
- language that specifies that different EHR systems are acceptable, as long as the data can be exchanged; and
- language that exchanges need to be in accordance with widely- adopted industry standards.

**Agency Response:** DMMA has edited section 4.1.4 to make “electronic health record” plural. DMMA will also consider adding additional clarifications regarding EHRs and data exchange requirements in forthcoming ACO Requirements.

**Comment:** One commenter urged DMMA to ensure the standards used to authorize Medicaid/CHIP ACOs allow enough flexibility so as not to undermine the tremendous investments, progress and success of the value-based payment models in which Delaware hospitals participate.

**Agency Response:** DMMA intends to provide flexibility where practical and within the framework developed by the State. DMMA believes the goals of this initiative are consistent with additional progress being undertaken within the State to promote a stronger value-based health care delivery system.

**Comment:** Several commenters indicated that ACOs should submit gainsharing or shared savings plans for approval, the agency should prohibit plans that result in financial incentives to reduce or limit medically necessary care.

**Agency Response:** Agreements negotiated between approved ACOs and MMCOs will be subject to DMMA review and approval. The State expects those agreements to have details regarding payments/financial transactions for DMMA to ensure the goals of this ACO initiative are being addressed.

**Comment:** One commenter requested that DHSS develop a provision that requires payers to provide at least two years of historical claims data to approved ACOs in preparation to take risk.

**Agency Response:** DMMA recognizes that data sharing and reporting is an important aspect of a successful ACO program and will take this comment into consideration.

**Comment:** One commenter requested that Independent Practice APRNs be included in the Definitions section (2.0), as well as ensure the arrangements and standards developed by DHHS as noted in 2.0 Definitions section specify eligibility of Independent APRNs to establish and manage ACOs.

**Agency Response:** DMMA will further define Medicaid ACO participants, including providers eligible to be participating primary care providers, in the forthcoming ACO Application that will be released following the finalization of this regulation. The forthcoming Application will also provide additional clarification and requirements related to the ACO program attribution methodology. DMMA will take this comment into consideration as it formulates the ACO Application.

**Comment:** One commenter suggested a revision of subsection 4.1.1 which states that an ACO must have “an organizational /governance structure that will have sufficient authority to ensure the delivery of high quality, cost-effective care to Medicaid/CHIP beneficiaries, as determined by DHSS.” The commenter recommend substituting “Medicaid/CHIP beneficiaries it serves.”

**Agency Response:** DMMA has modified the regulatory language as follows: “The ACO has an organizational/



governance structure that will have sufficient authority to ensure the delivery of high quality, cost-effective care to its attributed Medicaid/CHIP members, as determined by DHSS.”

**Comment:** One commenter requested that DMMA set parameters around the medical loss ratio target so the risk and reward are appropriately transferred to the ACO.

**Agency Response:** DMMA will take this comment into consideration.

**Comment:** A few commenters recommended a revision of subsection 4.1.5, which states that ACOs must have plans in place to monitor, report, and improve patient health outcomes and quality. These plans should include a mechanism for capturing and incorporating patient feedback in measuring outcomes and quality of care.

**Agency Response:** DMMA agrees with the intent of this comment. The pending ACO Application will include requirements on the ACO to demonstrate to DMMA how input/feedback from attributed members, families, and providers will be incorporated into the ACO’s operations.

**Comment:** Two commenters suggested that ACOs be obligated to inform the public and gather input about their objectives and strategies, including how they plan to improve health outcomes and care quality/coordination.

**Agency Response:** The pending ACO Application will include requirements on the ACO to demonstrate to DMMA how input/feedback from attributed members, families, and providers will be incorporated into the ACO’s operations. DMMA is not currently envisioning a public information gathering/sharing requirement on the ACOs, but will not preclude that as an option for ACOs and their partner MMCOs to consider.

**Comment:** Several commenters suggested revisions of the regulation to include more information about DHSS’ initial authorization and ongoing oversight of ACOs.

**Agency Response:** DMMA will not be holding a direct contract with an ACO. Therefore, DMMA will utilize its monitoring and oversight responsibilities of the MMCO program to monitor ACO performance.

DMMA is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given by:

- Christiana Care Health System
- Community Legal Aid Society, Inc
- Delaware Children’s Health Network
- Delaware Coalition of Nursing Practitioners
- Delaware Healthcare Association
- Governor’s Advisory Council for Exceptional Citizens (GACEC)
- Highmark BCBSD Health Options Inc.
- State Council for Persons with Disabilities (SCPD)

## **FINDINGS OF FACT:**

The Department finds the proposed changes as set forth in the December 2019 *Register of Regulations* should be adopted with additions. The Department finds that the proposed does not require further public notice or comment under the APA because the amendments are non-substantive pursuant to 29 **Del.C.** §10118(c).

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Division of Social Services Manual (DSSM) regarding Accountable Care Organizations, specifically, to set standards for the authorization and regulation for Medicaid/CHIP beneficiaries in the State of Delaware to improve health outcomes while reducing costs, is adopted and shall be final effective February 11, 2020.

1/14/2020

Date of Signature

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

## **80000 Authorization and Regulation of Medicaid/CHIP Accountable Care Organizations**

### **1.0 Authority and Purpose**

- 1.1 This regulation is promulgated pursuant to Section 7931(e) of Title 29, Delaware Code.

- 1.2 Pursuant to 42 CFR 438.6(c)(1), states may require a Medicaid Managed Care Organization (MMCO) to implement value-based purchasing (VBP) models for provider reimbursement and to participate in Medicaid-specific delivery system reform initiatives.
- 1.3 Pursuant to 29 Del.C. §7931(c), the Division of Medicaid and Medical Assistance (“DMMA”), which is under the direction and control of the Secretary of the Department of Health and Social Services (“DHSS”), is responsible for the performance of all of the powers, duties, and functions specifically related to Medicaid. This includes regulation and administration of MMCO activity, such as contracting with Accountable Care Organizations (ACOs).
- 1.4 The purpose of these regulations is to set forth standards for the authorization and regulation of ACOs for Medicaid/CHIP beneficiaries in the State of Delaware to improve health outcomes while reducing costs through VBP arrangements which include downside financial risk for participating ACOs.

## 2.0 **Definitions**

“Accountable Care Organization” or “ACO” means a group arrangement in which health care practitioners (e.g., hospitals, physicians, other health care providers) agree to assume responsibility for the quality, outcomes and cost of health care for a designated group of Medicaid and/or CHIP beneficiaries.

“ACO Contract” means a contract formed between an ACO and an MMCO that includes payment via a value-based purchasing arrangement as defined by DHSS.

“ACO Requirements” means standards developed by DHSS outlining the qualifications needed for an ACO to participate in the program.

“Value-Based Purchasing” or “VBP” means a model for provider reimbursement that promotes value over volume, such as a shared savings or risk-based arrangement.

## 3.0 **Formation and Existence**

- 3.1 Each ACO seeking approval from DHSS shall demonstrate to the satisfaction of DHSS that:
  - 3.1.1 The ACO is duly formed and validly existing under the laws of the State of Delaware.
  - 3.1.2 The ACO has the necessary corporate or company power to perform its obligations under the ACO Requirements and to enter into ACO Contracts with MMCOs.
  - 3.1.3 The ACO has taken all necessary corporate or company action to authorize the execution, delivery, and performance of ACO Contracts.
  - 3.1.4 The execution and delivery of ACO Contracts, and the performance of the ACO’s obligations under the ACO Contract, will not result in a violation of any provision of the ACO’s certificate of incorporation, bylaws, or other governing instrument or document whether at the State or Federal level.

## 4.0 **Duties and Obligations**

- 4.1 Each ACO seeking approval from DHSS shall demonstrate to the satisfaction of DHSS that:
  - 4.1.1 The ACO has an organizational/governance structure that will have sufficient authority to ensure the delivery of high quality, cost-effective care to [its attributed] Medicaid/CHIP [beneficiaries members], as determined by DHSS.
  - 4.1.2 The ACO has demonstrated the capability to offer a comprehensive array of coordinated primary care services, specialty care services, and the ability to provide access, either directly or through affiliations/contractual relationships, to behavioral health, acute care, community and social support, long term care, and oral health providers, and other organizations as determined by DHSS or as required in the ACO Contract.
  - 4.1.3 The ACO has a plan to support care coordination across the continuum of care, including services that address health-related social needs, within and outside the ACO.

- 4.1.4 The ACO has an electronic health ~~record~~ records] (“EHR”) system in place and has the capability to exchange data with MMCOs and DHSS, and other designated entities such as the Delaware Health Information Network (DHIN).
- 4.1.5 The ACO has a plan in place to monitor, report, and improve patient health outcomes and quality.
- 4.1.6 The ACO attests that it will not limit beneficiary provider choice and access to providers that are outside the ACO.
- 4.1.7 Any additional requirements that DHSS determines necessary to meet the goals of improving health outcomes and patient experience, while reducing costs.

## **5.0 Authorization**

- 5.1 If upon completion of its application, DHSS finds that the ACO has met the requirements therefor under this regulation, DHSS shall authorize the ACO to enter into an ACO Contract with the Delaware MMCOs for purposes of the Delaware Medicaid/CHIP managed care program.
- 5.2 DHSS’s authorization of an ACO shall be limited to the ACO’s business related to the Delaware Medicaid/CHIP managed care program and shall not authorize the ACO to conduct business that would otherwise require licensure under Title 18 of the Delaware Code.
- 5.3 The ACO shall at all times comply with the requirements set forth under this regulation. DHSS may immediately revoke the ACO’s authorization in accordance with its policies or as a result of a breach thereof by the ACO, or upon the determination of DHSS that the ACO is no longer able to meet the duties and obligations.

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### **DIVISION OF PUBLIC HEALTH HEALTH PROMOTION AND DISEASE PREVENTION**

Statutory Authority: 16 Delaware Code, Sections 122(3)a. and 707 (16 Del.C. §§122(3)a. & 707)  
16 DE Admin. Code 4202

#### **ORDER**

#### **4202 Control of Communicable and Other Disease Conditions**

#### **NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services (“DHSS”) initiated proceedings to adopt the State of Delaware Regulations Governing Control of Communicable and Other Disease Conditions. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, subsections 122(3)(a) and 707.

On December 1, 2019 (Volume 23, Issue 6), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 Del.C. §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by January 2, 2020, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

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

#### **SUMMARY OF EVIDENCE**

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Control of Communicable and Other Disease Conditions were published in the Delaware *Register of Regulations*. Written comments were received on the proposed regulations during the public comment period (December 1, 2019 through January 2, 2020).

Entities offering written comments include:

- Nemours Children’s Health System – Chris Manning, Director, Delaware Valley Government Relations

**Comments****Nemours Children's Health System**

Nemours Children's Health System appreciates the opportunity to comment on the proposed revision to the (16 Del.C. §122(3)a. & 707). Nemours has some concerns with this proposed regulation and seeks additional clarification from the Department.

Section 3.1, *Report of Outbreaks and Potential Causes of a Public Health Emergency* proposes that any health care provider, having knowledge of any unusual group expression or individual case of a disease of public concern as determined by the Division Director, will be required to report such occurrences within 24 hours to the Division Director or designee.

