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# Delaware Register of Regulations

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Issue Date: MARCH 1, 2017

Volume 20 - Issue 9, Pages 667 - 736

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Regulations:

Errata

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 February 15, 2017.

Cover Photo By  
Dolores Michels



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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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its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on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The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

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

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

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

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

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

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

ISSUE DATE	CLOSING DATE	CLOSING TIME
April 1	March 15	4:30 p.m.
May 1	April 17	4:30 p.m.
June 1	May 15	4:30 p.m.
July 1	June 15	4:30 p.m.
August 1	July 17	4:30 p.m.

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**
**DIVISION OF AIR QUALITY**

 Statutory Authority: 7 Delaware Code, Chapter 60 (7 **Del.C.** Ch. 60)

**Final Revisions to Delaware's State Implementation Plan ("SIP") to address the Start-up, Shutdown, and Malfunction SIP Call of the United States Environmental Protection Agency (U.S. EPA)**

**\*Please Note:** The submitted Final Revision to Delaware's State Implementation Plan ("SIP") to address the Start-up, Shutdown, and Malfunction SIP Call of the United States Environmental Protection Agency (U.S. EPA) (Secretary's Order No. 2016-A-0047), that was published as a General Notice in the January 2017 issue of the Delaware *Register of Regulations* (20 DE Reg. 567), contained typographical errors. The State Implementation Plan Revision was approved as originally published in the October 2016 issue of the *Register* (20 DE Reg. 317). The correct version is reprinted below. The effective date of the General Notice remains the same.

*Proposal*

**Delaware**

*State Implementation Plan Revision*

**Revision to Satisfy EPA's State Implementation Plan (SIP) Call Related to Air Emissions During Equipment Start-up and Shutdown**

**Submitted To**

**U.S. Environmental Protection Agency**

**Submitted By**

**Delaware Department of Natural Resources and Environmental Control**

**September 15, 2016**

**1. Introduction**

On June 12, 2015 the EPA, identified the State Implementation Plans (SIPs) of 36 states as inadequate because they allegedly allowed unregulated excess emissions (80 FR 33840). Seven Delaware regulations were cited in this SIP Call because the EPA believes the regulations do not appropriately restrict emissions during start-up or shutdown events. The seven Delaware regulations are: 7 **DE Admin. Code** 1104, 1105, 1108, 1109, 1114, 1124 and 1142.

Delaware does not agree with the EPA for the reasons cited in the comments Delaware made to the EPA docket. Despite this disagreement Delaware is revising the Delaware's SIP to comport with the EPA SIP Call to ensure the State is not subject to punitive CAA sanctions. This document details the revisions Delaware is making to the SIP, and demonstrates that these revisions comport with the EPA's interpretation of the CAA and are consistent with the EPA's approach for attainment and maintenance of all National Ambient Air Quality Standards (NAAQS).

**2. SIP Revision and Impact Analysis**

2.1 7 **DE Admin. Code** 1104, Particulate Emissions from Fuel Burning Equipment

2.1.1 Delaware requests that EPA revise 7 **DE Admin. Code** 1104, Particulate Emissions from Fuel Burning Equipment, in the Delaware SIP as follows<sup>1</sup>:

- 
1. Along with the new provision (i.e., 2.2) the two provisions that are removed from the SIP (i.e., 1.5 and 2.1) will be retained and enforced by Delaware through the State regulation.

- ~~1.5 The provisions of this Regulation shall not apply to the start up and shutdown of equipment which operates continuously or in an extended steady state when emissions from such equipment during start up and shutdown are governed by an operation permit issued pursuant to the provisions of 2.0 of 7 DE Admin. Code 1102.~~
- ~~2.1 Reserved. No person shall cause or allow the emission of particulate matter in excess of 0.3 pound per million BTU heat input, maximum two-hour average, from any fuel burning equipment.~~
- ~~2.2 No person shall cause or allow the emission of particulate matter in excess of 0.3 pound per million BTU heat input, maximum 30-day rolling average, from any fuel burning equipment.~~
- 2.1.2 Impact on attainment and maintenance of NAAQS. This revision provides the opportunity for any subject source to compensate for higher emission rates during startup or shutdown events by operating at corresponding lower rates during normal operations, so long as continuous compliance is demonstrated on a 30-day rolling average basis. This revision does not change the existing continuous emission limit in the SIP, nor will it result in any increase in emissions on a tons per year basis.
- 2.2 **7 DE Admin. Code 1105, Particulate Emissions from Industrial Process Operations**
- 2.2.1 Delaware requests that EPA revise **7 DE Admin. Code 1105 Particulate Emissions from Industrial Process Operations**, in the Delaware SIP as follows<sup>2</sup>:
- ~~1.7 The provisions of this Regulation shall not apply to the start up and shutdown of equipment which operates continuously or in an extended steady state when emissions from such equipment during start up and shutdown are governed by an operation permit issued pursuant to the provisions of 2.0 of 7 DE Admin. Code 1102.~~
- ~~2.1 Reserved. No person shall cause or allow particulate emissions into the atmosphere from any source not provided for in subsequent sections of this Regulation in excess of 0.2 grains per standard cubic foot.~~
- ~~2.2 No person shall cause or allow particulate emissions into the atmosphere from any source not provided for in subsequent sections of this Regulation in excess of 0.2 grains per standard cubic foot on a 30-day rolling average basis.~~
- 2.2.2 Impact on attainment and maintenance of NAAQS. This revision provides the opportunity for any subject source to compensate for higher emission rates during startup or shutdown events by operating at corresponding lower rates during normal operations, so long as continuous compliance is demonstrated on a 30-day rolling average basis. This revision does not change the existing continuous emission limit in the SIP, nor will it result in any increase in emissions on a tons per year basis.
- 2.3 **7 DE Admin. Code 1108, Sulfur Dioxide Emissions from Fuel Burning Equipment.** For **7 DE Admin. Code 1108** the provision EPA identified as deficient (i.e., 1.2) was removed from the Regulation under Secretary's Order (2013-A-0021), which was signed on 6/11/2013 and submitted to the EPA as a SIP revision. Since this SIP Call only deals with 1.2 of 1108, and since the revised regulation which does not include 1.2 was submitted to the EPA as a SIP revision, no further action is required under this SIP Call by Delaware relative to **7 DE Admin. Code 1108**.
- Since the cited provision has been removed from the Delaware Regulation, and because the EPA has indicated the cited provision allows for excess emissions, this revision comports with the EPA's interpretation of the CAA and is consistent with the EPA's approach for attainment and maintenance of all National Ambient Air Quality Standards (NAAQS).
- 2.4 **7 DE Admin. Code 1109, Emissions of Sulfur Compounds from Industrial Operations.** For **7 DE Admin. Code 1109** Delaware requests that the EPA remove the entire regulation from the Delaware SIP<sup>3</sup>.

2. Along with the new provision (i.e., 2.2) the two provisions that are removed from the SIP (i.e., 1.7 and 2.1) will be retained and enforced by Delaware through the State regulation.

Delaware believes existing federal requirements like, for example, New Source Performance Standards are adequate to ensure attainment and maintenance of sulfur related NAAQS in Delaware. Delaware believes that removal of this regulation from the SIP will not result in any increase in emissions on a ton per year basis, and that this revision comports with the EPA's interpretation of the CAA and is consistent with the EPA's approach for attainment and maintenance of all NAAQS.

- 2.5 **7 DE Admin. Code 1114, Visible Emissions.** For **7 DE Admin. Code 1114** Delaware requests that the EPA remove the entire regulation from the Delaware SIP <sup>4</sup>.

Delaware believes existing federal requirements like, for example, New Source Performance Standards regulate visible emissions, plus other Delaware SIP regulations that regulate fine particulate matter and fine particulate matter precursors (e.g., 1108 and 1146) are adequate to ensure attainment and maintenance of any particulate related NAAQS in Delaware. Further, there is no quantifiable relationship between visibility emissions and fine particulate matter emissions. Delaware believes that removal of this regulation from the SIP will not result in any increase in emissions on a ton per year basis, and that this revision comports with the EPA's interpretation of CAA and is consistent with the EPA's approach for attainment and maintenance of all NAAQS.

- 2.6 **7 DE Admin. Code 1124, Control of Volatile Organic Compound Emissions.** For **7 DE Admin. Code 1124** Delaware requests that the EPA remove the provision EPA identified as deficient (1.4) from the Delaware SIP as follows:

- 1.4 ~~Reserved. The provisions of this regulation shall not apply to the startup and shutdown of equipment which operates continuously or in an extended steady state when emissions from such equipment during startup and shutdown are governed by an Operating Permit issued pursuant to the provisions of 2.0 of 7 DE Admin. Code 1102.~~

Since the cited provision has been removed from the Delaware Regulation, and because the EPA has indicated the cited provision allows for excess emissions, this revision should be considered as strengthening the SIP and one which comports with the EPA's interpretation of the CAA and is consistent with EPA's approach for attainment and maintenance of all NAAQS.

- 2.7 **7 DE Admin. Code 1142, Section 2.0, Control of NO<sub>x</sub> Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries.** For **7 DE Admin. Code 1142** Delaware requests that the EPA remove the provision EPA identified as deficient (2.3.1.6) from the Delaware SIP as follows:

- 2.3.1.6 ~~Reserved. The standards set out in 2.3 of this regulation shall not apply to the start up and shutdown of equipment when emissions from such equipment during a start up and shutdown are addressed in an operation permit issued pursuant to the provisions of 7 DE Admin. Code 1102.~~

Since the cited provision has been removed from the Delaware Regulation, and because the EPA has indicated the cited provision allows for excess emissions, this revision should be considered as strengthening the SIP and one which comports with the CAA and is consistent with EPA's approach for attainment and maintenance of all NAAQS.

### 3. Conclusion

Based on the analysis in the previous section of this document, Delaware concludes that this regulatory revision including the identified SIP revision will not have any adverse impact on Delaware's overall efforts for attaining and maintaining all NAAQS. Therefore, this SIP revision and its analysis meet the anti-backsliding provision of CAA Sec. 110(l).

3. The regulation will be retained and enforced by Delaware.  
4. The regulation will be retained and enforced by Delaware.

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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 THOROUGHBRED RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 10103(c) (3 **Del.C.** §10103(c))  
3 DE Admin. Code 1001

### PUBLIC NOTICE

### 1001 Thoroughbred Racing Rules and Regulations

#### Summary

The Thoroughbred Racing Commission proposes to amend its Regulations adopted in accordance with Title 3, Chapter 101. The purpose of the amended regulations is to amend rule 14 to add new rules 14.19.1 relating to multiple disqualifications and 14.20 relating to dead heats and rule 15 to add new rule 15.22 relating to the adoption by reference of the ARCI Veterinary Practices Rule, rule 15.23 relating to the adoption by reference of the ARCI Prohibited Practices Rule and rule 15.24 relating to the adoption by reference of the ARCI Out of Competition Testing Rule and to delete the reference to stanozolol in rule 15.17.1.1. Other regulations issued by the Thoroughbred Racing Commission are not affected by this proposal. The Thoroughbred Racing Commission is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

#### Comments

A copy of the proposed regulations is being published in the March 1, 2017 edition of the Delaware *Register of Regulations*. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml).

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Thoroughbred Racing Commission at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before March 31, 2017. Written materials submitted will be available for inspection at the above address.

**Adoption of Proposed Regulation**

On or after March 31, 2017, following review of the public comment, the Thoroughbred Racing Commission will determine whether to amend its regulations by adopting the proposed rules or make additional changes because of the public comments received.

**\*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/march2017/proposed/20 DE Reg 681RFA 03-01-17.pdf>

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

**1001 Thoroughbred Racing Rules and Regulations**

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**THOROUGHBRED RACING COMMISSION**

Statutory Authority: 29 Delaware Code, Section 4815(b)(4)c. (29 Del.C. §4815(b)(4)c.)  
3 DE Admin. Code 1002

**PUBLIC NOTICE****1002 Delaware Jockeys' Health and Welfare Benefit Board Regulations**

The Delaware Jockey's Health and Welfare Benefit Board, in accordance with 29 Del.C. §4815(b)(4)c. has proposed changes to its rules and regulations by amending existing Rule 2.1.1, Rule 2.1.2.1, Rule 2.1.2.2 and Rule 2.2 and adding new Rule 2.1.1.3 and Rule 2.4. Other regulations issued by the Delaware Jockey's Health and Welfare Benefit Board are not affected by this proposal.

**Comments**

A copy of the proposed regulations is being published in the March 1, 2017 edition of the Delaware *Register of Regulations*. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml).

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Delaware Jockey's Health and Welfare Benefit Board at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 Del.C. §10118(a), public comments must be received on or before March 31, 2017. Written materials submitted will be available for inspection at the above address.

**Adoption of Proposed Regulation**

On or after March 31, 2017, following review of the public comment, the Delaware Jockey's Health and Welfare Benefit Board will determine whether to amend its regulations by adopting the proposed new rules.

**\*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/march2017/proposed/20 DE Reg 682RFA 03-01-17.pdf>

**1002 Delaware Jockeys' Health and Welfare Benefit Board Regulations****1.0 Introduction**



- 1.1 These regulations are authorized pursuant to 3 **Del.C.** §10171 and 29 **Del.C.** ~~§4815(b)(3)e~~ 4815(b)(4)c. which established a Delaware Jockeys' Health and Welfare Benefit Board (hereinafter "the Board") and Delaware Jockeys' Health and Welfare Benefit Fund (hereinafter "the Fund").

***(Break in Continuity Within Section)***

- 1.5 A special fund of the State has been established and will be known as the "Delaware Jockeys' Health and Welfare Benefit Fund." The Fund shall consist of the proceeds transferred from the licensed video lottery agent and the purse account pursuant to 29 **Del.C.** ~~§4815(b)(3)e~~ 4815(b)(4)c. The proceeds transferred to the Fund will be maintained in an account established in the Department of Agriculture.

## **2.0 Eligibility Criteria for Health Coverage**

- 2.1 The Board will pay from the Fund for health coverage for active jockeys who regularly ride in Delaware, eligible retired jockeys, and disabled Delaware jockeys.

- 2.1.1 An Active Delaware Jockey, who regularly rides in Delaware, is eligible for health insurance coverage under the fund, if the jockey had ~~fifty (50)~~ one hundred (100) mounts in a Delaware Park season at Delaware Park; and

***(Break in Continuity Within Section)***

- 2.1.1.3 An Active Delaware Jockey who did not ride the qualifying number of mounts during a Delaware Park season due to circumstances beyond the control of the jockey may petition the Delaware Jockey's Health and Welfare Benefit Board for eligibility. The Delaware Jockey's Health and Welfare Benefit Board shall review the petition, and if in the discretion of the Board the circumstances warrant, may grant eligibility.

- 2.1.2 A Retired Delaware Jockey is eligible for health insurance coverage under the Fund if:

- 2.1.2.1 The Jockey was receiving health insurance coverage as a retired jockey provided by the Delaware ~~Thoroughbred Racing Commission's Jockey's Health and Welfare Benefit Board~~ health insurance plan ~~with the Jockey's Guild on January 1, 2006~~ December 31, 2016; or

- 2.1.2.2 The Jockey rode a minimum of 100 mounts at Delaware Park during the regular Delaware Park season for at least ~~seven~~ ten years.

***(Break in Continuity Within Section)***

- 2.2 ~~An active jockey, a retired jockey and/or the an eligible disabled jockey's family who meets the eligibility requirements of either an active Delaware jockey, a retired Delaware jockey, or a disabled Delaware jockey's family will be entitled to health coverage for one year beginning on the first day of the month after it can be determined calendar year following the year the eligibility requirements has have been met, and continuing until December 31<sup>st</sup> of the next calendar year.~~

***(Break in Continuity Within Section)***

- 2.4 The Fund shall provide benefits secondary to Medicare or Medicaid for any member or an enrolled dependent of a member, who is eligible for Medicare or Medicaid health benefits.

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

**1002 Delaware Jockeys' Health and Welfare Benefit Board Regulations**

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# PROPOSED REGULATIONS

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## DEPARTMENT OF EDUCATION

### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 932

#### PUBLIC NOTICE

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

#### 932 Military-Connected Youth

#### A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

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

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 932 Military-Connected Youth. This regulation is being amended to expand and clarify the meaning of "Recently Retired" to include those individuals identified as a disabled veteran and those killed in action. Specifically, this amendment is in response to inquiries received from those completing the form during the first year of implementation.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before April 7, 2017 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Register of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml), or obtained at the Department of Education, Finance Office located at the address listed above.

#### C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is intended to help improve student achievement as measured against state achievement standards by accurately identifying military-connected students.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is intended to continue to help ensure all students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendment helps to ensure that 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 student's legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The 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 decision making authority and accountability for addressing the subject to be regulated does not change because of the amendment.
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 not a less burdensome method for addressing the purpose of the regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected cost to implementing this amended regulation.

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

<http://regulations.delaware.gov/register/march2017/proposed/20 DE Reg 684RFA 03-01-17.pdf>

**932 Military-Connected Youth**  
*(Break in Continuity of Sections)*

## 2.0 Definitions

*(Break in Continuity Within Section)*

"Recently Retired" for the purposes of this regulation, means having left military service within 18 months prior to September 30 of the current school year; identified as a disabled veteran; or killed in action.

