Delaware Register of Regulations Issue Date: October 1, 2005 Volume 9 - Issue 4 Pages 468 - 663 IN THIS ISSUE: Regulations: Errata Proposed Final Governor **Executive Orders Appointments 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 September 15, 2005.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

8 **DE Reg.** 757-772 (12/01/04)

Refers to Volume 8, pages 757-772 of the *Delaware Register* issued on December 1, 2004.

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title.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

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

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

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

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

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

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

Except as provided in the preceding section, no judicial review of a regulation is available

unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the *Register of Regulations*.

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
November 1	OCTOBER 15	4:30 P.M.
DECEMBER 1	NOVEMBER 15	4:30 p.m.
January 1	DECEMBER 15	4:30 p.m.
February 1	January 15	4:30 p.m.
MARCH 1	February 15	4:30 p.m.

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Moved to Department of State, 75 Del. Laws, Ch. 88, June 30, 2005.

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DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

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

ORDER

PLEASE NOTE: DUE TO A PUBLICATION ERROR IN THE SEPTEMBER ISSUE OF THE REGISTER, THE FOLLOWING FINAL REGULATION IS BEING REPUBLISHED. SECTION 25 WAS TO BE ADDED TO PART A. THAT SECTION WAS MISTAKENLY ADDED TO PART B IN THE SEPTEMBER REGISTER.

THE CORRECT VERSION IS PUBLISHED BELOW.

Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the policies of the Food Stamp Program in the Division of Social Services Manual (DSSM) as it relates to income exclusions. 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 July 2005 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2005 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposed Change

Citation

Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 100-707)

Disaster Unemployment Assistance received by individuals who suffered a job loss or were unemployed due to a recent disaster is not counted as income or as a resource for food stamp purposes.

Summary Of Comments Received With Agency Response

The State Council for Persons with Disabilities (SCPD) offered the following endorsement: SCPD endorses the proposed regulation since it would expand financial eligibility for the Food Stamp Program.

Agency Response: DSS thanks Council for the endorsement.

Findings of Fact:

The Department finds that the proposed changes as set forth in the July 2005 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Food Stamp Program as it relates to income exclusions is adopted and shall be final effective September 10, 2005.

Vincent P. Meconi, Secretary, DHSS, 8/15/05

9059 Income Exclusions

[273.9(c)]

Only the following items will be excluded from household income and no other income will be excluded:

A. Any gain or benefit which is not in the form of money payable directly to the household.

This includes in-kind benefits and certain vendor payments. In-kind benefits are those for which no monetary payment is made on behalf of the household and includes meals, clothing, housing, or produce from a garden. A vendor payment is a money payment made on behalf of a household by a person or organization outside of the household directly to either the household's creditors or to a person or organization providing a service to the household.

Payments made to a third party on behalf of the household are included or excluded as income as follows:

- 1. Department of Housing and Urban Development (HUD) vendor payments. Rent or mortgage payments made to landlords or mortgages by HUD are excluded.
- 2. Vendor payments that are reimbursements. Reimbursements made in the form of vendor payments are excluded on the same basis as reimbursements paid directly to the household as described in DSSM 9059 E.
- 3. Other third party payments. Other third party payments shall be handled as follows: Moneys legally obligated and otherwise payable to the household which are diverted by the provider of the payment to a third party for a household expense shall be counted as income and not excluded. If the person or organization makes a payment to a third party on behalf of a household using funds that are not owed to the household, the payment shall be excluded from income. The following are examples of third party payments:
- a) A friend or relative uses his or her own money to pay the household's rent directly to the landlord. This vendor payment shall be excluded.

- b) A household member earns wages. However, the wages are garnished or diverted by the employer and paid to a third party for a household expense, such as rent. This vendor payment is counted as income. However, if the employer pays a household's rent directly to the landlord in addition to paying the household its regular wages, the rent payment shall be excluded from income. Similarly, if the employer provides housing to an employee in addition to wages, the value of the housing shall not be counted as income.
- c) A household receives court-ordered monthly support payments in the amount of \$400. Later, \$200 is diverted by the provider and paid directly to a creditor for a household expense. The payment is counted as income.

Money deducted or diverted from a courtordered support or alimony payment to a third party for a household's expense shall be included as income because the payment is taken from money that is owed to the household. However, payments specified by a court order or other legally binding agreement to go directly to a third party rather than the household are excluded from income because they are not otherwise payable to the household.

Examples of court-ordered payments:

- a) A court awards support payments in the amount of \$400 a month and in addition orders \$200 to be paid directly to a bank for repayment of a loan. The \$400 payment is counted as income and the \$200 payment is excluded from income.
- b) A civil service retiree is entitled to a retirement payment of \$800 a month. However, \$400 is diverted to his ex-wife by court order for child support. This is similar to a wage garnishment. Since the retirement benefits are legally obligated and otherwise payable to the retiree's household, the \$800 is budgeted for food stamp purposes.

Support payments not required by a court order or other legally binding agreement (including payments in excess of the amount specified in a court order or written agreement) which are paid to a third party on the household's behalf shall be excluded from income.

- 4. Payments made by the Division or by another government agency to a child care institution to provide day care for a household member are also excluded as vendor payments.
- 5. All or part of a public assistance grant which would normally be provided in a money payment but which is diverted to a protective payee will be considered income to the household.
- 6. Emergency Assistance payments will be excluded if they are made directly to a third party for a household expense. This rule applies even if the household has the option of receiving a direct cash payment.

- 7. Under some pay/benefit plans, an employee may choose to have the employer withhold from the employee's earnings money to pay certain expenses such as child care and medical expenses as a vendor payment to a third party when the expenses are incurred. The amount is counted as earned income when withheld because the money is legally obligated and otherwise payable to the employee at that time.
- 8. Some companies make credits available to employees to use to buy health insurance, annual leave, sick leave or life insurance. The employee cannot elect to receive a cash payment and loses the credits if not used. The amount shows up on the pay stub when used. These flexible benefits are not counted as income because they are not legally obligated and otherwise payable to the employee as earnings.

Some companies give employees "points" as incentive to arrive to work on time, work so many weeks without taking leave, etc. These points have a monetary value that appears on the pay stub and the points are subject to taxes. The employee can only redeem the points for commodities or goods from a catalog provided by the employer; they cannot convert the points to cash. These points are excluded from income because the funds are not otherwise payable to the household.

- B. Any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of \$30 a quarter.
- C. Grants, Loans and Scholarships Do not count educational financial assistance received from school grants, scholarships, vocational rehabilitation payments, Job Training Partnership Act payments, educational loans, and other loans that are expected to be repaid as income. Exclude any other financial assistance received that is intended for books, tuition, or other self-sufficiency expenses.
- D. All loans, including loans from private individuals as well as commercial institutions.
- E. Reimbursements for past or future expenses, to the extent that they do not exceed actual expenses, and do not represent a gain or benefit to the household.

Reimbursements for normal household living expenses such as rent or mortgage, personal clothing, or food eaten at home are a gain or benefit and, therefore, are not excluded. To be excluded, these payments must be provided specifically for an identified expense, other than normal living expenses, and used for the purpose intended. When a reimbursement, including a flat allowance, covers multiple expenses, each expense does not have to be separately identified as long as none of the reimbursement covers normal living expenses. The amount by which a reimbursement exceeds the actual incurred expense will be counted as income. However, reimbursements will not be

considered to exceed actual expenses, unless the provider or the household indicates that the amount is excessive.

Examples of excludable reimbursements which are not considered to be a gain or benefit to the household are:

Reimbursements or flat allowances for job or training related expenses such as travel, per diem, uniforms, and transportation to and from the job or training site. Reimbursements which are provided over and above the basic wages for these expenses are excluded; however, these expenses, if not reimbursed, are not otherwise deductible. Reimbursements for the travel expenses incurred by migrant workers are also excluded, as are maintenance funds provided to VR clients for uniforms, supplies, etc.

Reimbursement for out-of-pocket expenses of volunteers incurred in the course of their work.

Medical or dependent care reimbursements.

Reimbursements received by households to pay for a service provided under Title XX of the Social Security Act.

Do not consider the following as excludable reimbursements:

No portion of benefits provided under Title IVA of the Social Security Act, (TANF) to the extent such benefit is attributed to an adjustment for work related or child care expenses, will be considered excludable under this provision.

No portion of any educational assistance that is provided for normal living expenses (room and board) shall be considered a reimbursement excludable under this section.

F. Monies received and used for the care and maintenance of a thirdparty beneficiary who is not a household member.

If the intended beneficiaries of a single payment are both household and nonhousehold members, any identifiable portion of the payment intended and used for the care and maintenance of the nonhousehold member will be excluded. If the nonhousehold member's portion cannot be readily identified, the payment must be evenly prorated among intended beneficiaries and the exclusion applied to the nonhousehold member's prorata share or the amount actually used for the non household member's care and maintenance, whichever is less.

G. The earned income of a student under age 18 who attends elementary or secondary school or classes to obtain a GED at least half-time and lives with a natural, adoptive or step parent, is under the control of a household member other than a parent, or is certified in a separate food stamp household but lives with a natural, adoptive or step parent.

This exclusion continues to apply during temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment will resume following the break. If the child's earnings or amount of

work performed cannot be differentiated from that of other household members, prorate the total earnings equally among the working members. The child's prorata share is excluded.

H. Money received in the form of a nonrecurring lump sum payment.

These include, but are not limited to: income tax refunds, rebates or credits; retroactive lump sum Social Security, SSI, cash assistance, railroad retirement benefits, or other payments; lump sum insurance settlement; or refunds of security deposits on rental property or utilities. TANF payments made to divert a family from becoming dependent on welfare may be excluded as a non-recurring lump-sum payment if the payment is not defined as assistance. (All TANF diversion payments are excluded.) These payments will be counted as resources in the month received unless specifically excluded from consideration as a resource by other federal laws.

Payments of large retroactive SSI benefit amounts are required to be made in installments for SSI recipients. These SSI retroactive lump sum installments are excluded from income.

Earned Income Tax Credit (EITC) payments, whether paid in advance or made as tax refunds, are considered to be nonrecurring lump sum payments.

- I. The cost of producing selfemployment income (See DSSM 9074.4).
- J. Any income that is specifically excluded by any other Federal law from consideration as income for the purpose of determining eligibility for the Food Stamp Program.

The following laws provide such an exclusion:

PART A -- GENERAL

1. P. L. 79-396, Section 12(e) of the National School Lunch Act, as amended by Section 9(d) of P. L. 94-105, provides that,

The value of assistance to children under this Act shall not be considered to be income or resources for any purposes under any Federal or State laws, including laws relating to taxation and welfare and public assistance programs.

This law authorizes the School Lunch Program, the Summer Food Service Program for Children, the Commodity Distribution Program, and the Child and Adult Care Food Program. Note that the exclusion applies to assistance provided to children rather than that paid to providers.

2. P. L. 89-642, the Child Nutrition Act of 1966, Section 11(b), provides in part that,

The value of assistance to children under this Act shall not be considered to be income or resources for any purpose under any Federal or State laws including, but not

limited to, laws relating to taxation, welfare, and public assistance programs.

This law authorizes the Special Milk Program, the School Breakfast Program, and the Special Supplemental Food Program for women, infants, and children (WIC).

- 3. P. L. 91-646, Section 216, the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970. Reimbursements are excluded from income and resources.
- 4. P. L. 93-113, the Domestic Volunteer Services Act of 1973, Titles I and II, as amended.

Payments under Title I of that Act, including payments from such Title I programs as VISTA, University Year for Action, and Urban Crime Prevention Program, to volunteers shall be excluded for those individuals receiving food stamps or public assistance at the time they joined the Title I program, except that households which were receiving an income exclusion for a Vista or other Title I Subsistence allowance at the time of conversion to the Food Stamp Act of 1977 shall continue to receive an income exclusion for VISTA for the length of their volunteer contraction in effect at the time of conversion. Temporary interruptions in food stamp participation shall not alter the exclusion once an initial determination has been made. New applicants who were not receiving public assistance or food stamps at the time they joined VISTA shall have these volunteer payments included as earned income.

Payments to volunteers under Title II, including the Retired Senior Volunteer Program (RSVP), Foster Grandparents Program and Senior Companion Program, are excluded from income.

5. P. L. 93-288, Section 312(d), the Disaster Relief Act of 1974, as amended by P. L. 100-707, Section 105(i), the Disaster Relief and Emergency Assistance Amendments of 1988, 11/23/88. Payments precipitated by an emergency or major disaster as defined in this Act, as amended, are not counted as income or resources for food stamp purposes. This exclusion applies to Federal assistance provided to persons directly affected and to comparable disaster assistance provided by States, local governments, and disaster assistance organizations.

A major disaster is any natural catastrophe such as a hurricane or drought, or, regardless of cause, any fire, flood, or explosion, which the President determines causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

An emergency is any occasion or instance for which the President determines that Federal assistance is needed to supplant State and local efforts and capabilities to

save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe.

Most, but not all, Federal Emergency Management Assistance (FEMA) funds are excluded. For example, some payments made to homeless people to pay for rent, mortgage, food, and utility assistance when there is no major disaster or emergency is not excluded under this provision.

- 6. P. L. 97-300, the Job Training Partnership Act (JTPA), 10/13/82. Section 142(b) provides that allowances, earnings and payments to individuals participating in programs under JTPA shall not be considered as income. Subsequently P. L. 99-198, the Food Security Act of 1985, 12/85, amended section 5(1) of the Food Stamp Act to require counting as income on-the-job training payments provided under section 204(5) of Title II of the JTPA except for dependents less than 19 years old. Section 702(b) of P.L. 102-367, the Job Training Reform Amendments of 1992, further amended the Food Stamp Act (by changing the reference) to exclude on-the-job training payments received under the Summer Youth Employment and Training Program. This means that currently only onthe-job training payments to (1) youths, other than dependents under 19, in year-round programs and (2) adults can be counted. All other JTPA income is excluded.
- 7. P. L. 99-425, Section (e), the Low-Income Home Energy Assistance Act, 9/30/86. The amount of any home energy assistance payments or allowances provided directly to, or indirectly on behalf of, a household is excluded from income and resources. In determining any excess shelter expense deduction, the full amount of such payments or allowances shall be deemed to be expended by such household for heating or cooling expenses.
- 8. P. L. 99-498, the Higher Education Act Amendments of 1986, Section 479B, as amended by P. L. 100-50, June 3, 1987. Amounts made available for tuition and fees and, for students attending an institution at least half-time, books, supplies, transportation and miscellaneous personal expenses (other than room, board and dependent care) provided under Title IV of the Act and by the Bureau of Indian Affairs were excluded from income and resources.
- P. L. 102-325, the Higher Education Amendments of 1992, dated 7/23/92, contain two separate provisions that affect the treatment of payments made under the Higher Education Act. In regard to Title IV-- Student Assistance, Part F, Section 479B provides that:

Notwithstanding any other provision of law, student financial assistance received under this title, or under Bureau of Indian Affairs student assistance programs, shall not be taken into account in determining the need or eligibility of any person for benefits or assistance, or the amount of such benefits or assistance, under any Federal,

State, or local program financed in whole or in part with Federal funds.

Student assistance authorized under Title IV includes the following: (State and local agencies select students for some of these programs. In addition, some State and local agencies have separate programs of their own with similar names.)

- Basic Educational Opportunity Grants (BEOG or Federal Pell Grants)
- Presidential Access Scholarships (PAS-Super Pell Grants)
- Federal Supplemental Educational Opportunity Grants (FSEOG)
 - State Student Incentives Grants (SSIG)
- Federal Direct Student Loan Programs (FDSLP) (Formerly GSL and FFELP):
- Federal Direct Supplemental Loan Program (provides loans to students)
- Federal Direct PLUS Program (provides loans to parents)
 - Federal Direct Stafford Loan Program
- Federal Direct Unsubsidized Stafford Loan Program, and
 - Federal Consolidated Loan Program
- Federal Perkins Loan Program Direct loans to students in institutions of higher education (Perkins Loans, formerly NDSL)
- Federal Work Study Funds (Note: Not all Federal work study funds come under Title IV of the Higher Education Act.)
- TRIO Grants (Go to organizations or institutions for students from disadvantaged backgrounds):
- Upward Bound (Some stipends go to students)
 - Student Support Services
- Robert E. McNair Post-Baccalaureate Achievement
- Robert C. Byrd Honors Scholarship Program
- College Assistance Migrant Program (CAMP) for students whose families are engaged in migrant and seasonal farm work
 - High School Equivalency Program (HEP)
- National Early Intervention Scholarship and Partnership Program (NEISP).

There is only one BIA student assistance program per se. It is the Higher Education Grant Program, which is sometimes called the Scholarship Grant Program. However, education or training assistance received under any BIA program must be excluded. There is an Adult Education Program that provides money to adults to get a GED, attend technical schools, and for job training. There is also an employment assistance program. In addition,

education and training may be made available under separate programs like the Indian Child and Family Programs. Each tribe has a BIA agency that may be contacted for more information about education and training assistance.

Section 480(b) provides that:

The changes made in part F of title IV of the Act by the amendment made by this section shall apply with respect to determinations of need under such part F for award years beginning on or after July 1, 1993.

Title XIII, Indian Higher Education Programs, Part E--Tribal Development Student Assistance Revolving Loan Program (Tribal Development Student Assistance Act), Section 1343(c) provides in part that:

. . . for purposes of determining eligibility, loans provided under this program may not be considered in needs analysis under any other Federal law, and may not penalize students in determining eligibility for other funds.

The Part E exclusion was effective October 1, 1992.

P. L. 98-524, the Carl D. Perkins Vocational Education Act, Section 507, as amended by P. L. 101-392, 9/25/90, Sections 501 and 701 of the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990. Amounts made available for tuition and fees and, for students attending an institution at least half-time, books, supplies, transportation, dependent care, and miscellaneous personal expenses (other than room and board). This provision was effective July 1, 1991. The programs under this Act include the following:

- Indian Vocational Education Program
- Native Hawaiian Vocational Education

Program

- State Vocational and Applied Technology Education Program which contains the:
- State Program and State Leadership Activities
- Program for Single Parents, Displaced Homemakers, and Single Pregnant Women
 - Sex Equity Program
 - Programs for Criminal Offenders
 - Secondary School Vocational Education

Program

- Postsecondary and Adult Vocational Education Program
- State Assistance for Vocational Education Support Programs by Community-Based Organizations
- Consumer and Homemaking Education Program
- Comprehensive Career Guidance and Counseling Program
- Business-Labor-Education Partnership for Training Program
 - National Tech-Prep Education Program

- State-administered Tech-Prep Education Program
- Supplementary State Grants for Facilities and Equipment and Other Program Improvement Activities
- Community Education Employment Centers Program
- Vocational Education Lighthouse Schools Program
- Tribally Controlled Postsecondary Vocational Institutions Program
 - Vocational Education Research Program
- National Network for Curriculum Coordination in Vocational and Technical Education
- National Center or Centers for Research in Vocational Education
- Materials Development in Telecommunications Program
- Demonstration Centers for the Training of Dislocated Workers Program
- Vocational Education Training and Study Grants Program
- Vocational Education Leadership Development Awards Program
- Vocational Educator Training Fellowships Program
- Internships for Gifted and Talented Vocational Education Students Program
- Business and Education Standards Program
- Blue Ribbon Vocational Education Program
- Educational Programs for Federal Correctional Institutions
- Vocational Education Dropout Prevention Program
- Model Programs of Regional Training for Skilled Trades
- Demonstration Projects for the Integration of Vocational and Academic Learning Program
 - Cooperative Demonstration Programs
 - Bilingual Vocational Training Program
 - Bilingual Vocational Instructor Training

Program

- Bilingual Materials, Methods, and Techniques Program

(Federal Perkins Loans authorized under Part E of Title IV of the Higher Education Act must be handled in accordance with other Title IV income.)

Section 5(d)(3) of the Food Stamp Act, as amended by P. L. 101-624, Food, Agriculture, Conservation and Trade Act of 1990, Title XVIII, Mickey Leland Memorial Domestic Hunger Relief Act, 11/28/90, and P. L. 102-237, Food, Agriculture, Conservation, and Trade Act

Amendments of 1991, Section 903, provides that educational monies are excluded from income:

- when they are awarded to a person enrolled at a recognized institution of post-secondary education, at a school for the handicapped, in a vocational education program, or in a program that provides for completion of a secondary school diploma or obtaining the equivalent thereof,
- to the extent that they do not exceed the amount used for or made available as an allowance determined by such school, institution, program, or other grantor, for tuition, mandatory fees (including the rental or purchase of any equipment, materials, and supplies related to the pursuit of the course of study involved), books, supplies, transportation, and other miscellaneous personal expenses (other than living expenses), of the student incidental to attending such school, institution, or program, and
- to the extent loans include any origination fees and insurance premiums.)
- 9. P. L. 99-576. Veterans' Benefits Improvement and Healthcare Authorization Act of 1986. Section 303(a)(1), 8/7/86, which amended Section 1411(b) and 1412(c) of the Veterans' Educational Act of 1984 (GI Bill) provides that any amount by which the basic pay of an individual is reduced under this subsection shall revert to the Treasury and shall not, for purposes of any Federal law, be considered to have been received by or to be within the control of such individual. Title 38 of the USC, Chapter 30, Section 1411 refers to basic educational assistance entitlement for service on active duty and Section 1412 refers to basic educational assistance entitlement for service in the Selected Reserve. (Section 216 of P. L. 99-576 authorized stipends for participation in study of Vietnam-era veterans' psychological problems. These payments are not excluded by law.)
- 10. P. L. 100-175, Section 166, Older Americans Act, 11/29/87. Funds received by persons 55 and older under the Senior Community Service Employment Program under Title V of the Older Americans Act are excluded from income. Each State and eight organizations receive Title V funds. The organizations that receive some Title V funds are as follows:

Green Thumb
National Council on Aging
National Council of Senior Citizens
American Association of Retired
Persons
U.S. Forest Service
National Association for Spanish
Speaking Elderly
National Urban League
National Council on Black Aging

- 11. P. L. 100-242, Section 126(c)(5)(A), 11-6-87, The Housing and Community Development Act of 1987, excludes most increases in the earned income of a family residing in certain housing while participating in HUD demonstration projects authorized by section 126. Demonstration projects are authorized by this law for Charlotte, North Carolina, and 10 additional locations. The affected regional offices will be contacted individually regarding these projects.
- 12. P. L. 100-383, section 105(f)(2), Wartime Relocation of Civilians, 8/10/88 (the Civil Liberties Act of 1988). Payments to U.S. citizens of Japanese ancestry and permanent resident Japanese aliens or their survivors and Aleut residents of the Pribilof Islands and the Aleutian Islands West of Unimak Island are excluded from income and resources.
- 13. P. L. 100-435, Section 501, 9/19/88, which amended Section 17(m)(7) of the Child Nutrition Act of 1966. Under WIC demonstration project, food stamp benefits that may be exchanged for food at farmers' markets are excluded from income and resources.
- 14. P. L. 101-201, Agent Orange Compensation Exclusion Act, 12/6/89. All payments from the Agent Orange Settlement fund or any other fund established pursuant to the settlement in the Agent Orange product liability litigation are excluded from income and resources retroactive to January 1, 1989. The disabled veteran will receive yearly payments. Survivors of deceased disabled veterans will receive a lump-sum payment. These payments were disbursed by the AETNA insurance company.
- P. L. 101-239, 12/19/89, the Omnibus Budget Reconciliation Act of 1989, Section 10405, also excluded payments made from the Agent Orange settlement fund or any other fund established pursuant to the settlement in the Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.) from income and resources in determining eligibility for the amount of benefits under the Food Stamp Program.
- (Note: P. L. 102-4, Agent Orange Act of 1991, 2/6/91, authorized veterans' benefits to some veterans with service connected disabilities resulting from exposure to agent orange. Most of the eligible veterans received a lump sum payment for retroactive benefits due them, followed by regular monthly payments. The lump sum payment is excluded as income but the subsequent monthly payments are counted as unearned income. These payments from the Department of Veterans Affairs are issued by the U.S. Treasury. These VA payments are not excluded by law.)
- P. L. 101-426, Section 6(h)(2), the Radiation Exposure Compensation Act, dated October 15, 1990, excludes payments made under this public law from food stamp income and resources.

16. P. L. 101-508, 11/5/90, the Omnibus Budget Reconciliation Act of 1990, Title XI Revenue Provisions, Section 11111, Modifications of Earned Income Tax Credit, subsection (b) provides that any Federal earned income tax credit shall not be treated as income and shall not be taken into account in determining resources for the month of its receipt and the following month. This provision was effective with taxable years beginning after December 31, 1990.

The September 1988 amendments to the Food Stamp Act require the exclusion from income of any payment made to the household under section 3507 of the Internal Revenue Code of 1986 (relating to advance payment of earned income credit). The August 1993 amendments to the Food Stamp Act require the exclusion from resources of any earned income tax credits received by any member of the household for a period of 12 months from receipt if such member was participating in the food stamp program at the time the credits were received and participated in such program continuously during the 12-month period.