We understand that a system of rapid reporting any communicable disease and/or condition is critical for public health, safety, and further spread of disease. We seek additional clarification regarding how the Department defines the parameters of "unusual group expression" and whether final diagnosis or clinical symptoms shall be considered. Additionally, we seek clarification regarding the process through which the Division Director will determine guidelines for what constitutes any individual case of public concern and most importantly, how and when this critical information will be shared with providers and health systems.

Thank you for the opportunity to comment. Nemours remains committed to supporting optimal child health and development. We look forward to continued partnership in the future.

**Division of Public Health Response:****How the Department defines the parameters of "unusual group expression":**

- The parameters for "unusual group expression" are undefined to allow flexibility to identify and investigating diseases, conditions, health states, and potentially associated factors of unknown etiology. It is difficult to have specific criteria to cover all potential diseases. A good recent example of an "unusual group expression" is the identification of a group of patients presenting with pulmonary illness/lung injuries while also reporting recent vaping.
- In the past, use of surveillance data have identified aberrations in syndromes of patients that warrant further investigation. Astute clinicians have identified an unusual disease presentation in a patient, which led to identification of behaviors, travel, circumstances, etc. that may have contributed to the patient's presentation that the clinician deems of potential public health concern (i.e., could potentially affect other persons in addition to the patient being seen, could be related to concerns regarding a product or contaminated source, etc.). These are only a couple of examples of how "unusual group expressions" or cases of public health concern have been identified.
- This language is consistent with language used in other state regulations on disease reporting, reporting of outbreaks, and health and safety of communicable and noncommunicable diseases (e.g., PA, RI, TX, IA).

**Whether final diagnosis or clinical symptoms shall be considered:**

- Final diagnosis: To respond in a timely fashion to investigate a disease, condition, or health state in which there is an unknown etiology or in which further investigation or surveillance of the condition is required, the Division of Public Health cannot necessarily wait for a final diagnosis. Preliminary and differential diagnoses can be used in cases where an immediate public health response is required to prevent spread and/or mitigate adverse outcomes to the public's health. Final diagnoses would be considered in the context of the investigation but could change based on additional clinical, laboratory, or other epidemiologic information. Public health case definitions used for surveillance purposes sometimes differ from clinical definitions used for diagnoses.
- Clinical symptoms: Clinical symptoms as well as laboratory, behavioral, social, geographical, and other epidemiologic factors are considered to identify an unusual group expression, case of public health concern, and are used in a public health investigation.

**The process for determining guidelines for what constitutes any individual case of public concern:**

- The process depends on many factors and may not be the same in every instance. The process involves but is not limited to:
  - The use of surveillance and/or administrative data;
  - Information from healthcare providers and the medical community (e.g., infection preventionists, medical specialists, etc.); or
  - Communications with CDC and other jurisdictions (e.g., neighboring states, etc.).

- In many instances, astute clinicians and/or epidemiologists (using surveillance data and other tools) are able to identify aberrations in syndromes that warrant further investigation to determine whether a public health threat may exist or is imminent.

**How and when this critical information will be shared with providers and health systems:**

- Identification of cases of public health concerns and “unusual group expressions” is a continuously evolving process based on changing information from surveillance data that includes clinical, laboratory, and self-reported information. There are no established guidelines for notification; however, judgment on the timing of the notification involves risk assessment and anticipating potential adverse consequences of the notice given changes in the use of preliminary over final data. The Division of Public Health aims to inform healthcare providers and health systems in a timely fashion based on the results of the assessments, working closely with subject matter experts, and in a manner that protects the public’s health. If a threat is suspected, the Division would communicate with the medical community through normal channels depending on the situation (e.g., Health Alert Network, contact with hospital Infection Prevention groups, use of professional organizations, direct contact individual facilities, press release, etc.).

**FINDINGS OF FACT:**

Some changes were made to the regulations since publication as proposed. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Control of Communicable and Other Disease Conditions is adopted and shall become effective February 11, 2020 (ten days), after publication of the final regulation in the Delaware *Register of Regulations*.

1/27/2020

Date

Dr. Kara Odom Walker  
Secretary

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

**4202 Control of Communicable and Other Disease Conditions**

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**DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code, Chapter 49A (16 Del.C. Ch. 49A)  
16 DE Admin. Code 4470

**ORDER**

**4470 State of Delaware Medical Marijuana Code**

**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services (“DHSS”) initiated proceedings to adopt the State of Delaware Regulations Governing the Medical Marijuana Code. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, subsection 49A.

On December 1, 2019 (Volume 23, Issue 6), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by January 2, 2020, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

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

**SUMMARY OF EVIDENCE**

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing the Medical Marijuana Code were published in the Delaware *Register of Regulations*. Written comments were received on the proposed regulations during the public comment period (December 1, 2019 through January 2, 2020).

Entities offering written comments include:

- Columbia Care – Tara Hopper Zeltner, Esq., VP of Regulatory Affairs and Licensing
- Governor’s Advisory Council for Exceptional Citizens – Ann C. Fisher, Chairperson
- Nemours Children’s Health System – Chris Manning, Director, Delaware Valley Government Relations
- State Council for Persons with Disabilities (SCPD) – J. Todd Webb, Chairperson

**Comments****Columbia Care**

Columbia Care Delaware LLC (“Columbia Care”) respectfully submits this letter of comment in relation to the Division of Public Health’s (“DPH”) proposed modifications to the medical marijuana regulations contained within 4470 State of Delaware Medical Marijuana Code. As you know, Columbia Care operates three medical marijuana compassion centers across the State of Delaware, and, as such, we greatly appreciate the opportunity to provide feedback on the proposed regulations. We believe DPH’s proposed modifications represent thoughtful and important advances in the State’s medical marijuana program. Further, we support the State’s sophisticated approach to the introduction of edible medical marijuana products. Within this letter, we intend to provide suggestions that we believe will further advance the DPH’s interest in continuing to develop a robust, and effective, medical marijuana program for residents. We respectfully request that DPH consider the following suggestions when finalizing these regulations:

1. Modify §11.2.4 to also permit chewable edible medical marijuana products (“chewables”), or, alternatively, clarify that the listed forms are not exhaustive of permitted forms of edible medical marijuana products.
2. In §10.3.4, reduce the minimum required font size on product labels below 10-point font type to 6 or 8-point font type. This allows all warnings to fit on smaller cannabis products and is consistent with many other state labeling regulations.
3. Allow the Online Advertising permissions for Marijuana Infused Food Establishments in §11.1.2 to also apply to Medical Marijuana Compassion Centers by adding the same language to §7.0.
4. Modify §§7.1.4.3; 7.10.2.1 to exclude publicly traded companies from the obligation of providing annual audited financial reports due to the already stringent reporting requirements resulting from their publicly traded status. Alternatively, DPH could create a conditional exemption for publicly traded companies, permitting such companies to satisfy the requirement by instead submitting audited financial statements prepared for the parent company rather than the local compassion center entity.

**Forms of Edible Medical Marijuana Products, §11.2.4**

The proposed regulations present a strong framework for the introduction of edible medical marijuana products, including specific permitted forms for such products. Currently enumerated products include fudge, lollipops, chocolates, and hard candy but chewables are not specifically listed. We would suggest the inclusion of chewables as a permitted form for edible medical marijuana products. In our experience throughout other markets, chewables are typically a preferred form of edible medical marijuana products amongst patients and therefore would increasingly serve the needs of residents in the State.

Alternatively, this provision may also be modified to provide that the listed forms are not exhaustive of the permitted forms, and that other forms may be permitted as approved by DPH. This modification may be more desirable as it permits flexibility for future products by enabling DPH to approve subsequent forms without triggering a rewrite of the regulations.

11.2.4 Candy products including, but not limited to chewables, fudge, lollipops, chocolates, and hard candy, are allowed to be manufactured in a Marijuana Infused Food Establishment provided the final products are non-TCS.

- **Response:** The Department currently allows chewable tablets as a form of administration. We will include the recommended language in the regulations.

## Labeling of Edible Medical Marijuana Products, §10.3.4

DPH has proposed a robust and expansive list of labeling requirements for edible medical marijuana products. Columbia Care fully supports packaging and labeling techniques that prevent distribution to minors while also providing important information to eligible consumers, which the proposed regulations seem to achieve. We further back DPH's proposed approach of providing certain statements on packaging and labeling while permitting remaining warnings and information to be provided to patients via supplementary materials. However, the proposed 10-point type font may restrict the capability to include important information on the packaging and labeling of edible medical marijuana products. Instead, a lesser font size, perhaps in bold may provide the same clarity to consumers while also permitting the inclusion of more materials on the label should DPH see fit in the future. For example, other states, such as California, have opted to require 6-point type font on labels while requiring that warnings use bold font for emphasis. The use of 6-point font type across the labels with a requirement to emphasize certain, important statements generally creates a more aesthetically pleasing package while also ensuring that patients are sufficiently notified of important product information.

10.3.4 Labels shall be printed in at least 6-point type in a color that provides a clear contrast to the background label.

- **Response:** The Department will allow 6-point type if the information can be easily read using standard reading glasses. The regulations will be updated as indicated.

## Limitations, Online Sales and Advertising, §11.1.2

Allow the Online Advertising permissions for Marijuana Infused Food Establishments in §11.1.2 to also apply to Medical Marijuana Compassion Centers by adding the same language to §7.0. The proposed inconsistency in advertising regulations provides less opportunity for patients to gain information on where to access medical products and provides more opportunity for people who want to eat at Marijuana Infused Food Establishments (MIFE). We believe this allowance for restaurants and not medical centers may be an oversight since the new language for online advertising is only recently added for MIFEs, but is not included in the previous compassion center provisions. We would greatly appreciate if you also allow online advertising for compassion centers. This inconsistency can be easily rectified by including a provision in §7.0 utilizing the same language or substantially similar language, which is our preferred path forward.

7.1.1.8 Online advertising and marketing are permitted subject to the limitations listed in 16 Del.C. Ch. 49A.

- **Response:** The Department will include the recommended language in the regulation.

## Annual Independently Audited Financial Reports, §§7.1.4.3; 7.10.2.1

Columbia Care appreciates the State's important interest in monitoring the solvency of compassion centers and understands that the State must take steps to hold compassion centers accountable. As the medical marijuana program continues to expand, the necessity of ensuring the right actors are involved grows increasingly important, with financial transparency looming as a paramount metric. However, the imposition of an annual requirement for each compassion center to provide independently audited financial reports may have unintended consequences on compassion centers and the medical marijuana program alike. We believe that either excluding publicly traded companies from submitting annual audited financial reports or creating a conditional exemption permitting publicly traded compassion center licensees to submit parent company level independent financial audits, rather than a local compassion center licensee entity report, presents a mutually beneficial solution to both the State and compassion centers.

While cannabis entities are not currently publicly traded in the United States stock exchanges, many entities are publicly traded abroad in foreign stock exchanges. Similar to stock exchanges within the United States, most foreign stock exchanges place a continuing, stringent obligation on publicly traded companies to provide independently audited financial reports on an annual basis. In addition to these annual reports, publicly traded companies also owe traditional duties of good faith and fair dealing to their shareholders, creating an elevated obligation to remain transparent and honest in their financial reports. The annual reports of publicly traded companies offer a greater level of value as they provide a heightened level of transparency and detail on the company's overall financial solvency as a direct result of obligations to shareholders and resulting disclosure requirements.