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

**932 Military-Connected Youth**

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**OFFICE OF THE SECRETARY**

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

**PUBLIC NOTICE**

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

**1203 Scholarship Incentive Program (SciP)**

### A. TYPE OF REGULATORY ACTION REQUIRED

New Regulation

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

The Secretary of Education intends to create 14 **DE Admin. Code** 1203 Scholarship Incentive Program (SciP). This regulation is being created to provide eligibility criteria for the SciP and to delineate the process for applying for SciP scholarships, pursuant to 14 **Del.C.** §3411.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before April 7, 2017 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Register of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml), or obtained at the Department of Education, Finance Office located at the address listed above.

### C. IMPACT CRITERIA

1. Will the regulation help improve student achievement as measured against state achievement standards? The regulation helps to improve student achievement as measured against state achievement standards by providing an opportunity for financial aid and future academic achievement.

2. Will the regulation help ensure that all students receive an equitable education? The regulation is intended to help ensure that all students who meet the established criteria will receive equal opportunity for this scholarship.

3. Will the regulation help to ensure that all students' health and safety are adequately protected? The regulation does not address students' health and safety.

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

5. Will the regulation preserve the necessary authority and flexibility of decision making at the local board and

school level? The regulation does not change the decision making at the local board and school level.

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

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

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected cost to implementing this 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/march2017/proposed/20 DE Reg 685RFA 03-01-17.pdf>

## 1203 Scholarship Incentive Program (ScIP)

### 1.0 Purpose

The purpose of this regulation is to provide eligibility criteria and to delineate the application process for the Scholarship Incentive Program (ScIP), pursuant to 14 Del.C. §3411.

### 2.0 Definitions

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:

"Academic Record" means the applicant's unofficial transcript from high school, college, or graduate school for the most recent academic year.

"Critical Need Area" means classifications where there is a shortage of persons for employment in a particular field. These classifications are posted annually on the Delaware Higher Education Office (DHEO) website and are based on federal and state reporting.

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

"Direct Educational Expenses" means tuition, mandatory fees, room, board, books, and supplies.

"Expected Family Contribution (EFC)" means a number that is calculated using the financial information an applicant provides on his or her Free Application for Federal Student Aid (FAFSA) to determine an applicant's eligibility for federal student aid.

"Free Application for Federal Student Aid (FAFSA)" means the data supplied in connection with the federal government's application for federal financial aid which DHEO uses to determine an applicant's eligibility for a ScIP scholarship.

"Full-Time Student" means an undergraduate student enrolled in 12 or more college credit hours or a graduate student enrolled in 9 or more credit hours.

"Grade Point Average (GPA)" means the number representing the average value of the accumulated final grades earned in courses over time.

"Graduate Student" means a full-time student enrolled in a post-baccalaureate program.

"Regionally Accredited Institution" means an institution of higher education accredited by one of the following regional accreditation organizations: Accrediting Commission for Community and Junior Colleges (ACCJC), Higher Learning Commission (HLC), Middle States Commission on Higher

Education (MSCHE), New England Association of Schools and Colleges (NEASC-CIHE), Southern Association of Colleges and Schools Commission on Colleges (SACSCOC), or WASC Senior College and University Commission (WSCUC).

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

"Semester" means a half-year term in a school or college, typically lasting 15 to 18 weeks.

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

"Undergraduate Student" means a full-time student at a regionally accredited college or university who has not yet earned a bachelor's or equivalent degree.

### **3.0 Application Acceptance and Submission Period**

3.1 The application acceptance and submission period for the SciP scholarship shall be posted on the DHEO's website by December 1 each calendar year.

3.1.1 Applications shall not be accepted outside of the posted application acceptance period under any circumstances.

3.1.2 Incomplete applications shall not be accepted or processed.

3.2 In order for an application to be considered complete, an applicant must:

3.2.1 Complete the FAFSA for the school year in which the scholarship is sought by the state deadline for Delaware that is posted online at FAFSA.ed.gov.

3.2.2 Submit the applicant's Academic Record to DHEO by mail, fax, or email by the last date of the application acceptance period.

3.2.2.1 Notwithstanding subsection 3.2.2 of this regulation, and unless notified otherwise by DHEO, an applicant who is currently enrolled as a senior in a Delaware public or charter school is not required to submit his or her Academic Record to DHEO by mail, fax, or email.

3.2.3 Submit the applicant's major and the name of the regionally accredited college or university in which the applicant will be enrolled for the school year in which the scholarship is sought through the Student Account Access Site by the last date of the application acceptance period.

3.2.3.1 Applicants may update their enrollment information on the Student Account Access Site through the last date of the application acceptance period.

3.2.3.2 A first time applicant must establish an account and provide his or her valid email address and permanent mailing address before being permitted to submit the information required in subsection 3.2.3 of this regulation.

### **4.0 Eligibility**

4.1 Applicants must meet the following requirements to be eligible for the SciP:

4.1.1 Be a Resident of the State; and

4.1.2 Be a Full-Time Student enrolled in:

4.1.2.1 an undergraduate degree program at a regionally accredited college or university in Delaware; or

4.1.2.2 an undergraduate degree program at a regionally accredited college or university outside of Delaware that is not offered by a publicly assisted college or university in Delaware; or

4.1.2.3 a graduate or professional education degree program at a regionally accredited college or university outside of Delaware that is not offered by a publicly assisted college or university in Delaware and in pursuit of a degree that is deemed in the best interest of the State.

4.1.2.3.1 For the purpose of subsection 4.1.2.3 of this regulation, an applicant who is in pursuit of a degree in either a Critical Need Area or for an occupation or industry in which there is a labor shortage as determined by DHEO based on current Delaware

# PROPOSED REGULATIONS

Department of Labor projections is in pursuit of a degree that is deemed in the best interest of the State.

## 5.0 Awards

- 5.1 DHEO determines the number and amount of scholarships to be awarded annually. The number and amount of awards each year will vary and is based on and subject to DHEO receiving funds appropriated for the ScIP.
- 5.1.1 If DHEO receives funds appropriated for the ScIP, DHEO may allocate up to 80% of the total amount of funds received for awards for eligible Undergraduate Students and up to 20% of the total amount of funds received for awards for eligible Graduate Students provided that DHEO receives applications from both Undergraduate and Graduate Students in a given year.
- 5.2 DHEO shall award scholarships on the basis of financial need and academic merit.
- 5.2.1 To determine an applicant's financial need, DHEO will consider:
- 5.2.1.1 the applicant's EFC;
- 5.2.1.2 the expense of attending the college or university in which the applicant is enrolled; and
- 5.2.1.3 the applicant's eligibility for Pell grants and other federal, state, or private grant assistance.
- 5.2.2 To determine an applicant's academic merit, DHEO will consider the applicant's GPA.
- 5.2.2.1 For an applicant who is currently enrolled in high school, the applicant must have an unweighted, cumulative GPA of 2.5 or higher.
- 5.2.2.2 For an applicant who is currently enrolled as an Undergraduate Student or Graduate Student, the applicant must have a cumulative GPA of 2.5 or higher.
- 5.2.2.3 Notwithstanding subsection 5.2.2 of this regulation, for an applicant who is currently enrolled as a Graduate Student in a degree program in which pass or fail grading is the only option and a GPA is not calculated, the applicant must have passing grades in his or her courses from the previous school year.
- 5.3 An award shall be used for, and not in excess of, Direct Educational Expenses.
- 5.4 An award shall not be renewable. Students must submit a new application each school year.
- 5.5 No student may receive more than 5 annual scholarships for either undergraduate or graduate study.

## 6.0 Award Payment

- 6.1 DHEO shall contact a recipient's college or university to verify the recipient's academic, financial, and enrollment status each Semester prior to the scholarship funds being disbursed.
- 6.2 All payments shall be disbursed directly to the eligible recipient's college or university only.
- 6.3 If a recipient withdraws from school or otherwise does not qualify for full payment at the end of the add/drop period for a semester, DHEO will apply the refund policy set forth in 14 Del.C. §3402(k).

### PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))  
14 DE Admin. Code 1511

#### PUBLIC NOTICE

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

#### 1511 Issuance and Renewal of Continuing License

#### A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

## B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1511 Issuance and Renewal of Continuing License. This regulation requires changes to bring Regulation 1511 into alignment with the new four-tier licensure system which was a result of Senate Bill 290.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Friday, March 31, 2017 to Mr. Chris Kenton, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

## C. IMPACT CRITERIA

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

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

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

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

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

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

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

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

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 **Del.C.** §1205 requires that we promulgate this regulation.

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

### \*Please Note:

(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/march2017/proposed/20 DE Reg 688RFA 03-01-17.pdf>

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

[1511 Issuance and Renewal of Continuing License](#)

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# PROPOSED REGULATIONS

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## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))  
14 DE Admin. Code 1512

### PUBLIC NOTICE

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

#### 1512 Issuance and Renewal of Advanced License

#### A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

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

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 DE Admin. Code 1512 Issuance and Renewal of Advanced License. This regulation requires changes to bring Regulation 1512 into alignment with the new four-tier licensure system which was a result of Senate Bill 290.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Friday, March 31, 2017 to Mr. Chris Kenton, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

#### C. IMPACT CRITERIA

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

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

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

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

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

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

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

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



9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 **Del.C.** §1205 requires that we promulgate this regulation.

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

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

<http://regulations.delaware.gov/register/march2017/proposed/20 DE Reg 690RFA 03-01-17.pdf>

## 1512 Issuance and Renewal of Advanced License (Break in Continuity of Sections)

### 2.0 Definitions

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

#### *(Break in Continuity Within Section)*

**"Educator"** means a person licensed and certified by the State under 14 **Del.C.** Chapter ~~Ch.~~ 12, to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board and approved by the State Board. ~~For purposes of 14 Del.C. Chapter 12, the~~ term 'educator' does not include substitute teachers.

**"Exigent Circumstances"** ~~The expiration of an educator's license before the end of the school year shall be considered an exigent circumstance, however the educator's license may only be extended to the end of that current school year~~ means unanticipated circumstances or circumstances beyond the educator's control, including, but not limited to, expiration of a license during the school year, serious illness of the educator or a member of his or her immediate family, activation to active military duty, and other serious emergencies which necessitate the educator's temporarily leaving active service.

#### *(Break in Continuity Within Section)*

~~"Maintenance of Proficiency" means evidence of valid renewal of National Board for Professional Teaching Standards certification.~~

~~"National Board Certified Teacher" means an educator who holds National Board for Professional Teaching Standards certification.~~

**"National Board Certification"** means certification of an educator by the National Board for Professional Teaching Standards.

**"Standards Board"** means the Professional Standards Board established pursuant to 14 **Del.C.** Chapter 12 §1201.

**"State"** means State of Delaware.

### 3.0 Advanced License

- 3.1 In accordance with 14 **Del.C.** §1213, the Department, upon application and receipt of the list of successful candidates provided annually by the National Board for Professional Teaching Standards, shall issue an Advanced License to any educator who receives National Board for Professional Teaching Standards certification. An Advanced License is valid for up to 10 years unless extended pursuant to 14 **Del.C.** §1216 or revoked for cause, as defined in 14 **Del.C.** §1218.
- 3.2 ~~The Department shall issue, upon application, an Advanced License to an educator licensed in another jurisdiction who provides verification of receipt of National Board certification. The term of the Advanced License shall be the same as the balance of the term of the educator's National Board for Professional Teaching Standards certification.~~
- 3.3 ~~The Department shall not act on an application for licensure if the applicant is under official investigation by any state or local authority with the power to issue educator licenses or certifications, where the alleged conduct involves allegations of immorality, misconduct in office, incompetence,~~

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# PROPOSED REGULATIONS

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~~willful neglect of duty, disloyalty or falsification of credentials, until the applicant provides evidence of the investigation's resolution. The Department may issue, upon application, an Advanced License to an educator licensed in another jurisdiction who provides verification of receipt of National Board certification.~~

- 3.4 ~~The term of the advanced license shall be the same as the balance of the term of the educator's National Board for Professional Teaching Standards certification. The Department shall not act on an application for licensure if the applicant is under official investigation by any state or local authority with the power to issue educator licenses or certifications, where the alleged conduct involves allegations of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials, until the applicant provides evidence of the investigation's resolution.~~

## 4.0 RESERVED (For Equivalent Program See 14 Del.C. §1213)

### 5.0 Renewal of Advanced License

- 5.1 In accordance with 14 Del.C. §1214, upon application, the Department shall renew an Advanced License, valid for up to an additional 10 years, to an educator who has maintained proficiency through the National Board for Professional Teaching Standards. Proficiency for National Board certification shall be deemed to have been maintained if the educator provides evidence of valid renewal of National Board for Professional Teaching Standards certification.
- 5.2 ~~The Department shall renew an Advanced License upon receipt of a list of successful Delaware candidates for renewal provided annually by the National Board for Professional Teaching Standards. The term of the renewed advanced license shall be the same as the balance of the term of the educator's National Board for Professional Teaching Standards certification.~~
- 5.3 ~~An applicant who elects not to renew with the National Board for Professional Teaching standards or who fails to meet the recertification requirements set forth by the National Board shall be issued a Continuing License. The Department shall renew an Advanced License upon application and receipt of a list of successful Delaware candidates for renewal provided annually by the National Board for Professional Teaching Standards.~~
- 5.4 ~~The term of the renewed advanced license shall be the same as the balance of the term of the educator's National Board for Professional Teaching Standards certification. An applicant who elects not to renew with the National Board for Professional Teaching standards or who fails to meet the recertification requirements set forth by the National Board shall be issued a Continuing License.~~

### 6.0 Extension for Exigent Circumstances

- 6.1 The Department may extend an Advanced License for a period not to exceed one (1) year, upon the license holder's showing of exigent circumstances warranting the necessity of such extension.
- 6.1.1 A license holder whose Advanced License expires during the school year may have the Advanced License extended until the last day of the fiscal year upon a request from the district superintendent or charter school administrator. This extension shall be considered an exigent circumstance and shall not exceed one (1) year in length.

### 7.0 Leave of Absence

- 7.1 ~~An~~ At the discretion of the hiring district or charter school, an educator may take a leave of absence of up to three years with no effect upon the validity or expiration of the Advanced License. The date of expiration of the Advanced License will be extended commensurate with the length of the leave of absence.
- 7.2 The Department may require that the educator provide documentation sufficient to establish the leave of absence.
- 7.3 An educator's Advanced License shall not be automatically extended under this section and the burden is on the educator to submit an extension request with sufficient documentation to the Department and to establish the leave of absence.

## 8.0 Criminal Conviction History

An applicant shall disclose his or her criminal conviction history upon application for an Advanced License, the renewal of an Advanced License, or upon the issuance of a Continuing License pursuant to ~~subsection 5.2~~ 5.4. Failure to disclose a criminal conviction history is grounds for denial or revocation of an ~~advanced license~~ Advanced License or a Continuing License and criminal prosecution as specified in 14 **Del.C.** §1219.

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

**[1512 Issuance and Renewal of Advanced License](#)**

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)  
16 **DE Admin. Code** 3220

#### PUBLIC NOTICE

### **3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants**

The Division of Long Term Care Residents Protection (DLTCRP) is proposing a full the revision of Regulation 3220 Certified Nursing Assistants. The proposed regulations will replace the existing Regulation.

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

#### SUMMARY OF PROPOSED CHANGES

##### Background

DLTCRP identified the fact that the regulation was last updated in December 2012. Many changes have occurred in the field. This revision will replace the current regulations and update it to meet the current standard and ensure they are in line with Federal requirements for training and certification.

##### Summary of Proposal

This regulatory proposal replaces the regulations for the purpose of bringing it into compliance with current standards.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulation should submit such comments by March 31, 2017 to:

Renee Purzycki, Social Service Chief Administrator  
Office of the Director for the Division of Long Term Care Residents Protection  
Delaware Department of Health and Social Services  
3 Mill Road Suite 308  
Wilmington, DE 19806  
Email: [Renee.Purzycki@state.de.us](mailto:Renee.Purzycki@state.de.us)  
Fax: 302-421-7401

**\*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/march2017/proposed/20 DE Reg 693RFA 03-01-17.pdf>**

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

**3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants**

**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

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

**PUBLIC NOTICE**

**Medicaid Eligibility- Out-of-State Former Foster Youth**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan and Delaware Social Services Manual (DSSM) regarding Medicaid Coverage for Out-of-State Former Foster Youth.

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, Attention: Kimberly Xavier; by email to Kimberly.xavier@state.de.us; or by fax to 302-255-4425 by March 31, 2017. Please identify in the subject line: Medicaid Coverage for Out-of-State Former Foster Youth.

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

**SUMMARY OF PROPOSAL**

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan and Delaware Social Services Manual (DSSM) regarding Medicaid Coverage for Out-of-State Former Foster Youth.