- 17. P. L. 101-610, Section 177(d), 11/16/90, National and Community Service Act (NCSA) of 1990, provides that Section 142(b) of the JTPA applies to projects conducted under Title I of the NCSA as if such projects were conducted under the JTPA. See item 6 above for the JTPA income exclusion. Title I includes three Acts: (1) Serve-America: The Community Service, Schools and Service-Learning Act of 1990, (2) the American Conservation and Youth Service Corps Act of 1990, and (3) the National and Community Service Act. There are about 47 different NCSA programs, and they vary by State. Most of the payments are made as a weekly stipend or for educational assistance. The Higher Education Service-Learning program and the AmeriCorps umbrella program come under this Title. The National Civilian Community Corps (NCCC) is a federally managed AmeriCorps program. The Summer for Safety program is an AmeriCorps program under which participants earn a stipend and a \$1000 post-service educational award. The National and Community Service Trust Act of 1993, P.L. 103-82, 9/23/93, amended the National and Community Services Act of 1990 but it did not change the exclusion.
- 18. P.S. 101-625, section 22(i), Cranston-Gonzales National Affordable Housing Act, dated 11/28/90 (42 USCS 1437t(i)) provides that,
- (i) Treatment of Income No service provided to a public housing resident under this section [Family Investment Centers] may be treated as income for purposes of any other program or provision of State or Federal law.

This exclusion applies to services such as child care, employment training and counseling, literacy training, computer skills training, assistance in the attainment of certificates of high school equivalency and other services. It does not apply to wages or stipends.

This same public law, Section 522Ii)(4), excludes most increases in the earned income of a family residing in certain housing while participating in HUD demonstration projects authorized by this public law. Demonstration projects are authorized by this law for Chicago, Illinois, and 3 other locations. The affected regional offices will be contacted individually regarding these projects.

- 19. P. L. 102-550, Housing and Community Development Act of 1992, Section 456(e) provides that payments made under the Youthbuild Program are to be treated like JTPA payments. Therefore they should be excluded from income in accordance with item 6 above.
- 20. P. L. 102-586, signed 11/4/92, Section 8, amended the Child Care and Development Block Grant Act Amendments of 1992 by adding a new Section 658S to exclude the value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under this subchapter from income for purposes of any other Federal or Federally-assisted program that bases eligibility, or the amount of benefits, on need. (These payments are made under the Social Security Act, as amended.)
- 21. P. L. 103-286, dated 8/1/94, Section 1 (a) provides in part that:

Payments made to individuals because of their status as victims of Nazi persecution shall be disregarded in determining eligibility for and the amount of benefits or services to be provided under any Federal or federally assisted program which provides benefits or services based, in whole or in part, on need.

- 22. P. L. 103-322, section 230202, dated 9/13/94, amended Section 1403 of the Crime Act of 1984 (42 U.S.C. 10602) to provide in part that:
- (e) Notwithstanding any other law, if the compensation paid by an eligible crime victim compensation program would cover costs that a Federal program, or a federally financed State or local program, would otherwise pay,
- (1) such crime victim compensation program shall not pay that compensation; and
- (2) the other program shall make its payments without regard to the existence of the crime victim compensation program.

Based on this language, payments received under this program must be excluded from income and resources for food stamp purposes.

23. P. L. 104-193, section 103(a), dated 8/22/96, amended Section 404(h) of Part A of Title IV of the Social Security Act to provide that for the purpose of determining eligibility to receive, or the amount of, any

benefit authorized by the Food Stamp Act, funds (including interest accruing) in an individual development account under the TANF block grant program shall be disregarded with respect to any period during which such individual maintains or makes contributions into such an account.

24. P.L. 104-204, section 1804(d), dated 9/26/96 provides that:

Notwithstanding any other provision of law, the allowance paid to a child under this section shall not be considered income or resources in determining eligibility for or the amount of benefits under any Federal or federally assisted program.

A monthly allowance (from \$200 - \$1200) is paid to a child of a Vietnam veteran for any disability resulting from spina bifida suffered by such child.

25. Public Law 100-707 authorizes the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act to pay Disaster Unemployment Assistance to any individual unemployed as a result of a major disaster. Individuals cannot be eligible for any other unemployment compensation and also receive disaster unemployment benefits. Benefits are limited to 26 weeks.

Disaster unemployment assistance is considered Federal major disaster and emergency assistance under the Stafford Act. It cannot be considered as income or as a resource when determining Food Stamp Program benefits.

Staff needs to verify the source of the unemployment income only if the client suffered a job loss or was unemployed due to a recent disaster.

PART B - AMERICAN INDIAN OR ALASKA NATIVE

Usually a law will authorize payments to members of a tribe or band, and the law will apply to the members enrolled in the tribe or band wherever they live. However, items 2, 3, and 4 are general laws, and they apply to all tribes. The individuals should have documentation showing the type of payment and where it originated.

- 1. P. L. 92-203, section 29, dated 1/2/76, the Alaska native Claims Settlement Act, and Section 15 of P. L. 100-241, 2/3/88, the Alaska Native Claims Settlement Act Amendments of 1987 All compensation (including cash, stock, partnership interest, land, interest in land, and other benefits) received under this Act are excluded from income and resources.
- 2. 25 USCA 640-d-22 (P.L. 93-531, section 22, dated 12/22/74) provides in part that the availability of financial assistance to any Navajo or Hopi Indian pursuant to 25 USCS ß 460d-460d-31 may not be considered as income or resources or otherwise used as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled to

under the Social Security Act or any other Federal or federally assisted program.

25 USCS 1407 Judgment Funds (as amended by P. L. 93-134 and P. L. 97-458) provides that:

None of the funds [appropriated in satisfaction of judgements of the Indian Claims and Commission or Claims Court in favor of any Indian tribe, band, etc.] which--

- (1) are distributed per capita or held in trust pursuant to a plan approved under the provisions of this Act [25 USCS \(\beta \) \(\beta \) 1401 et seq.], or
- (2) on the date of enactment of this Act [enacted Jan. 12, 1983], are to be distributed per capita or are held in trust pursuant to a plan approved by Congress prior to the date of enactment of this Act [enacted Jan. 12, 1983], or
- (3) were distributed pursuant to a plan approved by Congress after December 31, 1981 but prior to the date of enactment of this Act [enacted Jan. 12, 1983], and any purchases made with such funds, including all interest and investment income accrued thereon while such funds are so held in trust, shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act [42 USCS ß 301 et seq.] or, except for per capita shares in excess of \$2,000, any Federal or federally assisted program.

The \$2,000 amount applies to each payment made to each person. Initial purchases made with exempt payments distributed between January 1, 1982 and January 12, 1983, are excluded from resources to the extent that excluded funds were used.

- 3. P. L. 98-64, 8/2/83, applied the exclusion in 25 USCS 1407 to per capita payments from funds which are held in trust by the Secretary of Interior (trust fund distributions) for an Indian tribe. (Per capita payments may be authorized for specific tribes under other public laws.)
- 4. 25 USCS 1408 (as amended by P. L. 93-134, P. L. 97-458, and P. L. 103-66, Section 13736, 10/7/93) provides that interests of individual Indians in trust or restricted lands shall not be considered a resource and up to \$2,000 per year of income received by individual Indians that is derived from such interests shall not be considered income in determining eligibility for assistance under the Social Security Act or any other Federal or federally assisted program. Interests include the Indian's right to or legal share of the trust or restricted land and any income accrued from the funds in trust or the restricted lands. The exclusion applies to each individual Indian than has an interest. The income exclusion applies for both eligibility and benefit level purposes for food stamp purposes. The income exclusion applies to calendar years.

- 5. P. L. 93-531, section 22 Relocation assistance payments to members of the Navajo and Hopi Tribes are excluded from income and resources.
- 6. P. L. 94-114, section 6, 10/17/75 Income derived from certain submarginal land held in trust for certain Indian tribes is excluded from income and resources. The tribes that may benefit are:

Bad River Band of the Lake Superior Tribe of Chippewa Indians of Wisconsin Blackfeet Tribe Cherokee Nation of Oklahoma Cheyenne River Sioux Tribe Crow Creek Sioux Tribe Lower Brule Sioux Tribe Devils Lake Sioux Tribe Fort Belknap Indian Community Assiniboine and Sioux Tribes Lac Courte Oreilles Band of Lake Superior Chippewa Indians Keweenaw Bay Indian Community Minnesota Chippewa Tribe Navajo Tribe Oglala Sioux Tribe Rosebud Sioux Tribe **Shoshone-Bannock Tribes** Standing Rock Sioux Tribe

- 7. P. L. 94-189, Section 6, 12/31/75 Funds distributed per capita to the Sac and Fox Indians or held in trust are excluded from income and resources. The funds are divided between members of the Sac and Fox Tribe of Oklahoma and the Sac and Fox Tribe of the Mississippi in Iowa. The judgments were awarded in Indian Claims Commission dockets numbered 219, 153, 135, 158, 231, 83, and 95.
- 8. P. L. 94-540 Payments from the disposition of funds to the Grand River Band of Ottawa Indians are excluded from income and resources.
- 9. P. L. 95-433, section 2 Indian Claims Commission payments made pursuant to this Public Law to the Confederated Tribes and Bands of the Yakima Indian Nation and the Apache Tribe of the Mescalero Reservation are excluded from income and resources.
- 10. 25 USCS 1931 Indian Child Welfare (P. L. 95-608, 11/8/78), subparagraph (a) provides for child and family service grant programs on or near reservations in the preparation and implementation of child welfare codes. Such programs may include, but are not limited to, family assistance, including homemaker and home counselors, day care, after school care, and employment, recreational activities, and respite care; home improvement; the employment of professional and other trained personnel to

assist the tribal court in the disposition of domestic relations and child welfare matters; and education and training of Indians; including tribal court judges and staff, in skills relating to child and family assistance and service programs. Subparagraph (b) provides that assistance under 25 USCS 1901 et seq. shall not be a basis for the denial or reduction of any assistance otherwise authorized under any federally assisted programs. (Similar off-reservation programs are authorized by 25 USCS 1932. We have asked the Office of General Counsel if the exclusion applies to these programs.)

- 11. P. L. 96-420, section 9(c), 10/10/80, Maine Indian Claims Settlement Act of 1980 Payments made to the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet are excluded from income and resources.
- 12. P. L. 97-403 Payments to the Turtle Mountain Band of Chippewas, Arizona are excluded from income and resources.
- 13. P. L. 97-408 Payments to the Blackfeet, Grosventre, and Assiniboine tribes, Montana, and the Papago, Arizona, are excluded from income and resources.
- 14. P. L. 98-123, Section 3, 10/13/83 Funds distributed under this Act to members of the Red Lake Band of Chippewa Indians are excluded from income and resources. Funds were awarded in docket number 15-72 of the United States Court of Claims.
- 15. P. L. 98-124, Section 5 Per capita and interest payments made to members of the Assiniboine Tribe of the Fort Balknap Indian Community, Montana, and the Assiniboine Tribe of the Fort Peck Indian Reservation, Montana, under this Act are excluded from income and resources. Funds were awarded in docket 10-81L.
- 16. P. L. 98-500, Section 8, 10/17/84, Old Age Assistance Claims Settlement Act, provides that funds made to heirs of deceased Indians under this Act shall not be considered as income or resources nor otherwise used to reduce or deny food stamp benefits except for per capita shares in excess of \$2,000.
- 17. P. L. 99-146, Section 6(b), 11/11/85 Funds distributed per capita or held in trust for members of the Chippewas of Lake Superior are excluded from income and resources. Judgements were awarded in Dockets Numbered 18-S, 18-U, 18-C, and 18-T.

Dockets 18-S and 18-U are divided among the following reservations.

Michigan:

Keweenaw Bay Indian Community
(L'Anse, Lac Vieux Desert, and
Ontonagon Bands) Wisconsin:
Bad River Reservation
Lac du Flambeau Reservation
Lac Courte Oreilles Reservation
Sokaogon Chippewa Community

Red Cliff Reservation
St. Croix Reservation
Minnesota:
Fond du Lac Reservation
Grand Portage Reservation
Nett Lake Reservation (including
Vermillion Lake and Deer Creek)
White Earth Reservation

Under dockets 18-C and 18-T funds are given to the Lac Courte Oreilles Band of the Lake Superior Bands of Chippewa Indians of the Lac Courte Oreilles Reservation of Wisconsin, the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, the Sokaogon Chippewa Community of the Mole Lake Band of Chippewa Indians, and the St. Croix Chippewa Indians of Wisconsin.

- 18. P. L. 99-264, White Earth Reservation Land Settlement Act of 1985, 3/24/86, Section 16 excludes moneys paid under this Act from income and resources. This Act involves members of the White Earth Band of Chippewa Indians in Minnesota.
- 19. P. L. 99-346, Section 6(b)(2) Payments to the Saginaw Chippewa Indian Tribe of Michigan are excluded from income and resources.
- 20. P. L. 99-377 Section 4(b), 8/8/86, Funds distributed per capita to the Chippewas of the Mississippi or held in trust under this Act are excluded from income and resources. The judgements were awarded in Docket Number 18-S. The funds are divided by reservation affiliation for the Mille Lac Reservation, Minnesota; White Earth Reservation, Minnesota; and Leech Lake Reservation, Minnesota.
- 21. P. L. 101-41, 6/21/89, the Puyallup Tribe of Indians Settlement Act of 1989, Section 10(b) provides that nothing in this Act shall affect the eligibility of the Tribe or any of its members for any Federal program. Section 10(c) provides that none of the funds, assets, or income from the trust fund established in Section 6(b) shall at any time be used as a basis for denying or reducing funds to the Tribe or its members under any Federal, State, or local program. (The Puyallup Tribe is located in the State of Washington.)
- 22. P. L. 101-277, 4/30/90, funds appropriated in satisfaction of judgements awarded to the Seminole Indians in dockets 73, 151, and 73-A of the Indian Claims Commission are excluded from income and resources except for per capita payments in excess of \$2,000. Payments were allocated to the Seminole Nation of Oklahoma, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, and the independent Seminole Indians of Florida.
- 23. P. L. 101-503, Section 8(b), Seneca Nation Settlement Act of 1990, dated November 3, 1990, provides that none of the payments, funds or distributions authorized, established, or directed from this Act, and none of the income derived therefrom, shall affect the eligibility of the

Seneca Nation or its members for, or be used as a basis for denying or reducing funds under, any Federal program.

- 24. P.L. 103-436, 11/2/94, Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act, Section 7(b), provides that payments made pursuant to that Act are totally excluded from income and resources for food stamps purposes.
 - K. Energy Assistance as follows:
- (a) Any payments or allowances made for the purpose of providing energy assistance under any Federal law other than Part A of Title IV of the Social Security Act, including utility reimbursements made by the Department of Housing and Urban Development and the rural Housing Service, or
- (b) A one-time payment or allowance applied on an as needed basis and made under a Federal or State law for the costs of weatherizing or emergency repair or replacement of an unsafe or inoperative furnace or other heating or cooling device. A down payment followed by a final payment upon completion of the work will be considered a one-time payment for the purposes of this provision.

Federal or State one-time assistance for weatherization or emergency repair or replacement of heating or cooling devices are also excluded as income.

- L. Cash donations based on need received on or after February 1, 1988 from one or more private nonprofit charitable organizations, but not to exceed \$300 in a Federal fiscal year quarter.
- M. Earned income tax credit payments received either as a lump sum or payments under section 3507 of the Internal Revenue Code of 1986 (relating to advance payment of earned income tax credits received as part of the paycheck or as a reduction in taxes that otherwise would have been paid at the end of the year).
- N. Any payment made to an E & T participant for costs that are reasonably necessary and directly related to participation in the E & T program. These costs include, but are not limited to, dependent care costs, transportation, other expenses related to work, training or education, such as uniforms, personal safety items or other necessary equipment, and books or training manuals. These costs shall not include the cost of meals away from home.
- O. Governmental foster care payments received by households with foster care individuals who are considered to be boarders in accordance with DSSM 9013.3.
- P. Income of an SSI recipient necessary for the fulfillment of a plan for achieving self-support (PASS). The income set aside for this special PASS account is excluded for income purposes.
- Q. Marines living on base in adequate quarters are not entitled to receive a Basic Allowance for Quarters (BAQ) even though the amount is listed under entitlements and a deduction is shown for the same amount under deductions on

the Leave and Earnings Statement (LES). For these cases the BAQ is disregarded under the entitlement and deduction sections when verified. Staff must advise applicants to get a letter from their commanding officer stating that the LES is incorrect, the applicant is not entitled to the BAQ and does not receive it.

R. In HUD's Family Self-Sufficiency (FSS) Program, participants sign a contract to achieve economic independence within five years. As the participant's employment income rises, a portion of the rent increases they would normally be charged would be waived. The amount waived will be credited to an escrow account to be given to the family at the end of the program.

The participating household must fulfill its employment obligation under the contract or HUD may terminate the FSS supportive services. The family will then forfeit any escrow account funds.

While the funds are in the FSS Escrow Account, they are totally unavailable to the household and excluded as a resource. When the household achieves economic independence and is given the escrow account, the money will be excluded as income as a nonrecurring lump-sum payment.

S. The earnings of temporary census workers from the Bureau of Census is not counted as income for food stamp purposes effective April 1, 2000 through December 31, 2000.

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

3500 Board of Examiners of Psychologists 24 DE Admin. Code 3500

Statutory Authority: 24 Delaware Code, Section 3506(a)(1) (24 **Del.**C. §3506(a)(1))

PLEASE NOTE: IN THE SEPTEMBER REGISTER IT WAS NOTED THAT SINCE NO CHANGES WERE MADE TO THE PROPOSED REGULATION IT WAS NOT BEING PUBLISHED. THE READER WAS INCORRECTLY REFERRED TO THE DECEMBER ISSUE OF THE REGISTER. THE PROPOSED REGULATION WAS PUBLISHED IN THE MAY ISSUE AT PAGE 1518 8 DE REG. 1518 (05/01/05). A COMPLETE SET OF THE RULES AND REGULATIONS FOR THE BOARD OF EXAMINERS OF PSYCHOLOGISTS IS AVAILABLE AT: http://dpr.delaware.gov/boards/psychology/index.shtml

Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. <u>Underlined text</u> indicates new text. Language which is stricken through indicates text being deleted.

Proposed Regulations

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

DELAWARE COUNCIL ON POLICE TRAINING

Statutory Authority: 11 Delaware Code, Section 8404(a)(5) (11 **Del.C.** §8404(a)(5))

PUBLIC NOTICE

The Council on Police Training (COPT), in accordance with 11 **Delaware Code** Section 8404(a)(14) and 29 **Delaware Code** Section 10115 of the Administrative Procedures Act, hereby gives notice that it shall hold a public hearing on October 11, 2005 at 9:00 a.m., in the first-floor conference room at the Delaware State Police Training Academy, N. DuPont Highway, Dover, Delaware 19903.

The Council on Police Training will receive written comments or oral testimony from interested persons regarding the following regulations to amend the current COPT Regulation II-14 (Minimum Standards Qualification Course of Fire) and current COPT Regulation II-15 (Firearms Instructor Retraining). The final date for interested persons to submit written comments shall be the date of the public hearing. Written comments should be addressed to: Captain Harry W. Downes, Jr., Director, Delaware State Police Training Academy, P.O. Box 430, Dover, DE 19903-0430.

Anyone wishing to make written or oral comments who would like a copy of the proposed regulations may contact the COPT at (302) 739-5903, or write to the above address.

PROPOSED REVISIONS

H-14 Minimum Standards Firearm Qualification

Course Of Fire

50 Rounds/Daylight/Low-Light

Stage #1 3 Yard Line 2 RoundsTotal: 2 Rounds

The officer is to stand at the designated line and on the command "Draw" his/her handgun with the strong hand. Bringing the weapon eye level. Two rounds are to be fired. This is done with the strong hand only - strong hand shooting exercise. The weapon is to be returned to the holster.

Stage #2 3 Yard Line 2 RoundsTotal: 2 Rounds
The command "Back" will be given and the officer will
step to the rear one step. Upon the command "Fire", he/she
will fire two rounds into the target.

Stage #3 4 Yard Line 2 RoundsTotal: 2 Rounds Same as the previous stage.

Stage #4 5 Yard Line 2 RoundsTotal: 8 Rounds

With this stage, the shooter begins with a holstered weapon. On the command of either "right" or "left" the shooter will move one step in the direction indicated, draw and bringing the weapon to eye level, fire two rounds. The weapon is to remain on target for the next three lateral commands.

Night Shoot - add four more rounds to this stage.

Stage #5 7 Yard Line 2 RoundsTotal: 6 Rounds

Barricade, Kneeling, Strong-Side, and Strong-Hand

Drill

The shooters will kneel approximately three feet behind a barricade. On the command "Draw" the weapon will be brought up to eye level. From the safety of the barricade, the sights will be aligned. On the command "Fire", the shooter will quickly observe the target, check the sight alignment, lean out, and fire two rounds. The shooter will then return to concealment/cover. This procedure will be repeated two more times for a total of six rounds fired. The barricade is not to be used as support.

Night Shoot - add two more rounds to this stage.

Stage #6 7 Yard Line 2 RoundsTotal: 6 Rounds

Barricade, Kneeling, Off-Side, and Strong Hand Drill

The previous stage will be repeated from the off-side of the barricade.

Night Shoot - add two more rounds to this stage.

Stage #7 15 Yard Line 3 RoundsTotal:

Rounds

The shooter begins this course of fire standing on the 15 yard line wit the weapon drawn. On the command "Move" the shooter begins to advance on the target. A slow, smooth step is suggested allowing the shooter to stay on target. On the command "Fire" he/she will stop and fire three rounds. The shooter will not begin moving again until the command "Move" is given. This will be repeated tow more times for a total of nine rounds fired. Any reloading or clearing of malfunctions can be preformed behind cover by simply stepping to the left and kneeling down.

Stage #8 25 Yard Line 9 RoundsTotal: 9
Rounds

Standing Strong Side3 RoundsKneeling Strong Side3 RoundsStanding Off-Side - Strong Hand3 Rounds

The shooter will fire from the above positions. This is unsupported shooting. When the command "Fire" is given, the shooter will begin. Any and all reloading shall be done from behind the barricade as the weapon dictates.

Night Shoot - eliminate this stage.

Stage #9 4 Yard Line 6 RoundsTotal: 6 Rounds
Off-Hand, One Handed Shooting, and Reloading Drill

The weapon should be loaded with three rounds with three additional rounds in another reloading device. The officer will draw his/her weapon and transfer it to the offhand. The strong hand will be placed behind the back as if it were incapacitated. On the command "Fire" the shooter will fire three rounds. The weapon will then be emptied, reloaded, and fired three additional times. The weapon will then be unloaded. This is all done with use of only the offhand. The weapon will then be transferred back to the strong-hand and re-holstered.

Night Shoot - add one more round to this stage.

This completes the Minimum Handgun Qualification Course of Fire.

Total Rounds Expended: 50 Approximate Time: 25 minutes

II-14 Minimum Standards For Firearms Qualifications

A Handguns (Day)

A minimum of three qualification shoots per year, scheduled on at least two separate dates, with ninety days between qualification dates.

Of the three dates, there will be one mandatory "low light" qualification. Simulation of "low light" is permitted and the "low light" qualification may be combined with a day shoot.

All training ammunition shall be comparable to issued ammunition in performance.

Service ammunition will be collected annually and replaced with new ammunition. The collected ammunition may be used for training and qualification.

A minimum of 150 rounds of ammunition will be fired annually for proficiency training. This ammunition will not include the ammunition required for qualification courses.

A minimum score of 80% must be obtained to be qualified with the approved handgun. The method of scoring and target selection will be determined by the instructor.

All qualifications are to be completed with authorized weapon and equipment (holster, speedloaders, pouches, etc.).

Shooting will be conducted annually using the flashlight for target illumination and identification.

YARD LINE COURSE OF FIRE TOTAL ROUNDS

25/Greater	Behind Cover Two Different Positions	9
<u>15 to 7</u>	Advancing Towards Target	<u>9</u>
7	Centered Behind Barricade	<u>12</u>
<u>5/Less</u>	Move Back	<u>6</u>
<u>5/Less</u>	Lateral Movement	<u>8</u>
<u>5/Less</u>	One Hand Reload Strong/Weak Hand Only	<u>6</u>
	TOTAL OF FIFTY ROUNDS	

PROPOSED REGULATIONS

The instructor will determine at what distance, in what manner, and how many rounds will be fired on each command.

<u>B. Low Light or Concealed Carry Standards Retiree</u> Concealed Carry Standards for H.R. 218.

This regulation sets forth the minimum qualification standards for concealed weapon handguns for active duty police officers and for retired law enforcement officers who qualify under the Law Enforcement Officers Safety Act of 2004 (H.R. 218).

These are minimum standards and shall not prevent any police department from establishing more strict or additional rules or regulations to qualify to conceal carry a firearm on or off duty.

YARD LINE **COURSE OF FIRE TOTAL ROUNDS** 15 to 17 Advance Towards Target 9 7 Centered Kneeling Behind 16 Barricade 5/Less Lateral Movement 12 5/Less Move Back 6 5/Less One Hand Reload 7 Strong/Weak Hand Only TOTAL OF FIFTY ROUNDS

The instructor will determine at what distance, in what manner, and how many rounds are fired on each command.

Active duty and retired law enforcement officers must qualify a minimum of once annually and obtain a minimum score of 80%.

If the weapon system or holster is different from duty use, the officer must qualify a minimum of once annually and obtain a minimum of 80% score.