We are licensed in other states that have instituted similar requirements for compassion centers to provide annual, or semi-annual audited financial statements. In many of these states, industry members and regulators are

beginning to consider alternative approaches, such as permitting the exclusion of publicly traded companies or allowing such companies to provide audited statements for the parent entity rather than the local licensee entity. In our experience, reports for the local licensee entity are often time consuming for both compassion centers and department staff while offering less value than a report encompassing the entire operations of the parent company. Both the preparation and the regulator review of the reports are burdensome, requiring significant resources and time while diverting attention and efforts away from other, potentially more productive objectives that would further advance the interest of residents and respective marijuana programs – a shared goal between licensees and the state in any medical marijuana program.

For these reasons, we believe excluding publicly traded companies from the annual requirement to submit audited financials or permitting such companies to satisfy the obligation by submitting parent company level audited reports, would be in the best interest of compassion centers and the medical marijuana program.

7.1.4.3 An annual financial audit must be conducted by an independent audit firm and submitted to the Department with the compassion center’s annual report, provided that compassion center licensee entities that are subsidiaries of publicly traded parent entities may satisfy this requirement by submitting an annual financial audit conducted by an independent audit firm for the parent entity.

7.10.2.1 The compassion center submits materials required under Section subsection 7.9 of these regulations, including a summary annual report with financial audit attached consistent with requirements and applicable exclusions contained in subsection 7.1.4.3 of these regulations, a comprehensive inventory with a cover letter and the \$40,000 fee, which shall be refunded if the renewal application is rejected;

- **Response:** Information from multi-state publicly traded companies will not be granular enough to satisfy this requirement. The Department has determined that no additional changes will be made at this time and will continue to require localized information

## Conclusion

Once again, we greatly appreciate the opportunity to provide these suggestions. Columbia Care is proud to be a contributor to Delaware’s impressive medical marijuana program, we look forward to further collaborating on these important updates to the regulations and others to come.

Thank you for your consideration of the above comments, please do not hesitate to contact us with any questions.

## Governor’s Advisory Council for Exceptional Citizens

First, DHSS proposes to amend the definition of “debilitating medical condition.” to include terminal illness, seizure disorder, glaucoma, chronic debilitating migraines, and new daily persistent headache. According to the National Center for Complementary and Integrative Health, cannabis and cannabinoids are also helpful in treating anxiety, inflammatory bowel disease, irritable bowel syndrome, movement disorders due to Tourette Syndrome, and sleep problems. (<https://nccih.nih.gov/health/marijuana-cannabinoids#hed11>). Council would like to encourage DHSS to consider adding these additional health conditions to its definition of “debilitating medical condition.”

- **Response:** Conditions added to the definition of “debilitating medical condition” in this regulation were included to conform to legislation passed since the last regulatory update.

Second, DHSS is also proposing to add an additional subsection under the “debilitating medical condition” definition that describes the qualifying conditions for individuals under the age of 18. It reads as follows:

2.0(c) Pediatric qualifying conditions are limited to any of the following related to a terminal illness: pain, anxiety, or depression; seizure disorder; severe debilitating autism; or a chronic or debilitating disease or medical condition where they have failed treatment involving one or more of the following symptoms: cachexia or wasting syndrome; intractable nausea; severe, painful and persistent muscle spasms; and chronic debilitating migraines and new daily persistent headache that are refractory to conventional treatment and interventions;

For clarity, Council would like to recommend that DHSS consider using subsection headings to divide each qualifying condition. The section would then read as follows:

2.0(c) Pediatric qualifying conditions are limited to

- (1) any of the following related to a terminal illness: pain, anxiety, or depression;
- (2) seizure disorder; severe debilitating autism; or chronic debilitating migraines and new daily persistent headache that are refractory to conventional treatment and interventions; or
- (3) a chronic or debilitating disease or medical condition where they have failed treatment involving one or



more of the following symptoms: cachexia or wasting syndrome; intractable nausea; severe, painful and persistent muscle spasms; or; and chronic debilitating migraines and new daily persistent headache that are refractory to conventional treatment and interventions;

Alternatively, DHSS could use the same format and division as used in the proposed amended 3.3.3:

2.0(c) Pediatric qualifying conditions are limited to

- (1) any of the following related to a terminal illness: pain, anxiety or depression; or
- (2) intractable epilepsy or seizure disorder;
- (3) a chronic or debilitating disease or medical condition where the patient has failed treatment involving 1 one or more of the following symptoms: cachexia or wasting syndrome; intractable nausea; seizures; severe, painful and persistent muscle spasms. spasms; or chronic debilitating migraines and new daily persistent headache that are refractory to conventional treatment and interventions; or
- (4) severe debilitating autism.

- **Response:** The Department acknowledges and appreciates this suggestion but has determined that no additional changes to this section will be made at this time.

Third, DHSS proposes a definitional change involving the addition of the term “terminal illness” which includes language similar to the federal definition used for Medicare and Medicaid services. The biggest difference between the two definitions is that the proposed definition gives a life expectancy of 12 months whereas the federal definition gives a life expectancy of six months. Council supports the proposed amendment as it gives more time and allows more individuals access to medical marijuana.

- **Response:** The Department acknowledges and appreciates this comment. The definition of terminal illness used in the regulations is from HB 400 w/ HA 1 and SA 1 (148<sup>th</sup> General Assembly).

Fourth, Section 3.4 adds information on the “compassionate use card”. The requirements for the compassionate use card are more expansive and cumbersome than those used for the regular registry card because the compassionate use card allows a physician to certify a patient for the card for a medical condition that is not currently covered by the Act. Section 3.4.2 includes the requirement for physicians to re-evaluate the treatment for different medical conditions at different rates including every 15 days for the first 90 days and then every 30 days for substance use disorder; every 30 days for mental health disorders; every 30 days for the first 90 days and then every 90 days for autoimmune disease; and every 30 days for any other conditions. Council would suggest standardizing the timeframes to make the process less confusing. Council would also recommend longer intervals of re-evaluation given how cumbersome these timeframes may be.

- **Response:** §4923A of Title 16 gives the Division regulatory authority to set reevaluation intervals for compassionate use patients. Due to the lack of evidence associated with treating conditions not included in the list of qualifying conditions with medical marijuana, the Division feels strongly that it is in compassionate use patients’ best interest to have frequent re-evaluations with their physicians to prevent unintended consequences associated with treatment.

Fifth, DHSS proposes to make the denial of an application or renewal for a compassionate use card not subject to judicial review. (5.4.4.1). Presently, the denial of an application or renewal for registry identification cards is subject to judicial review in the Superior Court. Council recommends DHSS remove section 5.4.4.1 which would allow denials of applications or renewals for compassionate use cards be subject to judicial review.

- **Response:** Per 16 **Del.C.** §4910, a denial of an application or renewal for a compassionate use registry identification card is not subject to judicial review.

Sixth, although not presently being amended, Council would like to request that DHSS consider amending section 6.0, which details the procedure for the addition of debilitating medical conditions, or otherwise addresses the lack of published information on denied conditions. Currently, there is only a database for the medical conditions that have been approved to be added as debilitating medical conditions. There is no database containing the medical conditions that have been denied. DHSS considers a petition to add a new debilitating medical condition to have “merit” if, among other requirements, the particular medical condition has not been the subject of a petition in the preceding two years. If DHSS also includes information on those petitions that were denied, the date, and the reasoning in the same location as those that have been approved, it would provide consumers and Delawareans with additional information and could prevent the spending of additional staff hours on petitions.

- **Response:** All petitions, including those approved and denied, can be found at the following link: <https://dhss.delaware.gov/dhss/dph/hsp/medmarocpet.html>

Seventh, section 15.3.1 of the proposed addition of the regulations and procedures for Marijuana Infused Food Establishment states the following: “No animals/pets shall be permitted in the kitchen area of a Marijuana Infused Food Establishment during the preparation, packaging, or handling of any marijuana infused products. Under the Americans with Disabilities Act, individuals who utilize service dogs are afforded certain protections under law. Guidance by the Food and Drug Administration explains that in the context of food service:

Decisions regarding a food employee or applicant with a disability who needs to use a service animal should be made on a case-by-case basis. An employer must comply with health and safety requirements, but is obligated to consider whether there is a reasonable accommodation that can be made. (pg. 537; <https://www.fda.gov/media/87140/download>).

There may be situations where an employee could have their service dog at work, with precautions in place to prevent handling of the animal during food prep duties. Council supports the amendment but would like to request that DHSS change 15.3.1 to include similar language as the FDA guidance, such as:

Decisions regarding a Marijuana Infused Food Establishment employee’s use of a service animal should be determined by the employer on a case-by-case basis, considering both health and safety requirements and whether there is a reasonable accommodation that can be made.

- **Response:** Subsection 6-501.115(B)(3) of the FDA Food Code (and the State of Delaware Food Code) states the following:

(B) Live animals may be allowed in the following situations if the contamination of FOOD; clean EQUIPMENT, UTENSILS, and LINENS; and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES can not result:

- (3) In areas that are not used for FOOD preparation and that are usually open for customers, such as dining and sales areas, SERVICE ANIMALS that are controlled by the disabled EMPLOYEE or PERSON, if a health or safety HAZARD will not result from the presence or activities of the SERVICE ANIMAL.”

The Department will use similar language as found in the FDA Food Code with respect to service animals. Employees that utilize service animals will be permitted to do so in a marijuana infused food establishment, as afforded by the Americans with Disabilities Act, except in areas used for food preparation or packaging, as long as a health or safety hazard will not result from the presence or activities of the service animal. The Department will update this section in the regulations for clarity.

### Nemours Children’s Health System

Nemours appreciates the opportunity to submit comments on the proposed revision of the Delaware Medical Marijuana Program (DMMP) regulations. Our continued concern remains the introduction of edibles—including baked goods such as brownies and cookies, and candy, such as lollipops—at Delaware dispensaries.

Nemours strongly opposes the current proposal to expand the DMMP by allowing edible products resembling baked goods and candy. We understand the proposed regulations apply only to products available for purchase and consumption by adult DMMP patients and allow for greater range of non-combustible product selection, however there are significant and severe unintended consequences for children who may confuse and accidentally ingest these products. We believe the DMMP can achieve comparable results for adult patients, with minimal risks for children, by restricting edibles to more traditional forms appropriate for medical use, such as pills, tablets, capsules, chewables, lozenges or liquids. Consumers currently accept these forms for their prescription and over-the-counter medications, and we believe they would do the same for their medical marijuana.

A significant majority of states with medical marijuana programs (no recreational) do not allow edibles in the form of baked goods and candy. Delaware’s neighboring states of New Jersey, Pennsylvania and Maryland limit edible forms of medical marijuana to tablets, capsules, lozenges, drops, syrups, oils, and ointments.<sup>1,2,3</sup> Delaware

1. New Jersey Compassionate Use Medical Marijuana Act, Pub. L. 2009, c 307 (Amended September 10, 2013). Retrieved from <https://www.nj.gov/health/medicalmarijuana/program-rules/>.