**Statutory Authority**

- Patient Protection and Affordable Care Act (Pub. L. No. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152)), together known as the *Affordable Care Act*
- §1902(a)(10)(ii)(XX) of the Social Security Act; *Optional eligibility group*
- §42 CFR 435.218; *Individuals with MAGI-based income above 133 percent FPL*
- §1115 of the Social Security Act; *Demonstration Projects*

**Background**

Title IV-E foster care youth have been a mandatory Medicaid eligibility category since the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96-272). On March 23, 2010, the Affordable Care Act (ACA) was signed into law, making a number of changes to Medicaid eligibility effective, January 1, 2014. The ACA includes many provisions designed to expand and streamline Medicaid eligibility, such as the option to extend coverage to a new adult group of non-disabled, non-elderly citizens with income under 133 percent of the Federal Poverty Level (FPL). Additionally, to further the overall goal of the ACA to expand health coverage, it included a new provision to allow youth to maintain coverage under their parents' or guardians' health insurance plan until age 26 (to the extent that such plan extends coverage to dependents). Section 2004 of the ACA added a new mandatory Medicaid eligibility group at section 1902(a)(10)(A)(i)(IX) of the Act to provide a parallel opportunity for former foster care youth to obtain Medicaid coverage until age 26 from the state responsible for the individual's foster care.

On January 22, 2013, the Center for Medicaid Services (CMS) issued a notice of proposed rulemaking that proposed to implement the former foster care eligibility group in regulations at 42 CFR 435.150. As part of that provision, CMS proposed to provide states the option to cover youth who were in foster care under the

responsibility of another state, and enrolled in Medicaid, upon turning 18 or "aging out" of foster care in the other state. On November 21, 2016, CMS published the final rule clarifying that the Department of Health and Human Services (HHS) had determined that the state option to cover youth who were in foster care under the responsibility of another state was not available under section 1902(a)(10)(A)(i)(IX) of the Act. That section provides that, to be eligible under this group, an individual must have been "in foster care under the responsibility of the state" and to have been "enrolled in the state plan under this title or under a waiver of the plan while in such foster care [.]". Because the provision requires coverage specifically for youth in foster care under the responsibility of "the state" - not "a" or "any" state - CMS does not believe the provision provides states with the option to cover youth who were not under the responsibility of the state while in foster care under the former foster care eligibility group.

However, states can provide coverage to former foster care youth who were in Medicaid and foster care in a different state with income up to 133 percent of the federal poverty level (FPL) under the new adult group identified in the ACA. Additionally, states can use 1115 demonstration authority to provide coverage for former foster care youth who were in foster care under the responsibility of other states and have income higher than 133 percent of the FPL. States that provide coverage under the new adult group have the option of covering former foster care youth with MAGI-based income above 133 percent of the FPL, under the eligibility group described in section 1902(a)(10)(ii)(XX) of the Act and implementing regulations at 42 CFR 435.218 (the "XX" group). States would receive their standard Federal Medical Assistance Percentage (FMAP) for coverage of the "XX" group.

### **Summary of Proposal**

Delaware currently provides coverage to former foster youth that have aged out of Delaware's foster care system. This proposed regulation will allow DMMA to extend coverage to former foster care children who had been enrolled in Medicaid and in foster care under the responsibility of another state at the time they "aged out" of the foster care system.

#### *Purpose*

If implemented as proposed, this regulation will accomplish the following, effective May 21, 2017:

- Make changes to the Medicaid State Plan, Modified Adjusted Gross Income (MAGI)-Based Eligibility Groups, form S33 and S50, to include individuals who were in foster care and enrolled in Medicaid in any state at the time they turned 18 or aged out of the foster care system.
- Add a provision to DSSM 15550 - Former Foster Children Group to include individuals who were in foster care and enrolled in Medicaid in any state at the time they turned 18 or aged out of the foster care system.

#### *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 proposed regulations. Comments must be received by 4:30 p.m. on March 31, 2017.

#### *Centers for Medicare and Medicaid Services Review and Approval*

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

#### *Provider Manuals Update*

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

**Fiscal Impact**

In state fiscal year 2016 there were approximately 150 former foster youth that aged out of Delaware's foster care system that were eligible for Medicaid under the ACA. Extending this rule to former foster youth from other states would most likely result in very few new clients and therefore won't have a significant fiscal impact.

**\*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/march2017/proposed/20 DE Reg 694RFA 03-01-17.pdf](http://regulations.delaware.gov/register/march2017/proposed/20%20DE%20Reg%20694RFA%2003-01-17.pdf)

**DMMA PROPOSED REGULATION #17-012a  
REVISION**

[Eligibility Groups- Mandatory Coverage: Former Foster Care Children](#)

**DMMA PROPOSED REGULATION #17-012b  
REVISION**

[Eligibility Groups- Options for Coverage: Individuals above 133% FPL](#)

**DMMA PROPOSED REGULATION #17-012c  
REVISION****15550 Former Foster Children Group**

This section describes the eligibility requirements for the Former Foster Children Group. This group is established through the enactment of the Affordable Care Act of 2010. Coverage under this group is effective January 1, 2014.

**15550.1 Former Foster Children Group General Eligibility Requirements**

An individual must meet the general eligibility requirements in Section 14000.

**15550.2 Technical Eligibility**

An individual must:

- a) [15550.2.1](#) be age 18 or older and under age 26; and
- b) [15550.2.2](#) have been in foster care under the responsibility of the Delaware Department of Services for Children, Youth, and Their Families (DSCYF) and enrolled in Delaware Medicaid upon attaining age 18 or older (up to age 21); or
- [15550.2.3](#) Have been in foster care and on Medicaid in any state at the time they turned 18 or aged out of the foster care system; and
- e) [15550.2.4](#) not be eligible under the following mandatory groups – Parent/Caretaker Relative, Transitional, Prospective, Pregnant Women, Children, and Supplemental Security Income (SSI).

**15550.3 Financial Eligibility**

There is no income or resource test for this group.

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## DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)f. (16 Del.C. §122(3)f.)  
16 DE Admin. Code 4461

### PUBLIC NOTICE

#### 4461 State of Delaware Milk Code

The Division of Public Health, Department of Health and Social Services, is proposing revisions to the State of Delaware Milk Code (4461). The purpose of the amendments is to make technical corrections to bring the regulations in line with United States Department of Health and Human Services' Grade "A" Pasteurized Milk Ordinance - 2015 Revision. On March 1, 2017, DPH plans to publish as proposed the amended regulations, and hold them out for public comment per Delaware law.

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

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Jamie Mack by Friday, April 7, 2017, at:

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

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

<http://regulations.delaware.gov/register/march2017/proposed/20 DE Reg 697RFA 03-01-17.pdf>

#### 4461 State of Delaware Milk Code (Break in Continuity of Sections)

### 2.0 Adoption of United States Department of Health and Human Services' Grade "A" Pasteurized Milk Ordinance ~~2009~~ 2015 Revision.

- 2.1 The State of Delaware Milk Code adopts, as if fully set forth herein, the United States Department of Health and Human Services' Grade "A" Pasteurized Milk Ordinance ~~2009~~ 2015 Revision as amended herein. The production, transportation, processing, handling, sampling, examination, labeling and sale of all Grade "A" milk and milk products sold for the ultimate consumption within the State of Delaware; the inspection of dairy farms, milk plants, receiving stations, transfer stations, milk tank truck cleaning facilities, milk tank trucks and bulk milk hauler/samplers; and the issuing and revocation of permits to milk producers, bulk milk hauler/samplers, milk tank trucks, milk transportation companies, milk plants, receiving stations, transfer stations, milk tank truck cleaning facilities, haulers, and distributors shall be regulated in accordance with the provisions of the current edition of the Grade "A" PMO.
- 2.2 Insert as footnote 4 2 the phrase "State of Delaware".
- 2.3 ~~Amend Section 1, Subpart JJ "Regulatory Agency" by deleting the first sentence in its entirety and substituting in lieu thereof the following, "The Regulatory Agency shall mean the Secretary of the Delaware Department of Health and Social Services or their authorized representative."~~ Amend Section 16 by deleting the section in its entirety and substituting in lieu thereof the following "Any person who shall violate any of the provisions of these Regulations shall be penalized in accordance with these Regulations and Title 16 of the Delaware Code."
- 2.4 ~~Amend Section 3 by deleting the phrase "seventy-two (72) hours" as it appears therein and substituting in lieu thereof the following "ten (10) government business days".~~ Amend Section 17 by

# PROPOSED REGULATIONS

deleting the section in its entirety and substituting in lieu thereof the following. "All current or previous regulations or parts of Regulations in conflict with these Regulations are hereby repealed and these Regulations shall be in effect on July 1, 2017."

- 2.5 ~~Amend Section 16 by deleting the section in its entirety and substituting in lieu thereof the following, "Any person who shall violate any of the provisions of these Regulations shall be penalized in accordance with these Regulations and Title 16 of the Delaware Code."~~
- 2.6 ~~Amend Section 17 by deleting the section in its entirety and substituting in lieu thereof the following, "All current or previous regulations or parts of regulations in conflict with these Regulations are hereby repealed and these Regulations shall be in full force and effect on May 10, 2011."~~

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

**4461 State of Delaware Milk Code**

## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF ENERGY AND CLIMATE

Statutory Authority: 29 Delaware Code, Section 8003(7) (29 **Del.C.** §8003(7))  
7 **DE Admin. Code** 2102

#### REGISTER NOTICE

**SAN#: 2017- 02**

### **2102 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions**

#### **1. TITLE OF THE REGULATIONS:**

Regulation 2102, *Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions*

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

DNREC is proposing to repeal Regulation 2102, *Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions*, which directs when and how the Director of the Division of Energy & Climate may freeze implementation of the Renewable Portfolio Standards under 26 **Del.C.** §354(i) & (j). DNREC is proposing this action to avoid inconsistencies with Public Service Commission Regulation 3008, *Rules and Procedures to Implement the Renewable Energy Portfolio Standard*.

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

DNREC is proposing to repeal Regulation 2102 in its entirety.

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

29 **Del.C.** §8003(7)

(7) Establish and promulgate such rules and regulations governing the administration and operation of the Department as may be deemed necessary by the Secretary and which are not inconsistent with the laws of this State.

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

The Public Service Commission has recently reopened its Regulation Docket No. 56 to revise Regulation 3008, *Rules and Procedures to Implement the Renewable Energy Portfolio Standard*, pursuant to its authority under 26 **Del.C.** §362 (b). DNREC proposes to repeal Regulation 2102 to avoid inconsistencies with Public Service Commission Regulation 3008.



## 6. NOTICE OF PUBLIC COMMENT:

DNREC will hold a public hearing Wednesday, March 22, 2017 starting at 6:00 p.m. in the Public Service Commission Hearing Room, 861 Silver Lake Boulevard, Suite 100, Dover DE, 19901.

Any person who wishes to may submit written comments concerning the proposed repeal to: Thomas Noyes, Principal Planner for Utility Policy, DNREC Division of Energy & Climate, 100 W. Water Street, Suite 5, Dover, DE 19904, by fax to 302.735.3480, or by email to thomas.noyes@state.de.us.

## 7. PREPARED BY:

Thomas Noyes  
Principal Planner for Utility Policy  
Division of Energy & Climate  
Tel: 302.735.3480, Fax: 302.739.1840  
thomas.noyes@state.de.us

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

<http://regulations.delaware.gov/register/march2017/proposed/20 DE Reg 698RFA 03-01-17.pdf>

### ~~2102 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions~~

#### 1-0 Purpose

~~These rules govern how the Director of the Division of Energy & Climate (Director) and the Division of Energy & Climate (Division) administer their obligations under 26 Del.C. §354(i) & (j). The statute directs when and whether the Director may institute a freeze on the implementation of the Renewable Energy Portfolio Standards as provided for in 26 Del.C. §354(a).~~

#### 2-0 Definitions

~~For purposes of this regulation, the following words and phrases shall have the following meaning unless the context clearly indicates otherwise:~~

~~"Alternative compliance payment" means a payment of a certain dollar amount per megawatt hour, which a Commission-Regulated Electric Company may submit in lieu of supplying the minimum percentage of RECs from Eligible Energy Resources required as defined and set by 26 Del.C. §§352(1) and 358(d).~~

~~"Avoided system costs" means reductions in electric generation, transmission or distribution costs.~~

~~"Commission-Regulated Electric Company" means the same as an Electric Distribution Company in 26 Del.C. §1001(12).~~

~~"Compliance year" means the calendar year beginning with June 1 and ending with May 31 of the following year, for which a Commission-Regulated Electric Company must demonstrate that it has met the requirements of the subchapter known as the "Renewable Energy Portfolio Standards Act".~~

~~"Director" means the Director of the Division of Energy & Climate, who is considered the State Energy Coordinator for the purpose of these rules.~~

~~"Division" means the Division of Energy & Climate, the successor agency to the Delaware Energy Office.~~

~~"End use customer" means a person or entity in Delaware that purchases electrical energy at retail prices from regulated electric utilities.~~

~~"Exempt sales" means the retail customer sales of a Commission-Regulated Electric Company that is not included in the total retail sales for RPS compliance.~~

~~"Externality benefits" means reductions in environmental, health and mortality costs and improvements in habitat resulting from reduced emissions.~~

~~"Freeze" means suspension of enforcement or implementation of the annual increase in the RPS as provided for under 26 Del.C. §§352(3) & 354(a).~~

# PROPOSED REGULATIONS

~~"Green Energy Fund"~~ means the grant program authorized under 29 ~~Del.C.~~ §8057.

~~"Integrated Resource Plan" or "IRP"~~ means the plan filed by the Commission-Regulated Electric Company to meet the requirements of 26 ~~Del.C.~~ §1007(c) & (d).

~~"Non-exempt sales"~~ means the retail customer sales of a Commission-Regulated Electric Company that is included in the total retail sales for RPS compliance.

~~"PJM" or "PJM interconnection"~~ means the regional transmission organization that coordinates the movement of wholesale electricity in the PJM region, or its successors at law.

~~"Price suppression effects"~~ means reductions in energy or capacity costs due to competitive pressures from renewable resources.

~~"PSC"~~ means the Delaware Public Service Commission.

~~"REC costs of compliance"~~ means the total costs expended by the Commission-Regulated Electric Company to achieve the applicable RPS percentage standards for RECs during a respective compliance year.

~~"REC percentage requirements" and "SREC percentage requirements"~~ mean the renewable energy portfolio requirements for each compliance year as set forth in 26 ~~Del.C.~~ §354(a).

~~"Renewable Energy Cost of Compliance"~~ means the total costs expended by the Commission-Regulated Electric Company to achieve the applicable RPS percentage standards for all renewable energy during a respective compliance year.

~~"Renewable Energy Credit" or "REC"~~ means a tradable instrument defined by 26 ~~Del.C.~~ §352(18) used to demonstrate compliance with the percentage requirements set forth in 26 ~~Del.C.~~ §354(a).

~~"RPS"~~ means the renewable portfolio standard, the minimum percentage of total electricity sales delivered to Delaware end-use customers that is derived from eligible energy resources established under 26 ~~Del.C.~~ §354.

~~"Solar alternative compliance payment"~~ means the payment of certain dollar amounts expended in lieu of supplying the minimum percentage from solar photovoltaics as defined and set by 26 ~~Del.C.~~ §§352(24) and 358(e).

~~"Solar Renewable Energy Cost of Compliance"~~ means the total costs expended by a Commission-Regulated Electric Company to achieve the applicable RPS percentage standards for solar photovoltaic renewable energy during a respective compliance year.

~~"Solar Renewable Energy Credit" or "SREC"~~ means the tradable instrument defined by 26 ~~Del.C.~~ §352(25) used to demonstrate compliance with the percentage requirements set forth in 26 ~~Del.C.~~ §354(a).

~~"Third party supplier"~~ means an electricity supplier that sells power to end-use customers delivered over the distribution facilities of the Commission-Regulated Electric Company. It does not include the Commission-Regulated Electric Company, Rural Electric Cooperatives or Municipal Electric Companies.

~~"Total Retail Costs of Electricity"~~ means the total costs paid by customers of the Commission-Regulated Electric Company for the supply, transmission, distribution and delivery of retail electricity to serve non-exempt customers, including those served by third party suppliers, during a respective compliance year.

## 3.0 Application

- 3.1 These rules shall apply only to a Commission-Regulated Electric Company. These rules shall not apply to electric supply provided by either:
- 3.1.1 an exempted municipal electric company or a municipal utility (as set forth in 26 ~~Del.C.~~ §363); or
  - 3.1.2 an exempted rural electric cooperative or a rural electric cooperative (as set forth in 26 ~~Del.C.~~ §363).
- 3.2 These rules will be applied immediately upon enactment.