C. Basic Patrol Long Gun

This basic patrol long gun course is not designed to replace training relevant to specific weapons such as sniping marksmanship and select fire weapons. It will be incumbent upon each police department to provide their respective officers with specific recognized training to have those officers certified.

Long guns include patrol level weapons designed to be fired from the shoulder (e.g., patrol rifle/carbines, shotguns).

Police departments using long guns will be required to qualify three times a year. A two-day course and one "low light" course simulation of "low light" is permitted. A minimum of ninety days is required between the two-day courses. The "low light" course may be combined as part of a one-day qualification course.

Service ammunition will be collected annually and replaced with new ammunition. The collected ammunition may be used for training and qualification.

All training ammunition shall be comparable to issued ammunition in performance.

Departments using long guns will fire a minimum of twenty rounds of ammunition for proficiency training per year. This ammunition will not include the ammunition required for qualification courses.

A minimum score of 80% must be obtained to be qualified. The method of scoring and what type of target used will be determined by the instructor.

All qualifications are to be completed with authorized weapons and ammunition.

<u>Departments are required to qualify on each type of ammunition that is issued.</u>

YARD LINE COURSE OF FIRE TOTAL ROUNDS

<u>3/Greater</u> <u>Two Different Positions</u> <u>10</u> Three Different Places

TOTAL OF TEN ROUNDS

The instructor will determine at what distance, in what manner, and how many rounds are fired on each command depending on the weapon and the capability of the ammunition.

H-15 FIREARMS INSTRUCTOR RETRAINING

Firearms instructors certified by the Council on Police Training shall receive approved updated instructors training no less than every three years.

The Chief of Police shall provide documentation of the required update training to the Administrator for inclusion in the instructor's training records.

No Firearms instructor shall be employed by any police agency for purposes of certifying personnel unless the instructor has been approved by the Council on Police Training.

II-15 Re-certification of Basic Firearms Instructors

An eight-hour firearms re-certification course will be held annually and will cover, but not be limited to: legal

PROPOSED REGULATIONS

updates; use of force; and review of Council on Police <u>Training standards.</u>

To maintain certification, firearms instructors must attend a minimum of one re-certification course every three years and complete sixteen hours of additional training in firearms usage or complete sixteen hours of Academy-level instruction, or a combination of training and instruction in the same three-year period.

The head of the police department shall provide documentation of the required updated training to the COPT Administrator to include in the instructor's training records.

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

DEPARTMENT OF AGRICULTURE

HARNESS RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 10000 (3 **Del.C.** §10000) 3 **DE Admin. Code** 501

PUBLIC NOTICE

501 Harness Racing Rules and Regulations

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to amend rules 8.4.3.4.2 and 8.4.3.5.9 to permit the use of Commission approved blood collection containers. The Commission will hold a public hearing on the proposed rule change on October 20, 2005. Written comments should be sent to Administrator of Harness Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901.

8.0 Veterinary Practices, Equine Health Medication

(Break in Continuity of Sections)

8.4 Testing

8.4.1 Reporting to the Test Barn

8.4.1.1 Horses shall be selected for post-racing testing according to the following protocol:

8.4.1.1.1 At least one horse in each race, selected by the judges from among the horses finishing in the first four positions in each race, shall be tested.

8.4.1.1.2 Horses selected for testing shall be taken to the Test Barn or Test Stall to have a blood,

urine and/or other specimen sample taken at the direction of the State veterinarian.

8.4.1.2 Random or extra testing, including pre-race testing, may be required by the State Steward or judges, or by the Commission, at any time on any horse on association grounds.

8.4.1.3 Unless otherwise directed by the State Steward, judges or the Commission Veterinarian, a horse that is selected for testing must be taken directly to the Test Barn.

8.4.2 Sample Collection

8.4.2.1 Sample collection shall be done in accordance with the RCI Drug Testing and Quality Assurance Program External Chain of Custody Guidelines, or other guidelines and instructions provided by the Commission Veterinarian.

8.4.2.2 The Commission veterinarian shall determine a minimum sample requirement for the primary testing laboratory. A primary testing laboratory must be approved by the Commission.

8.4.3 Procedure for Taking Specimens

8.4.3.1 Horses from which specimens are to be drawn shall be taken to the detention area at the prescribed time and remain there until released by the Commission Veterinarian. Only the owner, trainer, groom, or hot walker of horses to be tested shall be admitted to the detention area without permission of the Commission Veterinarian.

8.4.3.2 Stable equipment other than equipment necessary for washing and cooling out a horse shall be prohibited in the detention area.

8.4.3.2.1 Buckets and water shall be furnished by the Commission Veterinarian.

8.4.3.2.2 If a body brace is to be used, it shall be supplied by the responsible trainer and administered only with the permission and in the presence of the Commission Veterinarian.

8.4.3.2.3 A licensed veterinarian shall attend a horse in the detention area only in the presence of the Commission Veterinarian.

8.4.3.3 One of the following persons shall be present and witness the taking of the specimen from a horse and so signify in writing:

8.4.3.3.1 The owner;

8.4.3.3.2 The responsible trainer who, in the case of a claimed horse, shall be the person in whose name the horse raced; or

8.4.3.3.3 A stable representative designated by such owner or trainer.

8.4.3.4

8.4.3.4.1 All urine containers shall be supplied by the Commission laboratory and shall be sealed

with the laboratory security seal which shall not be broken, except in the presence of the witness as provided by (subsection (3)) subsection 8.4.3.3 of this section.

8.4.3.4.2 Blood vacutainers sample receptacles will also be supplied by the Commission laboratory in sealed packages as received from the manufacturer.

8.4.3.5 Samples taken from a horse, by the Commission Veterinarian or his assistant at the detention barn, shall be collected and in double containers and designated as the "primary" and "secondary" samples.

8.4.3.5.1 These samples shall be sealed with tamper-proof tape and bear a portion of the multiple part "identification tag" that has identical printed numbers only. The other portion of the tag bearing the same printed identification number shall be detached in the presence of the witness.

8.4.3.5.2 The Commission Veterinarian shall:

8.4.3.5.2.1 Identify the horse from which the specimen was taken.

8.4.3.5.2.2 Document the race and day, verified by the witness; and

8.4.3.5.2.3 Place the detached portions of the identification tags in a sealed envelope for delivery only to the stewards.

8.4.3.5.3 After both portions of samples have been identified in accordance with this section, the "primary" sample shall be delivered to the official chemist designated by the Commission.

8.4.3.5.4 The "secondary" sample shall remain in the custody of the Commission Veterinarian at the detention area and urine samples shall be frozen and blood samples refrigerated in a locked refrigerator/freezer.

8.4.3.5.5 The Commission Veterinarian shall take every precaution to ensure that neither the Commission chemist nor any member of the laboratory staff shall know the identity of the horse from which a specimen was taken prior to the completion of all testing.

8.4.3.5.6 When the Commission chemist has reported that the "primary" sample delivered contains no prohibited drug, the "secondary" sample shall be properly disposed.

8.4.3.5.7 If after a horse remains a reasonable time in the detention area and a specimen can not be taken from the horse, the Commission Veterinarian may permit the horse to be returned to its barn and usual surroundings for the taking of a specimen under the supervision of the Commission Veterinarian.

8.4.3.5.8 If one hundred (100) milliliters (ml.) or less of urine is obtained, it will not be split, but will be considered the "primary" sample and will be tested as other "primary" samples.

8.4.3.5.9 Two (2) blood samples shall be collected in twenty (20) milliliters vacutainers, sample receptacles approved by the Commission, one for the "primary" and one for the "secondary" sample.

8.4.3.5.10 In the event of an initial finding of a prohibited substance or in violation of these Rules and Regulations, the Commission chemist shall notify the Commission, both orally and in writing, and an oral or written notice shall be issued by the Commission to the owner and trainer or other responsible person no more than twenty-four (24) hours after the receipt of the initial finding, unless extenuating circumstances require a longer period, in which case the Commission shall provide notice as soon as possible in order to allow for testing of the "secondary" sample; provided, however, that with respect to a finding of a prohibited level of total carbon dioxide in a blood sample, there shall be no right to testing of the "secondary sample" unless such finding initially is made at the racetrack on the same day that the tested horse raced, and in every such circumstance a "secondary sample" shall be transported to the Commission laboratory on an anonymous basis for confirmatory testing.

8.4.3.5.10.1 If testing of the "secondary" sample is desired, the owner, trainer, or other responsible person shall so notify the Commission in writing within 48 hours after notification of the initial positive test or within a reasonable period of time established by the Commission after consultation with the Commission chemist. The reasonable period is to be calculated to insure the integrity of the sample and the preservation of the alleged illegal substance.

8.4.3.5.10.2 Testing of the "secondary" samples shall be performed at a referee laboratory selected by representatives of the owner, trainer, or other responsible person from a list of not less than two (2) laboratories approved by the Commission.

8.4.3.5.11 The Commission shall bear the responsibility of preparing and shipping the sample, and the cost of preparation, shipping, and testing at the referee laboratory shall be assumed by the person requesting the testing, whether it be the owner, trainer, or other person charged.

8.4.3.5.11.1 A Commission representative and the owner, trainer, or other responsible person or a representative of the persons notified under these Rules and Regulations may be present at the time of the opening, repackaging, and testing of the "secondary" sample

to ensure its identity and that the testing is satisfactorily performed.

8.4.3.5.11.2 The referee laboratory shall be informed of the initial findings of the Commission chemist prior to making the test.

8.4.3.5.11.3 If the finding of the referee laboratory is proven to be of sufficient reliability and does not confirm the finding of the initial test performed by the Commission chemist and in the absence of other independent proof of the administration of a prohibited drug of the horse in question, it shall be concluded that there is insubstantial evidence upon which to charge anyone with a violation.

8.4.3.5.12 The Commission Veterinarian shall be responsible for safeguarding all specimens while in his possession and shall cause the specimens to be delivered only to the Commission chemist as soon as possible after sealing, in a manner so as not to reveal the identity of a horse from which the sample was taken.

8.4.3.5.13 If an Act of God, power failure, accident, strike or other action beyond the control of the Commission occurs, the results of the primary official test shall be accepted as prima facie evidence.

*Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Delaware Harness Racing Commission is available at: http://www.state.de.us/deptagri/harness/index.shtml.

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d)) 14 **DE Admin. Code** 396

PUBLIC NOTICE

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

396 Private Business and Trade Schools

A. Type of Regulatory Action Required Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend 14 **DE Admin. Code** 396 Private Business and Trade Schools. The amendments to add 3.6 and to change 7.1 are necessary in order to change the renewal cycle for the certification of approval for private business and trade schools by the Department of Education. Instead of all renewals occurring at the same time the renewals will be done on a quarterly basis. These changes are needed because of the large increase in the number of schools seeking renewal of their approval at the same time. The number of the regulation has also been changed to 282 from 396 placing the regulation in the 200 section of the Administrative Code entitled *Administrations and Operations*.

C. Impact Criteria

- 1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses changes in the procedures for approving private business and trade schools not student achievement.
- 2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses changes in the procedures for approving private business and trade schools not equitable education issues.
- 3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses changes in the procedures for approving private business and trade schools not health and safety issues.
- 4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses changes in the procedures for approving private business and trade schools not students' legal rights.
- 5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision making at the local board and school level.
- 6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.
- 7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity.

- 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 regulation? There is no less burdensome method for addressing the purpose of the regulation.
- 10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no cost to the State or to the local board of compliance with the regulation.

396 282 Private Business and Trade Schools

1.0 Definitions

For purposes of this regulation:

- "**Agent**" has the same meaning as in 14 **Del.C.** §8501(4).
- "Agent Card" shall mean the pocket card provided for in 14 Del.C. §8510.
- **"Department"** means the Delaware Department of Education.
- "Private Business and Trade School" has the same meaning as in 14 Del.C. §8501(1).

2.0 General Provisions

- 2.1 The distinguishing characteristic of a private business or trade school shall be the potential for wage earning by its graduates.
 - 2.2 Private business and trade schools shall include:
- 2.2.1 Correspondence school courses offered as post high school courses in trade or business subjects; and
- 2.2.2 Programs that may also be available as high school introductory courses in trade or business subjects, without regard for the age or the prior educational attainment of the student.
- 2.3 A private business and trade school which actively seeks enrollees from the State of Delaware, or which sends an agent or agents into the State of Delaware to solicit enrollees, shall ensure that each of its agents maintains a current agent permit issued by the Department.
- 2.4 The term agent shall include individuals who solicit enrollees in Delaware even though the institution the agent

- represents does not conduct classes within the State of Delaware.
- 2.5 All advertising by a private business and trade school shall be in accordance with the statutes, rules and regulations for advertising administered and supervised by the Department of Justice Consumer Protection Division.
- 2.6 The Department's 14 **DE Admin. Code** 225, prohibits discrimination on the basis of race, color, creed, national origin, disability, age or gender in programs receiving approval from the Department applies to private business and trade schools and agents approved by the Department.

3.0 Certificates of Approval

- 3.1 Applications for an initial certificate of approval to conduct a private business and trade school, and for annual renewal of such certificates, shall be made on forms approved by the Department and include such information and fees as required by the Department. Applications are not considered complete until all required information and fees are received by the Department.
- 3.2 A private business and trade school offering more than one program of instruction must have each program approved by the Department.
- 3.3 The Department may conduct an on-site evaluation of any applicant for a certificate of approval or for renewal of a certificate of approval. The Secretary of Education may waive an on-site evaluation if the applicant is accredited by a regional or national accrediting association recognized by the Department, or is certified to conduct a similar program or school by the state education agency of another state with comparable standards for such schools.
- 3.4 If a private business and trade school makes any material change in its operation, such as, but not limited to, corporate structure or financial structure, the school shall notify the Department of the change within thirty days. The school shall also identify the change in its next renewal application.
- 3.5 The fees charged as filing and renewal fees are not refundable.
- 3.6 For purposes for this section, the following definitions shall apply: first calendar quarter January 1st through March 31st; second calendar quarter April 1st through June 30; third calendar quarter July 1st through September 30th; and fourth calendar quarter- October 1st through December 31st.
- 3.6.1 Any current and valid Certificate of Approval with an expiration date of December 31, 2005, shall automatically be extended to the end of the calendar quarter in which the private business and trade school was originally granted its Certificate of Approval, conditioned on

the school providing the Department with evidence of continuation of surety bond at least through the extension period.

- 3.6.2 Beginning with the fourth quarter of 2005, a private business and trade school will be required to renew its certification by the end of the calendar quarter in which the Department originally granted its Certificate of Approval.
- 3.6.3 Private business and trade schools with multiple campuses may request the Department to renew all campuses on a single renewal date based on initial approval of any one of the campuses.

4.0 Agent Permits

- 4.1 Applications for an initial agent permit, and for renewal of such permits, shall be made on forms approved by the Department and include such information and fees as required by the Department. Applications are not considered complete until all required information and fees are received by the Department.
- 4.2 An agent representing more than one private business and trade school must apply for separate permits for each such school.
- 4.3 Agents shall apply to renew their permit(s) each year at the same time that the school or schools the agent represents make application to renew their respective certificates of approval. In the case of a school not conducting classes in Delaware, but sending agents into Delaware, the application for an agent permit must be accompanied by a notarized verification of employment from the school represented and must be received by the Department on or before the expiration of the current permit. No permit shall be issued for a period of more than twelve calendar months.
- 4.4 No agent shall solicit Delaware enrollees on behalf of the private business and trade school represented until the Department issues the appropriate agent card.
- 4.5 The lapse, suspension, revocation, or non-renewal of a private business and trade school certificate of approval for any cause shall terminate all agent permits for that institution.
- 4.6 A school shall report the discharge or resignation of any agent to the Department within thirty days.
- 4.7 The fee for the agent permit will be waived for the owner or chief executive officer of a private business and trade school who also serves as its agent. Each such individual must still apply for and obtain the agent permit. Any additional agents must obtain permits as otherwise described.
- 4.8 The fees charged as filing and renewal fees are not refundable.

5.0 Complaints

- 5.1 Each private business and trade school shall adopt a policy and procedures to address complaints by its students. The school catalogue shall contain its complaint policy and procedures or a reference to where the policy and procedures can be obtained.
- 5.2 In addition to the complaint procedures adopted by a private business and trade school for its students, the Department will investigate complaints by any person alleging facts that, if true, would constitute grounds for refusing or revoking a certificate of approval or an agent permit. In either event, the Department will notify the complainant of its conclusions and provide the complainant with a copy of the school or agent's initial response, if any.
- 5.2.1 Such complaints must be in writing and verified by the signature of the person making the complaint. Oral, anonymous or unsigned complaints will not be investigated.
- 5.2.2 A copy of the written complaint will be provided to the affected private business and trade school or agent for their written response. The Department may require that the complainant provide written permission for the Department to forward the complaint to the school or agent.
- 5.2.2.1 If, after reviewing the school or agent's response, the Department concludes that there is insufficient evidence to believe that the school or agent has violated applicable law or a standard, rule or regulation of the Department, the Department may close the complaint without further investigation. In such case, the Department will notify the complainant and the school or agent of this conclusion and provide the complainant with a copy of the school or agent's response.
- 5.2.2.2 If, after reviewing the school or agent response, the Department concludes that there is sufficient evidence to believe that the school or agent has violated applicable law or a standard, rule or regulation of the Department, the Department may continue its investigation or begin revocation or other action against the school or agent as the Department determines appropriate. The Department may also continue its investigation or begin revocation or other action if the school or agent fails to respond to a complaint within the time established by the Department.
- 5.3 The Department may also investigate circumstances that would constitute grounds for refusing or revoking a certificate of approval or an agent permit on its own initiative.

6.0 Denials and Revocations of Certificates and Permits

6.1 In view of an apparent conflict between the statutory statement in 14 **Del.C.** §8516 (for any combination of the following) and 14 **Del.C.** §8517 (for any cause enumerated in §8516), the Department interprets and shall administer §8516 to mean that a certificate of approval or an agent permit may be denied or revoked for any one or combination of the causes identified in that Section.

7.0 Bonds

- 7.1 Applications for an initial certificate of approval <u>or for renewal of certificates</u> shall include evidence that the required surety bond is valid <u>from the date of the complete application through the new certificate of approval expiration date.</u>
- 7.2 The amount of the surety bond required of a school shall be determined as provided in 14 **Del.C.** §8505(b). In no event shall a bond be for less than \$5,000 per calendar year.
- 7.3 The Department interprets and shall administer the phrase fail to provide the services called for in a contract or agreement with a student, as used in 14 **Del.C.**, §8523 to mean failure to substantially provide the essential services."

7.4 Forfeiture

- 7.4.1 In the event a surety bond is forfeited, the Department shall notify the students identified on the last available school roster of their right to submit a claim for reimbursement. Such students shall have thirty days from the date they are notified by the Department to submit a claim for reimbursement. Claims received more than thirty days after the Departments notification shall not be considered.
- 7.4.2 Other students wishing to submit a claim for reimbursement must contact the Department within thirty days of the schools closing to submit their claim for reimbursement. Claims received more than thirty days after the schools closing shall not be considered.
- 7.4.3 Claims for reimbursement shall be submitted and documented as directed by the Department. The Department shall consider only appropriately documented claims in distributing the proceeds of any surety bond.

4 DE Reg. 986 (12/1/00)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d)) 14 **DE Admin. Code** 405

PUBLIC NOTICE

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

405 Minor Capitol Improvement Program

A. Type of Regulatory Action Required Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend 14 **DE Admin. Code** 405 Minor Capitol Improvement Program in order to remove the reference in 1.2 and 1.5 to sending copies of purchase orders and invoices to the Department of Education. This practice in not needed and is inconsistent with current practice.

C. Impact Criteria

- 1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amendments address the Minor Capitol Improvement Program not student achievement.
- 2. Will the amended regulation help ensure that all students receive an equitable education? The amendments address the Minor Capitol Improvement Program not equitable education issues.
- 3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments address the Minor Capitol Improvement Program not health and safety issues.
- 4. Will the amended regulation help to ensure that all students' legal rights are respected? The amendments address the Minor Capitol Improvement Program not students' legal rights.
- 5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision making at the local board and school level.
- 6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation will not place unnecessary reporting or

administrative requirements or mandates upon decision makers at the local board and school levels.

- 7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity.
- 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 regulation? There is no less burdensome method for addressing the purpose of the regulation.
- 10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no additional cost to the State and to the local school boards of compliance with the regulation.

405 Minor Capital Improvement Programs

1.0 The Minor Capital Improvement Program

The Minor Capital Improvement Program is a program to provide for the planned and programmed maintenance and repair of the school plant. The program's primary purpose is to keep real property assets in their original condition of completeness and efficiency on a scheduled basis. It is not for increasing the plant inventory or changing its composition. Minor Capitol Improvement Projects are projects that cost less than \$500,000 unless the project is for roof repair. The program is reviewed annually and should be comprised of work necessary for good maintenance practice.

- 1.1 Minor Capitol Improvement Project purchase orders shall be submitted to the State Division of Accounting prior to any work being done. A separate purchase order must be submitted for each project. (One copy of the approved purchase order will be returned to the district for their information and record.)
- 1.2 The local school district shall send a copy of the purchase order to the Department of Education.
- 4.3 1.2 Use of Funds: The following areas are authorized for Minor Capital Improvement Program funds: roofs, heating systems, ventilation & air conditioning systems, plumbing & water systems, electrical systems,

windows, doors, floors, ceilings, masonry, structural built-in equipment, painting, fire suppression systems, life safety systems, maintenance of site, office equipment used for instructional purposes only and renovations/alterations/modernizations that do not require major structural changes.

1.4 1.3 Exclusions: Funds allocated for a specific project shall be used only for that project. Program funds may not be used for the following: movable equipment other than office equipment used for instructional purposes that is transported from one location to another, routine janitorial supplies, new construction that increases the area of a building or extends any of its component systems, site improvements that add to or extend the existing roadways or side walks, surfacing a non-surfaced area for parking, completing major construction projects or specific items omitted/deleted from major construction projects or floor space allocated according to formula and used otherwise.

1.5 1.4 Invoices: Invoices may be sent directly to the Division of Accounting for processing after work has been completed and accepted, except for invoices with an adjustment which must be approved by the Department of Education before transmittal to the Division of Accounting.

2.0 Career-Technical Program Equipment Replacement Requests

- 2.1 Requests for the replacement of Career-Technical Program equipment may be made under the Minor Capital Improvement Program. Requests shall be made when the equipment is within three years of its estimated life so districts can accumulate the necessary dollars to purchase the item. Districts desiring to participate in the Career Technical Program equipment replacement program shall submit a request in writing to the Office of School Plant Planning at the time of the Minor Capital Improvement Program submission. Districts should not include Career-Vocational Program replacements with regular Major Capitol Improvement Projects.
- 2.2 Career-Vocational Program Equipment is defined as either a movable or fixed unit but not a built-in unit. In addition, the equipment shall retain its original shape and appearance with use, be non-expendable, represent an investment which makes it feasible and advisable to capitalize and not lose its identity through incorporation into a different or more complex unit.
- 2.2.1 In order to replace Career-Vocational Program equipment, the equipment must have a minimum 10 year life expectancy, have a unit cost of \$500 or more, be obsolete or more then five (5) years old, and be purchased with state, state and local or local funds.
- 2.3 Funds: Funds shall be allocated based on the percentage of a district's Vocational Division II Units to the

total of such units of all participating districts. This percentage is applied to the total funds available in a given year for capital equipment. Vocational Career-Technical Schools are 100% State funded.

3.0 Purchase Orders.

Funds may be expended anytime during the life of the Act which appropriated the funds, usually, a three-year period. Appropriations may be accumulated over those three years and expended for a major replacement when a sufficient balance is attained. However, should funds prove insufficient after three years of appropriations, the district must supplement the program from their own or other resources. Funds unexpended when the appropriating Act expires shall revert to the State. Purchase orders shall include the reference ID system, sub system, component and deficiency code from the correction on the facility assessment website database.

4.0 Cost Limitations.

The maximum cost of a Minor Capital Improvement Project is \$500,000 except roof repairs/replacements which are not cost limited. Non-roof projects exceeding the ceiling shall be requested in the Major Capital Improvement Program.

5.0 Temporary Employees.

Workers may be hired under the Minor Capital Improvement Program provided they are temporary hires and directly involved in the planning, constructing, or record maintenance of the construction project.

6.0 Reporting.

At the end of each fiscal year, school districts shall submit a list of completed projects accomplished under the Minor Capital Improvement Program.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1250-1252 (14 **Del.C.** §§1250-1252) 14 **DE Admin. Code** 1518

PUBLIC NOTICE

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

1518 Special Institute for Teacher Licensure and Certification

A. Type of Regulatory Action Requested New Regulation

B. Synopsis of Subject Matter of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the approval of the State Board of Education to adopt regulation 1518 Special Institute for Teacher Licensure and Certification. It is necessary to adopt this regulation to provide regulatory guidance for the implementation of the Special Institute for Teacher Licensure and Certification, pursuant to 14 **Del.C.** §§1250 through 1252. This regulation concerns the establishment by one or more of Delaware's institutions of higher education of a special institute for teacher licensure and certification for individuals who hold a bachelor's degree in an area other than education to participate in coursework and other experiences necessary to be eligible for teacher licensure and certification in critical needs areas, including special education.