2. Pennsylvania Medical Marijuana Act, P.L. 84, No. 16 (April 17, 2016). Retrieved from <https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2016&sessInd=0&act=16>

3. State of Maryland, Code of Maryland Regulations. Natalie Laprade Medical Cannabis Commission, Title 10, Part 5, Subtitle 62 (September 14, 2015). Retrieved from [http://www.dsd.state.md.us/COMAR/subtitle\\_chapters/10\\_Chapters.aspx#Subtitle62](http://www.dsd.state.md.us/COMAR/subtitle_chapters/10_Chapters.aspx#Subtitle62).

has a proud history of prioritizing child well-being when enacting public policy. We urge the Department to carefully consider our recommendations and take all necessary steps to protect our children.

Our specific recommendations for your consideration are as follows:

#### *Edibles*

Accidental ingestion of marijuana, especially products containing high levels of THC, have serious, detrimental effects on children. There is a direct correlation between an increase in availability of edible marijuana products (foods such as candies, gummies, brownies, cookies) and accidental ingestion and overdose by children and/or adolescents. Accidental ingestion of cannabis is well documented and a legitimate public health concern as legalization of recreational and/or medical marijuana and the potency of the product evolves.<sup>4,5</sup>

Further, research supports traditional medical forms for more accurate and precise dosing, as dose estimation for retail edible products is inexact and those consuming edibles often ingest higher amounts of THC than intended.<sup>2</sup> Tolerance to the intoxicating effects of oral  $\Delta^9$ -THC after sustained exposure to high doses<sup>2</sup> is well documented. Additionally, imprecise and concentrated cannabis use can be highly detrimental for individuals with mental health conditions or novice medical marijuana users, producing extreme side effects for patients such as hallucinations, or psychosis. It can also worsen mental health conditions such as depression, anxiety, bipolar disorder, or schizophrenia. Particularly, the rise in cannabis potency shows increased risk of Cannabis use disorder, psychosis, acute cognitive impairment and structural brain changes<sup>6</sup>.

It is not clear to us whether the concentrates permitted in this proposed regulation could be used to offer a range of hash oil products such as “dabs,” which pose grave risk to health if overconsumed. If “dabs” in any form are possible products under this regulation, Nemours recommends adherence to strict packaging and labeling requirements detailed below, in addition to the proposed regulatory changes.

Health Matrix: The Journal of Law-Medicine finds “failure to warn” likely be the most significant area of cannabis product liability litigation<sup>7</sup>. Included in this “failure to warn” are precise dose limits, whether these medical grade products should be taken with food or water, contraindication warnings, as well as warnings of overdose and/or further instruction for management of overdose<sup>6</sup>. We continue to strongly urge that medical marijuana products be treated as any other medically regulated product.

The DMMP should limit the forms of edible medical marijuana to medically appropriate forms: capsules, pills, tablets, chewables, lozenge, or liquids. Limiting medical marijuana to medically appropriate forms distinguishes medical marijuana from recreational marijuana, and differentiates the product from traditional foods and candies, and allows for multiple forms of ingestion for patients with varying medical needs and/or limitations.

- **Response:** Ingestion through edible products result is a slower delivery of cannabinoids, which can be very therapeutic for seniors and others suffering from chronic conditions. The option of edibles products has been a top priority of many program participants for several years. The Department prefers these products be produced in professional kitchens under the regulation of DPH for public safety.

#### *Packaging and Labeling*

The DMMP has made significant progress in terms of proposed regulations on packaging and labeling safeguards to protect children and the general public. We strongly recommend the following changes to align Delaware’s program with laws and regulations of other medical marijuana programs around the nation:

- Fully opaque packaging; opaque and plain in design. Proposed regulation 10.2.2.2 would permit manufacturers the option of choosing between opaque or plain packaging.

4. Richards, J. R., MD, Smith, N. E., MS, & Moulin, A. K., MD. (2017). Unintentional Cannabis Ingestion in Children: A Systematic Review. *The Journal of Pediatrics*, 190, 142-152. Retrieved February 26, 2019, from <https://www.sciencedirect.com/science/article/pii/S0022347617309393#abs0025>.

5. Barrus, D. G., Capogrossi, K. L., Cates, S. C., Gourdet, C. K., Peiper, N. C., Novak, S. P., Lefever, T. W., ... Wiley, J. L. (2016). Tasty THC: Promises and Challenges of Cannabis Edibles. *Methods report (RTI Press)*, 2016, 10.3768/rtipress.2016.op.0035.1611.

6. Pierre, J.M. (2017). Risks of increasingly potent Cannabis: The joint effects of potency and frequency. *Current Psychiatry*, 16(2), 14-20.

7. Steven B. Perlmutter, High Times Ahead: Products Liability in Medical Marijuana, 29 Health Matrix 225 (2019) Available at: <https://scholarlycommons.law.case.edu/healthmatrix/vol29/iss1/7>.

- Each single serving be marked, stamped or otherwise imprinted with the universal symbol and should also:
  - contain a warning on the package that multiple servings are included;
  - prominently display the servings in the package and the amount of product per serving;
  - be continually resealable and maintain child resistant effectiveness; and
- Each package containing multiple servings cannot exceed a total of 50-100 milligrams of THC.
- Concentrates in the form of tinctures contain dosing mechanisms (such as droppers) that clearly indicate how much concentrate is being taken.
- A warning that states “This product has intoxicating effects and may be habit forming.”
- **Response:** The Department acknowledges and appreciates these comments but has determined that no additional changes to this section will be made at this time. The regulations limit THC to 10mgs per serving and 50mgs per package. Each product’s packaging will be reviewed and approved by the Department before approval for sale.

Thank you, again, for the opportunity to comment. Nemours remains committed to collaborating with your Division in pursuit of optimal child health and development.

### State Council for Persons with Disabilities

The first major relevant definitional change is with the term “debilitating medical condition.” DPH proposes to amend this definition to include terminal illness, seizure disorder, glaucoma, chronic debilitating migraines, and new daily persistent headache. According to the National Center for Complementary and Integrative Health, cannabis and cannabinoids are also helpful in treating anxiety, inflammatory bowel disease, irritable bowel syndrome, movement disorders due to Tourette Syndrome, and sleep problems. (<https://nccih.nih.gov/health/marijuana-cannabinoids#hed11>). SCPD encourages DPH to add these additional health conditions to its definition of “debilitating medical condition.”

- **Response:** Conditions added to the definition of “debilitating medical condition” in this regulation were included to conform to legislation passed since the last regulatory update.

DPH is also proposing to add a subsection under the “debilitating medical condition” definition that describes the qualifying conditions for individuals under the age of 18. It reads:

2.0(c) Pediatric qualifying conditions are limited to any of the following related to a terminal illness: pain, anxiety, or depression; seizure disorder; severe debilitating autism; or a chronic or debilitating disease or medical condition where they have failed treatment involving one or more of the following symptoms: cachexia or wasting syndrome; intractable nausea; severe, painful and persistent muscle spasms; and chronic debilitating migraines and new daily persistent headache that are refractory to conventional treatment and interventions;

For clarity, SCPD recommends that DPH consider using subsection headings to divide each qualifying condition. It would then read:

2.0(c) Pediatric qualifying conditions are limited to

- (1) any of the following related to a terminal illness: pain, anxiety, or depression;
- (2) intractable seizure disorder; severe debilitating autism; or chronic debilitating migraines and new daily persistent headache that are refractory to conventional treatment and interventions; or
- (3) a chronic or debilitating disease or medical condition where they have failed treatment involving one or more of the following symptoms: cachexia or wasting syndrome; intractable nausea; severe, painful and persistent muscle spasms; or; and chronic debilitating migraines and new daily persistent headache that are refractory to conventional treatment and interventions;

Alternatively, DPH could use the same format and division as used in the proposed amended 3.3.3:

2.0(c) Pediatric qualifying conditions are limited to

- (1) any of the following related to a terminal illness: pain, anxiety or depression; or
- (2) intractable epilepsy or seizure disorder; or
- (3) a chronic or debilitating disease or medical condition where the patient has failed treatment involving 1 one or more of the following symptoms: cachexia or wasting syndrome; intractable nausea; seizures; severe, painful and persistent muscle spasms. spasms; or chronic debilitating migraines and new daily persistent headache that are refractory to conventional treatment and interventions; or
- (4) severe debilitating autism.

- **Response:** The Department acknowledges and appreciates this suggestion but has determined that no additional changes to this section will be made at this time.

The second major definitional change involves the proposed amendment to the definition of “physician.” DPH is proposing to remove the requirement that a physician be a licensed psychiatrist if the debilitating medical condition is post-traumatic stress disorder (PTSD) and expand the options for pediatric physicians to include pediatric psychiatrist and developmental pediatrician. Removing the requirement that a licensed physician be a psychiatrist for PTSD expands the number of doctors/physicians that can recommend medical marijuana treatment for patients, in line with the expansion of pediatric psychiatrists.

- **Response:** The Department acknowledges and appreciates this comment.

The third relevant definitional change involves the addition of the term “terminal illness” which includes language similar to the federal definition used for Medicare and Medicaid services. The biggest difference between the two definitions is that the proposed definition gives a life-expectancy of 12 months whereas the federal definition gives a life expectancy of 6 months. CPD supports the proposed amendment since it will give greater access to more individuals who may benefit from medical marijuana.

- **Response:** The Department acknowledges and appreciates this comment. The definition of terminal illness used in the regulations is from HB 400 w/ HA 1 and SA 1 (148<sup>th</sup> General Assembly).

The next major change involves the addition of the “compassionate use card.” (Section 3.4). The requirements for the compassionate use card are more expansive and cumbersome than those used for the regular registry card because the compassionate use card allows a physician to certify a patient for the card for a medical condition that is not currently covered by the Act. 3.4.2 includes the requirement for physicians to re-evaluate the treatment for different medical conditions at different rates including every 15 days for the first 90 days and then every 30 days for substance use disorder, every 30 days for mental health disorders, every 30 days for the first 90 days and then every 90 days for autoimmune disease, and every 30 days for any other conditions. SCPD recommends longer intervals of re-evaluation given how cumbersome these timeframes may be.

- **Response:** §4923A of Title 16 gives the Division regulatory authority to set reevaluation intervals for compassionate use patients. Due to the lack of evidence associated with treating conditions not included in the list of qualifying conditions with medical marijuana, the Division feels strongly that it is in compassionate use patients’ best interest to have frequent re-evaluations with their physicians to prevent unintended consequences associated with treatment.

In addition, DPH proposes to make the denial of an application or renewal for a compassionate use card not subject to judicial review. (5.4.4.1). Presently, the denial of an application or renewal for registry identification cards is subject to judicial review in the Superior Court. SCPD opposes the approach provided in the proposed regulation and recommends that DPH delete section 5.4.4.1. Deletion of this section would then allow denials of applications or renewals for compassionate use cards to be subject to judicial review.

- **Response:** Per 16 Del.C. §4910, a denial of an application or renewal for a compassionate use registry identification card is not subject to judicial review.