## 4.0 Calculation of the Cost of Compliance

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- 4.1 ~~The Division shall calculate the Renewable Energy Cost of Compliance, the Solar Renewable Energy Cost of Compliance and the Total Retail Cost of Electricity as follows.~~
  - 4.2 ~~The Division shall calculate the Renewable Energy Cost of Compliance for a particular compliance year to be:~~
    - 4.2.1 ~~the total of contributions to that portion of the Green Energy Fund used to support the development of renewable resources, plus~~
    - 4.2.2 ~~the cost of RECs and SRECs retired to satisfy the RPS requirement, plus~~
    - 4.2.3 ~~all Alternative Compliance Payments.~~
  - 4.3 ~~The Division shall calculate the Solar Renewable Energy Cost of Compliance for a particular compliance year to be:~~
    - 4.3.1 ~~the total of contributions to that portion of the Green Energy Fund used to support the development of photovoltaic renewable resources, plus~~
    - 4.3.2 ~~the cost of SRECs retired to satisfy the RPS requirement, plus~~
    - 4.3.3 ~~all Solar Alternative Compliance Payments for the solar photovoltaic requirement.~~
  - 4.4 ~~The Division will determine the Total Retail Costs of Electricity as all customer costs for non-exempt load customers for a particular compliance year.~~

## **5.0 Determination by the Director**

- 5.1 ~~The Director shall review the calculations of the Division.~~
- 5.2 ~~If the Division calculations show that the Renewable Energy Cost of Compliance is greater than 3 percent of the Total Retail Costs of Electricity for the compliance year, the Director shall, after consulting with the PSC, determine whether a freeze should be implemented.~~
- 5.3 ~~If the Division calculations show that the Solar Renewable Energy Cost of Compliance is greater than 1 percent of the Total Retail Costs of Electricity for the compliance year, the Director shall, after consulting with the PSC, determine whether a freeze should be implemented.~~
- 5.4 ~~In making a determination, the Director shall consider:~~
  - 5.4.1 ~~the overall energy market conditions;~~
  - 5.4.2 ~~the avoided cost benefits from the RPS;~~
  - 5.4.3 ~~the externality benefits due to the RPS; and~~
  - 5.4.4 ~~the economic impacts of the deployment of renewable energy in Delaware.~~
- 5.5 ~~Overall market conditions may include shifts in energy prices, long term market trends, adjustments for short term fluctuations, changes in compliance costs, consumer benefits of other state energy policies such as the implementation of energy efficiency programs, and the overall cost of energy to consumers.~~
- 5.6 ~~Avoided cost benefits from the RPS may include avoided system costs and price suppression effects attributable to the deployment of renewable energy that result in lower net electricity costs.~~
- 5.7 ~~Externality benefits of changes in energy markets may include externality savings in health and mortality costs and environmental impacts due to policies promoting cleaner energy in Delaware and regional energy generation. To the extent possible, the externality savings should be consistent with the current IRP filed by the Commission Regulated Electric Company, except where other published methods or studies are determined to be more appropriate.~~
- 5.8 ~~Economic development benefits may include the overall economic activity attributed to jobs created by the development of renewable energy in Delaware.~~

## **6.0 Lifting of a Freeze**

- 6.1 ~~If a freeze has been imposed, the Division will calculate compliance costs, using the methods described in Section 4.0 of this regulation.~~
- 6.2 ~~The Director will review the calculation and determine whether to lift a freeze using the methods and criteria described in Section 5.0 of this regulation.~~

# PROPOSED REGULATIONS

- ~~6.3 If the total cost of compliance falls below the 3 percent threshold in subsection 5.2 of this regulation or the 1 percent threshold in subsection 5.3 of this regulation, the Director shall lift a freeze following consultation with the PSC.~~
- ~~6.4 If a freeze is lifted, the Director will promptly notify, electronically and by mail, the Commission-Regulated Electric Company that filed reports on RPS compliance. The Director will also:~~
- ~~6.4.1 provide prior notice of the lifting of the freeze to the PSC; and~~
- ~~6.4.2 publish notice of the lifting of the freeze in the next appropriate issue of the Delaware Register of Regulations.~~

## 7.0 Administration

- ~~7.1 Within 90 days after the end of any compliance year, the Commission-Regulated Electric Company shall submit to the Division in writing and electronically the following information for the applicable compliance year:~~
- ~~7.1.1 the Renewable Energy Cost of Compliance for that compliance year;~~
- ~~7.1.2 the Solar Renewable Energy Cost of Compliance costs for that compliance year; and~~
- ~~7.1.3 the Total Retail Costs of Electricity for that compliance year.~~
- ~~7.2 Within 30 days from receipt of the information described in subsection 7.1 of this regulation from the Commission-Regulated Electric Company, the Division shall calculate the cost of compliance as described in Section 4.0 of this regulation and present the results to the Director.~~
- ~~7.3 Within 30 days of receipt of the calculations of the cost of compliance from the Division, the Director will, after receipt of the calculations and consultation with the PSC, make a determination as described in Section 5.0 of this regulation and notify the Commission-Regulated Electric Company that filed reports on RPS compliance. The Director will also publish notice of the freeze in the next appropriate issue of the Delaware Register of Regulations.~~
- ~~7.4 The public will have 15 business days from the publication of the Director's determination to offer comment. The Director may alter or amend the determination based on review of the public comments.~~
- ~~7.5 The Director shall make a final determination, including effective date, provide public notice to the Registrar, and notify electronically and by mail the PSC, the Commission-Regulated Electric Company, and other interested parties within 15 business days of the close of public comments.~~

## 8.0 Existing Contracts

~~In implementing a freeze under these rules, existing contracts for the production or delivery of REGs, SREGs, renewable energy supply or other environmental attributes shall not be abrogated.~~

### OFFICE OF THE SECRETARY

Statutory Authority: 7 Delaware Code, Section 7507A(b) (7 Del.C. §7507A(b))  
7 DE Admin. Code 109

REGISTER NOTICE  
SAN#: 2017- 01

## 109 Regulations Governing the Guidelines to Evaluate Land Being Considered for Permanent Protection

### 1. TITLE OF THE REGULATIONS:

Regulations Governing the Guidelines to Evaluate Land Being Considered for Permanent Protection

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

As a result of amendments to the Land Protection Act, effective August 3, 2016, the Guidelines to Evaluate

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Land Being Considered for Permanent Protection, last updated 12/7/16, currently being used by staff to support the Open Space Program must go through notice and public hearing pursuant to 29 **Del.C.** Ch. 101.

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

N/A

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

7 **Del.C.** Ch. 75

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

N/A

**6. NOTICE OF PUBLIC COMMENT:**

Public hearing is scheduled for March 23, 2017 at 6:00pm in the DNREC, Richardson and Robbins Building Auditorium. Individuals may submit written comments prior to the hearing regarding the proposed changes via e-mail to [Elena.Stewart@state.de.us](mailto:Elena.Stewart@state.de.us) or via the USPS to Elena Stewart, Land Preservation Specialist, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9935. The record will remain open and comments will be accepted until April 7, 2017.

**7. PREPARED BY:**

Elena Stewart [elena.stewart@state.de.us](mailto:elena.stewart@state.de.us) 302-739-9935

**\*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/march2017/proposed/20 DE Reg 702RFA 03-01-17.pdf>

## 109 Regulations Governing the Guidelines to Evaluate Land Being Considered for Permanent Protection

### **1.0 Purpose of the Regulations**

The purpose of the Regulations contained herein is to detail the Guidelines to Evaluate Land Being Considered for Permanent Protection that the State agencies, as defined in 7 **Del.C.** §7504(10), shall use to evaluate land(s) that have been offered for permanent protection to ensure that the land(s) should be permanently protected and that permanently protecting the land furthers the purposes of the Land Protection Act, 7 **Del.C.** Ch. 75.

### **2.0 Definitions**

As used in these Regulations, the following terms shall have the meanings set forth here:

**"Act"** refers to the Land Protection Act (7 **Del.C.** Ch. 75).

**"Buffer"** refers to a vegetated area near a stream or other water feature which helps improve water quality by serving as protection from impacts of adjacent land use.

**"Cultural/Historic Resources"** means those structures, improvements, sites or lands that are listed as significant in or eligible for listing in the National Register of Historic Places, either as individual listings or as contribution elements in listed or eligible historic districts (30 **Del.C.** §1803).

**"Early Successional Habitat"** or **"ESH"** refers to mixed stand of grasses and herbaceous flowering plants, old field habitat, pastureland, and shrubland.

**"ERES Waters"** refers to waterways or waterbodies having the designation requiring the highest level of protection for waters that are of "Exceptional Recreation or Ecological Significance" (ERES). These waterways are important habitats for a multitude of wildlife and are also popular recreation destinations.

**"Fisheries Access Area"** refers to an area where fish could be caught, such as a shoreline or pier or somewhere a boat could get access to the water for the purpose of fishing.

**"Fisheries Resource Protection Areas"** means critical nursery or spawning habitat for anadromous fish, bivalves, and shellfish.

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## PROPOSED REGULATIONS

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**"Floodway"** means an area of land that impacts or is impacted by flooding.

**"Habitat of Conservation Concern (HCC)"** refers to habitats that are rare, have special significance in Delaware, are particularly sensitive to disturbance, and/or have a high diversity of rare plants.

**"Management Plan"** refers to a plan for the stewardship of land that would support the purposes of the Act.

**"Mean High Water (MHW)"** refers to the average of all the high water heights observed over a period of several years.

**"Nutrient Management Critical Priority Areas"** refers to areas established to help the Delaware Nutrient Management Commission decide where to focus their efforts with respect to their Nutrient Management Planning and Nutrient Relocation programs. The Delaware Nutrient Management Act (3 Del.C. Ch. 22) was enacted in June 1999 as part of an effort to address water quality concerns in Delaware.

**"One-Hundred-Year Floodplain"** refers to the area of inundation when the expected 100-year flood flow rate is mapped. A one-hundred-year flood is a flood event that has a 1% probability of occurring in any given year.

**"Open Space"** or **"open space land"** means any land the permanent protection of which will further any of the purposes listed in the Act.

**"Open Space Program"** means the conservation program created to carry out the purposes of the Act.

**"Permanent protection"**, **"permanently protected"**, **"permanently protect"**, or **"preservation"** means the acquisition by purchase, gift, grant, bequest, devise, or otherwise of the fee or any lesser interest, development right, easement, covenant, or other contractual right in land in perpetuity necessary to achieve the purposes of this chapter.

**"Proximity to Population Base"** refers to the Strategies for State Policies and Spending document, which is developed by the Office of State Planning Coordination and adopted by Executive Order. Levels 1-3 are the areas wherein State policies will support growth and economic development activities, with Levels 1 and 2 being the primary focus.

**"Regional Priorities"** means priorities that an organization has developed that could support the purposes of the Act.

**"Restoration"** means renewing degraded, damaged, or destroyed ecosystems and habitats in the environment by active intervention and action.

**"S1 Species"** refers to species classified as extremely rare with typically 5 or fewer occurrences statewide.

**"S2 Species"** refers to species classified as very rare with typically 6 to 20 occurrences statewide.

**"S3 Species"** refers to species classified as rare to uncommon with approximately 21 to 100 occurrences statewide.

**"Sea Level Rise (SLR) Adaptation"** means adaptations that allow for landward migration of a resource or loss of land due to sea level rise.

**"Species of Greatest Conservation Need (SGCN)"** refers to species identified according to a set of criteria provided in the Delaware Wildlife Action Plan. SGCN are species indicative of the overall diversity and health of the State's wildlife resources. Some may be rare or declining, may be vital components of certain habitats, and/or may have a significant portion of their population in Delaware.

**"Stand-alone"** means land that is not adjacent to properties that are already protected, or part of a greater management plan for an area that is already protected.

**"State agency"** means the Department of Natural Resources and Environmental Control (Division of Parks and Recreation or the Division of Fish and Wildlife), Department of State (Division of Historical and Cultural Affairs), or the Department of Agriculture (Delaware Forest Service) (7 Del.C. §7504(10)).

**"State Registry of Natural Areas"** means a list identifying all State-registered Natural Areas accompanied by a map on file at the Office of Nature Preserves.

"Statewide Comprehensive Outdoor Recreation Plan (SCORP)" refers to a planning and policy document that identifies needs in outdoor recreation throughout the State of Delaware.

"Utilities" means aboveground public utilities that serve more than one entity, such as electric transmission or distribution lines, fiber optic/cable lines, cell tower and/or solar panel array.

"Viewshed" means an area of particular scenic or historic value that is deemed worthy of preservation against development or other change.

"Watershed Impairment" refers to waters that do not meet the standards of Section 303(d) of the Clean Water Act (CWA). Section 305(b) of the CWA requires reporting of the conditions of the waters of the State. If monitoring reveals that a stream has high pollutant levels that prevent it from achieving all of its designated uses, it is considered impaired and will be placed on the 303(d) list. This information is organized by watershed, or the land area draining to a particular water body.

### **3.0 Open Space Criteria**

To be eligible for permanent protection, an area of land must include or exhibit, in whole or in part, one or more of the criteria set forth in 7 Del.C. §7507A(a).

### **4.0 Open Space Evaluation**

- 4.1 State agencies shall use the Guidelines to Evaluate Land Being Considered for Permanent Protection, last updated 12/7/16, to evaluate land(s) which a landowner has offered for permanent protection to ensure that permanently protecting the land furthers the purposes of the Act. The Guidelines can be found here:

**[Guidelines to Evaluate Land Being Considered for Permanent Protection](#)**

- 4.2 A representative of the Open Space Council or State agency may access the land being considered for permanent protection to perform onsite verification to gather information about the land only after the landowner executes the written permission form attached to the aforementioned guidelines granting the representative permission to enter upon the land.

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**DEPARTMENT OF STATE  
DIVISION OF PROFESSIONAL REGULATION  
2500 BOARD OF PHARMACY**

Statutory Authority: 24 Delaware Code, Section 2506(a)(1) (24 Del.C. §2506(a)(1))  
24 DE Admin. Code 2500

**PUBLIC NOTICE**

**2500 Board of Pharmacy**

Pursuant to 24 Del.C. §2506(a)(1), the Delaware Board of Pharmacy ("Board") has proposed revisions to its rules and regulations.

A public hearing will be held on April 19, 2017 at 9:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Pharmacy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board liaison, Christine Mast, at the above address.

The proposed regulations add to subsection 1.4.1, the biennial licensure renewal requirement that all licensees must complete two hours of continuing education in 1) the distribution, dispensing or delivery of controlled substances, or 2) the detection and recognition of symptoms, patterns of behavior, or other characteristics of

impairment and dependency resulting from the abusive or illegal use of controlled substances. Subsection 1.2.4 has been revised to reflect new NAPLEX requirements for taking of the examination. The list of crimes substantially related to the practice of pharmacy, set forth in Section 17.0, has been updated to include amendments to the Uniform Controlled Substances Act. Finally, subsection 5.1.7, pertaining to compounded medications for office use, has been revised to delineate standards for both human use and animal use. The proposed changes allow veterinarians to administer and dispense compounded preparations for animal patients subject to certain specified requirements designed to maintain safety and quality for the protection of the public.

In accordance with 29 Del.C. §10118(a), the final date to receive written comments will be May 4, 2017, which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its next regularly scheduled meeting, at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to the public comment.

**\*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/march2017/proposed/20 DE Reg 705RFA 03-01-17.pdf>

## 2500 Board of Pharmacy

### 1.0 Pharmacist Licensure Requirements

*(Break in Continuity Within Section)*

#### 1.2 Examination Requirements

*(Break in Continuity Within Section)*

- 1.2.4 The Board will re-confirm the eligibility of an applicant who fails the NAPLEX. The applicant shall be entitled to take a re-examination at least ~~ninety-one (91)~~ forty-five (45) days following the date of the failure with a limit of three attempts in a 12-month period. If an applicant has failed the examination three times, and 12 months have passed since the failure of the last examination, he/she shall be eligible to re-take the NAPLEX, provided that he/she produces evidence of working full-time as an intern for a period of six months or has attended an accredited college of pharmacy as a registered student for a minimum of one semester consisting of 12 credits during the interim. "College Practical Experience" form or an "affidavit of Intern Experience" must be furnished by the Dean of the College or the preceptor whichever the case may be.

*(Break in Continuity Within Section)*

#### 1.4 Continuing Education Requirements

- 1.4.1 A pharmacist must acquire 3.0 C.E.U.'s (30 hours) per biennial licensure period. No carry over of credit from one registration period to another period is permitted. Each biennial licensure renewal period, the required 30 hours must include the following:

1.4.1.1 At least 2 hours of continuing education ~~per biennial licensure period must be~~ in the area of medication safety/errors- and;

1.4.1.2 At least 2 hours of continuing education in: 1) the distribution, dispensing or delivery of controlled substances; or 2) the detection and recognition of symptoms, patterns of behavior, or other characteristics of impairment and dependency resulting from the abusive or illegal use of controlled substances.

*(Break in Continuity of Sections)*

### 5.0 Dispensing

- 5.1 The practice of dispensing shall include, but not be limited to the following acts which shall be performed only by a pharmacist, or a pharmacy intern or student participating in an approved College of Pharmacy coordinated, practical experience program under the direct supervision of a pharmacist.

*(Break in Continuity Within Section)*

- 5.1.7 Compounded medications for office use.