C. Impact Criteria

- 1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation concerns educator licensure and certification, not student achievement. The regulation will assist well-qualified individuals in becoming qualified to teach in critical needs areas.
- 2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps ensure that all educators demonstrate high standards for the issuance of an initial license and a standard certificate.
- 3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator licensure and certification, not students' health and safety issues.

- 4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator licensure and 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 new regulation? 14 **Del.C.** requires that we promulgate this regulation.
- 10. What is the cost to the state and to the local school boards of compliance with the new regulation? There is no additional cost to local school boards for compliance with the regulation.

1518 Special Institute for Teacher Licensure and Certification

1.0 Content

This regulation shall apply to the Special Institute for Teacher Licensure and Certification, pursuant to 14 **Del.C.** §§1250 through 1252.

2.0 Definitions

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

"Department" means the Delaware Department of Education.

"Educator" means a person licensed and certified by the State under chapter 12 of 14 Del.C. 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, but does not include substitute teachers.

"Emergency Certificate" means a certificate issued to an educator who holds a valid Delaware Initial, Continuing, or Advanced License, but lacks necessary skills and knowledge to meet certification requirements in a specific content area.

<u>"Examination of Content Knowledge" means a standardized test which measures knowledge in a specific content area, such as PRAXISTM II.</u>

"Examination of General Knowledge" means a standardized test which measures general knowledge and essential skills in mathematics or quantitative and verbal skills, including reading and writing, such as PRAXIS TM I and which, for the purposes of this regulation, means a preprofessional skills test.

"Initial License" means the first license issued to an educator that allows an educator to work in a position requiring a license in a Delaware public school.

"Major or Its Equivalent" means no fewer than thirty (30) credit hours in a content area.

<u>"Secretary"</u> means the Secretary of the Delaware Department of Education.

"Standard Certificate" means a credential issued to verify that an educator has the prescribed knowledge, skill and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

<u>"Standards Board"</u> means the Professional Standards Board established pursuant to 14 **Del.C.** §1201.

<u>"State Board"</u> means the State Board of Education of the State pursuant to 14 **Del.C.** §104.

3.0 Special Institute for Teacher Licensure and Certification

One or more of Delaware's teacher training institutions may establish a Special Institute for Teacher Licensure and Certification to provide a program for college graduates without a license and/or certificate to become licensed and certified to teach in Delaware public schools. Tuition may not be charged to participants.

- 3.1 <u>Candidates for admission to a Special Institute for</u> Teacher Licensure and Certification shall:
- 3.1.1 Hold a bachelor's degree in a field other than Education from a regionally accredited college or university, with a major or its equivalent in a content area that has designated as a critical needs area by the Department.
- 3.1.2 Have a grade point index in the major field of the bachelor's degree which is two-tenths of a point higher than the grade point index required for students entering regular teacher education programs at the teacher education institution(s).
- 3.1.3 Pass an examination of general knowledge, such as PRAXISTM I, or provide an acceptable alternative to the PRAXISTM I test scores, as set forth in 14 DE **Admin. Code** 1510.
- 3.1.4 <u>Must agree to teach at least one (1) year in a Delaware public school for each year funding was received.</u> Such service must be completed within five (5) years of successful completion of the Special Institute for Teacher Licensure and Certification program.
- 3.1.4.1 Failure to meet the requirement set forth in 3.1.4 above shall result in the individual immediately paying back a sum equivalent to the tuition which would have been paid for the coursework leading to licensure and certification; or
- 3.1.4.2 An individual may also satisfy the requirement set forth in 3.1.4 above by providing a notarized statement, accompanied by evidence of unsuccessful applications, that the individual has made a good faith effort to seek employment in at least five (5) Delaware public school districts, but has been unable to secure a teaching position in any of those districts.
- 3.1.4.3 An individual whose license and certificate have been revoked for cause prior to fulfilling the service set forth in 3.1.4 must immediately repay any remaining obligation.

4.0 Format of the Special Institute for Teacher Licensure and Certification

- 4.1 A Special Institute for Teacher Licensure and Certification in a secondary content area which corresponds to the major field of study in the bachelor's degree program shall consist of:
- 4.1.1 One (1) summer of courses in the Special Institute:
- 4.1.2 One (1) semester of student teaching or one (1) year of supervised, full-time teaching experience in a Delaware public school; and
- 4.1.3 <u>Additional coursework as set forth by the teacher training</u>

- institution which constitutes the program of study leading to initial licensure and certification.
- 4.2 A Special Institute for Teacher Licensure and Certification in elementary or special education shall consist of:
- 4.2.1 Two(2) summers of courses, one (1) immediately before and one (1)after a student teaching experience or one year of full-time teaching experience;
- 4.2.2 One (1) semester of student teaching or one (1) year of supervised, full-time teaching experience in a Delaware public school; and
- <u>4.2.3</u> <u>Additional coursework as set forth by the teacher training institution which constitutes a program of study leading to initial licensure and certification.</u>

5.0 Examination of Content Knowledge

Prior to completion of the Special Institute for Licensure and Certification, participants must successfully pass the appropriate examination of content knowledge, such as the PRAXISTM II examination, if applicable and available.

6.0 <u>Licensure and Certification of Special Institute</u> Participants

- 6.1 The Department shall issue an Initial License of no more than three (3) years duration conditioned on continued enrollment in the Special Institute and an Emergency Certificate to an individual employed to complete the one (1) year of full-time teaching experience in lieu of student teaching.
- 6.2 Upon successful completion of the Special Institute for Teacher Licensure and Certification program, an individual shall be issued an Initial License valid for the balance of the three (3) year term, and a Standard Certificate.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1260-1264 (14 **Del.C.** §§1260-1264) 14 **DE Admin. Code** 1519

PUBLIC NOTICE

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

1519 Alternative Routes to Teacher Licensure and Certification

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 approval of the State Board of Education to amend regulation 1519 Alternative Routes to Teacher Licensure and Certification. It is necessary to revise this regulation to align it with changes in statute and to correct some discrepancies in the existing regulation. This regulation concerns the organization and operation of the alternative routes for teacher licensure and certification program, which provides a vehicle for individuals who hold a bachelor's degree in a content area appropriate to secondary education to participate in coursework and other experiences necessary to be eligible for teacher licensure and certification in critical needs areas while serving as a teacher in a Delaware school district. The word "to" in the title and elsewhere in the regulation was changed to "for". In Section 2.0, the definition of "educator" was changed, and definitions for "examination of content knowledge" and "major or its equivalent" were added. Clarification of the issuance of an Initial License and Emergency Certificate conditioned on continued enrollment in the program was inserted in Section 3.0. Time requirements for the passage of PRAXISTM I and II were adjusted to comply with changes in statute. Section 6.0 dealing with evaluation and supervision was revised. New sections 7.0, 8.0, 9.0, and 10.0 were added to address licensure and certification recommendations and the candidates' right to a hearing. Sections 7.0 and 8.0 were renumbered 11.0 and 12.0.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation concerns educator

licensure and certification, not student achievement. The regulation will assist well-qualified individuals in becoming qualified to teach in critical needs areas.

- 2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps ensure that all educators demonstrate high standards for the issuance of an initial license and a standard certificate.
- 3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator licensure and certification, not students' health and safety issues.
- 4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator licensure and 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 new regulation? 14 **Del.C.** requires that we promulgate this regulation.
- 10. What is the cost to the state and to the local school boards of compliance with the new regulation? There is no

additional cost to local school boards for compliance with the regulation.

1519 Alternative Routes to for Teacher Licensure and Certification Program

1.0 Content

This regulation shall apply to the Alternative Routes to for Teacher Licensure and Certification Program, pursuant to 14 **Del.C**. §1260 through 1264.

7 DE Reg. 161 (8/1/03)

2.0 Definitions

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

"Coherent Major" means a major in an area appropriate to the instructional field.

"Department" means the Delaware Department of Education.

"Educator" means a public school employee who holds a license issued under the provisions of 14 Del.C. Chapter 12, and includes teachers and administrators, and as otherwise defined by the Standards Board and the State Board pursuant to 14 Del.C. §1203, but does not include substitute teachers. person licensed and certified by the State under Chapter 12 of 14 Del.C. 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, but does not include substitute teachers.

"Emergency Certificate" means a certificate issued to an educator who holds a valid Delaware Initial, Continuing, or Advanced License, but lacks necessary skills and knowledge to meet certification requirements in a specific content area.

<u>"Examination of Content Knowledge" means a standardized State test of subject matter knowledge which measures knowledge in a specific content area, such as PRAXISTM II.</u>

"Examination of General Knowledge" means a standardized test which measures general knowledge and essential skills in mathematics or quantitative and verbal skills, including reading and writing, such as PRAXISTM I, which for the purposes of this regulation, means the State Basic Skills Test.

"Initial License" means the first license issued to an educator that allows an educator to work in a position requiring a license in a Delaware public school.

"Major or Its Equivalent" means no fewer than thirty (30) credit hours in a content area.

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

"Standard Certificate" means a credential issued to verify that an educator has the prescribed knowledge, skill and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

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

"State Board" means the State Board of Education of the State pursuant to 14 Del.C. §104.

7 DE Reg. 161 (8/1/03)

3.0 Alternative Routes for Teacher Licensure and Certification Program Candidates

Candidates seeking participation in the Alternative Routes for Teacher Licensure and Certification Program shall be issued an Initial License of no more than three (3) years duration conditioned on continued enrollment in the Alternative Routes for Teacher Licensure and Certification Program and a Standard or an Emergency Certificate or Certificates of no more than three years duration. Candidates must:

- 3.1 Hold a bachelor's degree from a regionally accredited college or university in a <u>coherent</u> major, <u>or its</u> <u>equivalent</u>, appropriate to the instructional field they desire to teach;
- 3.2 Pass an examination of general knowledge, such as PRAXISTM I, or provide an acceptable alternative to the PRAXISTM I test scores, as set forth in **DE Admin. Code** 1510, within the period of time from the date of hire to the end of the next consecutive fiscal year;
- 3.3 Pass an examination of content knowledge, such as PRAXISTM II, in the instructional field they desire to teach, if applicable and available, within the period of time from the date of hire to the end of the next fiscal year;
- 3.34 Obtain an acceptable health clearance and an acceptable criminal background check clearance; and
- 3.45 Obtain and accept an offer of employment in a position that requires licensure and certification.

7 DE Reg. 161 (8/1/03)

4.0 Content of the Alternative Routes for Teacher Licensure and Certification Program

The Alternative Routes to <u>for</u> Teacher Licensure and Certification Program shall consist of: three interrelated but distinct components: a summer institute of intensive study, a practicum experience the first year of teaching, and seminars in teaching during, and, immediately following, the first year of teaching.

- 4.1 A summer institute of approximately 120 instructional (clock) hours completed by the candidate prior to the beginning of his/her teaching assignment. This includes an orientation to the policies, organization and curriculum of the employing school district or charter school, instructional strategies and classroom management and child or adolescent development.
- 4.1.1 Candidates employed too late to participate in the summer institute will complete the practicum experience and seminars on teaching during the first school year and will participate in the summer institute following their first year of teaching.
- 4.2 A one-year, full-time practicum experience which includes a period of intensive on-the-job mentoring and supervision beginning the first day in which the candidate assumes full responsibility for a classroom and continuing for a period of thirty (30) weeks.
- 4.3 Seminars on teaching that provide alternative routes to licensure and certification teachers with approximately 120 200 instructional (clock) hours or equivalent professional development during the first year of their teaching assignment and during a one week an intensive seminar the following summer. Content shall include curriculum, student development and learning, and the classroom and the school.

7 DE Reg. 161 (8/1/03)

5.0 Mentoring Support

Mentoring support shall be carried out in accordance with Section 1261 (b) (2) and (3) of 14 Del.C. 14 DE Admin. Code 1502.

7 DE Reg. 161 (8/1/03)

6.0 Evaluation/Supervision Supervision and Evaluation

Evaluation/supervision shall be conducted as per Section 1261 (b) (2) (3) of 14 Del. C. Teachers enrolled in the Alternative Routes for Teacher Licensure and Certification Program shall be observed and formally evaluated by a certified evaluator using the state approved evaluation system at least once during the first ten (10) weeks in the classroom, and a minimum of two (2) additional times within the next twenty (20) weeks. Evaluations shall be no more than two (2) months apart.

7.0 Recommendation for Licensure and Certification

Upon completion of the Alternative Routes for Teacher Licensure and Certification Program, the certified evaluator shall prepare a summative evaluation report for the teacher participating in the Program. The evaluation report shall include a recommendation as to whether or not a license shall be issued. The evaluation report and license

recommendation shall be submitted to the Department. A copy of the evaluation report and license recommendation should be issued to the candidate twenty (20) days before submission to the Department.

8.0 Issuance of License

If the evaluation report recommends approval of the candidate for licensure, the Department shall issue an Initial License valid for the balance of the three (3) year term, if the participant has completed the Program in less than three (3) years, or a Continuing License, if the three (3) year term of the Initial License has expired, and shall issue the appropriate Standard Certificate or Certificates.

<u>Candidates who receive a recommendation of 'disapproved' shall not be issued an Initial</u>

<u>License and Standard Certificate by the Department,</u> and may not continue in the Alternative Routes for Licensure and Certification Program.

9.0 Recommendation of "Disapproved"

Candidates who receive a recommendation of "disapproved" may petition the Department for approval of additional opportunities to participate in the Alternative Routes for Teacher Licensure and Certification Program. Within fifteen (15) days of receipt of the evaluation report and the certification recommendation, a candidates disagreeing with the recommendation may submit the the evaluator written materials documenting the reasons that the candidate believes a license should be awarded. The evaluator shall forward all documentation submitted by the candidate, along with the evaluation report and recommendation concerning licensure and certification. The Secretary or his or her designee shall review the evaluation report, the licensure and certification recommendation, and any documentation supplied by the candidate and make a determination with respect to licensure and certification.

10.0 Right to a Hearing

A teacher participating in the Alternative Routes for Teacher Licensure and Certification Program who is denied a license and certificate may appeal the decision, and is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with the Standard Board=s Hearing Procedures and Rules.

7.0 11.0 Program Evaluation

Those responsible for alternative routes to certification Programs approved by the Standards Board and the State Board shall develop a Program evaluation process. The focus of the Program evaluation must be to demonstrate the degree to which teachers who complete the Program are effective in the classroom.

Additional Alternative Routes to Teacher 8.0 12.0 **Licensure and Certification Programs**

The Secretary may implement other Alternative Routes to Teacher Licensure and Certification Programs, provided the Programs meet the minimum criteria set forth in this regulation.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1220(a) (14 **Del.C.** §1220(a)) 14 DE Admin, Code 1522

PUBLIC NOTICE

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

1522 Standard Certificate Business Education Teacher

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 DE Admin. Code 1522 Standard Certificate Business Education Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). It is necessary to amend this regulation to reflect changes in curriculum in business education classes, as well as to align it with the statutory change regarding PRAXISTM II test passage as a condition of eligibility for a standard certificate.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement The amended regulation addresses student standards? 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 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.
- Is there a less burdensome method for addressing the purpose of the new regulation? 14 **Del.C.** requires that we promulgate this regulation.
- 10. What is the cost to the state and to the local school boards of compliance with the amended regulation? There is no additional cost to local school boards for compliance with the regulation.

1522 Standard Certificate Business Education Teacher

1.0 Content

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Business Education Teacher (required for grades 9-12, and valid in grades 5-8 in a middle level school).

7 DE Reg. 775 (12/1/03)

2.0 Definitions

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

"Department" means the Delaware Department of Education.

"License" means a credential which authorizes the holder to engage in the practice for which the license is issued.

"Major in Business" means a major in business administration or management, or a related field, including, but not limited to, accounting, economics, finance or marketing.

"Standard Certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

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

"State Board" means the State Board of Education of the State pursuant to 14 Del.C. §104.

7 DE Reg. 775 (12/1/03)

3.0 Standard Certificate

In accordance with 14 **Del.C**. §1220(a), the Department shall issue a Standard Certificate as a Business Education Teacher to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

- 3.1 Professional Education A bachelor's degree from an NCATE specialty organization recognized educator preparation program offered by a regionally accredited college or university with a major in business education; or
- 3.1.1 Completion of an approved teacher preparation program in the area of Business Education or,
- 3.1.2 A minimum of 27 semester hours to include Human Development;
- <u>3.1.1</u> <u>A bachelor's degree from a state approved educator preparation program offered by a regionally accredited college or university, with a major in business</u>

education, where the state approval body employed the appropriate NASDTEC standards or NCATE specialty organization standards; or_

- 3.1.2 A bachelor's degree from a regionally accredited college or university with a major in business; and
- 3.2 Passage of the appropriate PRAXISTM II test approved by the Standards Board and the State Board in business education.
 - 3.2 Specific Teaching Field
- 3.2.1 Completion of a teacher education program in the area of Business Education or,
- 3.2.2 A minimum of forty-two (42) semester hours as specified below:
 - 3.2.2.1 Accounting (6 semester hours);
- 3.2.2.3 Business Information Systems (3 semester hours);
- 3.2.2.4 Business Computer Software Applications (6 semester hours);
- 3.2.2.5 Electronic Office Procedures (3 semester hours);
- 3.2.2.6 Business Communications (3 semester hours);
- 3.2.2.7 Business Mathematics (3 semester hours);
- 3.2.2.8 Business Economics (3 semester hours); Electives in Business (12 semester hours).
- 3.3.3 Alternative Certification of individuals with Business experience as a substitute for coursework in 3.2.2.
- 3.3.3.1 For each 4000 hours of business experience in a field appropriate to the course areas listed above, credit for 3 semester hours of that coursework can be approved by the Department of Education for the purpose of certification.
- 3.3.3.2 At a minimum, an individual in this situation will have to complete or verify completion of the 12 semester hours of elective coursework in Business (as well as the coursework in Professional Education) to obtain the Standard Certificate.
- 3.4 Endorsement for Teaching Information Systems and Services Business Education Courses in Vocational-Technical Schools shall be required of teachers in vocational-technical schools teaching information systems and services courses in business education programs.
- 3.4.1 Standard Certificate in Business Education and nine semester hours of elective coursework selected from the following:
- 3.4.1.1 Principles of Business Data
 Processing
 - 3.4.1.2 COBOL Programming
 - 3.4.1.3 Data Base Systems

3.4.1.4 Systems Analysis and Design

3.4.1.5 Programming Language Principles

3.4.1.6 RPG Programming.

3.4.2 This elective coursework can satisfy part of the elective requirements specified in 3.4.1.

7 DE Reg. 775 (12/1/03)

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a Standard Certificate as a Business Education Teacher after that date must comply with the requirements set forth in 14 DE Admin. Code 1516.

7 DE Reg. 775 (12/1/03)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Pharmaceutical Services – Multi-State Pooling Rebate Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan to expand the recently approved preferred drug list by participating in a Medicaid Multi-State Pooling Rebate Program to reduce the cost of pharmaceuticals in a clinically sound way.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by October 31, 2005.

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 Amendment

Statutory Authority

- 1927(a)(1) and 1927 (a)(4) of the Social Security Act, Authorizes state to enter directly into separate or supplemental rebate agreements with manufacturers
- 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
- 42 CFR §440.120, Prescribed drugs et al
- 42 CFR §447.201, State plan requirements
- State Medicaid Director Letter, SMDL #04-006, September 9, 2004, Guidelines for Multi-State Pooling Agreements

Background

On September 9, 2004, CMS issued a State Medicaid Director letter giving guidance to states on how to implement multi-state pooling arrangements that achieve cost savings and protect the interest of Medicaid beneficiaries while promoting competition.

Summary of Proposed Changes

DMMA intends to submit an amendment to the Title XIX Medicaid State Plan to the Centers for Medicare and Medicaid Services (CMS) to participate in a multi-state pool by submitting a SPA package that includes the following elements:

- Standard multi-state pooling language incorporated into the supplemental rebate agreement portion of the state plan.
- A supplemental rebate agreement template.
- A document referenced in the supplemental rebate agreement template that indicates the state's participation in the purchasing pool.

Although, the state will pool its efforts in buying drugs, DMMA will maintain its own Preferred Drug List (PDL) and exercise clinical oversight of the list to assure adequate access to needed prescribed drugs for its beneficiaries. This approach builds on the Department's efforts to curb program costs while assuring access to prescribed drugs and quality care.

DMMA is working with Provider Synergies, L.L.C. TOP\$(SM), a multi-state pharmaceutical purchasing pool administered by Provider Synergies, L.L.C., has received CMS approval. TOP\$ (SM) stands for "The Optimal PDL Solution".

DSS PROPOSED REGULATION #05-52

REVISIONS: Attachment 3.1-A
Page 5 Addendum

LIMITATIONS

12.a. Prescribed Drugs:

Drug Coverage

- 1. Drug products are covered when prescribed or ordered by a physician, or other licensed practitioner within the scope of their practice and when obtained from a licensed pharmacy. Covered drugs, as defined in Section 1927(k)(2) of the Act, are those which are prescribed for a medically accepted indication, medically necessary, and produced by any pharmaceutical manufacturer, which has entered into and complies with a drug rebate agreement under Section 1927(a) of the Act.
- 2. Drugs excluded from coverage as provided by Section 1927(d)(2) of the Act, include:
- a. Drugs designated less than effective by the FDA (DESI drugs) or which are identical, similar, or related to such drugs;
- b. Drugs when used for cosmetic purposes or hair growth (products, such as Minoxidil Lotion and Retin A are not covered for adults, except for certain medical conditions);
 - c. Drugs when used to promote fertility;
- d. Drugs that have an investigational or experimental or unproven efficacy or safety status;
- e. Drugs when used for anorexia, weight loss, or weight gain. Drugs for the purpose of weight control may be reimbursed when prior authorized following established criteria as reviewed and approved by the DUR Board and deemed medically necessary.
- 3. Non-covered services also include: drugs used to correct sexual dysfunction and compound drugs (compound prescriptions must include at least one medication that on its own would be a covered entity).
- 4. Participating manufacturers' new drugs are covered (except excluded/restricted drugs specified in Section 1927[d][1]-[2] of the Social Security Act) for six months after FDA approval and upon notification by the manufacturer of a new drug.

Quantity and Duration

1. Dosage limits: Medications are limited to a maximum dose recommended by the FDA and appropriate medical compendia described in section 1927(k) of the Social Security Act, that indicate that doses that exceed FDA guidelines are both safe and effective or doses that are

specified in regional or national guidelines published by established expert groups such as the American Academy of Pediatrics, or guidelines recommended by the Delaware Medicaid Drug Utilization Review (DUR) Board and accepted by the DHSS Secretary.

- 2. Quantity limits are placed on therapeutic categories that will allow for coordinated care and improve outcomes. Limits exist for:
 - a. Sedative hypnotics-15 doses per 30 days
- b. Triptans, acute treatment of migraines, 9 doses per 45 days
 - c. Opioid analgesics-200 doses per 30 days
- d. Skeletal muscle relaxants-120 tablets/capsules per 30 days
 - e. Benzodiazepines-120 tablets per 30 days
 - f. Tramadol-240 tablets per 30 days
 - g. Narcotic cough medications-480ml per 30 days
- h. Adjunctive anticonvulsants-240 tablets/capsules per 30 days
- Nebulizer solutions-3 acute exacerbations per 30 days
- j. Clients utilizing greater than 15 unique medications per 30 days
- k. Medications that are dosed once a day are limited to one dose per day unless that total dosage required is within the limits stated above and require more than one tablet/capsule to obtain the required therapeutic amount.
 - 3. Duration of therapy
- a. Nicotine cessation products are limited to the duration that has been approved by the FDA.
- b. Palivizumab-6 months during the high viral period of the year.
- 4. Prescriptions are limited to a quantity not to exceed the greater of 100 dosing units or a 34-day supply except for drugs selected and received through mail order.

Prior Authorization

- 1. Prior authorization requirements may be established for certain drug classes or particular drugs, or a medically accepted indication for uses and doses.
- 2. The DUR Board determines which prescription drugs may require prior authorization. The Board assesses data on drug use in accordance with predetermined standards. The standards shall be:
 - a. monitoring for therapeutic appropriateness
 - b .over-utilization and underutilization
 - c. appropriate use of generic products
 - d. therapeutic duplication
 - e. drug-disease contraindications
 - f. drug-drug interactions

- g. incorrect drug dosage or duration of drug treatment
 - h. clinical efficacy
 - i. safety
 - j. medical necessity
 - k. potential for abuse, misuse and diversion
 - 1. experimental use opportunity
 - m. cost effectiveness relative to similar therapies

The recommendations of the DUR Board constitute interpretive guidelines to be used in determining whether to grant or deny prior authorization of a prescription drug. The make up and membership authority for the DUR Board complies with 42 U.S.C. S1396r-8.

3. A request for prior authorization for covered outpatient drugs is processed within 24 hours of receipt of a completed prior authorization request from a prescribing provider by telephone, mail or electronic communication. A 72-hour supply of medically necessary covered drugs is provided in an emergency situation as mandated and pursuant to 42 United States Code s1396r-8.

Preferred Drug Lists with Prior Authorization

A process is established which utilized a preferred drug list (PDL) for selected therapeutic classes. Drugs in those classes that are not included on the PDL shall require prior authorization. A Pharmaceutical & Therapeutics (P&T) Committee, comprised of pharmacists, physicians, and community members, appointed by the Secretary, Delaware Health & Social Services, selects drugs for the PDL.