Although not presently being amended, SCPD requests that DPH consider amending section 6.0 which details the procedure for the addition of debilitating medical conditions, or otherwise address the lack of published information on denied conditions. Presently, there is only a database for the medical conditions that are approved to be added as a debilitating medical condition, and not a database for those that have been denied. Given that DPH considers a petition to add a new debilitating medical condition to have “merit” if, among other requirements, the particular medical condition has not been the subject of a petition in the preceding two years. If DPH also includes information on those petitions that were denied, the date, and the reasoning in the same location as those that have been approved, it would provide consumers and Delawareans with additional information and could prevent the spending of additional staff hours on petitions.

- **Response:** All petitions, including those approved and denied, can be found at the following link: <https://dhss.delaware.gov/dhss/dph/hsp/medmarocpet.html>

Lastly, in DPH’s proposed addition of the regulations and procedures for Marijuana Infused Food Establishment, section 15.3.1 states “No animals/pets shall be permitted in the kitchen area of a Marijuana Infused Food Establishment during the preparation, packaging, or handling of any marijuana infused products.” Under the Americans with Disabilities Act, individuals who utilize service dogs are afforded certain protections under law. Guidance by the Food and Drug Administration explains that in the context of food service:

Decisions regarding a food employee or applicant with a disability who needs to use a service animal

should be made on a case-by-case basis. An employer must comply with health and safety requirements, but is obligated to consider whether there is a reasonable accommodation that can be made. (pg. 537; <https://www.fda.gov/media/87140/download>).

There may be situations where an employee could have their service dog at work, with precautions in place to prevent handling of the animal during food prep duties. SCPD recommends that DPH change 15.3.1 to include language similar to the FDA guidance, such as:

Decisions regarding a Marijuana Infused Food Establishment employee's use of a service animal as defined by Americans with Disabilities Act (ADA) and/or Delaware Equal Accommodations Law (DEAL) should be determined by the employer on a case-by-case basis, considering both health and safety requirements and whether there is a reasonable accommodation that can be made.

- **Response:** Subsection 6-501.115(B)(3) of the FDA Food Code (and the State of Delaware Food Code) states the following:

(B) Live animals may be allowed in the following situations if the contamination of FOOD; clean EQUIPMENT, UTENSILS, and LINENS; and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES can not result:

(3) In areas that are not used for FOOD preparation and that are usually open for customers, such as dining and sales areas, SERVICE ANIMALS that are controlled by the disabled EMPLOYEE or PERSON, if a health or safety HAZARD will not result from the presence or activities of the SERVICE ANIMAL."

The Division will use similar language as found in the FDA Food Code with respect to service animals. Employees that utilize service animals will be permitted to do so in a marijuana infused food establishment, as afforded by the Americans with Disabilities Act, except in areas used for food preparation or packaging, as long as a health or safety hazard will not result from the presence or activities of the service animal. The Department will update this section in the regulations for clarity.

#### FINDINGS OF FACT:

Some changes were made to the regulations since publication as proposed. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing the Medical Marijuana Code is adopted and shall become effective February 11, 2020 (ten days), after publication of the final regulation in the Delaware *Register of Regulations*.

1/10/2020

Date

Kara Odom Walker, MD, MPH, MSHS  
Cabinet Secretary

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

**4470 State of Delaware Medical Marijuana Code**

## DEPARTMENT OF INSURANCE

### OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 and 2533 (18 Del.C. §§311 & 2533)  
18 DE Admin. Code 802

#### REGULATORY IMPLEMENTING ORDER

### 802 Delaware Workplace Safety Regulation

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

In the December 1, 2019 edition of the *Register of Regulations* at 23 DE Reg. 434, the Commissioner of the

Delaware Department of Insurance (Commissioner) published a notice of intent to amend Regulation 802 to:

- Add a provision that specifically emphasizes the availability of discounts that may be available to those employers who otherwise qualify for the Workplace Safety program and who implement a drug-free workplace program at their worksites;
- Rescind subsection 7.3 of the existing regulation concerning inspections by the Department of Labor, since the Department of Labor does not conduct such inspections; and
- Edit the remainder of the regulation for grammar and formatting.

The Department solicited written comments from the public for thirty (30) days as mandated by the Administrative Procedures Act at 29 **Del.C.** §10118(a). The Delaware Code authority for the regulation is 18 **Del.C.** §§311 and 2533.

As discussed in the introductory paragraphs of the proposal, the Delaware Department of Insurance (the Department) has been implementing its Workplace Safety Program since 1989. Through this program, the Department, in coordination with the Delaware Compensation Rating Bureau, offers Delaware employers an opportunity to lower workers' compensation insurance premiums by participating in the Delaware Workplace Safety Program. Businesses may earn discounts of up to 19 percent by providing and maintaining a safe place to work. More information about the program may be found on the Department's website at <https://insurance.delaware.gov/services/workplacesafetydiscount/>.

The Department received one comment, which is on file with the Department, in which the commenter opined that adding "for both supervisors and employees" in the last bulleted point at subsection 7.1 is not practical from an implementation standpoint because most restauranters do not have drug-free workplace training for both supervisors and employees, but rather, that supervisors are employees who generally are trained upon hire. The commenter suggested that the regulation be amended on adoption to make training apply only to employees.

The Department did not hold a public hearing on the proposal.

## II. FINDINGS OF FACTS

1. The proposed amendments to Regulation 802 Delaware Workplace Safety Regulation augment the Department's Workplace Safety Program because they emphasize the availability of discounts that may be available to those employers who would otherwise qualify for the Workplace Safety Program and who implement a drug-free workplace program at their worksites.

2. On adoption, the Department has determined to amend the bulleted point at subsection 7.1 that describes the employer's training program as suggested by the commenter. The Department did not intend the regulation as amended to require separate training for supervisors and employees, as that provision appears to have been interpreted by the commenter. The Administrative Procedures Act at 29 **Del.C.** §10118(c) allows non-substantive changes to a proposal as a result of public comments on adoption. Given that the first paragraph of this subsection as proposed indicates that the bulleted points following the first paragraph are to be incorporated into an employer's program only "as applicable," and that the Department did not intend for employers to be required to include separate training for both supervisors and employees, the Department has determined that this requested edit is non-substantive in nature and may be made upon adoption. Therefore, the Department has determined to amend the bulleted point at subsection 7.1 to clarify the training requirements.

3. On adoption, the Department is also making a non-substantive, grammatical correction to Section 6.0 of the regulation to correct a technical error, as is expressly permitted under the Administrative Procedures Act at 29 **Del.C.** §10113(b)4.

4. The Department met the public notice requirements of the Administrative Procedures Act.

5. The Commissioner finds that it is appropriate to adopt the proposed amendments to 18 **DE Admin. Code** 802 as proposed in the December 1, 2019 *Register of Regulations* with further amendments in accordance with this Final Order, for the reasons set forth in this Final Order and in the proposal.

## III. DECISION TO ADOPT THE NEW REGULATION

For the foregoing reasons, the Commissioner concludes that it is appropriate to adopt the proposed amendments to 18 **DE Admin. Code** 802, as discussed in the above Findings of Fact for the reasons set forth above and in the proposal.

## IV. EFFECTIVE DATE OF ORDER

The actions referred to hereinabove were taken by the Commissioner pursuant to 18 **Del.C.** §§311 and 2533

on the date indicated below. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*. The effective date of the Regulation shall be as stated in the text of the Regulation.

**IT IS SO ORDERED.**

The 15<sup>th</sup> day of January, 2020.

Trinidad Navarro  
Commissioner  
Delaware Department of Insurance

**800 ~~Workmen's~~ Workers' Compensation**

**802 Delaware Workplace Safety Regulation**

**1.0 Authority**

This regulation is adopted and promulgated by the Insurance Commissioner pursuant to 18 **Del.C.** ~~§311, §2533~~ §§311 and 2533 and promulgated under 29 **Del.C.** Ch.101.

**2.0 Purpose**

**[2.1]** The purpose of this regulation is to:

~~[2.1 2.1.1]~~ Enhance the health and safety of workers in the State of Delaware. ~~Delaware;~~

~~[2.2 2.1.2]~~ Provide lower insurance premiums for qualifying employers who currently pay \$3,161 or more of annual Delaware Workers' Compensation ~~premiums;~~ premiums; and

~~[2.3 2.1.3]~~ Establish both testing and inspection procedures to determine an employer's qualification for a premium credit under the Workplace Safety Program.

**3.0 Scope**

3.1 All employers who comply with the criteria set forth in this regulation are ~~An employer is~~ eligible for participation in the Workplace Safety Program if the employer complies with the criteria set forth in this regulation.

3.2 Only employers whose employees work at Delaware work sites will be ~~are~~ eligible for this program to participate in the workplace Safety Program; and

3.3 In the case of an employer who purchases a multi-state workers compensation insurance policy, and safety credit earned by participation in the Workplace Safety Program applies to only that portion of the premium that covers Delaware ~~premiums in multi-state policies~~ workers.

**4.0 Eligibility and Premium Credit**

4.1 An employer is eligible for the Workplace Safety Program if insurance premium credit if:

4.1.1 ~~its~~ The employer's annual workers compensation insurance premium is \$3,161 or more. ~~Workplace Safety credit eligibility is more.~~ based on the most current unit statistical card filing. The Delaware Compensation Rating Bureau ~~will test each~~ is charged with determining whether an employer meets this requirement by taking the most current unit statistical card payroll times current rates times current experience modification to determine the employer's premium ~~size;~~ size; and

4.1.2 The employer submits a Workplace Safety Program Questionnaire to the Department of Insurance in which it provides details of the employer's Workplace Safety Program, including but not limited to:

- Details concerning the employer's health and safety program, including the effectiveness of that program;



- Details concerning the employer's employee training program, including data on its adequacy and effectiveness;
- Details concerning the employer's efforts to identify and eliminate potential hazardous conditions; and
- Workplace injury data for the three years immediately preceding the date on which the employer submits the Workplace Safety Program Questionnaire to the Department.

## 5.0 Notice of Employer Eligibility

Employers meeting the ~~premium requirement~~ eligibility requirements set forth in Section 4.0 of this regulation will be notified by the Delaware Department of Insurance seven months in advance of their policy renewal date. This notification will ~~[include(s)]~~ **include** instructions for qualifying for a safe workplace credit.

## 6.0 Eligibility Period

The Department will notify the employer of eligibility, and **[will]** inform the employer that ~~he~~ the employer must elect at least five (5) months in advance of the date of policy renewal to participate in the Workplace Safety Program. Failure to notify the Department within this time period of an intent to renew participation may preclude the employer's participation in the Workplace Safety Program for the ~~next~~ upcoming year. Election to participate shall commence by contacting the Delaware Department of Insurance.