- 5.1.7.1 ~~Non-patient specific compounded products may not be sold to the practitioner for use in his or her office to administer to patients unless authorized by Federal authority. Compounded nonsterile or sterile preparations for human use without a patient specific prescription.~~
  - 5.1.7.1.1 Only an FDA-registered outsourcing facility properly licensed in Delaware may distribute to a practitioner for office use human compounded preparations without a patient-specific prescription.
- 5.1.7.2 Compounded nonsterile or sterile preparations for animal use without a patient specific prescription.
  - 5.1.7.2.1 A Delaware licensed pharmacy may provide a compounded nonsterile or sterile preparation without a patient-specific prescription to a Delaware licensed veterinarian who intends to administer to the animal patient in his or her care or to dispense to the patient's owner or caretaker only if the pharmacy:
    - 5.1.7.2.1.1 Complies with USP 795 or USP 797, or any updated versions, as applicable;
    - 5.1.7.2.1.2 Complies with applicable federal law; and
    - 5.1.7.2.1.3 Labels compounded nonsterile or sterile preparations with:
      - 5.1.7.2.1.3.1 The name and strength of the preparation; or a list of the active ingredients and the strength of the active ingredients in the preparation;
      - 5.1.7.2.1.3.2 An appropriate beyond-use date as determined by the pharmacist in accordance with USP-NF standards for pharmacy compounding;
      - 5.1.7.2.1.3.3 The quantity of the preparation; and
      - 5.1.7.2.1.3.4 The name, address and license number of the pharmacy.
  - 5.1.7.2.2 A Delaware licensed pharmacy may not provide compounded nonsterile or sterile preparations without a patient-specific prescription to Delaware licensed veterinarians:
    - 5.1.7.2.2.1 In an amount greater than 10% of the total amount of non-patient specific compounded preparations sold by the pharmacy in a rolling year; or
    - 5.1.7.2.2.2 If the compounded nonsterile or sterile preparations are copies or close approximations to products approved by the FDA.

**(Break in Continuity of Sections)**

**17.0 Crimes substantially related to the practice of pharmacy.**

- 17.1 For the purposes of this section the following definitions shall apply:
  - 17.1.1 **"Conviction"** means a verdict of guilty entered by a judge or jury, or a plea of guilty or a plea of *nolo contendere* or other similar plea such as a "**Robinson**" or "**Alford**" plea unless the individual has been discharged under 11 ~~Del.C.~~ §4218 (probation before judgment) or under 10 ~~Del.C.~~ §1024 (domestic violence diversion program) or under 16 ~~Del.C.~~ §4764 (first offenders controlled substances diversion program).
- 17.2 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal the following crimes, is deemed to be a crime substantially related to the practice of pharmacy in the State of Delaware without regard to the place of conviction:
  - 17.2.1 Unlawfully administering drugs. 11 **Del.C.** §625.
  - 17.2.2 Unlawfully administering a controlled substance or counterfeit substance or narcotic drugs. 11 **Del.C.** §626.
  - 17.2.3 ~~Prohibited acts as to substances releasing vapors or fumes; unclassified misdemeanor.~~ 11 ~~Del.C.~~ §627.
  - 17.2.3 Unlawful sexual contact in the second degree; class F felony. 11 **Del.C.** §768
  - 17.2.4 Unlawful sexual contact in the first degree; class D felony. 11 **Del.C.** §769
  - 17.2.5 Rape in the fourth degree; class C felony. 11 **Del.C.** §770
  - 17.2.6 Rape in the third degree; class B felony 11 **Del.C.** §771

- 17.2.7 Rape in the second degree; class B felony. 11 Del.C. §772
- 17.2.8 Rape in the first degree; class A felony. 11 Del.C. §773
- 17.2.9 Sexual extortion; class E felony. 11 Del.C. §774
- 17.2.10 Continuous sexual abuse of a child; class B felony. 11 Del.C. §776
- 17.2.11 Dangerous crime against a child, definitions, sentences. 11 Del.C. §777
- 17.2.12 Sex offender unlawful sexual conduct against a child. 11 Del.C. §777A
- 17.2.13 Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree. 11 Del.C. §778
- 17.2.14 Sexual abuse of a child by a person in a position of trust, authority or supervision in the second degree 11 Del.C. §778A
- 17.2.15 Female genital mutilation. 11 Del.C. §780
- 17.2.416 Use of illegitimate retail sales receipt or UPC Universal Product Code Label. 11 Del.C. §840A.
- 17.2.517 Theft. Felony. 11 Del.C. §841.
- 17.2.618 Forgery. 11 Del.C. §861.
- 17.2.719 Possession of forgery devices. 11 Del.C. §862.
- 17.2.820 Falsifying business records. 11 Del.C. §871.
- 17.2.921 Deceptive business practices. 11 Del.C. §906.
- 17.2.4022 Insurance fraud. 11 Del.C. §913.
- 17.2.4423 Health care fraud. 11 Del.C. §913A.
- 17.2.4224 Unauthorized access to computer systems. 11 Del.C. §932.
- 17.2.4325 Theft of computer services. 11 Del.C. §933.
- 17.2.4426 Interruption of computer services. 11 Del.C. §934.
- 17.2.4527 Misuse of computer system information. 11 Del.C. §935.
- 17.2.16 Unlawful delivery of noncontrolled substance. ~~16 Del.C. §4752A.~~
- 17.2.17 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, L.S.D., or designer drugs. ~~16 Del.C. §4753A.~~
- 17.2.18 Failure to keep drugs in original containers ~~16 Del.C. §4758.~~
- 17.2.19 Sexual harassment; unclassified misdemeanor. ~~11 Del.C. §763~~
- 17.2.20 Indecent exposure in the second degree; unclassified misdemeanor. ~~11 Del.C. §764~~
- 17.2.21 Indecent exposure in the first degree; class A misdemeanor. ~~11 Del.C. §765~~
- 17.2.22 Incest; class A misdemeanor. ~~11 Del.C. §766~~
- 17.2.23 Unlawful sexual contact in the third degree; class A misdemeanor. ~~11 Del.C. §767~~
- 17.2.24 Unlawful sexual contact in the second degree; class G felony. ~~11 Del.C. §768~~
- 17.2.25 Unlawful sexual contact in the first degree; class F felony. ~~11 Del.C. §769~~
- 17.2.26 Rape in the fourth degree; class C felony. ~~11 Del.C. §770~~
- 17.2.27 Rape in the third degree; class B felony ~~11 Del.C. §771~~
- 17.2.28 Rape in the second degree; class B felony. ~~11 Del.C. §772~~
- 17.2.29 Rape in the first degree; class A felony. ~~11 Del.C. §773~~
- 17.2.30 Sexual extortion; class E felony. ~~11 Del.C. §774~~
- 17.2.31 Bestiality. ~~11 Del.C. §775~~
- 17.2.32 Continuous sexual abuse of a child; class B felony. ~~11 Del.C. §776~~
- 17.2.33 Dangerous crime against a child, definitions, sentences. ~~11 Del.C. §777~~
- 17.2.34 Sex offender unlawful sexual conduct against a child. ~~11 Del.C. §777A~~
- 17.2.35 Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree. ~~11 Del.C. §778, 778A~~
- 17.2.36 Female genital mutilation. ~~11 Del.C. §780~~
- 17.2.28 Possession or theft of a prescription form or a pad. 11 Del.C. §841C

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- 17.2.3729 Dealing in children. 11 **Del.C.** §1100
- 17.2.3830 Sexual exploitation of a child. 11 **Del.C.** §1108
- 17.2.3931 Unlawful dealing in child pornography. 11 **Del.C.** §1109
- 17.2.4032 Possession of child pornography. 11 **Del.C.** §1111
- 17.2.4133 Sexual offenders; prohibitions from school zones. 11 **Del.C.** §1112
- 17.2.4234 Sexual solicitation of a child. 11 **Del.C.** §1112A
- 17.2.35 Prohibited acts A. Former 16 **Del.C.** §4751
- 17.2.36 Prohibited acts B. Former 16 **Del.C.** §4752
- 17.2.37 Unlawful delivery of noncontrolled substance. Former 16 **Del.C.** §4752A
- 17.2.38 Prohibited acts C. Former 16 **Del.C.** §4753
- 17.2.39 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, L.S.D., or designer drugs. Former 16 **Del.C.** §4753A
- 17.2.40 Prohibited acts D. Former 16 **Del.C.** §4754
- 17.2.41 Possession and delivery of noncontrolled prescription drug. Former 16 **Del.C.** §4754A
- 17.2.42 Prohibited acts E. Former 11 **Del.C.** §4755
- 17.2.43 Prohibited acts. Former 11 **Del.C.** §4756
- 17.2.44 Hypodermic syringe or needle; delivering or possessing; disposal; exceptions. Former 16 **Del.C.** §4757
- 17.2.45 Keeping drugs in original containers. Former 16 **Del.C.** §4758
- 17.2.46 Distribution to persons under 21 years of age. Former 16 **Del.C.** §4761
- 17.2.47 Purchase of drugs from minors. Former 16 **Del.C.** §4761A
- 17.2.48 Distribution, delivery, or possession of controlled substance within 1,000 feet of school property. Former 16 **Del.C.** §4767
- 17.2.49 Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship. Former 16 **Del.C.** §4768
- 17.2.50 Drug dealing-Aggravated possession; class B felony. 16 **Del.C.** §4752
- 17.2.51 Drug dealing-Aggravated possession; class C felony. 16 **Del.C.** §4753
- 17.2.52 Drug dealing-Aggravated possession; class D felony. 16 **Del.C.** §4754
- 17.2.53 Aggravated possession; class E felony. 16 **Del.C.** §4755
- 17.2.54 Aggravated possession; class F felony. 16 **Del.C.** §4756
- 17.2.55 Miscellaneous drug crimes; class B, C and F felony. 16 **Del.C.** §4757
- 17.2.56 Unlawful dealing in a counterfeit or purported controlled substance; class E felony. 16 **Del.C.** §4758
- 17.2.57 Registrant crimes. 16 **Del.C.** §4759
- 17.2.58 Maintaining a drug property; class F felony. 16 **Del.C.** §4760
- 17.2.59 Operating or attempting to operate clandestine laboratories; cleanup; penalties. 16 **Del.C.** §4760A
- 17.2.60 Illegal possession and delivery of noncontrolled prescription drugs. 16 **Del.C.** §4761
- 17.2.61 Hypodermic syringe or needle; delivering or possessing; disposal; exceptions; penalties. 16 **Del.C.** §4762
- 17.2.62 Possession of controlled substances or counterfeit controlled substances; class A or B misdemeanor. 16 **Del.C.** §4763
- ~~17.2.43 Any conviction under Title 18 or Title 21 of the United States Code Annotated including, but not limited to Federal Health Care offenses.~~
- 17.3 Crimes substantially related to the practice of pharmacy shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

# PROPOSED REGULATIONS

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

**2500 Board of Pharmacy**

## DIVISION OF PROFESSIONAL REGULATION

### 4400 DELAWARE MANUFACTURED HOME INSTALLATION BOARD

Statutory Authority: 24 Delaware Code, Section 4416(b)(1) (24 **Del.C.** §4416(b)(1))  
24 **DE Admin. Code** 4400

#### PUBLIC NOTICE

#### 4400 Delaware Manufactured Home Installation Board

Pursuant to 24 **Del.C.** §4416(b)(1), the Delaware Board of Manufactured Home Installation has proposed revisions to its rules and regulations. The rules pertaining to crimes substantially related to the practice of manufactured home installation are amended as well as a provision on qualifying education.

A public hearing will be held on April 10, 2017 at 9 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Manufactured Home Installation, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address, no later than April 25, 2017, in accordance with 29 **Del.C.** §10118(a).

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

<http://regulations.delaware.gov/register/march2017/proposed/20 DE Reg 710RFA 03-01-17.pdf>

#### 4400 Delaware Manufactured Home Installation Board (Break in Continuity of Sections)

#### 4.0 Education

4.1 All applicants must successfully complete a Board-approved course to qualify for licensure or certification. Completion of the HUD certification course satisfies this requirement.

4.1.1 Training courses must provide at least ~~fifteen (15)~~ twelve (12) hours of education. An "hour" for purposes of this requirement shall mean fifty (50) minutes of instruction or participation in an appropriate course or program. Meals and breaks shall be excluded from credit.

**(Break in Continuity of Sections)**

#### 16.0 Crimes Substantially Related to the Practice of Manufactured Home Installation or Installation Inspection

16.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of manufactured home installation or manufactured home installation inspection in the State of Delaware, without regard to the place of conviction:

**(Break in Continuity Within Section)**

16.1.15 Sexual extortion. 11 **Del.C.** §~~776~~ 774

16.1.16 Continuous sexual abuse of a child. 11 **Del.C.** §~~778~~ 776

**(Break in Continuity Within Section)**

16.1.43 Forgery and related offenses. 11 **Del.C.** §~~863~~

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- 16.1.4443 Falsifying business records. 11 **Del.C.** §871
- 16.1.4544 Tampering with public records in the second degree. 11 **Del.C.** §873
- 16.1.4645 Tampering with public records in the first degree. 11 **Del.C.** §876
- 16.1.4746 Offering a false instrument for filing. 11 **Del.C.** §877
- 16.1.4847 Issuing a false certificate. 11 **Del.C.** §878
- 16.1.4948 Bribery. 11 **Del.C.** §881
- 16.1.5049 Bribe receiving. 11 **Del.C.** §882
- 16.1.5150 Deceptive business practices. 11 **Del.C.** §906
- 16.1.5251 Criminal impersonation. 11 **Del.C.** §907
- 16.1.5352 Criminal impersonation of a police officer, firefighter, emergency medical technician (EMT), paramedic or fire police. 11 **Del.C.** §907B
- 16.1.5453 Securing execution of documents by deception. 11 **Del.C.** §909
- 16.1.5554 Insurance fraud. 11 **Del.C.** §913
- 16.1.5655 Home improvement fraud. 11 **Del.C.** §916
- 16.1.5756 New home construction fraud. 11 **Del.C.** §917
- 16.1.5857 Dealing in children. 11 **Del.C.** §1100A
- 16.1.5958 Sexual exploitation of a child. 11 **Del.C.** §1108
- 16.1.6059 Unlawfully dealing in child pornography. 11 **Del.C.** §1109
- 16.1.6160 Possession of child pornography. 11 **Del.C.** §1111
- 16.1.6261 Sexual offenders; prohibitions from school zones. 11 **Del.C.** §1112
- 16.1.6362 Sexual solicitation of a child. 11 **Del.C.** §1112A
- 16.1.6463 Bribery. 11 **Del.C.** §1201
- 16.1.6564 Receiving a Bribe. 11 **Del.C.** §1203
- 16.1.6665 Giving unlawful gratuities. 11 **Del.C.** §1205
- 16.1.6766 Receiving unlawful gratuities. 11 **Del.C.** §1206
- 16.1.6867 Improper influence. 11 **Del.C.** §1207
- 16.1.6968 Official misconduct. 11 **Del.C.** §1211
- 16.1.7069 Profiteering. 11 **Del.C.** §1212
- 16.1.7170 Perjury in the third degree. 11 **Del.C.** §1221
- 16.1.7271 Perjury in the second degree. 11 **Del.C.** §1222
- 16.1.7372 Perjury in the first degree. 11 **Del.C.** §1223
- 16.1.7473 Making a false written statement. 11 **Del.C.** §1233
- 16.1.7574 Terroristic threatening of public officials or public servants. 11 **Del.C.** §1240
- 16.1.7675 Bribing a witness. 11 **Del.C.** §1261
- 16.1.7776 Bribe receiving by a witness. 11 **Del.C.** §1262
- 16.1.7877 Tampering with a witness. 11 **Del.C.** §1263
- 16.1.7978 Interfering with a child witness. 11 **Del.C.** §1263A
- 16.1.8079 Bribing a juror. 11 **Del.C.** §1264
- 16.1.8180 Bribe receiving by a juror. 11 **Del.C.** §1265
- 16.1.8281 Tampering with a juror. 11 **Del.C.** §1266
- 16.1.8382 Misconduct by a juror. 11 **Del.C.** §1267
- 16.1.8483 Tampering with physical evidence. 11 **Del.C.** §1269
- 16.1.8584 Hate crimes. 11 **Del.C.** §1304
- 16.1.8685 Bombs, incendiary devices, Molotov cocktails and explosive devices. 11 **Del.C.** §1338
- 16.1.8786 Carrying a concealed deadly weapon. 11 **Del.C.** §1442
- 16.1.8887 Carrying a concealed dangerous instrument. 11 **Del.C.** §1443