Delaware will participate in a multi-state pooling program that will negotiate supplemental rebates in addition to the federal rebates provided for in Title XIX of the Social Security Act.

Drug Rebate Agreements

CMS has authorized the state of Delaware to enter into The State of Delaware Department of Health and Social Services supplemental drug rebate agreement. This supplemental drug rebate agreement was submitted to CMS on April 7, 2005 and has been authorized by CMS.

- Pharmaceutical manufacturers are allowed to audit utilization rates:
- Compliance with the reporting requirements for state utilization information and restrictions to coverage;
- The unit rebate amount is confidential and cannot be disclosed for purposes other than rebate invoicing and verification; and,
- Rebate agreements between the state and a pharmaceutical manufacturer that are separate from the drug rebate agreements of Section 1927 are

approved by the Centers for Medicare and Medicaid Services. The state reports rebates from separate agreements to the Secretary of Health and Human Services. The state will remit the federal portion of any cash state supplemental rebates collected.

Diagnostic Services:

Medicaid will pay for the rental of an apnea monitor to monitor the breathing of an infant for whom a diagnosis of apneic episodes (near-miss Sudden Infant Death Syndrome) has been made.

9 DE Reg. 420 (9/1/05)

DIVISION OF MEDICAL ASSISTANCE

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

WITHDRAWAL OF NOTICE OF INTENT

Pharmaceutical Services: Mail Order Pharmacy Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, notice is hereby given that the Notice of Intent published in the General Notices section of Volume 8, Issue 12 of the June 1, 2005 issue of the *Delaware Register of Regulations* has been withdrawn.

Summary of Withdrawal

On June 1, 2005, the Division of Medicaid & Medical Assistance (DMMA) published for public comment a notice of intent to submit an amendment to the Title XIX Medicaid State Plan to the Centers for Medicare and Medicaid Services (CMS) to implement mail order prescription service. DMMA withdraws its notice of intent published on June 1, 2005 at 8 **DE Reg.** 1737 as of October 1, 2005.

Summary of Comments Received with Agency Response

The Governor's Advisory Council for Exceptional Citizens (GACEC); the State Council for Persons with Disabilities (SCPD); Macaulay and Burtch, P.C., EPIC

Pharmacies, Inc.; the National Community Pharmacists Association; the National Association of Chain Drug Stores; and, Cape Pharmacy offered the following comments summarized below. DSS has considered each comment and responds as follows:

Subject to two (2) caveats, the GACEC and the SCPD endorse the concept of the regulation since there may be a realization of cost savings and mail order may be more convenient for some beneficiaries. The caveats are: 1) clarify prior authorization aspects of the standards; and, 2) clarify that denial of prior authorization would result in a notice to the beneficiary of appeal rights.

The other commenters strongly oppose mail order pharmacy for Medicaid recipients. These comments fall in seven (7) discrete areas. These comment areas are summarized below:

- 1. Mail order programs have hidden financial impact, i.e., mail order pharmacies may steer recipients to brand name drugs over generics.
- 2. Medicaid consumers are better served by community pharmacies, i.e., explaining dosing and side effects.
- 3. Safety issues, i.e., who has control over filling and verifying the prescription.
- 4. Level playing field for community pharmacies, i.e., savings of \$15 per month is a substantial incentive to choose mail order.
 - 5. PBMs are not regulated in Delaware.
- 6. The mail order facility may not be regulated in Delaware.
- 7. Federal prohibition against paying remuneration to Medicaid beneficiaries, i.e., any provider offering the proposed co-pay waiver could be considered in violation of the federal anti-remuneration law.

Agency Response: In response to the written public comments received, DMMA withdraws its "Notice of Intent". DMMA credits the advocates and partners who gave comments that led to this decision.

DIVISION OF MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Long Term Care Nursing Facilities

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**), and with 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 is proposing to amend the Title XIX Medicaid State Plan regarding the reimbursement methodology for nursing facilities. Additionally, the proposed rule is technical in nature to change a reference from the HCFA (Health Care Financing Administration) to the CMS (Centers for Medicare and Medicaid Services).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by October 31, 2005.

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 Amendment

Title of Regulation

Methods and Standards for Establishing Payment Rates

- Prospective Reimbursement System for Long Term Care
Facilities

Statutory Authority

42 CFR Part 447, Subpart C – Payment for Inpatient Hospital and Long-Term Care Facility Services

Amending the Following State Plan Pages

Attachment 4.19-D and Attachments

Summary of Proposed Changes

• Clarifies the calculation of primary patient care reimbursement policy regarding the placement of

- costs for administrative nurses on the cost report.
- Clarifies the policy regarding the calculation of the rate for "Incentive add-ons", such as the level of care classifications of Rehabilitative, Psychological/Social and Rehab/Psych Preventive and Treatments.
- Changes the reimbursement rate year from October 1 to January 1 for private facilities.
- Clarifies the policy regarding the calculation of the base rate portion of the reimbursement rate.
- Clarifies the policy regarding the calculation of the capital rate component of the base rate portion of the reimbursement rate.
- Changes the source of the inflator applied to the rate. The inflator source was the University of Delaware. New source for the inflator will be a recognized source based on an appropriate index for the primary cost center and the cost centers that make up the base rate.
- Changes the period for rebasing the rates.
 Current policy indicates a rebase every three years; new policy changes rebase cycle to every fourth year.
- Changes the next rebase year. Currently, the rebase year would have taken place for rates effective October 1, 2006, new policy indicates the next rebase will take place for rates effective January 1, 2008.
- Changes the federal agency reference from HCFA to CMS.
- Clarifies that the reimbursement methodology for super skilled prior to 4/1/93 and after is the same.
- Removes the estimate of the cost increases due to OBRA '87.
- Removes the Nursing Facility Cost Report and Instructions from the State Plan.

DSS PROPOSED REGULATION #05-50

REVISIONS: ATTACHMENT 4.19-D

Page 1

State Plan Under Title XIX of the Social Security Act

STATE OF DELAWARE

Methods And Standards For Establishing Payment Rates

Prospective Reimbursement System for Long Term Care Facilities

I. General Provisions

A. Purpose

This plan establishes a reimbursement system for long-term care facilities that complies with federal requirements, including but not limited to:

- Requirements of the Omnibus Reconciliation Act of 1981 that nursing facility provider reimbursements be reasonable and adequate to assure an efficient and economically operated facility.
- The requirement that Medicaid payments in the aggregate do not exceed what would have been paid by Medicare based on allowable cost principles.
- Limitations on the revaluation of assets subsequent to a change of ownership since July 18, 1984.
- Requirements of the Omnibus Reconciliation
 Act of 1987 to establish one level of nursing
 care, i.e., Nursing Facility Care, to eliminate
 the designation of Skilled and Intermediate
 Care, and to provide sufficient staff to meet
 these requirements.
- The requirement to employ only nurse aides who have successfully completed a training and competency evaluation program or a competency evaluation program.

B. Reimbursement Principles

1. Providers of nursing facility care shall be reimbursed prospectively determined per diem rates based on a patient based classification system. Providers of ICF-MR and ICF-IMD services shall be reimbursed prospectively determined per diem rates.

ATTACHMENT 4.19-D Page 2

2. The Delaware Medicaid Program shall reimburse qualified providers of long-term care based on the individual Medicaid recipient's days of care multiplied by the applicable per diem rate for that patient's classification less any payments made by recipients or third parties.

II. Rate Determination for Nursing Facilities

A. Basis for Reimbursement

Per Diem reimbursement for nursing facility services shall be composed of five prospectively determined rate components that reimburse providers for primary patient care, secondary patient care, support services, administration, and capital costs.

The primary patient care component of the per diem rate is based on the nursing care costs related specifically to each patient's classification. In addition to assignment to case mix classifications, patients may qualify for supplementary primary care reimbursement based on their characteristics and special service needs. Primary care component reimbursement for each basic patient classification will be the same for each facility within a group. A schedule of primary rates, including rate additions, is established for each of three groups of facilities:

- Private facilities in New Castle County
- Private facilities in Kent and Sussex Counties
- Public facilities

Payment for the secondary, support, administrative, and capital costs comprise the base rate, and is unique to each facility. Provider costs are reported annually to Medicaid and are used to establish rate ceilings for the secondary, support, and administrative cost centers in each provider group.

The sections that follow provide specific details on rate computation for each of the five rate components.

B. Rate components

Payment for services based on the sum of five rate components. The rate components are defined as:

• Primary Patient Care. This cost center encompasses all costs that are involved in the provision of basic nursing care for nursing home patients and is inclusive of nursing staff salaries, fringe benefits, and training costs. Costs of completing Resident Assessment and Plans of Care will be eovered in this cost center. All nurses salaries, fringe benefits, and training for staff with duties that counts towards the minimum staff requirements will be included in this cost center.

ATTACHMENT 4.19-D Page 3

- Secondary Patient Care. This cost center encompasses other patient care costs that directly affect patient health status and quality of care and is inclusive of clinical consultants, social services, raw food, medical supplies, and non prescription drugs, dietitian services, dental services (in public facilities only), and activities personnel.
- Support Services. This cost center includes costs for departments that provide supportive

- services other than medical care and is inclusive of dietary, operation and maintenance of the facility, housekeeping, laundry and linen, and patient recreation.
- Administrative. This category includes costs
 that are not patient related and is inclusive of
 owner/administrator salary, medical and
 nursing director salary (excluding such time
 spent in direct patient care), administrative
 salaries, medical records, working capital,
 benefits associated with administrative
 personnel, home office expenses,
 management of resident personal funds, and
 monitoring and resolving patient's rights
 issues.
- Capital. This category includes costs related to the purchase and lease of property, plant and equipment and is inclusive of lease costs, mortgage interest, property taxes and depreciation.

C. Excluded Services

Those services to residents of private long term care facilities that are ordinarily billed directly by practitioners will continue to be billed separately and are not covered by the rate component categories. This includes prescription drugs, Medicare Part B covered services, physician services, hospitalization and dental services, laboratory, radiology, and certain ancillary therapies.

For public facilities, laboratory, radiology, prescription drugs, physician services, dental services, and ancillary therapies are included in the per diem.

Costs of training and certification of nurse aides are billed separately by the facilities as they are incurred, and reimbursed directly by Medicaid.

D. Primary Payment Component Computations

The primary patient care rate component is based on a patient index system in which all nursing home patients are classified into patient classes. The lowest resource intensive clients are placed in the lowest class.

ATTACHMENT 4.19-D Page 4

The Department will assign classes to nursing home patients. Initial classification of patients occurs through the State's pre-admission screening program. These initial classifications will be reviewed by Department nurses within 31 to 45 days after assignment. Patient classification will then be reviewed twice a year. Facilities will receive notices from the Department concerning class changes and relevant effective dates.

- 1. In order to establish the patient classification for reimbursement, patients are evaluated and scored by Medicaid review nurses according to the specific amount of staff assistance needed in Activity of Daily Living (ADL) dependency areas. These include Bathing, Eating, Mobility/Transfer/Toileting. Potential scores are as follows:
 - 0 Independent
- 1 Supervision (includes verbal cueing and occasional staff standby)
- 2 Moderate assistance (requires staff standby/physical presence)
 - 3 Maximum Assistance

Patients receiving moderate or maximum assistance will be considered "dependent" in that ADL area. Patients receiving supervision will not be considered dependent.

Reimbursement is determined by assigning the patient to a patient classifications based on their ADL scores or range of scores.

Each patient classification is related to specific nursing time factors. These time factors are multiplied by the 75th percentile nurse wage in each provider group to determine the per diem rate for each classification.

2. Patients receiving an active rehabilitative/preventive program as defined and approved by the Department shall be reimbursed at the next higher patient class. For qualifying patients at the highest level, the facility will receive an additional IO percent of the primary care rate component.

an additional 20% of the primary care rate component.

To be considered for the added reimbursement allowed under this provision, a facility must develop and prepare an individual rehabilitative/preventive care plan. This plan of care must contain rehabilitative/preventive care programs as described in a Department approved list of programs. The services must seek to address specific activity of daily living and other functional problems of the patient. The care plan must also indicate specific six month and one-year patient goals, and must have a physician's approval.

6 DE Reg. 964 (2/1/03)

ATTACHMENT 4.19-D Page 5

The Department will evaluate new facility-developed rehabilitative/preventive care plans during its patient classification reviews of nursing homes.

Interim provisional approval of plans can be provided by Department review nurses. When reviewed, the Department will examine facility documentation on the provision of rehabilitative/preventive services to patients

with previously approved care plans as well as progress towards patient goals.

3. Patients exhibiting disruptive psycho social behaviors on a frequent basis as defined and classified by the Department shall receive an additional 10 percent of the primary care rate component for the appropriate classification.

The specific psychosocial behaviors that will be considered for added reimbursement under this provision are those that necessitate additional nursing staff intervention in the provision of personal and nursing care. Such behaviors include: verbal and physically disruptive actions, inappropriate social behavior, non-territorial wandering, and any other similar patient problems as designated by the Department.

Facilities must have complete documentation on frequency of such behaviors in a patient's chart for the Department to consider the facility for added reimbursement under this provision. This documentation will be evaluated during patient classification reviews of a nursing home.

4. Patient class rates are determined based on the time required to care for patients in each classification, and nursing wage, fringe benefit, and training costs tabulated separately for private facilities in New Castle County, private facilities in Kent and Sussex Counties, and public facilities statewide.

Primary rates are established by the following methodology:

 Annual wage surveys and cost reports required of each provider are used to determine 75th percentile hourly nursing wages.

The cost report used in the calculations will represent the fiscal year ending June 30th of the previous reimbursement year. The Delaware reimbursement year, for purposes of rate setting, is from October 1 through September 30 January 1 through December 31 for private facilities and October 1 through September 30 for State facilities.

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This is calculated by first dividing total pay by total hours for each nursing classification (RN, LPN, Aide) in each facility, then arraying the representative 75th percentile wages of each facility them to determine the 75th percentile within each provider group.

Based on cost data from each provider group, hourly wage rates are adjusted to include hourly training and fringe benefit costs within each provider group.

- In each of the three provider groups (private facilities in New Castle County, Kent and Sussex Counties, and public facilities), the rates are established in the same manner. The primary component of the Medicaid nursing home rate is determined by multiplying the 75th percentile hourly nursing wage for RNs, LPNs, and Aides by standard nursing time factors for each of the base levels of patient acuity.
- Providers will be reimbursed for agency nurse costs if their use of agency nurses does not exceed the allowable agency nurse cap determined each year by the Delaware Medicaid staff. Any nursing cost incurred in excess of the allowable cap will not be included in the nursing cost calculation.
- Within each of the patient classes, Medicaid provides "Incentive add-ons" to encourage rehabilitative and preventive programs. Rehabilitative and preventive services shall be reimbursed at the same rate as the next highest patient class. In the case of patients in the highest class, the facility will receive an additional 10 percent of the primary care rate component. an additional 20% of the primary care rate component. Incentive payments discourage the deterioration of patients into higher classifications.
- Patients exhibiting disruptive psychosocial behaviors on a frequent basis as defined by the Department and are receiving an active rehabilitation/preventive program as defined and approved by the Department shall be reimbursed an additional 10% of the rehabilitative/preventive primary care rate component.
- E. Non-primary Rate Component Computations

Facility rates for the four non-primary components of secondary, support, administrative, and capital are computed from annual provider cost report data on reimbursable costs. Reimbursable costs are defined to be those that are allowable based on Medicare principles, according to HIM 15. Costs applicable to services, facilities, and supplies furnished to a provider by commonly owned,

controlled or related organizations shall not exceed the lower cost of comparable services purchased elsewhere.

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The cost report used in the calculations will represent the fiscal year ending June 30th of the previous reimbursement year. The Delaware reimbursement year, for purposes of rate setting is from October 1 through September 30 January 1 through December 31 for private facilities and October 1 through September 30 for State facilities.

Individual allowable cost items from cost reports for each facility comprising the base rate component are summed and divided by patient days. For established facilities, the patient day amount used in this computation equal actual patient days or estimated days based on a 90 percent occupancy of Medicaid certified beds, whichever is greater. The day amount for new facilities equals actual patient days for the period of operation, or estimated days based on a 75 percent occupancy of Medicaid certified beds, whichever is greater. This applies to cost centers comprising the basic rate.

The discussion that follows explains rate computation for the secondary, support, administrative and capital payment centers.

- 1. Secondary patient care rates are reimbursed according to the cost of care determined prospectively up to a calculated ceiling (115 percent of median per diem costs). Three steps are required:
 - Facilities are grouped into three peer groups

 private facilities in New Castle County,
 private facilities in Kent and Sussex
 Counties, and public facilities.
 - Individual allowable cost items from cost reports for each facility comprising the secondary care component are summed and divided by patient days. For established facilities, the patient day amount used in this computation equals actual patient days or estimated days based on a 90 percent occupancy of Medicaid certified beds, whichever is greater. The day amount for new facilities¹ equals actual patient days for the period of operation, or estimated days based on a 75 percent occupancy of Medicaid certified beds, whichever is

greater.

- The median per diem cost is determined for each category of facility and inflated by 15 percent. The secondary care per diem assigned to a facility is the actual allowable cost up to a maximum of 115 percent of the median.
- 2. Support service component rates are determined in a manner that parallels the secondary component rate calculation process. However, the ceiling is set at 110 percent of median support costs per day for the appropriate category of facility. In addition, facilities, which maintain costs below the cap, are entitled to an incentive payment 25 percent of the difference between the facility's actual per day cost and the applicable cap, up to a maximum incentive of 5 percent of the cap amount.
- * "New facility" is defined as: (1) New construction built to provide a new service of either intermediate or skilled nursing care for which the existing facility has never before been certified, or (2) construction of an entirely new facility totally and administratively independent of an existing facility.

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- 3. Administrative component rates are determined in a manner parallel to the secondary component. However, the ceiling is set at 105 percent of median costs per day. A facility is entitled to an incentive payment of 50 percent of the difference between its actual costs and the cap. The incentive payment is limited to 10 percent of the ceiling amount.
- 4. Capital component rates are determined prospectively and are subject to a rate floor and rate ceiling. The dollar amounts representing the 20th percentile of actual per diem capital cost (floor) and the 80th percentile of actual per diem capital cost (ceiling) are calculated. If the facility's costs are greater than or equal to the floor, and less than or equal to the ceiling, the facility's prospective rate is equal to its actual cost. If the facility's costs are below the floor, the prospective rate is equal to the lower of the floor or actual cost plus twenty-five percent of actual cost. If the facility's costs are greater than the ceiling, the prospective rate is equal to the higher of the ceiling or ninety-five percent of actual cost. Costs associated with revaluation of assets of a facility will not be recognized.

The capital component is also subject to the occupancy standards as set forth in section II.E. of State Plan Amendment 4.19-D. The capital component rate is calculated on a statewide basis.

5. Where services are currently contracted by the nursing facility to a practitioner, additional services may be billed directly. These services are not covered by the rate component categories for private facilities, but may be included in the rate for public facilities. These services include therapies, physician services, dental services and prescription drugs.

F. Computation of Total Rate from Components

A facility's secondary, support, administrative, and capital payments will be summed and called its basic rate. The total rate for a patient is then determined by adding the primary rate for which a patient qualifies to the facility's basic rate component. The basic payment amount will not vary across patients in a nursing home. However, the primary payment depend will depend on a patient's class and qualification for added rehabilitative/preventive and/or psychosocial reimbursement.

G. OBRA '87 Additional Costs

to the state by each facility quarterly.

1. Nurse Aide Training and Certification
Providers of long-term care services will be
reimbursed directly for the reasonable costs of training,
competency testing and certification of nurse aides in
compliance with the requirements of OBRA '87. The
training and competency testing must be in a program
approved by the Delaware Department of Health and Social
Services, Division of Public Health. A "Statement of
Reimbursement Cost of Nurse Aide Training" is submitted

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Costs reported on the Statement of Reimbursement Cost are reimbursed directly and claimed by the State as administrative costs. They include:

- Costs incurred in testing and certifying currently employed nurse aides, i.e., testing fees, tuition, books, and training materials.
- Costs of providing State approved training or refresher training in preparation for the competency evaluation testing to employed nurse aides who have not yet received certification.
- Salaries of in-service instructions to conduct State approved training programs for the portion of their time involved with training, or fees charged by providers of a State approved training program.

 Costs of transporting nurse aides from the nursing facility to a testing or training site.

The following costs of nurse aide training are considered operational, and will be reported annually on the Medicaid cost report. These costs will be reimbursed through the Primary cost component of the per diem rate:

- Salaries of nurse aides while in training or competency evaluation.
- Costs of additional staff to replace nurse aides participating in training or competency evaluation.
- Continuing education or of nurse aides following certification.

2. Additional Nurse Staff Requirements

Additional nurse staff required by a nursing facility to comply with the requirements of OBRA '87 will be reimbursed under the provisions of the Delaware Medicaid Patient Index Reimbursement System (PIRS). This system makes no distinction between levels of care for reimbursement. Nursing costs are derived from average hourly wage, benefit, and training cost data provided on the Nursing Wage Survey submitted by each facility. Prospective rates for each patient acuity classification are calculated by these costs by the minimum nursing time factors. Although representative of actual costs incurred, these prospectively determined rates are independent of the number employed or the number of staff vacancies at any given time.

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3. Additional Non-Nursing Requirements

The Delaware Medicaid reimbursement system will recognize the incremental costs of additional staff and services incurred by nursing facilities to comply with the mandates of OBRA '87. Prospective rate calculations will be adjusted to account for costs incurred on or after October 1, 1990.

Where services are currently contracted by the nursing facility to a practitioner, additional services may be billed directly. These services are not covered by the rate component categories (for private facilities, but may be included in the rate for public facilities.) These services include therapies, physician services, dental services, and prescription drugs.

A supplemental schedule to the Statement of Reimbursement Costs (Medicaid Cost Report) will be submitted by each facility to demonstrate projected staff and service costs required to comply with OBRA'87. For the rate

year beginning October 1, 1990, facilities may project full year costs onto prior year reported actual costs to be included in the rate calculation.

The supplemental schedule will be used to project costs incurred for programs effective October 1, 1990 into the prospective reimbursement rates. Where nursing care facilities indicate new and anticipated staff positions, those costs will be included with the actual SFY '90 costs when calculating the reimbursement rates effective October 1, 1990.

Additional staff requirements include dietitian, medical director, medical records, activities personnel, and social worker.

H. Hold Harmless Provision

For the first year under the patient index reimbursement system the Department will have in effect a hold-harmless provision. The purpose of the provision is to give facilities an opportunity to adjust their operations to the new system. Under this provision, no facility will be paid less by Medicaid under the patient index system than it would have been paid had Federal Fiscal Year 1988 rates, adjusted by an inflation factor, been retained.

For the period October 1, 1990 to September 30, 1991, the Department will have in effect a hold-harmless provision with respect to capital reimbursement rates. The purpose of this provision is to give facilities an opportunity to adjust their operations to the new system. Under this provision, facilities will be paid the greater of the rate under the prospective capital rate methodology or the rate based on reimbursable costs. Beginning October 1, 1991, all facilities will be subject to the prospective capital rate methodology described in Section II, E.4.

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I. Annual Rate Recalculation

1. Primary Payment Component

Rates for the primary patient care component will be rebased annually. Two sources of provider-supplied data will be used in this rate rebasing:

- An annual nursing wage and salary survey that the Department will conduct of all Medicaid-participating nursing facilities in Delaware.
- Nursing home cost report data on nurses' fringe benefits and training costs.

The 75th percentile wages will be redetermined annually from the wage and salary survey, and the standard

nurse time factors will be applied for each patient classification. The cost report and wage and salary survey will be for the previous year ending June 30.

2. Non-Primary Payment Components

The payment caps for the secondary, support, and administrative components will be rebased every fourth year using the computation methods specified in Section E above. For the interim periods between rebasing, the payment caps will be inflated annually based on reasonable inflation estimates as published by the Department. Facility-specific payment rates for these cost centers shall then be calculated using these inflated caps and cost report data from the most recently available cost reporting period.

The capital floor and ceiling will be rebased annually.

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3. Inflation Adjustment

Per Diem caps for primary, secondary, support and administrative cost centers will be adjusted each year by inflation indices. The inflation indices are obtained from the Department of Economics of the University of Delaware and include both regional and national health care-specific economic trends. The inflation forecast is based on the U.S. Consumer Price Indexed. Factors reviewed on the demand side include recent growth rates in the money supply, employment, and business and government debt, as well as the state of the business cycle. Current capacity utilization rates and new capital spending plans, production delivery delays, employment to population ratios, wages, and trends in energy, housing, and food are studies on the supply side. The forecast is also confirmed by reviewing the Consumer Estimates and Columbia University Leading Index of Inflation, interest rates in the futures markets, the Commodity Research Bureau's Index of Future Prices, and the trade weighted price of the dollar. will be obtained from a recognized source and based on an appropriate index for the primary cost center and the following cost centers: secondary, support and administrative.

The inflation factors are applied to the actual nursing wage rates to compensate for the annual inflation in nursing costs. This adjustment is made before the nurse training and benefits are added and the wages are multiplied by the standard nurse time factors.