## 7.0 Inspections and Cost

7.1 ~~There are three options for Workplace Safety Inspections to be conducted. To obtain the Workplace Safety Program premium discount, all inspection procedures and inspection reports must be in compliance with the requirements and standards set forth by this regulation. In the event of multiple applications, only the first application received will be accepted. All inspections must include a thorough review of the following items, which are to be maintained by the employer and made available for the inspector to review:~~

- Any workplace injuries that have occurred within the three years prior to the application.
- The outcome of those injuries, including specific details of the injuries.
- Confirmation of Modification Duty Availability Reports for all injuries, as applicable.
- Any findings or fines relating to workplace safety resulting from the injuries.
- A list of possible assignments for injured workers.
- Any safety measures taken by the employer as a result of the injuries.
- Any drug-free workplace program being implemented by an employer that includes but is not limited to the following components, as applicable:
  - A written policy regarding the use of drugs in the workplace that includes, at a minimum:
    - A statement of purpose concerning the protection of the employer's employees and guests;
    - A general statement concerning what conduct is prohibited;
    - A statement concerning the employer's intent to comply with applicable federal and Delaware statutes and regulations;
    - A description of the employer's drug testing policy, if any, including but not limited to pre-employment testing, reasonable suspicion testing, and post-incident testing;
    - A list of workplace-prohibited substances, which may include but is not limited to amphetamines, cannabinoids, cocaine, opiates, phencyclidine (PCP), and chemical derivatives;
    - Whether marijuana is a prohibited substance in the workplace;
    - A statement concerning the employer's policy that accounts for the use of prescription medications, including the employee's duty to notify any testing laboratory of such substances;

# FINAL REGULATIONS

- A statement concerning the employer's policy on employee consumption of alcohol on premises, including the types of employer functions at which alcohol consumption is permitted and whether an employee is permitted to use alcohol on premise outside of the employees normal working hours;
- A listing of all employee drug testing procedures (if testing will occur), including but not limited to whether the employer uses an independent laboratory, whether testing includes (or is limited to) urine testing, the employee's right to refuse testing and the consequences for so doing, whether an employee will be compensated for time spent testing, whether the employer pays for the cost of the test;
- A statement concerning the consequences that arise when an employee tests positive for drugs, both during a pre-employment drug screening and for current employees, including whether the job applicant or current employee has a right to explain the positive drug test;
- A statement of confidentiality of information; and
- A method for ensuring and documenting that an applicant for employment and all current employees receive details of the employer's Drug-Free Program;
- A copy of the employer's Drug-Free Workplace Poster, certified by the government agency or vendor of the employer's choice;
- A description of the employer's Employee Assistance Program ("EAP") or proof of resources available to employees such as drug and alcohol counseling services, and a list of treatment centers; and
- A description of the employer's training program for both supervisors and employees that requires that the training must be completed within 30 days of start date as part of new employee orientation, and that describes how the employer documents that ~~employers and supervisors~~ employees] have completed this training.

NOTE: A recommendation by the inspector based on the above information as to whether or not the employer should receive the workplace safety credit must also be included.

7.2 To obtain the Workplace Safety Program premium credit, all inspection procedures and inspection reports must comply with the requirements and standards set forth in this regulation. In the event of multiple applications, only the first application received will be accepted. Subsections 7.2.1 and 7.2.2 of this regulation set forth the two options according to which a Workplace Safety inspection may be conducted.

~~7.1-47.2.1~~ All inspections made that are conducted by a representative from an independent safety expert company under contract to the Insurance Department will follow this procedure. shall be conducted as follows:

7.2.1.1 The Insurance Department will notify the inspector of the employer's request. The inspector, in turn, will then contact the employer to set up the first of two inspections. A second unannounced inspection shall be made no later than the expiration date of the policy to which any workplace safety credit based on the inspection will apply to confirm the initial certifications of safety in the workplace. The Department of Insurance will notify the Bureau when an employer successfully completes each scheduled and/or nonscheduled inspection. Failure to pass a scheduled inspection will result in a denial of an employer's eligibility to participate in the Workplace Safety Program. However, the employer, after failing an inspection can request another inspection, after successful completion of which will make them eligible for participation in the Workplace Safety Program.

~~7.1-27.2.1.2~~ The cost of each inspection will be borne by the employer. The minimum charge for safety inspection is \$150 per location. Each work location must successfully pass both inspections before an employer is entitled to a premium credit under the program. Inspection fees for large and/or complex employers may be established by the Department of Insurance.

~~7.27.2.2~~ Insurers issuing workers compensation insurance in Delaware may submit their own workplace safety inspection procedures for review by the Insurance Department. The Insurance

Department shall permit the insurer's inspection to satisfy the inspection requirements of ~~paragraph 7.1.4~~ subsection 7.2.1 of this regulation if the inspection procedures are at least as rigorous as those employed by the Insurance Department and its independent safety experts. An insurer's safety inspection procedures must be re-certified on a bi-annual basis to maintain status as an acceptable substitute.

- 7.3 ~~If the annual workers compensation insurance premium is between \$3,161 and \$10,000 for an eligible employer, the employer may opt to undergo an inspection conducted by a qualified inspector from the Delaware Department of Labor at a cost determined by the Department of Labor but not to exceed the maximum fee as per the inspection charges maintained by the Insurance Department.~~

## 8.0 Renewals and Eligibility

- 8.1 An employer must annually apply for the Workplace Safety Program ~~each year~~.
- 8.2 For each year after the initial qualification, the inspection requirement for the Workplace Safety Program insurance premium credit will consist of one unannounced inspection. The Department will maintain a list of inspection charges for inspections conducted pursuant to ~~paragraph 7.4~~ subsection 7.2.1 of this regulation, which will be sent to interested parties upon request.

## 9.0 Premium Size Ranges and Corresponding Credits

- 9.1 ~~The Workplace Safety credits insurance premium credit will be granted~~ calculated according to the following formula:
- $$20\% \times [1.0000 - C]$$
- where "C" is the credibility of the qualified employer in the uniform Experience Rating Plan for the policy period expiring immediately prior to the application of the Safety credit. If the qualified employer was not experience-rated in the policy period expiring immediately prior to the application of the Safety credit, "C" will be set at 0.050 Safety credit packages will be rounded to the nearest whole percent.
- 9.2 If the inspector confirms that an employer maintains a drug-free workplace program that meets the criteria set forth in subsection 7.1 of this regulation, the carrier may offer an additional discount in accordance with rate filings submitted to and approved by the Department.

## 10.0 Effect upon Mutual Rates and Schedule Rating Credits

- 10.1 Workers' Compensation manual rates shall be adjusted because of implementation of this program. A Delaware Workplace Safety Program Factor shall be included in loss costs and residual market rates. This factor may offset credits given to qualified employers, so that the Workplace Safety Program will neither increase nor decrease premiums for eligible employers in the aggregate.
- 10.2 Schedule rating plan credits given to policyholders for "competitive" reasons cannot be withdrawn. Schedule credits given for safety reasons may be reduced to offset the Workplace Safety Program premium credit.
- 10.3 A Merit Rating Plan shall be implemented which will provide incentives for employers paying less than \$3,161 of annual Delaware Workers' Compensation premiums to maintain safe workplaces.

## 11.0 Effective Date

This Regulation ~~shall become~~ became effective on November 11, 2013. The 2019 amendments to this regulation shall become effective ~~[10 days after being published as a final regulation~~ February 11, 2020].

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# FINAL REGULATIONS

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## DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION 1900 BOARD OF NURSING

Statutory Authority: 24 Delaware Code, Section 1906(a)(1) (24 **Del.C.** §1906(a)(1))  
24 **DE Admin. Code** 1900

### ORDER

#### 1900 Board of Nursing

The Delaware Board of Nursing pursuant to 24 **Del.C.** §1906(a)(1), proposed to revise its regulations. The proposed changes update the regulations pertaining to internationally educated nursing applicants and advanced practice registered nurses.

#### SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Following publication in the Delaware *Register of Regulations* on October 1, 2019 a public hearing was held on November 13, 2019. Written comment periods were held open for thirty days, and an additional fifteen days following the public hearing. At the hearing, the Board accepted as evidence and marked as the Board's Exhibits 1 and 2 documentation of publication of the notice of the public hearing in the *News Journal* and the *Delaware State News*.

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

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

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

There was no verbal testimony given at the public hearing on November 12, 2019, and no written comments were received by the Board during the initial thirty day public comment period or the second fifteen day public comment period.

#### FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Board during the initial 30 day written public comment period, or the public hearing.
3. Pursuant to 24 **Del.C.** §1906(a)(1), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed changes to Regulation 2 seek to clarify the requirements for clinical and didactic preceptors for online nursing education programs and the requirements to obtain Board approval to establish a new nursing school in Delaware. The changes to Regulation 6 clarify the requirements for licensure for internationally or Puerto Rican educated nurses to make them consistent with US educated nurses. The proposed changes to Regulation 8 clean up redundant or inaccurate regulations pertaining to advanced practice registered nurses. More specifically, the definition of audit will be stricken to clarify they are audited along with the registered nurse audit; regulations pertaining to internationally educated APRNs will be added as there currently are none, despite such language existing in the national model rules; the procedure for renewal audits will be clarified to comport with the procedure utilized by the Division of Professional Regulation; and the definition of active practice for APRNs will be added to comply with the statute regarding prescriptive authority.
5. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed changes to the Board's rules and regulations.
6. Having received no public comment, the Board finds no reason to amend the regulations as proposed.

#### DECISION AND ORDER CONCERNING THE REGULATIONS

Having found that the proposed changes to the regulations are necessary as outlined herein, the Board finds

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that the regulations shall be adopted as final in the form as proposed. The exact text of the regulations, as amended, are attached to this order as Exhibit A. These changes will become effective ten days following publication of this order in the Delaware *Register of Regulations*.

**IT IS SO ORDERED** this 8<sup>th</sup> day of January, 2020 by the Delaware Board of Nursing.

|   |                                       |
|---|---------------------------------------|
| Megan Williams, DNP, FNP-C, RN, President | Ron Castaldo, RN, APRN                |
| Kimberly Hopkins, RN                      | Tiarra Davis, Public Member           |
| Pamela James, RN                          | Carol Abdill, RN                      |
| Danielle Gomez, RN (absent)               | Christopher Otto, RN Member (absent)  |
| Kenyette Walters, LPN                     | Marlo Silverio, RN                    |
| Sandra Glenn-Vernon, RN                   | Prameela Kaza, Public Member (absent) |
| William Hare, Public Member               | Gayle Melvin, Public Member           |

**\*Please note that no changes were made to the regulation as originally proposed and published in the October 2019 issue of the *Register* at page 296 (23 DE Reg. 296). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1900 Board of Nursing**

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# GENERAL NOTICES

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

Statutory Authority: 16 Delaware Code, Sections 210-218 (16 Del.C. §§210-218)

### NOTICE OF PUBLIC COMMENT

#### Birth to Three Early Intervention System

The Delaware Department of Health and Social Services will submit its annual grant application under Part C of the Individuals with Disabilities Education Improvement Act of 2004. The grant application is available for review from February 1 – March 31, 2020. Public Comment is being accepted between February 1 - March 31, 2020.

Please contact the Part C Birth to Three office at 302-255-9134 (call collect from Kent and Sussex) or visit the Birth to Three website: <https://www.dhss.delaware.gov/dms/epqc/birth3/> to secure a copy of the grant application.