- 16.1.~~898~~88 Possessing a destructive weapon. 11 **Del.C.** §1444
- 16.1.~~908~~89 Unlawfully dealing with a dangerous weapon. 11 **Del.C.** §1445
- 16.1.~~949~~90 Unlawfully dealing with a switchblade knife. 11 **Del.C.** §1446
- 16.1.~~929~~91 Possession of a deadly weapon during commission of a felony. 11 **Del.C.** §1447
- 16.1.~~939~~92 Possession of a firearm during the commission of a felony. 11 **Del.C.** §1447A
- 16.1.~~949~~93 Possession and purchase of deadly weapons by persons prohibited. 11 **Del.C.** §1448
- 16.1.~~959~~94 Receiving a stolen firearm. 11 **Del.C.** §1450
- 16.1.~~969~~95 Theft of a firearm. 11 **Del.C.** §1451
- 16.1.~~979~~96 Unlawfully dealing with knuckles-combination knife. 11 **Del.C.** §1452
- 16.1.~~989~~97 Unlawfully dealing with a martial arts throwing star. 11 **Del.C.** §1453
- 16.1.~~999~~98 Giving a firearm to person prohibited. 11 **Del.C.** §1454
- 16.1.~~400~~99 Engaging in a firearms transaction on behalf of another. 11 **Del.C.** §1455
- 16.1.~~404~~100 Unlawfully permitting a minor access to a firearm. 11 **Del.C.** §1456
- 16.1.~~402~~101 Possession of a weapon in a Safe School and Recreation Zone. 11 **Del.C.** §1457
- 16.1.~~403~~102 Removing a firearm from the possession of a law enforcement officer. 11 **Del.C.** §1458
- 16.1.~~404~~103 Possession of a weapon with a removed, obliterated or altered serial number. 11 **Del.C.** §1459
- ~~16.1.105 Criminal Penalties, Organized Crime and Racketeering. 11 **Del.C.** §1504~~
- 16.1.~~406~~104 Act of intimidation. 11 **Del.C.** §3532
- 16.1.~~407~~105 Aggravated act of intimidation. 11 **Del.C.** §3533
- ~~16.1.108 Prohibited Acts A; penalties. 16 **Del.C.** §4751~~
- ~~16.1.109 Prohibited Acts B; penalties. 16 **Del.C.** §4752~~
- ~~16.1.110 Unlawful delivery of non controlled substance. 16 **Del.C.** §4752A~~
- ~~16.1.111 Prohibited Acts C; penalties. 16 **Del.C.** §4753~~
- ~~16.1.112 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3,4-methylenedioxymethamphetamine (MDMA). 16 **Del.C.** §4753A~~
- ~~16.1.113 Prohibited acts D; penalties. 16 **Del.C.** §4754~~
- ~~16.1.114 Possession and delivery of non controlled prescription drug. 16 **Del.C.** §4754A~~
- ~~16.1.115 Prohibited acts; penalties. 16 **Del.C.** §4756~~
- ~~16.1.116 Hypodermic syringe or needle; delivering or possessing; disposal; exceptions; penalties. 16 **Del.C.** §4757~~
- ~~16.1.117 Distribution to persons under 21 years of age; penalties. 16 **Del.C.** §4761~~
- ~~16.1.118 Purchase of drugs from minors; penalties. 16 **Del.C.** §4761A~~
- ~~16.1.119 Distribution, delivery, or possession of controlled substance within 1,000 feet of school property; penalties; defenses. 16 **Del.C.** §4767~~
- ~~16.1.120 Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship; penalties; defenses. 16 **Del.C.** §4768~~
- ~~16.1.124 Drug paraphernalia. 16 **Del.C.** §4771(a) and (b)~~
- ~~16.1.122 Penalties [drug paraphernalia]. 16 **Del.C.** §4774~~
- 16.1.~~423~~106 Attempt to evade or defeat tax. 30 **Del.C.** §571
- 16.1.~~424~~107 Failure to collect or pay over tax. 30 **Del.C.** §572
- 16.1.~~425~~108 Failure to file return, supply information or pay tax. 30 **Del.C.** §573
- 16.1.~~426~~109 Fraud and false statements. 30 **Del.C.** §574
- 16.1.~~427~~110 Obtaining benefit under false representation. 31 **Del.C.** §1003
- 16.1.~~428~~111 Reports, statements or and documents. 31 **Del.C.** §1004(1)-(4)

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- 16.1.429112 Unlawful possession or manufacture of proof of insurance. 21 **Del.C.** §2118A
- 16.1.430113 Altering or forging certificate of title, manufacturer's certificate of origin, registration card, vehicle warranty or certification sticker or vehicle identification plate. 21 **Del.C.** §2316
- 16.1.434114 Unlawful application for or use of license or identification card. 21 **Del.C.** §2751
- 16.1.432115 False statements. 21 **Del.C.** §2752
- 16.1.433116 Removed, falsified or unauthorized identification number on vehicle, bicycle or engine; removed or affixed license/registration plate with intent to misrepresent identity; penalty. 21 **Del.C.** §6705(a)-(e)
- 16.1.434117 Possession of blank title; blank registration card; vehicle identification plate; warranty sticker and registration card. 21 **Del.C.** §6708(a) and (b).
- 16.1.435118 Removal of warranty or certification stickers; vehicle identification plates; confidential vehicle identification numbers; penalty. 21 **Del.C.** §6709(a)
- 16.1.436119 Unlawful possession of assigned titles, assigned registration cards, vehicle identification plates and warranty stickers; penalty. 21 **Del.C.** §6710(a)
- 16.1.437120 Permits Required [regarding environmental control]. 7 **Del.C.** §6003
- ~~16.1.138 Criminal Penalties [for violation of §6003 or Regulations]. 7 **Del.C.** §6013~~
- 16.2 Crimes substantially related to the practice of manufactured home installation or manufactured home installation inspection shall be deemed to include any crimes under any federal law, state law or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

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

**4400 Delaware Manufactured Home Installation Board**

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## PUBLIC SERVICE COMMISSION

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

26 **DE Admin. Code** 3008

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

PSC REGULATION DOCKET NO. 56

## PUBLIC NOTICE OF PROPOSED REGULATIONS

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

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

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

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

The Delaware Public Service Commission will hold a public hearing on the proposed regulation change on Thursday, April 6, 2017 at 1:00 p.m., during its regularly-scheduled meeting, in the Hearing Room, Cannon Building, 861 Silver Lake Blvd., First Floor, Dover, Delaware 19904.

Written comments can be filed electronically in DelaFile at <http://delafile.delaware.gov/> by filling out the Public Comment Form located under Public Links. Written comments can also be mailed to Joseph DeLosa, Public Service Commission, Cannon Building, 861 Silver Lake Blvd., Suite 100, Dover, DE 19904 or via email to [joseph.delosa@state.de.us](mailto:joseph.delosa@state.de.us), with the subject line "Regulation Docket No. 56." Written comments will be accepted until Monday, April 24, 2017 pursuant to 29 **Del.C.** §10118(a).

## ORDER NO. 9024

**AND NOW**, this 2<sup>nd</sup> day of February, 2017, the Delaware Public Service Commission ("Commission") determines and orders the following:

**WHEREAS**, on October 2, 2015, in Docket No. 15-1462, the Delaware Division of the Public Advocate ("DPA") filed a Petition requesting that this Commission open a docket to consider whether to amend 26 Del. Admin. C. § 3008-3.2.21 to issue regulations governing when a freeze of the minimum percentages of eligible energy resources and solar photovoltaics may be declared pursuant to 26 **Del.C.** §354(i) and (j); and on October 12, 2015, the Caesar Rodney Institute ("CRI") submitted a Petition supporting the DPA's Petition;

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

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

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

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

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

**WHEREAS**, after briefing and oral argument by the DPA and the Commission, on December 30, 2016, the Court issued a Memorandum Opinion<sup>2</sup> reversing the Commission's decision in Order No. 8807 and remanding to the Commission for proceedings consistent with the decision; and

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

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



**WHEREAS**, in compliance with the Court's Memorandum Opinion, on February 2, 2017, the Commission adopted Order No. 9025 in Docket No. 15-1462, which 1) re-opened Docket No. 15-1462 for the limited purpose of complying with the Memorandum Opinion, issued December 30, 2016, in *Delaware Division of the Public Advocate v. Delaware Public Service Commission*, C.A. N15A-12-002 AML; 2) reversed Ordering Paragraph No. 21 of Order No. 8807, which denied the Petition of the DPA and CRI; and 3) directed Staff to re-open Regulation Docket 56 for the limited purpose of complying with the Memorandum Opinion, issued December 30, 2016, in *Delaware Division of the Public Advocate v. Delaware Public Service Commission*, C.A. N15A-12-002 AML;

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. That Regulation Docket No. 56, is hereby re-opened for the limited purpose of complying with the Memorandum Opinion, issued December 30, 2016, in *Delaware Division of the Public Advocate v. Delaware Public Service Commission*, C.A. N15A-12-002 AML; that is, specifically to promulgate regulations to amend 26 Del. Admin. C. §3008-3.2.21 and related regulations as needed to specify the procedures for freezing the minimum cumulative solar photovoltaic and eligible energy resource requirements under 26 **Del.C.** §§354(i) and (j). The proposed revision is set forth herein in Exhibit "A".

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

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

4. That, pursuant to 29 **Del.C.** §§10115(a) and 10116, the Commission encourages persons or entities to submit written comments, on or before Monday, April 24, 2017. Pursuant to 29 **Del.C.** §10117, the Commission will conduct a public hearing on Thursday, April 6, 2017 at 1:00 PM, at the Commission's office at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware.

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

**BY ORDER OF THE COMMISSION:**

Dallas Winslow, Chair (absent)

Joann T. Conaway, Commissioner

Mike Karia, Commissioner

Harold B. Gray, Commissioner

K. F. Drexler, Commissioner

ATTEST:

Donna Nickerson, Secretary

**\*Please Note:**

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

<http://regulations.delaware.gov/register/march2017/proposed/20 DE Reg 713RFA 03-01-17.pdf>

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

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

### Symbol Key

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

### Final Regulations

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

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

## DEPARTMENT OF EDUCATION

### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 712

### REGULATORY IMPLEMENTING ORDER

#### 712 Employee Leave

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

The Secretary of Education intends to amend 14 **DE Admin. Code** 712 Employee Leave. This regulation is being amended as part of the 2016 Regulation Review as required by 29 **Del.C.** §10407. Public comment was received for this regulation which asked the Department of Education to include language that requires current employees to use their annual leave in a lump sum when retired/terminated so that a new employee can be hired. The Department consulted with Human Resources Directors on the comment and found that this was a not a concern and they did not support the change as requested. The Department did make changes to the annual leave portion of the regulation for purposes of clarification.

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

#### II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 712 Employee Leave only to make minor changes to the annual leave portion of the regulation for purposes of clarification.

#### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 712 Employee Leave. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 712 Employee Leave attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 712

Employee Leave 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** 712 Employee Leave amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 712 Employee Leave in the *Administrative Code of Regulations* for the Department of Education.

#### V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on February 16, 2017. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 16<sup>th</sup> day of February 2017.

#### Department of Education

Susan Bunting, Secretary of Education

Approved this 16<sup>th</sup> day of February 2017

**\*Please note that no changes were made to the regulation as originally proposed and published in the January 2017 issue of the *Register* at page 517 (20 DE Reg. 517). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**712 Employee Leave**

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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** 733

#### REGULATORY IMPLEMENTING ORDER

#### **733 Payment of Substitutes for Teachers**

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

The Secretary of Education intends to amend 14 **DE Admin. Code** 733 Payment of Substitutes for Teachers. This regulation is being amended as part of the 2016 Regulation Review as required by 29 **Del.C.** §10407. During this review, public comment was received for this regulation. The Department was requested to include language that prohibits school districts from requiring teachers to pay for substitutes out of their own money. The Department considered the comment but did not make specific amendments to this effect. The Department did make minor changes for clarification purposes. Additionally, the regulation was reviewed pursuant to the required five-year review cycle.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on January 1, 2017 in the form hereto attached as *Exhibit "A"*. Comments were received from the Delaware State Education Association (DSEA) as to why the section regarding kindergarten teachers on abbreviated days was removed. Since the time of the original regulation, full day kindergarten has been adopted throughout the state, thus this clause was considered to be non-applicable. A second comment by DSEA asked if any schools currently require teachers to pay for substitutes out of their own money. The Department is not aware of any such requirement, and also notes that this is not permitted per the regulation.

#### II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 733 Payment of Substitutes for Teachers in order to make minor changes beyond the comments received and for clarification purposes.

### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 733 Payment of Substitutes for Teachers. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 733 Payment of Substitutes for Teachers attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 733 Payment of Substitutes for Teachers 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** 733 Payment of Substitutes for Teachers amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 733 Payment of Substitutes for Teachers in the *Administrative Code of Regulations* for the Department of Education.

### V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on February 16, 2017. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 16<sup>th</sup> day of February 2017.

#### Department of Education

Susan S. Bunting, Secretary of Education

Approved this 16<sup>th</sup> day of February 2017

**\*Please note that no changes were made to the regulation as originally proposed and published in the January 2017 issue of the *Register* at page 519 (20 DE Reg. 519). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**733 Payment of Substitutes for Teachers**

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### PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))  
14 **DE Admin. Code** 1503

### REGULATORY IMPLEMENTING ORDER

#### 1503 Educator Mentoring

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

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1503 Educator Mentoring. The proposed regulation replaces references to "DPAS" with "DPAS II or a state-approved alternative educator evaluation system;" adds professional development and mentoring activities required for novice educators in their first, second, and third and fourth years of employment in sections 4.0, 5.0, and 6.0, respectively; adds professional development and mentoring activities required for experienced educators new to Delaware in section 7.0; replaces "category" with area" and adds professional development and mentoring activities for experienced educators who are new to an area in section 8.0; clarifies the duties and responsibilities of lead mentors and educator mentors in section 9.0; and replaces the requirement that the Department provide quarterly reports with an annual presentation in section 11.0.

Notice of the proposed regulation was published in the *Register of Regulations* on January 1, 2017 in the form attached hereto as Exhibit "A." Persons who wished to present their views regarding the proposed regulation were invited to do so in writing by January 31, 2017. The Professional Standards Board did not receive written comments. The Professional Standards Board believes that the proposed regulation serves to improve the quality of instruction for Delaware's children and that the amendments are designed to improve the quality of the Delaware

educator workforce and to improve student performance.

## **II. FINDINGS OF FACT**

The Professional Standards Board finds that it is appropriate to amend 14 **DE Admin. Code** 1503 Educator Mentoring to replace references to "DPAS" with "DPAS II or a state- approved alternative educator evaluation system;" add professional development and mentoring activities required for novice educators in their first, second, and third and fourth years of employment in sections 4.0, 5.0, and 6.0, respectively; add professional development and mentoring activities required for experienced educators new to Delaware in section 7.0; replace "category" with area" and add professional development and mentoring activities for experienced educators who are new to an area in section 8.0; clarify the duties and responsibilities of lead mentors and educator mentors in section 9.0; and replace the requirement that the Department provide quarterly reports with an annual presentation in section 11.0.

## **III. DECISION TO AMEND THE REGULATION**

For the foregoing reasons, the Professional Standards Board concludes that it is appropriate to amend 14 **DE Admin. Code** 1503 Educator Mentoring.

Therefore, pursuant to 14 **Del.C.** §1203, the regulation attached hereto as Exhibit "A" is hereby proposed subject to the approval of the State Board of Education. If approved by the State Board of Education, the proposed regulation will have the force and effect of law.

## **IV. TEXT AND CITATION**

Subject to the approval of the State Board of Education, the text of 14 **DE Admin. Code** 1503 Educator Mentoring amended shall be in the form attached hereto as Exhibit "A" and said regulation shall be cited as 14 **DE Admin. Code** 1503 Educator Mentoring in the Administrative Code.

## **V. EFFECTIVE DATE OF ORDER**

The actions hereinabove referred to were taken by the Professional Standards Board pursuant to 14 **Del.C.** §1203 on February 7, 2017. This Order will be presented to the State Board of Education at its regular monthly meeting on February 16, 2017. If State Board of Education approves the text of 14 **DE Admin. Code** 1503 Educator Mentoring amended, the effective date of the State Board of Education's Order will be ten (10) days from the date the Order is published in its final form in the *Register of Regulations*.

**IT IS SO ORDERED** the 2<sup>nd</sup> day of February, 2017 by the Professional Standards Board.

Byron Murphy, Chairman  
Diane Albanese (voted no)  
Amber Augustus  
Stephanie DeWitt (voted no)  
Dr. Laura Glass  
Rosaria Macera  
Mary Pinkston (voted no)  
Sue Smith

David Kohan, Vice Chairman  
Gerald Allen (voted no)  
Jennifer Burton (voted no)  
Nelia Dolan  
Dr. Darren T. Guido (absent)  
Darlene O'Neill  
Dr. Stephanie Smith

**IT IS SO ORDERED** the 16<sup>th</sup> day of February, 2017.

**Department of Education**  
Susan Bunting, Ed.D., Secretary of Education

Approved this 16<sup>th</sup> day of February, 2017 by the State Board of Education

Teri Quinn Gray, Ph.D., President

G. Patrick Heffernan

Nina Lou Bunting, Vice President

Barbara B. Rutt (not present)

Gregory B. Coverdale, Jr.

Terry M. Whittaker

\*Please note that no changes were made to the regulation as originally proposed and published in the January 2017 issue of the *Register* at page 520 (20 DE Reg. 520). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**1503 Educator Mentoring**

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

#### ORDER

#### Pharmaceutical Services – Reimbursement of Covered Outpatient Drugs

##### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Title XIX Medicaid State Plan regarding Pharmaceutical Services, specifically, *to clarify reimbursement methodology for covered outpatient drugs*. 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 November 2016 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 1, 2016 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

##### SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding Pharmaceutical Services, specifically, *to clarify reimbursement methodology for covered outpatient drugs*.