Cost center caps are used to set an upper limit on the amount a provider will be reimbursed for the costs in the secondary, support, and administrative cost centers. Initially, these caps are computed by determining the median value of the provider's actual daily costs, then adjusting

upwardly according to the particular cost center. The Secondary cost center cap is 115% of the provider group median, and Administrative costs are capped at 105% of the median. Delaware Medicaid will recalculate non-primary cost center caps every three years fourth year. The next rebase will be for rates effective January 1, 2008. In interim rate years, these cost center caps will not be recomputed. Instead, cost center caps will be adjusted by inflation factors. The inflation index provided by the University of Delaware a recognized source will be applied to the current cap in each cost center in each provider group to establish the new cap. The actual reported costs will be compared to the cap. Facilities with costs above the cap will receive the amount of the cap.

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J. Medicare Aggregate Upper Limitations

The State of Delaware assures HCFA CMS that in no case shall aggregate payments made under this plan, inclusive of DEFRA capital limitations, exceed the amount that would have been paid under Medicare principles of reimbursement. As a result of a change of ownership, on or after July 18, 1984, the State will not increase payments to providers for depreciation, interest on capital and return on equity, in the aggregate, more than the amount that would be recognized under section 1861(v)(1)(0) of the Social Security Act. Average projected rates of payment shall be tested against such limitations. In the event that average payment rates exceed such limitations, rates shall be reduced for those facilities exceeding Medicare principles as applied to all nursing facilities.

III. Rate Determination ICF/MR and ICF/IMD Facilities

Delaware will recalculate the prospective per diem rates for ICF/MRs and ICF/IMDs annually for the reimbursement year, of October through September 30 January 1 through December 31 for private facilities and October 1 through September 30 for public facilities. ICF/MR and ICF/IMD facilities shall be reimbursed actual total per diem costs determined prospectively up to a ceiling. The ceiling is set at the 75th percentile of the distribution of costs of the facilities in each class. There are four (4) classes of facilities, which are:

- 1. Public ICF/MR facilities of 8 beds or less.
- 2. Public ICF/MR facilities of greater than 8 beds.
- 3. Private ICF/MR facilities of 60 beds or less.
- 4. Public ICF/IMD facilities.

An inflation factor (as described in II.H.3 above) will be applied to prior year's costs to determine the current year's rate.

IV. Rate Reconsideration

A. Primary Rate Component

Long-term care providers shall have the right to request a rate reconsideration for alleged patient misclassification relating to the Department's assignment of the case mix classification. Conditions for reconsideration are specified in the Department's nursing home appeals process as specified in the long-term care provider manual.

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Exclusions from Reconsideration
 Specifically excluded from patient class reconsiderations are:

- Changes in patient status between regular patient class reviews.
- Patient classification determinations, unless the loss of revenues for a month's period of alleged misclassification equals ten percent or more of the facility's Medicaid revenues in that month.

2. Procedures for Filing

Facilities shall submit requests for reconsiderations within sixty days after patient classifications are provided to a facility. All requests shall be submitted in writing and must be accompanied by supporting documentation as required by the Department.

3. Patient Reclassifications

Any reclassification resulting from the reconsideration process will become effective on the first day of the month following such reclassification.

B. Non-Primary Rate Components

Long-term care providers shall have the right to request a rate reconsideration for any alleged Department miscalculation of one or more non-primary payment rates. Miscalculation is defined as incorrect computation of payment rates from provider supplied data in annual cost reports.

1. Exclusions from Reconsideration Specifically excluded from rate consideration

are:

- Department classification of cost items into payment centers.
- Peer-group rate ceilings.
- Department inflation adjustments.

• Capital floor and ceiling rate percentiles.

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2. Procedures for Filing

Rate reconsiderations shall be submitted within sixty days after payment rate schedules are provided to a facility. All requests shall be submitted in writing and must be accompanied by supporting documentation as requested by the Department.

3. Rate Adjustments

Any rate adjustments resulting from the reconsideration process will take place on the first day of the month following such adjustment. Rate adjustments resulting from this provision will only affect the facility that had rate miscalculations. Payment ceilings and incentive amounts for other facilities in a peer group will not be altered by these adjustments.

V. Reimbursement for Super Skilled Care

A higher rate will be paid for individuals who need a greater level of skilled care than that which is currently reimbursed in Delaware nursing facilities. For patients in the Super Skilled program prior to 4/1/93, the rate will be determined as follows:

A summary of each individual who qualified under the Medicaid program's criteria for a "Super Skilled" level of care will be sent to local nursing facilities, which have expressed an interest in providing this level of care. They will be asked to submit bids, within a specific time frame, for their per diem charge for caring for the individual. The Medicaid program will review the bids and select the one that most meets the needs of the patient at the lowest cost.

Effective 4/1/93, all new patients who would have formerly been placed in a super skilled level will be placed in one of the patient class levels and reimbursed as any other elient. The Medicaid program will pay outside of the per diem rate for the exceptional costs of their care, such as ventilator equipment and special supplies required.

VI. Reporting and Audit Requirements

A. Reporting

All facilities certified to participate in the Medicaid program are required to maintain cost data and submit reports on the form and in the format specified by the Department. Such reports shall be filed annually. Cost reports are due within ninety days of the close of the state fiscal year. All Medicaid participating facilities shall report allowable costs on a state fiscal year basis, which begins on July 1 and ends the following June 30. The allowable costs

recognized by Delaware are those defined by Medicare principles.

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In addition, all facilities are required to complete and submit an annual nursing wage survey on a form specified by the Department. All facilities must provide nursing wage data for the time periods requested on the survey form.

For patients in the Super Skilled program, prior to 4/1/93 annual Super Skilled bids will be considered the cost report for Super Skilled services. The nursing facility cost report must be adjusted to reflect costs associated with care for Super Skilled patients.

Failure to submit timely cost reports or nursing wage surveys within the allowed time periods when the facility has not been granted an extension by the Department, shall be grounds for suspension from the program. The Department may levy fines for failure to submit timely data as described in Section II.D. of the General Instructions to the Medicaid nursing facility cost report.

B. Audit

The Department shall conduct a field audit of participating facilities, in accordance with Federal regulation and State law. Both cost reports and the nursing wage surveys will be subject to audit.

Overpayments identified and documented as a result of field audit activities, or other findings made available to the Department, will be recovered. Such overpayments will be accounted for on the Quarterly Report of Expenditures as required by regulation.

Rate revisions resulting from field audit will only affect payments to those facilities that had an identified overpayment. Payment ceilings and incentive payments for other facilities within a peer group will not be altered by these revisions.

C. Desk Review

All cost reports and nursing wage surveys shall be subjected to a desk review annually. Only desk reviewed cost report and nursing wage survey data will be used to calculate rates.

VII. Reimbursement for Out-of-State Facilities

Facilities located outside of Delaware will be paid the <u>lesser</u> of the Medicaid reimbursement rate from the state in which they are located or the highest rate established by Delaware for comparably certified non-state operated facilities as specified above.

VIII. Reimbursement of Ancillary Service for Private Facilities

Oxygen, physical therapy, occupational therapy, and speech therapy will be reimbursed on a fee-for-service basis. The rates for these services are determined by a survey of all enrolled facilities' costs. The costs are then arrayed and a cap set at the median rate. Facilities will be paid the lower of their cost or the cap. The cap will be recomputed every three years based on new surveys.

The Delaware Medicaid Program's nursing home rate calculation, the Patient Index Reimbursement System, complies with requirements found in the Nursing Home Reform Act and all subsequent revisions. A detailed description of the methodology and analysis used in determining the adjustment in payment amount for nursing facilities to take into account the cost of services required to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident eligible for benefits under Title XIX is found in Attachment A.

DELAWARE MEDICAID PROGRAM ESTIMATE OF THE COST INCREASES INCURRED BY NURSING FACILITY

IN MEETING THE REQUIREMENTS OF OBRA '87

I. TRAINING, CERTIFICATION AND CONTINUING
EDUCATION FOR NURSE AIDES

		#		Cost	Total
		Aid		1	Cost
		es		Aide	0050
A	Prior to				
-	October 1,				
	1990				
	Competency	204		\$50	\$102.
	Evaluation	1			050
	75 hour	204	Average fee	\$160	\$32,6
	Training		for training		40
	(10%)				
	Staff Salaries	204	Average	\$41	\$83,6
	- Testing	1	\$6.82/hr x 6		81
	_		hrs		
	Staff Salaries	204	Average	\$409	\$83,4
	- Training		\$6.82/hr x 75		36
	_		hrs x 80%		
	Travel Costs	700	\$.30/mi x 34	\$3	\$2,10
			mi / 5 persons		0
	Total Cost		·		\$303.
					907
	Cost per Aide				\$149

Avg # Aides		33
per facility		
Avg Cost per		\$4,91
facility		4

Information from DE Office of Licensing and Certification indicates that most currently employed nurse aides were able to take the certification examination prior to October 1, 1990 without the 75 hour training program. An estimate of 10% requiring the training is used here.

Average staff salaries are derived from the Nurse Wage Survey, July 1989, and projected forward to 1990.

Nurse aide training and certification costs will be reimbursed directly as administrative costs from billing submitted by each nursing facility.

		#		Cost	Total
		Aides		1	Cost
		riides		Aide	Cost
В	After			Aluc	
	October 1,				
•	1990				
	Competency	680	33% Turnover /	\$50	\$34,000
		000		Φου	Ψ3+,000
	Evaluation	200	year	01.00	(100 00
	75 hour	680	Average fee for	\$160	\$108,80
	Training		training		Θ
	(100%)				
	Staff Salaries	680	Average \$6.82/hr	\$41	\$27,880
	-Testing		x 6 hrs		
	Staff Salaries	680	Average \$6.82/hr	\$409	\$ 278,12
	- Training		x 75 hrs x 80%		0
	Travel Costs	230	\$.30/mi x 34 mi /	\$3	\$690
			5 persons		
	Total Costs				\$449,49
					0
	Cost per				\$661
	Aide				
	Avg # Aides				33
	per facility				
	Avg Cost per				\$21,813
	facility				

Continuing education for nurse aides will be reported on the annual cost report and will be reimbursed as part of the per diem.

Annual staff turn over estimate of 33Z is derived from staffing experience of facilities.

- II. ADDITIONAL NURSE STAFF REQUIREMENTS
 - A. Nursing Staff
- 1. RN on Day Shift# Facilities Currently Meeting Requirement
- # Facilities That Must Increase Staff to-Comply With Requirement

- o No financial impact of this additional staff requirement because all facilities are currently meeting minimum staffing requirement.
- 2. RN/LPN on all shifts #Facilities Currently
 Meeting Requirement 29
- ---- #Facilities That Must Increase Staff to Comply With Requirement
- -3 Total Cost per Facility 1.7 FTE x 2080 hrs/ FTE x \$15.30/hr Salary/Benefit/Training \$54,101

Current reimbursement under the Delaware Patient Index Reimbursement System makes no distinction between Skilled and Intermediate levels of care. The three facilities which must increase their staff to comply with the new regulations have always been paid on the same basis as those facilities which exceeded the new staffing requirement. The nursing time factors in the Medicaid time matrix are sufficient to reimburse for the required staffing.

Three of 29 private facilities in Delaware must increase their nursing staff in order to meet the new requirements. Two of the three facilities will continue to receive reimbursement exceeding their costs providing that they maintain their current patient mix. The third facility currently has costs exceeding reimbursement due to several factors. Significant factors include their corporate policy to accept low care patients, their 72% occupancy rate, and higher than average nursing salaries. By making only minor adjustments to the patient mix, this facility could increase the average daily reimbursement per patient from \$20.94 to \$26.75. Their costs will increase from \$22.62 to \$26.62 as a result of the additional nursing staff required.

Resident Assessment

Avg 87 pts/facility x 25 minutes/pt/year @ \$16.98/hr = \$615.53 per Facility

o- The PIRS nursing time requirements matrix has been adjusted to account for the additional nursing time required to conduct Resident Assessment. Time for assessment and documentation was originally included in the nursing time requirements for RN and LPN at each level of patient accuity. Additional time will be included when calculating the Oct 1, 1990 rates to account for the new requirements. The amount of time added to the matrix was calculated by estimating the time required for assessment per patient per year and dividing by the number of annual available patient days per patient.

C. Plans Of Care

Avg 87 pts/facility x 30 minutes/pt/year @ \$16.98/ hr = \$738.63 per Facility

The PIRS nursing time requirements matrix has been adjusted to account for the additional nursing time required to conduct Plans of Care. Time for plans of care and documentation was originally included in the nursing time requirements for IN and LPN at each level of patient acuity. Additional time will be included when calculating the Oct 1, 1990 rates to account for the new requirements. The amount of time added to the matrix was calculated by estimating the time required for plans of care per patient per year and dividing by the number of annual available patient days per patient.

III. EXTENDED PATIENT SERVICES

A. Dietary: No cost increase is expected as a result of the new

No cost increase is expected as a result of the new requirements

Current State certification standards require the level of

Dietary standards required by OBRA.

The PIRS reimbursement system will reflect any increase in staffing.

B. Pharmaey: No cost increase is expected as a result of the new requirements

Current State certification standards require
the level of Pharmacy standards required by OBRA. The
FIRS reimbursement system will reflect any
increase in staffing.

C. Dental Services: Delaware does not eurrently cover Dental Care under the State Plan. No cost impact is expected.

Patient Assessment and — coordinating Plans of Care will has been expanded in the Nursing Time Requirements Matrix. This accounts for the additional time required to manage medical records.

Please refer to the explanation of the Additional Nursing Staff Requirements above.

E. Activities Personnel: 8 Facilities - P.T. Activities Director @ \$23,400 annually

8 facilities expect to expand their activities staff, although they currently employ an Activities Director.

All Delaware facilities currently meet this requirement by employing an an qualified Activities Director on staff. Many facilities also have activities personnel in addition to the Director.

The estimates of the number of facilities effected by this requirement and the cost of a part time Activities Director were derived from a telephone survey of 9 facilities and information from the state nursing facilities association.

F.T. Social Worker:> 120 beds 4 Facilities - F.T. Social Worker @ \$31,200 annually < 120 beds 11Facilities - P.T. Social Worker @ \$23,400

4 of 10 facilities over 120 beds will incur costs to upgrade their social work activities.

11 of 22 facilities under 120 beds must upgrade their social work program by increasing their social work staff.

The estimates of the number of facilities effected by this requirement and the cost of Social Workers were derived from a telephone survey of 9 facilities and information from the state nursing facilities association.

G. Physical Therapy:1753 ICI beds x 90% occupancy = 1578 patients x 20% increase = 316 patients Therapist treats 6 pts/hr @ avg \$35/hr x 2 times/week/pt = \$11.67/pt/week Total Cost 316 patients x \$11.67/pt/week = \$3,688/week total

Average Cost per Facility 11 pts @ \$11.67/pt/ week = \$128.37/wk = \$6,675/yr.

On-site therapy will continue to be billed directly as a contracted ancillary service, and will not be part of the per diem reimbursement rate.

ICF as well as SNF patients are currently receiving therapy as needed. An increase of about 20% utilization is anticipated, primarily for ICF patients.

Estimates of additional costs were derived from information from the Delaware Division of Public Health, Office of Health Facilities Licensing and Certification, and a review of therapy reimbursement.

IV. MEDICAL DIRECTOR

Average \$66/hour for contractual services x 5 hours per month

\$330 per month x 12 months = \$3,960 per year for Medical Director

All Delaware nursing facilities are currently required to have Medical Director. Many will need to expand the responsibilities of the designated position.

12 facilities to increase Medical Director hours under contract from an average of \$720/ mo to \$1050/ mo. Increase represents \$3,960 per facility per year.

The cost estimate for the Medical Director was based on information from the Medicaid review nurse, who projected the number of hours required and the average hourly reimbursement, and called a number of facilities to determine how this requirement would be met. The number of facilities effected was estimated by the state nursing facilities association.

V. RESIDENT'S RIGHTS

A. Resident Personal Funds: 8 hours/day x 1.5 days/mo x 12 mo/yr x \$12.50/hr = \$1,800 per year

Estimated 20 facilities will increase their bookkeeping staff to maintain records of interest bearing accounts, calculate interest, and produce quarterly statements.

Most likely approach to this requirement will be to employ temporary bookkeeping services.

Other facilities will absorb this requirement into their current bookkeeping staff.

This is the estimate of the Medicaid review nurse, who contacted a number of facilities to determine how this requirement would be met.

B. Other Resident's Rights:

The following patient's rights are not expected to result in additional costs for the nursing facilities:

- 1. Notice of Rights and Services
- 2. Rights of Incompetent Residents
- 3. Transfer and Discharge Rights
- 4. Access and Visitation Rights
- 5. Equal Access to Quality Care
- 6. Admissions Policy

No additional costs are anticipated for nursing facilities to implement other resident's rights. Most state regulations concerning specific patient's rights are the same as or more stringent than the Federal requirements. Those rights that are not addressed specifically as individual requirements in the state regulations, are protected by the Delaware's Patient Bill of Rights.

STATE OF DELAWARE

STATEMENT OF REIMBURSEMENT COST FOR SKILLEDAND INTERMEDIATE CARE NURSING FACILITIES TITLE XIX

- 1. FOR THE PERIOD:TO:
- 2. NAME OF FACILITY

STREET ADDRESS

CITY, STATE, ZIP CODE

3. Name and telephone number of person to contact in ease of questions concerning this report:

NAME:

TITLE:

TELEPHONE NUMBER:

4. TYPE OF ENTITY: (check one only)

- A. Corporation
- B. Individual Proprietorship
- C. Non-Profit Organization
- D. Partnership
- E. State Facility
- F. Other (Describe)

Under penalties of perjury, I declare that I have examined this Statement of Reimbursement Cost, including accompanying schedules, statements and adjustments and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than facility personnel) is based on all information of which preparer has any knowledge.

- 5. Your signature: Date: Title:
- 6. Preparer's signature: Date: Company or Organization Name:

Street address:

City, State, Zip Code:

DIVISION OF MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Long Term Care Medicaid

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) / is proposing to amend a rule in the Division of Social Services Manual (DSSM) used to determine eligibility for medical assistance. Additionally, the proposed rule is technical in nature to change a reference from the Division of Social Services to the Division of Medicaid and Medical Assistance.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by October 31, 2005.

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 Change

Statutory Authority

- 42 CFR §435.907, Written Application
- 42 CFR §435.908, Assistance with Application

Summary of Proposed Change

DSSM 20103: Clarifies who is permitted to file an application for Long Term Care Medical Assistance to ensure that a person who is knowledgeable about the applicant's finances completes the application. DMMA adds an eligibility determination requirement that a knowledgeable and responsible representative complete the application process for the applicant. This will enable the Social Worker to process the case in a more accurate and timely manner.

DSS PROPOSED REGULATION #05-47

REVISIONS:

20103 Financial Eligibility Determination

This is the second step in the application process. A referral is passed to the LTC financial eligibility unit within two days of being referred to the Medicaid PAS unit.

An application for Medicaid is presumed to be made only when an interview is held with the applicant or his family member. Should anyone hold Power of Attorney or Guardianship over the applicant, he must attend the interview unless his attendance is waived by the supervisor. and the In addition, the application form is must be signed listing those individuals for whom Medicaid coverage is being sought. The applicant or his representative must sign the An Application, Affidavit of Citizenship, and Responsibility Statement. and HCBS 1 Awareness Form must be signed by the applicant or his representative. The application date is considered the date of the interview unless the interview requirement is waived. The interview can only be waived if the applicant is medically unable to come in for the interview and there is no family member.

<u>POA</u> or <u>Guardian friend</u> medically able to come in for the interview. The unit Supervisor must approve the waiving of the interview requirement.

For cases in which the interview is waived, the application must be date stamped when it is received in the Division of Social Services Medicaid and Medical Assistance office. The stamped date sets the base for the timeliness of determination.

DIVISION OF MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Assisted Living Medicaid Waiver Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend a rule in the Division of Social Services Manual (DSSM) related to the Assisted Living Medicaid Waiver Program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by October 31, 2005.

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 Change

Statutory Authority

 42 CFR Subpart G – Home and Community-Based Services: Waiver Requirements

Background

The Assisted Living Medicaid Waiver Program (ALMWP) is a community based residential services

program administered by the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD).

The ALMWP pays for *services* for eligible clients living in assisted living facilities who would otherwise need nursing home placement. To be eligible, a client must meet financial and functional criteria.

Summary of Proposed Changes

DSSM 20700.4.5: This change provides clarification of an existing policy regarding Medicaid bed hold days for the Assisted Living Medicaid Waiver Program. There are no Medicaid bed hold days for hospitalization.

DSS PROPOSED REGULATION #05-49

REVISION:

20700.4.5 Illness Or Hospitalization

The assisted living provider shall NOT provide services for an individual that has been bedridden for 14 consecutive days unless a physician certifies that the consumer's needs may be safely met by the service agreement.

There is no 14 day bed hold day Medicaid payment for hospitalization (20650) as available for nursing facility residents. There are no Medicaid bed hold days for hospitalization.

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

Case Record Maintenance and Retention

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the language in the Division of Social Services Manual (DSSM) as it relates to the retention period for case records.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program

Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by October 31, 2005.

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 Change

Citation

Title 29 **Delaware Code**, Chapter 5, Subchapter I, *Public Records*

Summary of Proposed Change

DSSM 1005: Changes the retention period for case records for State and/or federally funded programs from three (3) years to five (5) years.

DSS Proposed Regulation #05-55

REVISION:

1005 Case Record Maintenance and Retention

Case records will contain important facts regarding applicants for and recipients of DSS and DMMA services, the dates that applications for benefits are filed and the dates eligibility decisions are reached, the facts essential to determining initial and continuing eligibility for financial assistance, medical assistance, food stamps or other services, the basis for terminating assistance or services, and information regarding overpayments and claims.

The Division of Management (DMS) of the Department of Health and Social Services, in discharging its fiscal accountability, will maintain an accounting system and supporting fiscal records adequate to assure that claims for federal funds are in accord with applicable Federal requirements.

The Division of Social Services <u>and the Division of Medicaid & Medical Assistance</u> will maintain case records for its State and/or federally funded programs for a period of <u>three (3) years five (5) years</u> subject to the following qualifications:

- a) The three year five-year retention period starts from the date of termination of cash assistance benefits.
- b) The records will be retained beyond the three (3) year five (5) year period if the Division has been notified of a pending audit.

- c) Records of non-expendable property which was acquired with Federal grant funds shall be retained by the State Office for three (3) years five (5) years after final disposition of such property.
- d) Any papers (forms or correspondence) in an active record which are more than four (4) calendar years old may be destroyed on site with the permission of the unit supervisor who has possession of the record. In destroying such papers, care should be taken not to destroy records of permanent value such as birth certificates, deeds, trusts, contracts, or other records of value. The following are examples of forms which may be destroyed on site:

Cash Assistance and Food Stamp budget sheets; Bank forms or statements; Wage forms or stubs; Shelter statements, bills, or receipts; Duplicate forms, letters, etc. Note: Information needed to substantiate outstanding overpayments cannot be destroyed.

Cases that are under investigation by the Department of Justice (DOJ) or that have outstanding overpayments will be retained beyond the three-year period and will remain intact until the investigation and subsequent legal action is complete or the overpayment is filed. Case files that have been referred to DOJ for prosecution are so indicated with a file copy of the Criminal Justice Report.

DEPARTMENT OF INSURANCE

18 Delaware Code, Sections 311 and 2503 (18 **Del.C.** §§311 and 2503) 18 **DE Admin. Code** 702

NOTICE OF PUBLIC HEARING

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice that a PUBLIC HEARING will be held on Tuesday November 1, 2005 at 2:00 p.m. in the Consumer Services Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to receive public comment in **Docket No. 2005-140**, proposed amendments to **Regulation 607** relating to **Defensive Driving Course Discount Automobiles and Motorcycles.**

The primary purpose for proposing amendments to Regulation 907 is to eliminate the Defensive Driving Credentials Committee and revise the methods by which the Department of Insurance receives and processes complaints against course providers and instructors. There are conforming amendments in the balance of the text to delete references to the Defensive Driving Credentials Committee

as well as to eliminate outdated text. The text of the proposed amendments is reproduced in the October 2005 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at http://www.state.de.us/inscom/departments/documents/ProposedRegs/ProposedRegs.shtml.

The hearing will be conducted in accordance with 18 **Del.C.** §311 and the Delaware Administrative Procedures Act, 29 **Del.C.** Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the hearing. Written comments, testimony or other written materials concerning the proposed change to the regulation must be received by the Department of Insurance no later than 2:00 p.m., Tuesday, November 1, 2005, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.5566 or email to michael.rich@state.de.us. If you are disabled and might need assistance in this matter, please contact Julia Blevins at 302.739.4251 ext.111 or Julia.Blevins@state.de.us.

607 Defensive Driving Course Discount (Automobiles and Motorcycles)

1.0 Purpose and Authority

The purpose of this Regulation is to provide a discount applicable to total premiums for persons who voluntarily attend and complete a Defensive Driving Course and to provide criteria for Defensive Driving Courses, Providers and Instructors. This Regulation is adopted pursuant to 18 **Del.C.** §314, and 18 **Del.C.** §2503 and promulgated in accordance with the procedures specified in the Administrative Procedures Act, 29 **Del.C.** Ch. 101.