Any person who wishes to make written suggestions, testimony, briefs or provide other written materials concerning the proposed grant application must submit these to Susan Campbell by Tuesday, March 31, 2020 at: Susan Campbell

DHSS - Division of Management Services  
Birth to Three Early Intervention Program  
1901 N Dupont Hwy  
New Castle, DE 19720  
Email: [susan.campbell@delaware.gov](mailto:susan.campbell@delaware.gov)  
Fax: 302-255-4407

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### OFFICE OF THE SECRETARY

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

### NOTICE

#### General Notice of Lodging of Agreement and [Proposed] Consent Decree

The Department of Natural Resources and Environmental Control (“DNREC”) and Mountaire Farms of Delaware, Inc. (“MFODI”) have entered into an Agreement and [Proposed] Consent Decree (the “Agreement”) in the proceeding captioned *State of Delaware Department of Natural Resources & Environmental Control v. Mountaire Farms of Delaware, Inc.* Case No. 18-00838 MN, currently pending in the United States District Court for the District of Delaware. In accordance with the terms of the Agreement, notice is hereby given that the Agreement has been lodged with the United States District Court for the District of Delaware (the “Delaware District Court”).

No action is required by the Delaware District Court at this time because the Agreement is subject to public written comment before it can be entered by the Delaware District Court as a Consent Decree.

The Agreement resolves claims alleging violations of the Clean Water Act, the Resource Conservation and Recovery Act, and state law as described in the Agreement. In the Agreement, MFODI commits to: (i) pay a civil penalty; (ii) construct a major upgrade to its wastewater treatment plant (“WWTP”) at its Millsboro, Delaware facility; (iii) take and maintain various interim measures at its WWTP until such time as the upgrade is completed and operational in order to mitigate potential nitrate loading at its permitted spray irrigation fields; (iv) relocate its water supply wells at the facility to enable MFODI to extract and treat nitrate in groundwater as part of its WWTP operations and to maintain a measure of hydraulic control; and (v) provide options for an alternative water supply to nearby residents.

Although the Agreement is currently effective as a contract between DNREC and MFODI, it will not become

effective as a Consent Decree unless and until signed and entered by the Delaware District Court.

DNREC will accept written comments relating to the Agreement for thirty (30) days from the date of publication of this General Notice. Individuals may submit written comments via email to [DNRECHearingComments@delaware.gov](mailto:DNRECHearingComments@delaware.gov), or via the United States Postal Service to Lisa Vest, Office of the Secretary, 89 Kings Highway, Dover, DE 19901. Written comments will be accepted until the close of business on Monday, March 2, 2020.

The Agreement may be examined at the Clerk's Office, United States District Court for the District of Delaware, 844 North King St, Unit 18, Wilmington, DE 19801-3570. In addition, the Agreement may be examined electronically at <http://www.dnrec.delaware.gov/Info/Documents/agreement-and-proposed-consent-decree-dnrec-and-mountaire-20191213.pdf>

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## DEPARTMENT OF STATE PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) and 29 Delaware Code, Section 10115  
(26 Del.C. §209(a) and 29 Del.C. §10115)

### NOTICE

### **PUBLIC NOTICE OF PROPOSED AMENDMENTS TO THE PUBLIC SERVICE COMMISSION'S RULES FOR TELECOMMUNICATIONS SERVICE PROVIDERS**

#### EXHIBIT "A"

IN THE MATTER OF THE RULES FOR THE  
PROVISION OF TELECOMMUNICATIONS  
SERVICES

(REG. DKT 10 OPENED MAY 1, 1984; REG. DKT  
45 OPENED NOVEMBER 21, 1995; JOINTLY  
REOPENED NOVEMBER 17, 1998; JULY 24,  
2001; AUGUST 9, 2005; NOVEMBER 5, 2013;  
MAY 13, 2014; AUGUST 19, 2014 AND  
DECEMBER 5, 2019

PSC REGULATION DOCKET  
NOS. 10 AND 45

IN THE MATTER OF THE REGULATIONS FOR  
THE IMPLEMENTATION OF THE  
TELECOMMUNICATIONS TECHNOLOGY  
INVESTMENT ACT

(OPENED JULY 20, 1993; REOPENED  
DECEMBER 5, 2019)

PSC REGULATION DOCKET NO. 41

#### **TO: ALL TELECOMMUNICATIONS CARRIERS, ALL CONSUMERS, AND OTHER INTERESTED PERSONS**

As a result of the cancellation of its regular meeting scheduled for February 26, 2020, the Delaware Public Service Commission ("Commission") is re-posting this public notice to move the date for the hearing in this matter from February 26, 2020, to March 18, 2020, and to extend the deadline for public comment until April 3, 2020.

In April 2019, the role of the Delaware Public Service Commission ("Commission") with respect to landline telecommunications regulation changed with the passage of Senate Bill No. 18 ("SB 18"). (The Commission does not regulate wireless or voice over internet services.) Among other things, SB 18 amended Title 26 of the Delaware Code by removing certain statutory requirements for Commission-regulated telecommunications service providers that are no longer consistent with recent decisions of the Federal Communications Commission, including significant changes to the Telecommunications Technology Investment Act ("TTIA") (See 26 Del. C. §§ 215, 704-707).

Generally, telecommunications services provided over landlines fall into two categories: (1) "Basic Services,"

which the Commission regulates for price and quality of service; and (2) "Competitive Services," which the Commission does not regulate, other than to certify new carriers who seek to offer such services in Delaware. The SB 18 amendments maintained certification requirements for telecommunications carriers but revised the TTIA (§§ 704-707) to narrow the definition of "Basic Services" and to allow carriers to change the rates for Basic Services without Commission approval.

By Order No. 9506 dated December 5, 2019 (the "Order"), the Commission now proposes to revise its telecommunications rules to reflect the SB 18 amendments and to otherwise clarify and simplify its regulations by: (1) amending its "Rules for the Provision of Telecommunications Services," codified at 26 *Del. Admin. C.* § 4001 ("§ 4001") (Regulation Docket Nos. 10 and 45); (2) moving the remaining TTIA requirements (as amended by SB 18) from 26 *Del. Admin. C.* § 4005 ("§ 4005") to § 4001; and (3) repealing its "Regulations for the Implementation of the Telecommunications Technology Investment Act," codified at § 4005 (Regulation Docket No. 41).

The text of the Amendments are attached to the Order. The Order and related exhibits are reproduced in the January 2020 edition of the Delaware *Register of Regulations* and may also be reviewed online at the Commission's website at [www.depsc.delaware.gov](http://www.depsc.delaware.gov). You may also obtain a paper copy of the Orders at the Commission's Dover office for a fee of \$0.25 per page.

Interested parties may file written comments, suggestions, briefs, compilations of data, or other materials concerning the Amendments. Such material (10 copies) may be submitted to the Commission on or before April 3, 2020, by email to [lisa.driggins@delaware.gov](mailto:lisa.driggins@delaware.gov) or at the following address:

Delaware Public Service Commission  
861 Silver Lake Boulevard  
Cannon Bldg., Suite 100  
Dover, Delaware, 19904  
Attn: PSC Reg. Dckts. Nos. 10 & 45

The Commission will conduct a public hearing on the Amendments on Wednesday, March 18, 2020, beginning at 1:00 PM in the Hearing Room of the Delaware Public Service Commission, 861 Silver Lake Blvd., Dover, Delaware.

If you are handicapped and need assistance or aids in participating in this matter, please contact the Commission to discuss any needed assistance or aids. You may contact the Commission with questions or requests about this matter at the Commission's toll-free telephone number (800) 282-8574 (Delaware only) or (302) 739-4333 (including text telephone). You may also send inquiries by Internet e-mail addressed to [psc@delaware.gov](mailto:psc@delaware.gov).

IN THE MATTER OF THE RULES FOR THE  
PROVISION OF TELECOMMUNICATIONS  
SERVICES

(REG. DKT 10 OPENED MAY 1, 1984; REG. DKT  
45 OPENED NOVEMBER 21, 1995; JOINTLY  
REOPENED NOVEMBER 17, 1998; JULY 24,  
2001; AUGUST 9, 2005; NOVEMBER 5, 2013;  
MAY 13, 2014; AUGUST 19, 2014 AND  
DECEMBER 5, 2019

PSC REGULATION DOCKET  
NOS. 10 AND 45

IN THE MATTER OF THE REGULATIONS FOR  
THE IMPLEMENTATION OF THE  
TELECOMMUNICATIONS TECHNOLOGY  
INVESTMENT ACT

(OPENED JULY 20, 1993; REOPENED  
DECEMBER 5, 2019)

PSC REGULATION DOCKET NO. 41

**ORDER NO. 9532**

**AND NOW**, this 8<sup>th</sup> day of January 2020, the Delaware Public Service Commission ("Commission") determines



and orders the following:

**WHEREAS**, on December 5, 2019, by Order No. 9506, the Commission re-opened the captioned dockets to consider amending its “Rules for the Provision of Telecommunications Services,” codified at 26 *Del. Admin. C.* § 4001 (“§ 4001”) (Regulation Docket Nos. 10 and 45) and to consider repealing its “Regulations for the Implementation of the Telecommunications Technology Investment Act,” codified at § 4005 (Regulation Docket No. 41); and

**WHEREAS**, the Commission set the hearing date on the proposed changes for the regular meeting it had scheduled for February 26, 2020, and directed the Commission Secretary to cause notice of the proposed changes and the hearing date in *The News Journal* and *Delaware State News* newspapers and in the *Delaware Register of Regulations*; and

**WHEREAS**, the Commission has cancelled its February 26, 2020 meeting and now sets the new hearing date on the proposed changes for March 18, 2020;

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE  
OF NOT FEWER THAN THREE COMMISSIONERS:**

1. That, pursuant to 29 *Del. C.* § 10115(a), the Secretary shall transmit a copy of the updated form of public notice attached as Exhibit “A” to the Registrar of Regulations for publication in the February 1, 2020 edition of the *Delaware Register of Regulations*.

2. That, pursuant to 29 *Del. C.* § 10115(b), the Secretary shall cause the updated form of public notice attached as Exhibit “A” to be published in two-column format, outlined in black, in the following two newspapers on the following dates:

*The News Journal*                      January 23, 2020

*Delaware State News*              January 23, 2020

In addition, the Secretary shall mail a copy of this Order, with its exhibit, to the Division of the Public Advocate and to all persons or entities who have made written requests for advanced notice of this Commission’s rule-making proceedings. The Secretary shall file a certification of the completion of these tasks by January 31, 2020.

3. Pursuant to 26 *Del. C.* § 209(a), the Commission will hold a public hearing on the proposed amendments on Wednesday, March 18, 2020, beginning at 1:00 PM in the Hearing Room of the Delaware Public Service Commission, 861 Silver Lake Blvd., Dover, Delaware. Interested persons or entities may submit written suggestions, compilations of data, briefs, or other written materials concerning these proposed amendments on or before April 3, 2020.

4. The Commission reserves the jurisdiction and authority to enter such further orders in this matter as may be deemed necessary or proper by Order of the Commission.

**BY ORDER OF THE COMMISSION:**

Joann T. Conaway, Commissioner

Harold B. Gray, Commissioner

Manubhai C. Karia, Commissioner

K. F. Drexler, Commissioner

ATTEST: Donna Nickerson, Secretary

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## CALENDAR OF EVENTS/HEARING NOTICES

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### DELAWARE RIVER BASIN COMMISSION

#### PUBLIC NOTICE

The Delaware River Basin Commission will hold a public hearing on **Wednesday, February 12, 2020** beginning at **1:30 p.m.** The hearing is open to the public and will be held at the Delaware River Basin Commission Office, Goddard Conference Room, 25 Cosey Road, West Trenton, New Jersey 08628.