##### Statutory Authority

- 1927 of the Social Security Act, *Payment for Covered Outpatient Drugs*
- 42 CFR §447.512, *Drugs: Aggregate upper limits of payment*
- 42 CFR §447.201, *State plan requirements*
- 42 CFR §447.205, *Public notice of changes in Statewide methods and standards for setting payment rates*

##### Background

Under the Medicaid program, States may provide coverage of outpatient drugs as an optional service under section 1905(a)(12) of the Social Security Act (the Act). Section 1903(a) of the Act provides for Federal financial participation (FFP) in State expenditures for these drugs. States generally reimburse pharmacies for prescribed covered outpatient drugs dispensed to Medicaid beneficiaries based on a two-part formula consisting of the ingredient cost of a drug and a professional dispensing fee. States have flexibility to determine reimbursement amounts, consistent with applicable statutory and regulatory requirements. These reimbursement amounts are subject to review and approval by the Centers for Medicare & Medicaid Services (CMS) through the State Plan Approval (SPA) process.

On February 1, 2016 CMS published the Covered Outpatient Drug Rule. This rule became final on April 1, 2016 and implements provisions of the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010 (collectively referred to as the Affordable Care Act) pertaining to Medicaid reimbursement for covered outpatient drugs (CODs). The regulations direct the Medicaid programs to reimburse all outpatient covered drugs based on the actual acquisition cost of the medication and the professional dispensing fee if applicable.

The Division of Medicaid & Medical Assistance (DMMA) has been applying an Actual Acquisition Cost (AAC) plus a professional dispensing fee since April 1, 2016 for all dispensed products, as well as for medications that are administered in a clinical setting. Medications can be purchased through different avenues depending on the type of entity purchasing the drugs. Prices can be published using multiple methods. DMMA will no longer be using the drug file that list Average Wholesale Prices. The new drug file will contain the Wholesale Acquisition Cost. Additionally, CMS has requested that all possible sources of drugs have a corresponding definition for reimbursement. Drugs reimbursed when administered either in a clinic or physician's office are submitted using a procedure code. These codes have been manually reviewed to establish an acquisition cost for any provider. The SPA is documenting the steps that are taken to develop those reimbursement levels.

## **Summary of Proposal**

### *Purpose*

To add language to the Medicaid State plan to clarify the reimbursement methodology for covered outpatient drugs.

### *Summary of Proposed Changes*

Effective for services provided on and after January 1, 2017 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Attachment 4.19-B Page 14 and Page 14a to clarify the reimbursement methodology for all outpatient medications for the DMMA beneficiaries, by defining the Actual Acquisition Cost Methodology used

### *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 to the methods and standards governing payment methodology for pharmaceutical services. Comments were to be received by 4:30 p.m. on December 1, 2016.

### *CMS Review and Approval*

The provisions of this draft state plan amendment (SPA) are subject to the Centers for Medicare and Medicaid Services (CMS) review and approval. 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 Manual Update*

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

## **Fiscal Impact**

The proposed amendment is being implemented to clarify current practices attested to by DMAP pharmacy providers. Therefore, there is no impact on the General Fund.

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

The State Council for Persons with Disabilities (SCPD), Governor's Advisory Council for Exceptional Citizens

(GACEC), Planned Parenthood, Nanticoke Health Services, Henrietta Johnson Medical Center, La Red Health Center, Christiana Care Health Systems, Saint Francis Healthcare, and Bay Health Medical Center offered the following summarized observations:

First, the dispensing fee standard is less "blunt" under the initiative. Instead of a blanket \$10 fee, a table is inserted which has higher dispensing rates in a few contexts ("specialty drugs-mailed"; "clotting factor"). There is also an apt "catch-all" provision "carried over" from the current version of the State Plan: "Exceptions will be made if documentation provided demonstrates that the product can only be obtained at a higher rate."

**Agency Response:** The table was inserted to clarify the specific requirements that CMS requires DMMA to address. The table format was adopted to keep each required response addressed. Providers have separate contracts with the managed care plans. State Plan reimbursement policies are for providers that submit fee-for-service claims directly to DMMA for reimbursement.

Second, the Plan amendment (p. 346) includes the following deletion:

~~Exceptions of the reimbursement of FUL and DMAC can be made if a physician certifies in their own handwriting that a specific brand is medically necessary. The medical necessity must be documented on a FDA Med Watch form based on the client experiencing an adverse reaction.~~

DMMA has traditionally implemented a system in which physicians could request approval of a non-generic drug based on medical necessity for an individual client considering factors such as efficacy and adverse reactions.

**Agency Response:** The ability to obtain a brand product, for multi-sourced products, when clinical necessary is still available to the practitioners who provide service to the DMMA clients.

Third, Delaware should refrain from applying an actual acquisition cost for reimbursement limitation to physician-administered drugs and to drugs that are reimbursed as part of a patient's medical benefit.

**Agency Response:** DMMA is reimbursing for all outpatient drugs based on actual acquisition cost regardless of the source of obtaining these medications. The professional dispensing fee or clinical component of the service should address the additional cost for providing the medication.

Fourth, the state's professional dispensing fee methodology should recognize the higher cost incurred by 340-B providers.

**Agency Response:** The professional dispensing fee is based on the delivery of the medication to the DMMA client for self-administration. Your comments note four areas where counseling and administration are provided. The costs associated with the provision of these services are covered under the office visit or the clinical coverage.

Fifth, the state should not apply actual acquisition cost restrictions to drugs purchased through the 340-B program.

**Agency Response:** DMMA's approach to the reimbursement of all outpatient drugs is to cover the cost of the product specifically. The service to deliver the product can be reimbursed based on the clinician's scope of effort to provide the medication. With this approach DMMA can treat all providers equally, regardless of the special circumstances regarding the acquisition of the medications.

Sixth, DMMA should clarify that this proposal's reimbursement does not apply to Medicaid Managed Care plans. Specifically, DMMA should confirm that DMMA's proposed rule, including the AAC billing and contract pharmacy carve-out requirements, does not apply to Medicaid managed care drugs.

**Agency Response:** The proposed regulation, 20 DE Reg. 342, referred to as 16-023 in your letter, sets forth the method by which DMMA will reimburse a covered entity for any claim submitted by that covered entity for reimbursement of a covered outpatient drug (COD). To the extent the cost for most managed care CODs is bundled into the capitated rate paid by DMMA to each of the managed care organizations, such costs are generally not submitted by covered entities directly to DMMA for payment and, therefore, are not contemplated by this proposed regulation. Providers have separate contracts with the managed care plans. State Plan reimbursement policies are for providers that submit fee-for-service claims directly to DMMA for reimbursement. The state plan amendment should not be interpreted as applying to claims paid by other processors.

Seventh, you request clarity on the use of 340B for Medicaid populations, specifically that a covered entity's



carve-in request to use 340B drugs for its Medicaid population "will be granted automatically if DMAP and the covered entities have a system for avoiding duplicate discounts."

**Agency Response:** This question does not relate to the proposed regulation, 20 DE Reg. 342, but rather appears to seek clarification of Delaware's previously approved State Plan Amendment (SPA 16-001), the purpose of which was to clarify reimbursement methodology for entities that purchase 340B drug products. The deadline for any public comments to SPA 16-001, which was noticed for public comment in the November 2015 Delaware *Register of Regulations*, was November 30, 2015. Furthermore, SPA 16-001 in its final form was approved by the Centers for Medicare and Medicaid Services ("CMS") on October 13, 2016. Because this inquiry falls outside of the deadline for public comments and, more importantly, concerns a regulation that has already been approved by CMS, DMMA declines to address that question.

No changes were made to the regulation as a result of these comments.

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

## FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the November 2016 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XIX Medicaid State Plan regarding Pharmaceutical Services, specifically, to *clarify reimbursement methodology for covered outpatient drugs*, is adopted and shall be final effective March 11, 2017.

Date of Signature: 2/20/17

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

**\*Please note that no changes were made to the regulation as originally proposed and published in the November 2016 issue of the *Register* at page 342 (20 DE Reg. 342). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**Pharmaceutical Services – Reimbursement of Covered Outpatient Drugs**

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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### ORDER

#### **Federally Qualified Health Centers - Long-Acting Reversible Contraceptives**

## NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Title XIX Medicaid State Plan regarding Federally Qualified Health Care Centers, specifically, to *increase access to Long-Acting Reversible Contraceptives*. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the January 2017 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2017 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

## SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of

Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding Federally Qualified Health Care Centers, specifically, *to increase access to Long-Acting Reversible Contraceptives*.

### Statutory Authority

- §1902(a)(19) of the Social Security Act, *Care and services under a Medicaid state plan be provided in a manner consistent with simplicity of administration and the best interests of beneficiaries*
- §1905(a)(4)(C) of the Social Security Act, *Family Planning Services and Supplies*
- §1927 of the Social Security Act, *Payment for Covered Outpatient Drugs*
- 42 CFR §440.210, *Required services for the categorically needy; family planning services*
- 42 CFR §441.20, *Family Planning Services and Supplies*
- 42 CFR §440.120, *Prescribed drugs*
- 42 CFR §447.45, *Timely claims payment*
- State Medicaid Manual, Section 4270, *Family Planning Services*

### Background

#### *Family Planning Services and Supplies*

Family planning is classified as a "mandatory" benefit under Medicaid, meaning that all Medicaid programs must cover family planning, but states have considerable discretion in identifying the specific services and supplies that are included in the benefit. There is no formal definition of family planning in the Medicaid program. Rather, federal law at Section 1905(a)(4)(C) generally allows payment for "family planning services and supplies furnished (directly or under arrangements with others) to individuals of child-bearing age who are eligible under the State plan and who desire such services and supplies." Contraception is one of the primary services included as family planning, and most states offer broad coverage for prescription contraceptive products in their Medicaid programs. Family planning providers include office-based physicians, federally qualified health centers, family planning clinic, health departments, and other clinics. Medicaid beneficiaries can obtain family planning services and supplies from any Medicaid-participating provider. This freedom of choice is maintained even if the individual is enrolled in a managed care plan.

Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) currently provides Medicaid coverage and reimbursement for family planning services and supplies, including LARCs. LARCs are long-acting reversible contraceptives, such as intrauterine devices (IUDs) and contraceptive implants. The Center for Medicaid and CHIP Services (CMCS), the U.S. Department of Health and Human Services Secretary's Advisory Committee on Infant Mortality (SACIM), the Health Resources and Services Administration, and the American Congress of Obstetricians and Gynecologists (ACOG) all recommend the use of LARCs.

States may cover LARCs through the pharmacy benefit or medical benefit. Covering LARCs through the pharmacy benefit means that dispensing pharmacies bill the state for the LARCs and applicable dispensing fees, then deliver the LARCs to providers for insertion or administration. The provider then bills the state for the furnished insertion or implantation service. In many cases this is appropriate; however, these steps may present barriers to access in some instances since this process requires the Medicaid recipient to see the provider twice: once to obtain the LARC prescription and then again for insertion or administration. While covering LARCs through the medical benefit could address these barriers to access, high upfront costs required to maintain a stock of LARCs, may deter providers from implementing this approach, resulting in barriers to access due to a potential unwillingness of providers to furnish LARCs.

### Summary of Proposal

The purpose of the proposed rule is to provide a mechanism for Federally Qualified Health Centers (FQHC) to be compensated for these expensive LARCs that are not included in the FQHC's rates. This would provide FQHC's the ability to maintain an adequate stock of LARCs, thus increasing access to important family planning services for Medicaid recipients.

#### *Summary of Proposed Changes*

If implemented as proposed, the state plan amendment will accomplish the following, effective January 1, 2017:

Add language to Attachment 4.19-B, Page 2, that provides a mechanism for FQHCs to receive reimbursement

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for distributed LARCs based on actual acquisition cost (ACC).

### *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 proposed regulations. Comments were to have been received by 4:30 p.m. on January 31, 2017.

### *Centers for Medicare and Medicaid Services Review and Approval*

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

### *Provider Manuals Update*

Also, upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. DMAP provider manuals and official notices are available on the DMAP website: <http://www.dmap.state.de.us/home/index.html>

### **Fiscal Impact**

The proposed regulation modifies Division of Medicaid and Medical Assistance's practice and procedures to assist FQHCs in administering LARCs. It does not have a fiscal impact; the policy change is budget neutral.

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

No public comments were received for this regulation.

### **FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the January 2017 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Title XIX Medicaid State Plan regarding Federally Qualified Health Care Centers, specifically, *to increase access to Long-Acting Reversible Contraceptives*, is adopted and shall be final effective March 11, 2017.

Date of Signature: 2/20/17

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

**\*Please note that no changes were made to the regulation as originally proposed and published in the January 2017 issue of the *Register* at page 523 (20 DE Reg. 523). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**Federally Qualified Health Centers - Long-Acting Reversible Contraceptives**

## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

## ORDER

## Nondiscrimination

**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Title XIX Medicaid State Plan and Delaware Social Services Manual (DSSM) regarding nondiscrimination, specifically, *to modify language to be more inclusive and to ensure compliance with Federal Regulation*. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the January 2017 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2017 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**SUMMARY OF PROPOSAL**

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan and Delaware Social Services Manual (DSSM) regarding nondiscrimination, specifically, *to modify language to be more inclusive and to ensure compliance with Federal Regulation*.

**Background**

The Department of Health and Social Services (DHSS) is the agency designated by the State as responsible for Delaware's public assistance programs. Within the Department, the Division of Social Services (DSS) is responsible for administering the following programs in an accurate and timely fashion while treating clients with respect and dignity: Temporary Assistance for Needy Families (TANF), General Assistance Program, Food Supplement Program, Refugee Resettlement Program, Child Care Subsidy Program, and Employment and Training Services. Additionally, the Division of Medicaid and Medical Assistance (DMMA) is responsible for furnishing medical assistance to eligible low-income families and to eligible aged, blind and/or disabled people whose income is insufficient to meet the cost of necessary medical services.

DHSS, and its divisions, are required to provide these services in accordance with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et. seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 70b), and the regulations at 7 CFR §272.6(a), 42 CFR §440.262; and 45 CFR Parts 80, and 84, 90, and 92, such that no individual shall be subject to discrimination under this plan on the grounds of race, color, national origin, age, disability, sex, sexual orientation, gender identity, religious creed, political beliefs, limited English proficiency (LEP) and/or retaliation.

**Summary of Proposal**

The purpose of the proposed rule is to expand existing nondiscrimination protections to be more inclusive and to ensure compliance with Federal Regulation.

*Summary of Proposed Changes*

If implemented as proposed, the state plan amendment will accomplish the following, effective January 1, 2017:

Modify language on page 87, in Section 7 - General Provisions, to include discrimination based on sex, sexual orientation, gender identity, and limited English proficiency (LEP).

If implemented as proposed, the Delaware Social Services Manual (DSSM) amendment will accomplish the following, effective March 11, 2017:

Modify language in the following sections, to include discrimination based on sex, sexual orientation, gender identity, and limited English proficiency (LEP).

DSSM 1000	Definitions
DSSM 1006	Guaranteeing Civil Rights and Non-Discrimination
DSSM 1006.1	Ensuring Non-discrimination in the Provision of Services
DSSM 1006.4	Assuring Compliance in Area Operations
DSSM 1006.6	Publicizing the Civil Rights Program
DSSM 1007	Making Civil Rights Complaints
DSSM 1007.3	Routing Civil Rights Complaints
DSSM 1007.4	Keeping Track of Civil Rights Complaints

### *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 expansion of existing nondiscrimination protections to be more inclusive and to ensure compliance with Federal Regulation. Comments were to be received by 4:30 p.m. on January 31, 2017.

### *Centers for Medicare and Medicaid Services Review and Approval*

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

### *Provider Manuals Update*

Also, upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. DMAP provider manuals and official notices are available on the DMAP website: <http://www.dmap.state.de.us/home/index.html>

### **Fiscal Impact**

The proposed regulation clarifies practice and procedures currently used by the Division of Medicaid and Medical Assistance and Division of Social Services and therefore will result in no fiscal impact.

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

No public comments were received for this regulation.

### **FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the January 2017 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Title XIX Medicaid State Plan and Delaware Social Services Manual (DSSM) regarding nondiscrimination, specifically, *to modify language to be more inclusive and to ensure compliance with Federal Regulation*, is adopted and shall be final effective March 11, 2017.

Date of Signature: 2/20/17  
Kara Odom Walker, MD, MPH, MSHS  
Secretary, DHSS

\*Please note that no changes were made to the regulation as originally proposed and published in the January 2017 issue of the *Register* at page 526 (20 DE Reg. 526). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**Nondiscrimination**

**DEPARTMENT OF JUSTICE  
FRAUD AND CONSUMER PROTECTION DIVISION  
INVESTOR PROTECTION UNIT**

Statutory Authority: 6 Delaware Code, Section 73-102(b) (6 Del.C. §73-102(b))

**ORDER**

**Rules Pursuant to the Delaware Securities Act**

**WHEREAS**, on November 1, 2016, the Delaware *Registrar of Regulations*, pursuant to the request of the Investor Protection Director, caused the proposed rules and regulations pursuant to the Delaware Securities Act to be published in the Delaware *Register of Regulations*, 20 DE Reg. 330 (11/01/16); and

**WHEREAS**, the proposed rules and regulations were held open for public comment until December 1, 2016; and

**WHEREAS**, no comments were received by the Investor Protection Director, and therefore no evaluation or summarization of comments is presented in the accompanying "Summary of Evidence";

**NOW THEREFORE, IT IS HEREBY ORDERED** this 16th day of February, 2017, that the information set forth herein shall constitute the required summary of evidence and information submitted; the summary of findings of fact with respect to the evidence and information submitted; and the decision to adopt the rules and regulations in the form attached hereto as Exhibit A.