2 DE Reg 989 (12/1/98)

2.0 Definitions

"Classroom courses" for the purpose of this regulation means a defensive driving program conducted with students and instructors in a location common to all. These courses may include the use of audio or visual aides or materials.

"Committee" for the purpose of this regulation means the Defensive Driving Credentials Committee.

"Department" means the Delaware Insurance Department.

"On-line courses" for the purpose of this regulation means instruction provided through the use of a computer including the use of CD roms or websites.

"Providers" means c Corporate sponsor for any course as well as the individual who signs the application for the course.

3.0 Minimum Requirements

A Defensive Driving Course Discount shall be applied to the total premiums for bodily injury liability coverage, property damage liability coverage, and personal injury protection coverage provided:

- 3.1 The automobile or motorcycle is individually owned or jointly owned by husband and wife or by members of the same household and is classified and rated as a private passenger automobile or motorcycle; and
- 3.2 The driver who customarily operates the automobile or motorcycle has a certificate certifying voluntary attendance and successful completion within the last 36 months from the date of application of a motor vehicle accident prevention course or motorcycle rider course, as appropriate, which is approved by the Insurance Commissioner Department.

2 DE Reg 989 (12/1/98)

4.0 Application

- 4.1 A 10% discount shall be applied with respect to the applicable premium(s) for each automobile or motorcycle insured under a policy if all operators named on the policy as insureds complete the course. If fewer than all the operators covered as principal or occasional drivers complete the course, then the discount shall be a fraction of 10%. The fraction shall be the number of operators completing the course, divided by the total number operators. The discount shall begin at the inception date of the policy or the first renewal date following application by the insured and shall terminate at the policy expiration date subsequent to the expiration of three years since completion of the course.
- 4.2 An insured who has received a defensive driving discount as outlined in section 4.1 above may take a refresher defensive driving course within the ninety days prior to the three year expiration date thereof or within two years thereof to receive a 15% discount for an additional three year period as outlined in section 4.1 above. Discounts shall not overlap. The discount may be applied as a multiplier or on an additive basis compatible with the rating system in use by the company.

2 DE Reg 989 (12/1/98)

5.0 Implementation

5.1 In the effective date of the Act, the discount shall be first applied to policies written to be effective on or after July 14, 1982 (automobile), or July 19, 1990 (motorcycle), or with renewal dates on or after July 14, 1982 (automobile), or July 19, 1990 (motorcycle), if applied for by the insured, and shall remain in effect for a 3-year period from the effective date of such policies.

- 5.2 The discount may be applied as a multiplier or on an additive basis compatible with the rating system in use by the company.
- 5.32 All courses certified by this Department as of September 1, 2004 shall apply for re-certification under the provisions of section 7 of this regulation on or before January 1, 2005. All courses not certified by this Department prior to September 1, 2004 shall apply for certification under the provisions of section 7 of this regulation.

6.0 Defensive Driving Course Credential Committee

- 6.1 The Commissioner hereby forms an entity known as the Defensive Driving Course Credential Committee ("Committee"). In appointing Committee members, the Commissioner shall consider the following characteristics:
- 6.1.1 Knowledge of principles of teaching and learning;
 - 6.1.2 Knowledge of safe driving principles; and
 - 6.1.3 Kknowledge of Delaware Motor Vehicle

laws.

6.2 The Committee shall be composed of five citizens of this State who are not employed by or have any financial interest in any course provider and who meet the standards set forth in sections 10.1.1 through 10.1.4.

6.3 Duties. The Committee shall:

- 6.3.1 Elect its Chairperson and shall make recommendations to the Commissioner concerning the duties set forth herein;
- 6.3.2 Review and examine defensive driving course provider, instructors and prospective providers and instructors to its satisfaction. Recommend certification, denial of certification or de-certification of a course provider or prospective provider and applicants.
- 6.3.3 Review and examine defensive driving courses and shall provide occasional monitoring of courses to ensure each course continues to meet the Committee's minimum requirements, as outlined in this Regulation. The Committee may from time to time recommend amendments to course requirements
- 6.3.4 Certify approved course providers and individual instructors for a two year period so long as the course sponsor/instructor continues to meet the requirements of this Regulation; and
- 6.3.5 Conduct any other such activity reasonably related to the furtherance of its duties.

76.0 Certification Criteria for Defensive Driving Programs and Providers

Each course provider shall:

76.1 Submit to the Department for approval written instructor and student materials for any defensive driving

- course to be offered that minimally includes the elements listed in this section. On-line courses shall provide free site access to the Department a Committee member for purposes of verification of compliance. The course materials for each defensive driving course shall include, at a minimum, the following:
- 76.1.1 The definition of defensive driving and the collision prevention theory serving as the basis for the course:
- 76.1.2 A discussion of vVehicle safety devices, including the use of seat belts, child restraint devices and their proper use and relationship to a childís age and size, including the correct placement of a child in a vehicle. Vehicle air bag systems shall be explained in detail with special attention to proper passenger seating and proper use of anti-lock braking systems and how they compare to standard braking systems;
- 76.1.3 A discussion of driving situations as they relate to the condition of the driver, driver characteristics, use of alcohol and legal/illegal drugs, including a discussion of Delaware law on drinking and driving and the use of drugs;
- 76.1.4 A discussion of the factors affecting driving and how they pertain to driving defensively, including, but not limited to:
- 76.1.4.1 The condition of the driver, the vehicle, the road, sun glare, weather and lighting;
- 76.1.4.2 Distractions such as use of cellular telephones while driving, adjusting radios, audio and video tapes and compact discs, talking with a passenger, reading and eating;
- 76.1.5 A discussion, including specific requirements of Delaware law where applicable, of pertinent driving situations, including stopping distances, proper following distances, proper intersection driving, stopping at railroad crossings, right-of-way and traffic devices as well as situations involving passing and being passed and how to protect against head-on collisions; and
- 76.1.6 Consideration of the hazards and techniques of various driving situations such, as but not limited to, city, highway, expressway and rural driving, proper use of exit and entrance ramps, driving in parking lots and a discussion of Delaware law concerning school buses.
- 76.1.7 A discussion of aggressive driving including but not limited to identifying an aggressive driver and providing appropriate defensive driving techniques. Discussion shall also include identifying oneself as an aggressive driver and the appropriate manner to respond.
- <u>6.1.8</u> <u>No course completion credit shall be shall be awarded unless the student successfully completes a course test and shall achieve a score of not less than seventy-</u>

- five percent (75%). Testing materials (original or amended) including questions and answer keys that the students must pass prior to receiving a certification of completion of the defensive driving course shall be approved by the Department in advance of their first use.
- 76.2 Require instructors in classroom courses to present information in a manner consistent with the approved curriculum and otherwise in accordance with the standards set forth herein.
- 76.3 Require on-line courses to provide toll free telephone lines staffed by knowledgeable customer service personnel who can assist with content based questions.
- 76.4 Require that each student receives a minimum of six hours of classroom or on-line time for the initial course and three hours of classroom or on-line time for the refresher advanced (renewal) course. Each classroom hour shall consist of not less than 50 minutes of instructional time devoted to the presentation of course curriculum.
- 76.5 Require that registration shall be completed prior to the beginning of any type of instruction and shall not be counted as instructional time.
- 76.6 Require its instructors in classroom courses to be in the classroom with the students during any and all periods of instructional time.
- 76.7 Require instructors in classroom courses to maintain an atmosphere appropriate for class-work.
- 76.8 Material required to be covered by this Regulation shall be discussed by the instructor in a classroom situation and be included as on screen information in an on-line course.
- 76.9 Supply students who complete a defensive driving course (including achieving a passing grade in the written testing required by section 6.1.8) and who have presented a government issued photo identification with a certification of completion that includes, at a minimum, the name of the student, the date of the class, the name of the defensive driving course and the course sponsorís authorized signature.
- 76.10 All courses shall provide all students with a copy of a letter provided by the Committee Department informing the student how to provide comment or file a complaint regarding a defensive driving course. This letter shall be in hard copy form for classroom courses. On-line courses shall place the letter with registration on-line and shall provide a hard copy with the certificate of completion.
- 76.11 Notify the Division of Motor Vehicles of each student's successful completion of the course in the manner and form required by the Division.

8.0 Complaints, De-certification, Suspension and Probationary Status

- 8.1 Complaints received by the Department of Insurance against course providers and/or instructors shall be directed to the Chairperson for the Committee. The Chairperson shall forward the complaint, in writing or by electronic mail, to the provider and shall request a response. The provider shall respond in writing or by electronic mail within fifteen working days. At the next meeting, the Committee shall determine whether the complaint is in an area over which it has the authority to take action or to make a recommendation. The results shall be reported to the course provider in writing as soon as reasonably possible.
- 8.2 Course providers and instructors may be decertified, placed on probation for not more than 90 calendar days, or have certification suspended indefinitely upon a finding of the Committee that the course presented does not meet the criteria set forth in this Regulation. Investigations relating to issues of compliance shall be directed by the Committee.
- 8.3 Prior to de-certification, placement on probation or suspension of certification, the course provider or instructor or both shall be notified, in writing, by the Committee. The course provider or instructor or both shall be given a reasonable opportunity to submit evidence of compliance in his or her defense.
- 8.4 A course provider or instructor who is placed on probationary status and does not show proof of compliance with the standards set forth herein within 90 calendar days shall be subject to de-certification at the end of the probationary period.
- 8.5 A course provider or instructor or both may be decertified, suspended or placed on probation for the following:
- 8.5.1Falsification of information on, or accompanying, the Application for Certification/Recertification:
- 8.5.2Falsification of, or failure to keep and provide adequate student records and information as required herein;
- 8.5.3Falsification of, or failure to keep and provide adequate financial records and documents as required; and
- 8.5.4Failure to comply with any section of this Regulation.

9.0 Appeal Procedures

9.1 Within 10 business days after the date of written notification of certification denial, suspension, probation or de-certification, the course provider or instructor or both may file an appeal requesting review of the action taken.

- 9.2 The appeal shall be addressed to the Committee, eiting the reasons for the request, and accompanied by any other relevant substantiating information.
- 9.3 The Committee shall conduct all hearings pursuant to 29 **Del.C.** Ch.101 of the Delaware Code Annotated.

7.0 Complaints, Hearings, De-certification, Suspension and Probationary Status

- 7.1 The following procedure shall be followed for the investigation of complaints against course providers and/or instructors certified under section 6.0 of this Regulation (the term icourse providerî as used in section 7.0 of this Regulation shall include individual instructors as may be appropriate in the context of this section):
- 7.1.1 Any person who desires to file a complaint against any course provider must do so in writing.
- 7.1.2 The complaint shall state the name of the course provider and the facts that allegedly constitute the basis for the complaint. If either of these elements is missing from the complaint, the Department may, in its discretion, dismiss the complaint without further notice or a hearing.
- 7.1.3 The Department, upon determining that the complaint is complete as provided in section 7.1.2 above, shall, within 15 days of the receipt of the complaint, assign a docket number to the complaint and shall transmit a copy of the complaint by certified mail, receipted email or other receipted delivery service to the course provider named in the complaint at the course provider's address of record in the Department's files. The named course provider may file an answer to the complaint within 20 calendar days with the Department.
- 7.1.4. The Department shall assign a staff member to investigate the complaint and the course provider's response.
- 7.1.5 The staff member, as part of the investigation, shall provide a report of the staff member's findings and recommendations to the Commissioner or his designee for further action as may be appropriate under this section. The report shall list the evidence reviewed, the witnesses interviewed and cite the law or regulation alleged to have been violated and the facts to support such finding. The report shall contain a written recommendation either to take such action as may be authorized by this section or to dismiss the complaint.
- 7.1.6 A dismissal of the complaint shall be without prejudice and no further action shall be taken by the Department. The Department shall provide a written notification of the Department's action and the basic reason(s) therefor to the complainant and to the course provider.

- 7.2 Upon a recommendation for further action under section 7.1 of this Regulation, the Commissioner shall determine whether the course provider should be warned (with or without conditions), placed on probation (with or without conditions) for not more than 90 days, suspended for a period not to exceed 6 months, or to be permanently decertified for one or more violations of this Regulation. For purposes of the enforcement of this Regulation and the protection of the public, progressive discipline is not required.
- 7.3 Upon making a determination as provided for in section 7.2 of this Regulation, the Department shall provide written notice to the course provider by certified mail, receipted email or other receipted delivery service. A copy of the notice shall be provided to the complainant. The notice shall include the following:
 - 7.3.1 a summary of the complaint;
- 7.3.2 <u>a summary of the information obtained in the investigation;</u>
 - <u>7.3.3</u> <u>findings of fact and/or law; and</u>
- 7.3.4 the sanction to be imposed by the Department.
- 7.4 Upon receipt of the notice provided for in section 7.3 of this Regulation, the course provider shall have the rights to a hearing and appeal as provided for in 18 **Del. C.** §§ 323-28.
- 7.5 Nothing in section 7.0 of this Regulation shall preclude the course provider from entering into a consent agreement with the Department.
- 7.6 A course provider or instructor who receives a warning or is placed on probation and does not show proof of compliance with the conditions of the warning or probation within the time set forth in the consent agreement or order may be subject to suspension or decertification.
- 7.7 In addition to the other provisions of this Regulation, a course provider may be placed on probation, suspended or decertified for any one or more of the following:
- 7.7.1 <u>Falsification of information on, or accompanying, the Application for Certification/Recertification;</u>
- 7.7.2 <u>Falsification of, or failure to keep and provide, adequate student records and information as required herein; or</u>
- 7.7.3 <u>Falsification of, or failure to keep and provide, adequate financial records and documents as required.</u>

108.0 Certification Process for Defensive Driving Instructors

108.1 Basic Requirements. Each instructor shall:

- 108.1.1 Be at least 18 years of age;
- $\frac{108}{1}$.1.2 Be a high school graduate or have a G.E.D.;
- 108.1.3 Provide a certified copy of his or her driving record showing he or she holds a valid driver's license with no more than four (4) points, no suspensions or revocations in the past two years; and
- 108.1.4 Have no felony convictions during the past four years and no criminal convictions evidencing moral turpitude. The Committee reserves the right to Department may require a criminal history background check of all applicants for an instructor's certification.
- 10.2 The Committee may recommend that Basic Requirements sections 10.1.2 through 10.1.4 hereof be waived upon a finding that an instructor is qualified and fit to act as an instructor.
- 10.38.2 Re-certification. Every two years each instructor shall:
- 10.38.2.1 Submit evidence that he or she has taught the certified course a minimum of 12 hours the previous calendar year;
- 10.38.2.2 Submit evidence that he or she attended an in-service update training seminar, or other training session, as provided by, or specified by, a certified defensive driving course sponsor; and
- 10.38.2.3 Submit a form as prescribed by the CommitteeDepartment certifying that he or she continues to meet the requirements of an instructor as outlined in this Regulation-and:
- 10.38.2.4 Submit a certified copy of his or her driving record.
- 10.3.58.3 The above-described submissions shall be filed not later than January 31st of the year in which recertification is desired. The Committee Department shall accept requests for re-certification not earlier than November 15th of the preceding year and make reasonable efforts to act on such requests within 30 days of receipt thereof.

11.0 Meetings

The committee shall set a day and time for quarterly meetings. Other meetings may be set as needed.

12 9.0 Effective Date

- 12.1 This <u>aetregulation</u> shall become effective on <u>September December</u> 11, 2004<u>5</u>.
 - 2 DE Reg. 989 (12/01/98)

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WATER RESOURCES

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

PUBLIC NOTICE

Proposed Total Maximum Daily Loads (TMDLs) for the Chester River, Choptank River, Marshyhope Creek and Pocomoke River Watersheds, Delaware

Brief Synopsis of the Subject, Substance, and Issues

The Department of Natural Resources and Environmental Control (DNREC) is proposing to adopt Total Maximum Daily Loads (TMDLs) Regulations for nitrogen, phosphorous, and bacteria for the Chester River, Choptank River, Marshyhope Creek and Pocomoke River Watersheds in Delaware. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS) to account for uncertainties and future growth.

Possible Terms of the Agency Action

Following adoption of the proposed Total Maximum Daily Loads for the Chester River, Choptank River, Marshyhope Creek and Pocomoke River Watersheds, DNREC will develop a Pollution Control Strategy (PCS) to achieve the necessary load reductions. The PCS will identify specific pollution reduction activities and timeframes and will be developed in concert with Tributary Action Teams, other stakeholders, and the public.

Statutory Basis or Legal Authority to Act

The authority to develop a TMDL is provided by Title 7 of the **Delaware Code**, Chapter 60, and Section 303(d) of the *Federal Clean Water Act*, 33 U.S.C. 1251 <u>et. seq.</u>, as amended.

Other Legislation That May be Impacted

None

Notice of Public Hearing and Comment

A public hearing will be held at 6:00 p.m., Thursday, October 27, 2005, at the University of Delaware Cooperative

Extension Service, Research and Education Center, 16684 County Seat Highway (Route 9), Georgetown, Delaware 19947. The hearing record will remain open until 4:30 p.m., Monday, October 31, 2005. Please send written comments to Hassan Mirsajadi, Watershed Assessment Section, Division of Water Resources, Department of Natural Resources and Environmental Control, 820 Silver Lake Boulevard, Suite 220, Dover, DE 19904-2464, (302) 739-9939, facsimile: (302) 739-6140, email: (Hassan.Mirsajadi@state.de.us). All written comments must be received by 4:30 p.m., Monday, October 31, 2005.

Additional information and supporting technical documents may be obtained by contacting Hassan Mirsajadi at the above address.

Prepared By:

John Schneider, Watershed Assessment Section, 739-9939

7410 Total Maximum Daily Loads (TMDLs) for Choptank River, Delaware

1.0 Introduction and Background

Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that the Choptank River is impaired by high levels of bacteria, elevated levels of the nutrients nitrogen and phosphorous, and low dissolved oxygen, and that the designated uses are not fully supported by water quality in the stream.

Section 303(d) of the Federal Clean Water Act (CWA) requires states to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impairment. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

DNREC listed Choptank River on several of the State's 303(d) Lists and proposes the following Total Maximum Daily Load regulation for nitrogen, phosphorous, and Enterococcus bacteria.

2.0 Total Maximum Daily Loads (TMDLs) Regulation for the Choptank River, Delaware

Article 1. The nonpoint source nitrogen load in the entire watershed shall be capped at the 2001-2003 baseline

level. This shall result in a yearly-average total nitrogen load of 1,359 pounds per day.

Article 2. The nonpoint source phosphorus load in the entire watershed shall be reduced by 40 percent from the 2001-2003 baseline level. This shall result in reducing the yearly-average total phosphorous load from 127 pounds per day to 75.9 pound per day.

Article 3. The nonpoint source bacteria load shall be reduced by 87.8% from the 1997 – 2005 baseline level. This shall result in reducing a yearly-mean bacteria load from 4.3E+11 CFU per day to 4.4E+10 CFU per day.

Article 4. Based upon water quality model runs and assuming implementation of reductions identified by Articles 1 through 3, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in Choptank River.

Article 5. Implementation of this TMDL Regulation shall be achieved through development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Tributary Action Teams, other stakeholders, and the public.

7411 Total Maximum Daily Loads (TMDLs) for Marshyhope Creek, Delaware

1.0 Introduction and Background

Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that the Marshyhope Creek is impaired by high levels of bacteria, elevated levels of nutrients nitrogen and phosphorous, and low dissolved oxygen, and that the designated uses are not fully supported by water quality in the stream.

Section 303(d) of the Federal Clean Water Act (CWA) requires states to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impairment. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

DNREC listed Marshyhope Creek on several of the State's 303(d) Lists and proposes the following Total Maximum Daily Load regulation for nitrogen, phosphorous, and Enterococcus bacteria.

2.0 Total Maximum Daily Loads (TMDLs) Regulation for Marshyhope Creek, Delaware

Article 1. The nonpoint source nitrogen load in the entire watershed shall be reduced by 20 percent from the 2001-2003 baseline level. This shall result in reducing the yearly-average total nitrogen load from 2,687 pounds per day to 2,148 pounds per day.

Article 2. The nonpoint source phosphorus load in the entire watershed shall be reduced by 25 percent from the 2001-2003 baseline level. This shall result in reducing the yearly-average total phosphorous load from 109 pounds per day to 78.1 pound per day.

Article 3. The nonpoint source bacteria load shall be reduced by 85.7% from the 1997 – 2005 baseline levels. This shall result in reducing a yearly-mean bacteria load from 1.1E+11 CFU per day to 1.6E+10 CFU per day.

Article 4. Based upon water quality model runs and assuming implementation of reductions identified by Articles 1 through 3, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in Marshyhope Creek.

Article 5. Implementation of this TMDL Regulation shall be achieved through development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Tributary Action Teams, other stakeholders, and the public.

7412 Total Maximum Daily Loads (TMDLs) for Pocomoke River, Delaware

1.0 Introduction and Background

Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that the Pocomoke River is impaired by high levels of bacteria, elevated levels of the nutrients nitrogen and phosphorous, and low dissolved oxygen, and that the designated uses are not fully supported by water quality in the stream.

Section 303(d) of the Federal Clean Water Act (CWA) requires states to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impairment. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

DNREC listed Pocomoke River on several of the State's 303(d) Lists and proposes the following Total Maximum Daily Load regulation for nitrogen, phosphorous, and Enterococcus bacteria.

2.0 Total Maximum Daily Loads (TMDLs) Regulation for the Pocomoke River, Delaware

Article 1. The nonpoint source nitrogen load in the entire watershed shall be reduced by 55 percent from the 1997-2003 baseline level. This shall result in reducing the yearly-median total nitrogen load from 226 pounds per day to 102 pounds per day.

Article 2. The nonpoint source phosphorus load in the entire watershed shall be reduced by 55 percent from the 1997-2003 baseline level. This shall result in reducing the yearly-median total phosphorous load from 13.5 pounds per day to 6.1 pound per day.

Article 3. The nonpoint source bacteria load shall be reduced by 69.2% from the 1997- 2005 baseline levels. This shall result in reducing a yearly-mean bacteria load from 4.2E+11 CFU per day to 1.3E+11CFU per day.

Article 4. Based upon water quality model runs and assuming implementation of reductions identified by Articles 1 through 3, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in Pocomoke River.

Article 5. Implementation of this TMDL Regulation shall be achieved through development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Tributary Action Teams, other stakeholders, and the public.

7413 Total Maximum Daily Loads (TMDLs) for Chester River, Delaware

1.0 Introduction and Background

Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that the Chester River is impaired by high levels of bacteria, elevated levels of the nutrients nitrogen and phosphorous, and low dissolved oxygen, and that the designated uses are not fully supported by water quality in the stream.

Section 303(d) of the Federal Clean Water Act (CWA) requires states to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impairment. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are

composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

DNREC listed Chester River on several of the State's 303(d) Lists and proposes the following Total Maximum Daily Load regulation for nitrogen, phosphorous, and Enterococcus bacteria.

2.0 <u>Total Maximum Daily Loads (TMDLs) Regulation</u> for the Chester River, Delaware

Article 1. The nonpoint source nitrogen load in the entire watershed shall be capped at the 2001-2003 baseline level. This shall result in a yearly-average total nitrogen load of 708 pounds per day.

Article 2. The nonpoint source phosphorus load in the entire watershed shall be reduced by 40 percent from the 2001-2003 baseline level. This shall result in reducing the yearly-average total phosphorous load from 54.6 pounds per day to 32.3 pound per day.

Article 3. The nonpoint source bacteria load in the entire watershed shall be reduced by 75.6% from the 1997 – 2005 baseline levels. This shall result in reducing a yearlymean bacteria load from 1.9E+11 CFU per day to 4.6E+10 CFU per day.

Article 4. Based upon water quality model runs and assuming implementation of reductions identified by Articles 1 through 3, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in Chester River.

Article 5. Implementation of this TMDL Regulation shall be achieved through development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Tributary Action Teams, other stakeholders, and the public.

DEPARTMENT OF STATE OFFICE OF THE STATE BANKING COMMISSIONER

Statutory Authority: 5 Delaware Code, Section 121(b) (5 **Del.C.** §121(b)) 5 **DE Admin. Code** §904

Notice of Proposed Adoption of a Regulation of the State Bank Commissioner

Summary

The State Bank Commissioner proposes to adopt new Regulation 904 ("Exceptions to Tying Restrictions"), which implements §929(f) of Title 5 of the **Delaware Code** by authorizing certain conduct as exceptions to the anti-tying restrictions of §929. These exceptions are in addition to those elsewhere in §929. The State Bank Commissioner would adopt the proposed new Regulation 904 on or after November 4, 2005. Other regulations issued by the State Bank Commissioner are not affected by these proposals. The State Bank Commissioner is issuing this regulation in accordance with Title 5 of the **Delaware Code**.

Comments

A copy of the proposed new regulation is published in the *Delaware Register of Regulations*. A copy is also on file in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, DE 19901 and is available for inspection during regular office hours. Copies are available upon request.

Interested parties are invited to comment or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner as to whether this proposed new regulation should be adopted, rejected or modified. Written materials submitted will be available for inspection at the above address. Comments must be received at or before the public hearing scheduled for November 4, 2005.

Public Hearing

A public hearing on the proposed regulation will be held in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, DE 19901 on Friday, November 4, 2005 commencing at 10:00 a.m. This notice is issued pursuant to the requirements of Subchapter III of Chapter 11 and Chapter 101 of Title 29 of the **Delaware Code**.