A business meeting will be held the following month on **Wednesday, March 11, 2020** beginning at **10:30 a.m.** The business meeting is also open to the public and will be held at the Washington Crossing Historic Park Visitor Center, 1112 River Road, Washington Crossing, Pennsylvania 18977. For more information, visit the DRBC web site at [www.drbc.gov](http://www.drbc.gov) or contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, at 609-883-9500 extension 203.

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### DEPARTMENT OF AGRICULTURE DELAWARE NUTRIENT MANAGEMENT COMMISSION

#### PUBLIC NOTICE

#### 1201 Nutrient Management Certification Regulations

The Delaware Nutrient Management Commission, pursuant to 3 **Del.C.** §2220(a), proposes to revise regulation 1201-9.3 to allow the Commission to waive the fee required to obtain a nutrient consultant or commercial nutrient handler certificate for good cause shown.

Written comments should be sent to Chris Brosch, Administrator of the Delaware Nutrient Management Commission, 2320 S. DuPont Highway, Dover DE 19901. Written comments will be accepted until March 2, 2020 pursuant to 29 **Del.C.** §10118(a).

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### DEPARTMENT OF EDUCATION

#### PUBLIC NOTICE

The State Board of Education will hold its monthly meeting February 20, 2020 at 5:00pm in the Professional Development enter of the Early Years Center in the Red Clay School District (1621 Telegraph Rd. Wilmington, DE).

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### DEPARTMENT OF HEALTH AND SOCIAL SERVICES

#### DIVISION OF SOCIAL SERVICES

#### PUBLIC NOTICE

#### Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T)

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 Division of Social Services Manual regarding Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T), specifically, to clarify policy and define terms.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@delaware.gov](mailto:Nicole.M.Cunningham@delaware.gov), or by fax to 302-255-4413 by 4:30 p.m. on March 2, 2020. Please identify in the subject line: Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T).

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

by other interested persons.

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**DIVISION OF SOCIAL SERVICES**  
**PUBLIC NOTICE**  
**Child Care Subsidy Program**

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 clarify policy related to subsidized child care provider reimbursement.

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

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

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

Pursuant to the authority conferred by 18 Delaware Code, Sections 314, 2304(26) and 2741 and 21 Delaware Code, Section 2118, the Delaware Department of Insurance (the Department), in coordination with the Delaware Division of Motor Vehicles, is proposing to amend Regulation 606 to update and clarify requirements concerning insurer submission of notices of automobile insurance cancellation and termination.

The Department is also taking the opportunity of this proposal to make grammatical and formatting edits throughout the regulation.

The Department does not plan to hold a public hearing on the proposed amendments to Regulation 606. The proposed amendments appear below and may also be viewed at 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 2<sup>nd</sup> day, March 2020. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist  
Delaware Department of Insurance  
ATTN: Docket 4232-2019  
1351 West North St., Ste. 101  
Dover, DE 19904  
(302) 674-7379  
Email: [Leslie.Ledogar@delaware.gov](mailto:Leslie.Ledogar@delaware.gov)

## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF FISH AND WILDLIFE

#### PUBLIC NOTICE

#### 3502 Striped Bass Spawning Season and Area Restrictions.

Several commercial striped bass gill net fishermen proposed adjustments to the seasonal fixed gill net exclusion area in the Delaware River to facilitate striped bass capture efficiency and to reduce drift gill net conflicts with recreational boaters and anglers. This action proposes to expand the current allowable area where fixed gill nets can be used by opening approximately 1.75 nautical miles (linear) of the Delaware River to fixed gill net fishing during the months of January through May. The current seasonal fixed gill net exclusion area extends from Liston Point (Delaware River) northward. This action would adjust the lower boundary of the exclusion area northward (upstream) to the southern shore of Appoquinimink River mouth at latitude 39°26'51.00"N and longitude 75°34'46.00"W.

The proposed action is consistent with the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for the Striped Bass, its amendments and addenda. The Advisory Council on Tidal Fisheries endorsed development of this action at their September 25, 2019 meeting. Striped bass landings will be unaffected by this amendment, as the commercial striped bass fishery is managed through and limited by an annual commercial quota with mandatory harvester and weigh station tagging and reporting.

The hearing record on the proposed changes to 7 **DE Admin. Code** 3502 Striped Bass Spawning Season and Area Restrictions opens February 1, 2020 (Hearing Docket No. 2019-R-F-0026). A public hearing on the proposed amendment will be held on Wednesday, February 26, 2020 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Individuals may submit written comments regarding the proposed changes via e-mail to [DNRECHearingComments@delaware.gov](mailto:DNRECHearingComments@delaware.gov), or via USPS to the DNREC Hearing Officer, 89 Kings Highway, Dover, DE 19901. Public comments will be received until close of business Thursday, March 12, 2020.

### DIVISION OF FISH AND WILDLIFE

#### PUBLIC NOTICE

#### 3550 Cobia (*Rachycentron canadum*)

The Atlantic States Marine Fisheries Commission adopted the Interstate Fishery Management Plan for Atlantic Migratory Group Cobia (FMP) in November 2017. The most recent stock assessment indicated that Cobia biomass has declined over the past two decades, but the stock is not overfished and overfishing is not occurring. The FMP requires that states adopt the precautionary management measures contained in the FMP to prevent overfishing.

Cobia presence in Delaware waters is sporadic, but they are targeted by anglers when known to be present. Delaware had no reported commercial or recreational Cobia landings in the three years preceding adoption of the FMP. Therefore, Delaware qualifies for *de minimis* status under the FMP criteria and may adopt either of the following two management options:

Delaware's proposed Cobia management options.

|                  | Option 1          |            | Option 2                       |            |
|------------------|-------------------|------------|--------------------------------|------------|
|                  | <i>De Minimis</i> |            | Nearest Non- <i>De Minimis</i> |            |
|                  | Recreational      | Commercial | Recreational                   | Commercial |
| Min. Length      | 32                | 37         | 40                             | 37         |
| Possession Limit | 1                 | 2          | 1                              | 2          |
| Vessel Limit     | 1                 | 6          | 3                              | 6          |
| Open Season      | All Year          | All Year   | June 1 - Sept. 15              | All Year   |

Option 1 reflects the *de minimis* management measures outlined in the FMP and Option 2 reflects the

management measures in place for the nearest non-*de minimis* jurisdiction (VA). The commercial fishing management measures are identical in both options; however, the recreational management measures differ by the minimum length, maximum vessel limit and season.

Adoption of either option will ensure compliance with the FMP, as required by the Atlantic Coastal Fisheries Cooperative Management Act (16 USC §§5101, *et seq.*). The proposed action is expected to complement federal management in a consistent manner throughout the management unit and provide for the long-term stability of the stock. Given the sporadic occurrence of Cobia in Delaware waters, it is unlikely that the proposed action will have significant, measurable or predicable costs to the affected Delaware fisheries or their dependent businesses.

The hearing record on the proposed changes to 7 **DE Admin. Code** 3500 Tidal Finfish to include a new 3550 Cobia opens February 1, 2020 (Hearing Docket No. 2019-R-F-0002). A public hearing on the proposed amendment will be held proceeding the adjournment of the public hearing on proposed amendments to 7 **DE Admin. Code** 3502 Striped Bass Spawning Season and Area Restrictions (SAN # 2019-10; Hearing Docket No. 2019-R-F-0026) on Wednesday, February 26, 2020 at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Individuals may submit written comments regarding the proposed changes via e-mail to [DNRECHearingComments@delaware.gov](mailto:DNRECHearingComments@delaware.gov), or via USPS to the DNREC Hearing Officer, 89 Kings Highway, Dover, DE 19901. Public comments will be received until close of business Thursday, March 12, 2020.

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**DEPARTMENT OF SAFETY AND HOMELAND SECURITY**  
**DELAWARE COUNCIL ON POLICE TRAINING**  
**PUBLIC NOTICE**

**801 Regulations of the Delaware Council on Police Training**

The Council on Police Training (COPT), pursuant to 11 **Del.C.** §8404(a)(14), proposes to revise its regulations. The proposed amendments, which were voted on in a regular meeting by the COPT on January 14, 2020, seek to update information regarding firearms training and qualifications.

The COPT will allow for the submission of written comments, suggestions, or other materials regarding the proposed rules to the Department of Safety and Homeland Security Attn: Christopher Klein, Public Safety Building Suite 220, P.O. BOX 818, Dover, Delaware 19903-0818 or e-mail [Christopherm.klein@delaware.gov](mailto:Christopherm.klein@delaware.gov). Any written submission in response to this notice and the relevant proposed regulations must be received by the Department of Safety and Homeland Security no later than 4:30 p.m. (EST) on March 02, 2020. A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml).

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**DELAWARE COUNCIL ON POLICE TRAINING**  
**PUBLIC NOTICE**

**803 COPT Firearms Instructors Standards and Requirements**

The Council on Police Training (COPT), pursuant to 11 **Del.C.** §8404(a)(14), proposes to create regulations. The proposed regulations, which were voted on in a regular meeting by the COPT on January 14, 2020, seek to establish standards and requirements for Firearms Instructors.

The COPT will allow for the submission of written comments, suggestions, or other materials regarding the proposed rules to the Department of Safety and Homeland Security Attn: Christopher Klein, Public Safety Building Suite 220, P.O. BOX 818, Dover, Delaware 19903-0818 or e-mail [Christopherm.klein@delaware.gov](mailto:Christopherm.klein@delaware.gov). Any written submission in response to this notice and the relevant proposed regulations must be received by the Department of Safety and Homeland Security no later than 4:30 p.m. (EST) on March 02, 2020. A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml).

**DEPARTMENT OF STATE**  
**OFFICE OF THE STATE BANK COMMISSIONER**  
**PUBLIC NOTICE**  
**2301 Operating Regulation**

The State Bank Commissioner proposes to amend Regulation 2301 (Sale of Checks and Transmission of Money – Operating Regulation). The proposed amendments implement the changes to Title 5, Chapter 23 from House Bill 199, signed by the Governor on 6/27/2019, by providing for license applications to be processed through the Nationwide Multistate Licensing System and Registry. The proposed amendments are not substantially likely to impose additional costs or burdens upon individuals and/or small businesses. Other Regulations issued by the State Bank Commissioner are not affected by this proposal. The State Bank Commissioner is issuing this proposed amended Regulation in accordance with Title 5 of the Delaware Code. This Notice is issued pursuant to the requirements of Title 29 of the Delaware Code, Chapter 11, Subchapter III, Chapter 101, Subchapter II, and Chapter 104, Sections 10404A(b)(1) and 10404B(b)(1).

Copies of the proposed amended Regulation are being published in the February 1, 2020 edition of the Delaware *Register of Regulations*. Copies are also on file in the Office of the State Bank Commissioner, 1110 Forrest Avenue, Dover, DE 19904 and are available for inspection during regular office hours. Copies are available upon request.

Interested parties may offer comments on the proposed amended Regulation or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner at the above address as to whether the proposed amended Regulation should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before March 3, 2020. Written materials submitted will be available for inspection at the above address.

On or after March 3, 2020, following review of the public comment, the State Bank Commissioner will determine whether to adopt the proposed amended Regulation, or make additional changes because of the public comments received.