**IT IS FURTHER ORDERED** that, pursuant to 6 Del.C. §73-102(b) and 29 Del.C. §10118(b)(3), upon consideration of the information submitted to the Director of the Investor Protection Unit, and based upon the findings of fact with respect to the information submitted, the Rules and Regulations Pursuant to the Delaware Securities Act, in the form attached hereto as Exhibit A, are adopted effective April 1, 2017.

**A. SUMMARY OF EVIDENCE AND INFORMATION SUBMITTED**

The public comment period was open from November 1, 2016 to December 1, 2016. No comments were received on the proposed regulations during the public comment period and no changes have been made to the proposed regulations.

**B. SUMMARY FINDINGS OF FACT**

The revision makes changes to the Rules and Regulations Pursuant to the Delaware Securities Act (the "Rules"). The Rules are being changed as follows:

1. To permit issuers offering securities pursuant to Regulation A Tier 1 to file a copy of Form 1-A with our office, in lieu of a registration statement, when registering their offering pursuant to Rule 401.

2. To require a fee for notice filings of Regulation A - Tier 2 Offerings pursuant to Rule 404. The proposed fee is identical to the current fee for notice filing by Form D. Rule 404 is also amended to require a fee for notice filings of intrastate crowdfunding offerings.

3. Rule 406, pertaining to notice filing of Form D, is amended consistent with a December 9, 2014 Order Adopting The Electronic Filing Depository as a Permissible Means of Filing Form D, and also mandates the use of Electronic Filing Depository for such notice filings as of June 1, 2017.

4. To add new Rule 407 to the Rules which requires issuers of securities relying on the exemption from registration in Section 3(b)(2) of the Securities Act of 1933 and Rule 251(a)(2) pursuant to the Securities Act of 1933, known as Regulation A Tier 2 offerings, to file notice with the Director. This new Rule is based on a NASAA model rule and will promote uniformity with other states that also choose to adopt the model rule to cover notice

filings for Regulation A Tier 2 offerings.

5. To add new Rule 408 to the Rules which pertains to the new intrastate crowdfunding exemption and provides detail regarding the notice filing issuers relying on this exemption are required to file as well as detail regarding the registration requirements for Internet Site Operators involved in intrastate crowdfunding offerings.

6. To strike an out of print manual from the list and to add two new manuals published by OTC Markets to the Manual Exemption Rule 508.

7. Proposed Rule 402 will not become final due to an SEC Rule Change that occurred after the Rule was proposed that requires a substantive change to the proposed rule. Accordingly, Proposed Rule 402 will be amended and re-proposed at a later date.

DATED THIS 16<sup>th</sup> DAY OF FEBRUARY, 2017

BY ORDER OF:

Gregory Strong  
Investor Protection Director  
for the State of Delaware

**\*Please note that the proposed changes to Rule 402 were not approved as final at this time. No additional changes were made to the regulation as originally proposed and published in the November 2016 issue of the *Register* at page 348 (20 DE Reg. 348). A copy of the final regulation is available at:**

**[Rules Pursuant to the Delaware Securities Act](#)**

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**DELAWARE RIVER BASIN COMMISSION****Notice of Special Public Hearing**

**AGENCY:** Delaware River Basin Commission

**ACTION:** Notice of Public Hearing

**SUMMARY:**

The Delaware River Basin Commission ("DRBC" or "Commission") will hold a special public hearing on a draft resolution to recognize significant water quality improvements in the Delaware River Estuary and provide for a formal review of the designated aquatic life uses and water quality criteria necessary to support these uses.

In order to fulfill their obligation under the federal Clean Water Act ("CWA") to designate and protect uses for surface waters including the shared waters of the Delaware River Estuary, the States of Delaware and New Jersey and the Commonwealth of Pennsylvania either defer to DRBC water quality standards that they have jointly established or provide for application of the more stringent of state and DRBC standards within the basin. In 1967 the DRBC established water quality standards for the Estuary, including as designated uses for Water Quality Zones 3, 4 and the upper portion of Zone 5, "the maintenance of resident fish and other aquatic life and the passage of anadromous fish". Significant water quality improvements have occurred since these uses and supporting water quality criteria were adopted, an achievement that has been the result of effective water management by DRBC, the federal government, and the four basin states, and substantial investment by public entities and private industry to upgrade treatment works.

A study of existing aquatic life uses in the Estuary with respect to resident and anadromous fish species was completed by DRBC in 2015. Based on this study, the Commission proposes to recognize formally that water quality and aquatic life uses in portions of the Estuary have substantially and significantly improved since 1967 and that the evidence supports further study on the inclusion of propagation as a designated use in Zones 3 and 4 and the upper portion of Zone 5.

The Commission's draft resolution outlines the need for additional studies, among others, to: determine the dissolved oxygen ("DO") requirements of resident and migratory fish species and the nutrient loadings from point and non-point sources that can be discharged while maintaining these DO levels in Estuary waters; evaluate the variety of factors affecting attainment of potential "higher" uses, including technical, social and economic factors; and identify and evaluate opportunities for early action to reduce oxygen depleting discharges to the Estuary in the short term.

The resolution also identifies goals for the Estuary that are shared by the Commission, the Estuary states, and the U.S. Environmental Protection Agency, including: protection of the water quality improvements achieved to date; continuous improvement in water quality in these shared waters; an update of the water quality standards, including designated uses and criteria, consistent with CWA goals as quickly as possible and practicable; early actions based on optimizing the use of existing infrastructure; and consultation with all stakeholders, including the regulated community, in updating and implementing regulatory changes.

Action on the proposed resolution can occur only at a duly noticed DRBC business meeting following the close of the written comment period.

**DATES:** The public hearing will be held at 2:00 P.M. on Wednesday, March 15, 2017. Individuals who wish to comment during the public hearing are asked to sign up in advance by contacting Ms. Paula Schmitt of the Commission staff, at [paula.schmitt@drbc.nj.gov](mailto:paula.schmitt@drbc.nj.gov). The hearing will continue until all those wishing to testify have had an opportunity to do so. Written comments will be accepted and must be received by 5:00 P.M. on Thursday, April 13, 2017.

**ADDRESSES:** The public hearing will be held at the Washington Crossing Historic Park Visitor Center, 1112 River Road, Washington Crossing, Pa. Written comment on items scheduled for hearing may be delivered by hand at the public hearing or: by hand, U.S. Mail or private carrier to: Commission Secretary, P.O. Box 7360, 25 Cosey Road,



West Trenton, NJ 08628; by fax to Commission Secretary, DRBC at 609-883-9522; or by email (preferred) to paula.schmitt@drbc.nj.gov.

**FOR FURTHER INFORMATION:** The resolution can be viewed on the commission's web site at [www.drbc.net](http://www.drbc.net).

Dated: February 23, 2017  
PAMELA M. BUSH, ESQ.  
Commission Secretary

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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

### IDEA Part C Grant Application for FFY 2017

#### Summary

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. Public comment is being accepted from February 15 - March 15, 2017, and the application will be available until April 15, 2017.

#### Background

The Birth to Three Early Intervention System (Birth to Three) operates under the authorization of Part C of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), with the Delaware Department of Health and Social Services (DHSS) as the lead agency.

To receive its allocation of the IDEA Part C funds, the State must submit an application to the U.S. Department of Education (USDOE), Secretary of Education. The application verifies that Birth to Three has reviewed its policies and procedures, and assures that Birth to Three will comply with the provisions required by Part C of IDEA 2004. As part of this process, USDOE requires all states to publish the application and receive comments.

#### Notice of Public Comment

A copy of the annual grant application is available for review by contacting the Birth to Three office at 302-255-9134 (call collect from Kent and Sussex). Send your written comments to:

**Birth to Three Early Intervention Systems  
Department of Health and Social Services  
Division of Management Services  
1901 North DuPont Highway  
New Castle, DE 19720  
302-255-4407 (fax)**

**DEPARTMENT OF AGRICULTURE  
THOROUGHBRED RACING COMMISSION  
PUBLIC NOTICE****1001 Thoroughbred Racing Rules and Regulations**

The Thoroughbred Racing Commission proposes to amend its Regulations adopted in accordance with Title 3, Chapter 101. The purpose of the amended regulations is to amend rule 14 to add new rules 14.19.1 relating to multiple disqualifications and 14.20 relating to dead heats and rule 15 to add new rule 15.22 relating to the adoption by reference of the ARCI Veterinary Practices Rule, rule 15.23 relating to the adoption by reference of the ARCI Prohibited Practices Rule and rule 15.24 relating to the adoption by reference of the ARCI Out of Competition Testing Rule and to delete the reference to stanazolol in rule 15.17.1.1. Other regulations issued by the Thoroughbred Racing Commission are not affected by this proposal. The Thoroughbred Racing Commission is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

A copy of the proposed regulations is being published in the March 1, 2017 edition of the Delaware *Register of Regulations*. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml).

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Thoroughbred Racing Commission at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before March 31, 2017. Written materials submitted will be available for inspection at the above address.

On or after March 31, 2017, following review of the public comment, the Thoroughbred Racing Commission will determine whether to amend its regulations by adopting the proposed rules or make additional changes because of the public comments received.

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**THOROUGHBRED RACING COMMISSION  
PUBLIC NOTICE****1002 Delaware Jockeys' Health and Welfare Benefit Board Regulations**

The Delaware Jockey's Health and Welfare Benefit Board, in accordance with 3 **Del.C.** §10103(c) has proposed changes to its rules and regulations by amending existing Rule 2.1.1, Rule 2.1.2.1, Rule 2.1.2.2 and Rule 2.2 and adding new Rule 2.1.1.3 and Rule 2.4. Other regulations issued by the Delaware Jockey's Health and Welfare Benefit Board are not affected by this proposal.

A copy of the proposed regulations is being published in the March 1, 2017 edition of the Delaware *Register of Regulations*. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml).

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Delaware Jockey's Health and Welfare Benefit Board at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before March 31, 2017. Written materials submitted will be available for inspection at the above address.

On or after March 31, 2017, following review of the public comment, the Delaware Jockey's Health and Welfare Benefit Board will determine whether to amend its regulations by adopting the proposed new rules.

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

The State Board of Education will hold its monthly meeting on Thursday, March 16, 2017 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF LONG TERM CARE RESIDENTS PROTECTION**  
**PUBLIC NOTICE****3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants**

The Division of Long Term Care Residents Protection (DLTCRP) is proposing a full the revision of Regulation 3220 Certified Nursing Assistants. The proposed regulations will replace the existing Regulation.

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.

This regulatory proposal replaces the regulations for the purpose of bringing it into compliance with current standards.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulation should submit such comments by March 31, 2017 to:

Renee Purzycki, Social Service Chief Administrator  
Office of the Director for the Division of Long Term Care Residents Protection  
Delaware Department of Health and Social Services  
3 Mill Road Suite 308  
Wilmington, DE 19806  
Email: Renee.Purzycki@state.de.us  
Fax: 302-421-7401

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**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**  
**PUBLIC NOTICE****Medicaid Eligibility- Out of State Former Foster Youth**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan and Delaware Social Services Manual (DSSM) regarding Medicaid Coverage for Out-of-State Former Foster Youth.

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, Attention: Kimberly Xavier; by email to Kimberly.xavier@state.de.us; or by fax to 302-255-4425 by March 31, 2017. Please identify in the subject line: Medicaid Coverage for Out-of-State Former Foster Youth.

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 PUBLIC HEALTH**  
**PUBLIC NOTICE**  
**4461 State of Delaware Milk Code**

The Division of Public Health, Department of Health and Social Services, is proposing revisions to the State of Delaware Milk Code (4461). The purpose of the amendments is to make technical corrections to bring the regulations in line with United States Department of Health and Human Services' Grade "A" Pasteurized Milk Ordinance - 2015 Revision. On March 1, 2017, DPH plans to publish as proposed the amended regulations, and hold them out for public comment per Delaware law.

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

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Jamie Mack by Friday, April 7, 2017, at:

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

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

**DIVISION OF ENERGY AND CLIMATE**  
**PUBLIC NOTICE**

**2102 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions**

DNREC is proposing to repeal Regulation 2102, *Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions*, which directs when and how the Director of the Division of Energy & Climate may freeze implementation of the Renewable Portfolio Standards under 26 **Del.C.** §354(i) & (j). DNREC is proposing this action to avoid inconsistencies with Public Service Commission Regulation 3008, *Rules and Procedures to Implement the Renewable Energy Portfolio Standard*.

The Public Service Commission has recently reopened its Regulation Docket No. 56 to revise Regulation 3008, *Rules and Procedures to Implement the Renewable Energy Portfolio Standard*, pursuant to its authority under 26 **Del.C.** §362 (b). DNREC proposes to repeal Regulation 2102 to avoid inconsistencies with Public Service Commission Regulation 3008.

DNREC will hold a public hearing Wednesday, March 22, 2017 starting at 6:00 p.m. in the Public Service Commission Hearing Room, 861 Silver Lake Boulevard, Suite 100, Dover DE, 19901.

Any person who wishes to may submit written comments concerning the proposed repeal to: Thomas Noyes, Principal Planner for Utility Policy, DNREC Division of Energy & Climate, 100 W. Water Street, Suite 5, Dover, DE 19904, by fax to 302.735.3480, or by email to [thomas.noyes@state.de.us](mailto:thomas.noyes@state.de.us).

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**OFFICE OF THE SECRETARY**  
**PUBLIC NOTICE**

**109 Regulations Governing the Guidelines to Evaluate Land Being Considered for Permanent Protection**

As a result of amendments to the Land Protection Act, effective August 3, 2016, the Guidelines to Evaluate Land Being Considered for Permanent Protection, last updated 12/7/16, currently being used by staff to support the Open Space Program must go through notice and public hearing pursuant to 29 **Del.C.** Ch. 101.

Public hearing is scheduled for March 23, 2017 at 6:00pm in the DNREC, Richardson and Robbins Building Auditorium. Individuals may submit written comments prior to the hearing regarding the proposed changes via e-mail to [Elena.Stewart@state.de.us](mailto:Elena.Stewart@state.de.us) or via the USPS to Elena Stewart, Land Preservation Specialist, DNREC, 89

Kings Highway, Dover, DE 19901 (302) 739-9935. The record will remain open and comments will be accepted until April 7, 2017.

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**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**2500 BOARD OF PHARMACY**  
**PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §2506(a)(1), the Delaware Board of Pharmacy ("Board") has proposed revisions to its rules and regulations.

A public hearing will be held on April 19, 2017 at 9:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Pharmacy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board liaison, Christine Mast, at the above address.

The proposed regulations add to subsection 1.4.1, the biennial licensure renewal requirement that all licensees must complete two hours of continuing education in 1) the distribution, dispensing or delivery of controlled substances, or 2) the detection and recognition of symptoms, patterns of behavior, or other characteristics of impairment and dependency resulting from the abusive or illegal use of controlled substances. Subsection 1.2.4 has been revised to reflect new NAPLEX requirements for taking of the examination. The list of crimes substantially related to the practice of pharmacy, set forth in Section 17.0, has been updated to include amendments to the Uniform Controlled Substances Act. Finally, subsection 5.1.7, pertaining to compounded medications for office use, has been revised to delineate standards for both human use and animal use. The proposed changes allow veterinarians to administer and dispense compounded preparations for animal patients subject to certain specified requirements designed to maintain safety and quality for the protection of the public.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be May 4, 2017, which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its next regularly scheduled meeting, at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to the public comment.

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**DIVISION OF PROFESSIONAL REGULATION**  
**4400 DELAWARE MANUFACTURED HOME INSTALLATION BOARD**  
**PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §4416(b)(1), the Delaware Board of Manufactured Home Installation has proposed revisions to its rules and regulations. The rules pertaining to crimes substantially related to the practice of manufactured home installation are amended as well as a provision on qualifying education.

A public hearing will be held on April 10, 2017 at 9 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Manufactured Home Installation, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address, no later than April 25, 2017, in accordance with 29 **Del.C.** §10118(a).

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

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

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

The Delaware Public Service Commission will hold a public hearing on the proposed regulation change on Thursday, April 6, 2017 at 1:00 p.m., during its regularly-scheduled meeting, in the Hearing Room, Cannon Building, 861 Silver Lake Blvd., First Floor, Dover, Delaware 19904.

Written comments can be filed electronically in DelaFile at <http://delafile.delaware.gov/> by filling out the Public Comment Form located under Public Links. Written comments can also be mailed to Joseph DeLosa, Public Service Commission, Cannon Building, 861 Silver Lake Blvd., Suite 100, Dover, DE 19904 or via email to [joseph.delosa@state.de.us](mailto:joseph.delosa@state.de.us), with the subject line "Regulation Docket No. 56." Written comments will be accepted until Monday, April 24, 2017 pursuant to 29 **Del.C.** §10118(a).

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