904 Exceptions to Tying Restrictions

Effective Date: [Proposed]

1.0 Purpose. This Regulation authorizes certain conduct as exceptions to the anti-tying restrictions of Section 929 of the State Banking Code (5 Del.C. §929), pursuant to Section 929(f). These exceptions are in addition to those elsewhere in Section 929.

2.0 Exceptions to statute.

<u>Subject to the limitations of paragraph 3.0 of this</u> <u>Regulation, a bank may:</u>

- 2.1 Safe harbor for combined-balance discounts. Vary the consideration for any product or package of products based on a customer's maintaining a combined minimum balance in certain products specified by the bank (eligible products), if:
- <u>2.1.1</u> <u>The bank offers deposits, and all such</u> deposits are eligible products; and
- <u>2.1.2</u> <u>Balances in deposits count at least as much as nondeposit products toward the minimum balance.</u>
- 2.2 <u>Safe harbor for foreign transactions. Engage in any transaction with a customer if that customer is:</u>
- <u>2.2.1</u> <u>A corporation, business, or other person</u> (other than an individual) that:
- <u>2.2.1.1</u> <u>Is incorporated, chartered, or otherwise organized outside the United States; and</u>
- 2.2.1.2 <u>Has its principal place of business</u> outside the United States; or
- <u>2.2.2</u> <u>An individual who is a citizen of a foreign country and is not resident in the United States.</u>

3.0 Limitations on exceptions.

Any exception authorized pursuant to this Regulation shall terminate upon a finding by the Commissioner that the arrangement is resulting in anti-competitive practices. The eligibility of a bank to operate under any exception authorized pursuant to this Regulation shall terminate upon a finding by the Commissioner that its exercise of this authority is resulting in anti-competitive practices.

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Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF EDUCATIONOFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d)) 14 **DE Admin. Code** 106

REGULATORY IMPLEMENTING ORDER

106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II)

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II). The amendments include changing 5.2.5.1 by removing "all" and adding "four out of five" in referring to the criteria for a satisfactory rating under Student Improvement and changing 6.2.1 defining the effective rating by removing the words "in component 5, Student Improvement and" as well as changing the words "three out of four" to "four out of five". This amendment to this regulation is necessary in order to comply with the agreement made between the Delaware State Education Association, the Department of Education and the State Board of Education concerning the participation of two local

school districts in the pilot of the Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II).

The amendments to the regulation are being submitted under an exception to 29 **Del.C.** §10113(5) the Administrative Procedures Act. The agreement signed by the parties named above required a change in the rating definitions in order to allow the two year pilot to begin in the fall of 2005.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) in order to bring the regulation into alignment with the agreement made between the Delaware State Education Association, the Department of Education and the State Board of Education concerning the participation of two local school districts in the pilot of the Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II).

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 106. Therefore, pursuant to 14 **Del.C.** §1270, 14 **DE Admin. Code** 106 attached hereto as *Exhibit* "A" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE**

Admin. Code 106 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** 106 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 106 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.** §1270 on September 15, 2005. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 15th day of September 2005.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education Approved this 15th day of September 2005

STATE BOARD OF EDUCATION

Jean W. Allen, President Richard M. Farmer, Jr., Vice President Mary B. Graham, Esquire Barbara Rutt, Esquire Dennis J. Savage Dr. Claibourne D. Smith

106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II)

1.0 The Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) shall be effective for only those districts participating in the pilot of this process.

1.1 For teachers participating in the pilot, any rating received on a Summative Evaluation conducted during the pilot period shall not be included in the determination of a pattern of ineffective teaching as defined in 7.0.

2.0 Definitions

"Announced Observation" shall consist of the Pre-Observation Form and conference with the evaluator, an observation by the evaluator at an agreed upon date and time, and the associated formative conferences/reports. The observation shall be of sufficient length, at least twenty (20) minutes, to analyze the lesson and assess performance.

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

"Certified Evaluator" shall mean the individual, usually the supervisor of the teacher, who has successfully completed the evaluation training in accordance with 9.0.

"DPAS" shall mean the Delaware Performance Appraisal System in effect prior to **DPAS II**.

"Experienced Teacher" shall mean a teacher who holds valid and current Continuing or Advanced License, or Standard or Professional Status Certificate issued prior to August 1, 2003.

"Improvement Plan" shall be the plan that a teacher and evaluator mutually develop in accordance with section 8.0

"Novice Teacher" shall mean a teacher who holds a valid and current Initial License.

"Satisfactory Component Rating" shall mean the teacher understands the concepts of the component and the teacher's performance in that component is acceptable.

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

"Summative Evaluation" shall be the rating process at the conclusion of the appraisal cycle.

"Technical Assistance Document" shall mean the manual that contains the prescribed forms, detailed procedures, specific details about the 5 components of evaluation and other relevant documents that assist in the appraisal process.

"Unannounced Observation" shall consist of an observation by the evaluator at a date and time that has not been previously arranged and the associated formative conferences/reports. The observation shall be of sufficient length, at least twenty (20) minutes, to analyze the lesson and assess performance.

"Unsatisfactory Component Rating" shall mean that the teacher does not understand the concepts of the component and the teacher's performance in that component is not acceptable.

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

3.0 Appraisal Cycles

3.1 Experienced teachers who have earned a rating of "Effective" on their most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation each

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year with a Summative Evaluation at the end of the one year period. The minimum annual evaluation for an experienced teacher who has earned an effective rating, may be waived for the subsequent year but not for two (2) consecutive years. Up to one half of the experienced teachers in a building who received a rating of "Effective" or "Exemplary" on the most recent DPAS Performance Appraisal may have the annual Summative Evaluation waived.

- 3.2 Experienced teachers who have earned a rating of "Needs Improvement" or "Ineffective" on their most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one year period. These teachers shall have an Improvement Plan which may require additional observations and other types of monitoring as outlined in the Technical Assistance Document.
- 3.3 Novice teachers shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one year period. Novice teachers who have earned a rating of "Needs Improvement" or "Ineffective" on their most recent Summative Evaluation shall have an Improvement Plan which may require additional observations or other types of monitoring as outlined in the Technical Assistance Document.

4.0 Technical Assistance Document

- 4.1 All districts and charter schools shall use the document entitled *Delaware Performance Appraisal System* (*DPAS*) *II Technical Assistance Document* as developed by the Department of Education to assist in the implementation of the appraisal system. The Technical Assistance Document shall be reviewed biannually by the State Board of Education. Any recommendations for change shall be submitted to the Department of Education for consideration.
- 4.2 The Document shall contain, at a minimum, the following:
- 4.2.1 Specific details about each of the five (5) components listed in 5.1.
- 4.2.2 All forms or documents needed to complete the requirements of the appraisal process including Announced Observation, Unannounced Observation, Summative Evaluation, Improvement Plan and Challenge Form.
- 4.2.3 Specific procedures for observations, conferences, ratings, Summative Evaluation, Improvement Plan(s), and Challenges.

5.0 Appraisal Criteria

5.1 The following five (5) components shall be the basis upon which the performance of a teacher shall be evaluated by a certified evaluator:

5.1.1 Planning and Preparation

- 5.1.1.1 Selecting Instructional Goals: Teacher selects instructional goals that are aligned with the DE content standards and available DSTP/district/school/program data. Goals are appropriate for the learners and reflect high expectations consistent with DSTP levels of performance.
- 5.1.1.2 Designing Coherent Instruction: Teacher plans for learning activities that align with the goals and supports student learning. Instructional planning shows a structure and selection of materials and activities that support student learning relative to the DE content standards.
- 5.1.1.3 Demonstrating Knowledge of Content and Pedagogy: Teacher shows his/her knowledge of content and how to teach it to a variety of learners. The teacher's plans include natural connections between content areas that deepen student learning. The content that he/she teaches is aligned to the DE content standards.
- 5.1.1.4 Demonstrating Knowledge of Students: Teacher shows an awareness of his/her knowledge of student developmental characteristics, approaches to learning, knowledge, skills, interests, cultural heritage, and DSTP performance levels.

5.1.2 Classroom Environment

- 5.1.2.1 Managing Classroom Procedures: Teacher has clearly defined procedures for managing learning time, transitions between learning events, and routine procedures that maximize learning time.
- 5.1.2.2 Managing Student Behavior: Teacher establishes behavioral expectations and consequences and monitors student conduct. Teacher responds to student behavior in appropriate and effective ways to minimize disruptions.
- 5.1.2.3 Creating an Environment to Support Learning: Teacher creates an atmosphere in which learning is valued. Teacher-student and student-student interactions show rapport that is grounded in mutual respect.
- 5.1.2.4 Organizing Physical Space: Teacher organizes, allocates, and manages physical space to create a safe learning environment. Teacher uses physical resources to contribute to effective instruction and make resources accessible to all students.

5.1.3 Instruction

5.1.3.1 Engaging Students in Learning: Content is appropriate, clear, and links to student knowledge and experience. Content is aligned with the DE content standards and informed by the DSTP instructional needs

comments. Activities and assignments engage students in the exploration of the content. Instructional materials are suitable to the instructional goals. The instruction is coherent.

- 5.1.3.2 Demonstrating Flexibility and Responsiveness: Teacher has a repertoire of instructional strategies and makes modifications to lessons as needed. Teacher differentiates instruction based on learner characteristics and DSTP instructional needs comments.
- 5.1.3.3 Communicating Clearly and Accurately: Verbal and written communication is clear and appropriate to students' age, background, and level of understanding.
- 5.1.3.4 Using Questioning and Discussion Techniques: Questions are appropriate to the content and level of students' understanding. Teacher encourages students to pose their own questions and is responsive to student questions. Teacher facilitates student-led discussions.

5.1.4 Professional Responsibilities

- 5.1.4.1 Communicating with Families: Teacher shares information about the school's educational program, its alignment with the DE content standards, and expectations for student performance. Teacher develops two-way communication with families about student progress, behavior, and personal needs or concerns.
- 5.1.4.2 Developing a Student Record System: Teacher keeps records of attendance, emergency contact information, personal information (such as: allergies, medications, accommodations), and behavior. Shares relevant information with appropriate school personnel.
- 5.1.4.3 Growing and Developing Professionally: Teacher participates in professional development to increase his/her knowledge of content and pedagogy. Teacher chooses professional development that is aligned with the needs of the school/district/students.
- 5.1.4.4 Reflecting on Professional Practice: Teacher engages in reflective thinking as an individual, as a team participant, or as a school/community member with the goal of improving instruction and learning.

5.1.5 Student Improvement

- 5.1.5.1 Showing Improvement on the DSTP: Teacher uses DSTP data analysis to inform classroom improvement, curriculum and instruction decisions.
- 5.1.5.2 Aligning Assessments to Learning Goals and DSTP: Teacher creates dependable assessments and scoring criteria that accurately measure the learning goals based on the DE content standards and DSTP and classroom performance assessments and that yield data about student needs and progress relative to the content standards measured by the DSTP.

5.2 Each of the five (5) components shall be weighted equally and assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.

5.2.1 Planning and Preparation

- 5.2.1.1 A satisfactory rating for this component shall mean the teacher demonstrates acceptable performance by meeting at least 4 of the following 5 criteria:
- 5.2.1.1.1 Selects goals that are clear, reflect high expectations, are consistent with DSTP levels of performance, focus on learning, align with Delaware content standards and available DSTP/district/school/program data, and are suitable for the class.
- 5.2.1.1.2 Designs instruction that has a clearly defined structure, is appropriate for students, and matches the selected goals.
- 5.2.1.1.3 Chooses materials and activities that match the goals and engage students in learning.
- 5.2.1.1.4 Displays solid content and pedagogy knowledge and makes connections within the content area and with other content areas that deepen student learning. Displays an understanding of prerequisite knowledge and anticipates student misconceptions.
- 5.2.1.1.5 Displays knowledge of student developmental characteristics, approaches to learning, knowledge, skills, interests, cultural heritage, and DSTP performance levels.

5.2.2 Classroom Environment

- 5.2.2.1 A satisfactory rating for this component shall mean the teacher demonstrates acceptable performance by meeting at least 8 of the following 11 criteria:
- 5.2.2.1.1 Posts classroom procedures/rules stated in student friendly terms.
- 5.2.2.1.2 Encourages students in assuming responsibility for following procedures.
- 5.2.2.1.3 Uses transitions appropriately to maximize learning time.
- 5.2.2.1.4 Posts behavioral expectations and consequences in student friendly terms.
- 5.2.2.1.5 Monitors and responds to behavior in effective ways that minimize disruptions.
- 5.2.2.1.6 Discusses classroom procedures/rules with students in ways that show shared valuing of procedures/rules.
- 5.2.2.1.7 Interacts with students and encourages student-student interactions in ways that show rapport and mutual respect.
 - 5.2.2.1.8 Displays student work.

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5.2.2.1.9 Organizes, allocates, and manages physical space in ways that create a safe learning environment.

5.2.2.1.10 Uses physical resources in ways that contribute to effective instruction.

 $5.2.2.1.11 \qquad \text{Makes resources available to} \\$ all students.

5.2.3 Instruction

5.2.3.1 A satisfactory rating for this component shall mean the teacher demonstrates acceptable performance by meeting at least 7 of the following 9 criteria:

5.2.3.1.1 Selects content that is aligned with the DE content standards, is appropriate, clear, and links to student knowledge and experience and the DSTP instructional needs comments.

5.2.3.1.2 Selects and designs activities and assignments that engage students in the exploration of the content.

5.2.3.1.3 Uses instructional materials that are suitable to the instructional goals.

5.2.3.1.4 Delivers coherent

instruction.

5.2.3.1.5 Uses a repertoire of instructional strategies and makes adjustments to lessons as needed.

5.2.3.1.6 Differentiates instruction based on learner characteristics and DSTP instructional needs comments.

5.2.3.1.7 Communicates clearly in writing and verbally. Communicates in ways appropriate to students' age, background, and level of understanding.

5.2.3.1.8 Asks questions that are appropriate to the content and level of students' understanding. Encourages students to pose their own questions and is responsive to student questions.

5.2.3.1.9 Facilitates student-led discussions.

5.2.4 Professional Responsibilities

5.2.4.1 A satisfactory rating for this component shall mean the teacher demonstrates acceptable performance by meeting at least 5 of the following 7 criteria:

5.2.4.1.1 Shares information, in a variety of ways, about the school's educational program, its alignment with the DE content standards, and expectations for student performance.

5.2.4.1.2 Develops two-way communication with families about student progress, behavior, and personal needs or concerns.

5.2.4.1.3 Responds to families in a timely and appropriate way.

5.2.4.1.4 Develops and maintains a record keeping system that is up-to-date, well-organized, accurate, and complete.

5.2.4.1.5 Shares relevant student information with appropriate school personnel.

5.2.4.1.6 Participates in professional development to increase knowledge of content and pedagogy. Chooses professional development that is clearly aligned with the needs of the school/district/and students.

5.2.4.1.7 Engages in reflective thinking as an individual, as a team participant, or school/community member with the goal of improving instruction and learning.

5.2.5 Student Improvement

5.2.5.1 A satisfactory rating shall mean the teacher demonstrates acceptable performance in this component by meeting all four (4) out of five (5) of the criteria set forth below:

5.2.5.1.1 The teacher provides evidence of a positive contribution to the school's State Progress Determination.

5.2.5.1.2 For the aggregate group of students taught by the teacher for the previous two years the average scale scores on the DSTP in reading and math have increased, excluding those students pursuant to 14 **Del.C.** §1270(c).

5.2.5.1.3 The average scale score for the groups of students disaggregated by race/ethnicity, LEP, Special education and low income have increased for the previous two (2) years on the DSTP in reading and math, provided that there were a minimum of ten (10) students in a subgroup, excluding those students pursuant to 14 **Del.C.** §1270(c). If there were fewer than ten (10) students in a subgroup, the subgroup shall not be considered for these criteria.

5.2.5.1.4 The students currently being instructed in the teacher's classroom in the aggregate have shown improvement on classroom based assessments, excluding those students pursuant to 14 **Del.C.** §1270(c).

5.2.5.1.5 The students currently being instructed in the teacher's classroom disaggregated by race/ethnicity, LEP, special education and low income have shown improvement on classroom based assessments, provided that there were a minimum of five (5) students in a subgroup, excluding those students pursuant to 14 **Del.C.** §1270(c). If there were fewer than five (5) students in a subgroup, the subgroup shall not be considered for these criteria.

6.0 Summative Evaluation Ratings

- 6.1 The Summative Evaluation shall include ratings of Satisfactory or Unsatisfactory on each of the five (5) components pursuant to 5.0.
- 6.2 The Summative Evaluation shall also include one of three overall ratings: "Effective", "Needs Improvement", or "Ineffective".
- 6.2.1 Effective shall mean that the teacher has received Satisfactory Component ratings in Component 5, Student Improvement and in at least three (3) four (4) of the other four (4) five (5) components of the appraisal criteria.
- 6.2.2 Needs Improvement shall mean that the teacher has received at least three (3) Satisfactory Component ratings out of the five (5) components of the appraisal criteria.
- 6.2.2.1 A teacher who has received an unsatisfactory rating on the student improvement component may have their next Summative Evaluation delayed until the Delaware Student Testing Program (DSTP) data is available for the current group of students the teacher is instructing.
- 6.2.3 Ineffective shall mean that the teacher has received three (3) or more Unsatisfactory Component ratings out of the five (5) components of the appraisal criteria.
- 6.2.3.1 A teacher who has received an unsatisfactory rating on the student improvement component may have their next Summative Evaluation delayed until the Delaware Student Testing Program (DSTP) data is available for the current group of students the teacher is instructing.
- 6.2.3.2 If the teacher's overall Summative Evaluation rating is determined to be "Needs Improvement" for the third consecutive year, the rating shall be recategorized as Ineffective.

7.0 Pattern of ineffective teaching defined.

A pattern of ineffective teaching shall be based on the most recent appraisal ratings of a teacher using the DPAS II process. Two consecutive ratings of Ineffective shall be deemed as a pattern of ineffective teaching. The following appraisal ratings shall be determined to be a pattern of ineffective teaching:

Ineffective	Ineffective	
Needs	Ineffective	Needs
Improvement		Improvement
Needs	Needs	Ineffective
Improvement	Improvement	
Ineffective	Needs	Ineffective
	Improvement	
Ineffective	Needs	Needs
	Improvement	Improvement

Needs	Ineffective	Ineffective
Improvement		

8.0 Improvement Plan

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

9.0 Evaluator Credentials

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

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

- 9.2 The training for the certificate of completion shall include techniques of observation and conferencing, content and relationships of frameworks for teaching training and a thorough review of the Technical Assistance Document. Activities in which participants practice implementation of DPAS II procedures shall be included in the training.
- 9.3 The credentialing process shall be conducted by the Department of Education.

10.0 Challenge Process

- 10.1 A teacher may challenge any rating on the Summative Evaluation, either a Component Rating or the Overall Rating, or a teacher may challenge the conclusions of a lesson observation if the statement "PERFORMANCE IS UNSATISFACTORY" has been included on the Formative Feedback form by submitting additional information specific to the point of disagreement in writing within ten (10) working days of the date of the teacher's receipt of the Summative Evaluation. Such written response shall become part of the appraisal record and shall be attached to the Summative Evaluation. All challenges together with the record shall be forwarded to the supervisor of the evaluator.
- 10.1.1 Within ten (10) working days of receiving the written challenge, the supervisor of the evaluator shall review the record which consists of the Pre-observation Form(s), the Formative Feedback Form(s), the Summative Evaluation and the written challenge, and issue a written decision.
- 10.1.2 If the challenge is denied, the decision shall state the reasons for denial.
- 10.1.3 The decision of the supervisor of the evaluator shall be final.

8 DE Reg. 431 (9/1/04)

OFFICE OF THE SECRETARY

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

REGULATORY IMPLEMENTING ORDER

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

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II). The amendments include changing 5.2.5.1 by removing "all" and adding "two out of three" in referring to the criteria for a satisfactory rating under Student Improvement and changing 6.2.1 defining the effective rating by removing the words "in component 5, Student Improvement and" as well as changing the words "three out of four" to "four out of five". This amendment to this regulation is necessary in order to comply with the agreement made between the Delaware State Education Association, the Department of Education and the State Board of Education concerning the agreement of two local school districts to participate in the pilot of the Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II).

The amendments to the regulation are being submitted under an exception to 29 **Del.C.** §10113(5) the Administrative Procedures Act. The agreement signed by the parties named above required a change in the rating definitions in order to allow the two year pilot to begin in the fall of 2005.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) in order to bring the regulation into alignment with the agreement made between the Delaware State Education Association, the Department of Education and the State Board of Education concerning the participation of two local school districts in the pilot of the Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II).

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 107. Therefore, pursuant to 14 **Del.C.** §1270, 14 **DE Admin. Code** 107 attached hereto as *Exhibit* "A" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 107 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** 107 amended hereby shall be in the form attached hereto as *Exhibit* "B", and said regulation shall be cited as 14 **DE Admin. Code** 107 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.** §1270 on September 15, 2005. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 15th day of September 2005.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education Approved this 15th day of September 2005

STATE BOARD OF EDUCATION

Jean W. Allen, President Richard M. Farmer, Jr., Vice President Mary B. Graham, Esquire Barbara Rutt, Esquire Dennis J. Savage Dr. Claibourne D. Smith

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

1.0 The Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) shall be effective for only those districts participating in the pilot of this process.

1.1 For specialists participating in the pilot, any rating received on a Summative Evaluation conducted during the

pilot period shall not be included in the determination of a pattern of ineffective practice as defined in 7.0.

1.2 Specialist shall mean a licensed and certificated staff person who is part of the school team and delivers professional services to students, teachers, staff and/or families. Specialists include but are not limited to guidance counselors, instructional support specialists, library media specialists, school psychologists, school nurses, student support specialists, and therapeutic services specialists.

2.0 Definitions

"Announced Observation" shall consist of the Pre-Observation Form and conference with the evaluator, an observation by the evaluator at an agreed upon date and time, and the associated formative conferences/reports. The observation for the specialist may be a collection of data over a specified period of time, up to four (4) weeks, or it may be an observation of sufficient length to gather appropriate data but not less than twenty (20) minutes.

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

"Certified Evaluator" shall mean the individual, usually the supervisor of the specialist, who has successfully completed the evaluation training in accordance with 9.0.

"DPAS" shall mean the Delaware Performance Appraisal System in effect prior to **DPAS II**.

"Experienced Specialist" is a specialist who holds a valid and current Continuing or Advanced License, or Standard or Professional Status Certificate issued prior to August 1, 2003 or holds a valid and current license from their respective licensure body.

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

"Novice Specialist" is a specialist who holds a valid and current Initial License or holds a valid and current license from their respective licensure body and has less than three (3) years of experience as a specialist.

"Satisfactory Component Rating" shall mean the specialist understands the concepts of the component and the specialist's performance in that component is acceptable.

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

"Summative Evaluation" shall be the rating process at the conclusion of the appraisal cycle.

"Technical Assistance Document" shall mean the manual that contains the prescribed forms, detailed procedures, evaluation criteria and other relevant documents that assist in the appraisal process.

"Unannounced Observation" shall consist of an observation by the evaluator at a date and time that has not been previously arranged and the associated formative conferences/reports. The unannounced observation for the specialist may be an observation of sufficient length to gather appropriate data but not less than twenty (20) minutes.

"Unsatisfactory Component Rating" shall mean that the specialist does not understand the concepts of the component and the specialist's performance in that component is not acceptable.

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

3.0 Appraisal Cycles

- 3.1 Experienced specialists who have earned a rating of "Effective" on their most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation each year with a Summative Evaluation at the end of the one year period. This minimum annual evaluation for an experienced specialist who has earned an effective rating may be waived for the subsequent year but not for two (2) consecutive years. Up to one half of the experienced specialists in a building who received a rating of "Effective" or "Exemplary" on the most recent DPAS Performance Appraisal Summative Evaluation may have the annual Summative Evaluation waived.
- 3.2 Experienced specialists who have earned a rating of "Needs Improvement" or "Ineffective" on their most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one year period. These specialists shall have an Improvement Plan which may require additional observations and other types of monitoring as outlined in the Technical Assistance Document.
- 3.3 Novice specialists shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one year period. Novice specialists who have earned a rating of "Needs Improvement" or "Ineffective" on their most recent Summative Evaluation shall have an Improvement Plan which may require additional observations or other types of monitoring as outlined in the Technical Assistance Document.

4.0 Technical Assistance Document

4.1 All districts and charter schools shall use the document entitled *Delaware Performance Appraisal System* (DPAS) II Technical Assistance Document as developed by

- the Department of Education to assist in the implementation of the appraisal system. The Technical Assistance Document shall be reviewed biannually by the State Board of Education. Any recommendations for change shall be submitted to the Department of Education for consideration.
- 4.2 The Document shall contain, at a minimum, the following:
- 4.2.1 Specific details about each of the five (5) components listed in 5.1.
- 4.2.2 All forms or documents needed to complete the requirements of the appraisal process including Announced Observation, Unannounced Observation, Summative Evaluation, Improvement Plan and Challenge Form.
- 4.2.3 Specific procedures for observations, conferences, ratings, Summative Evaluation, Improvement Plan(s), and Challenges.

5.0 Appraisal Criteria

- 5.1 The following five (5) components shall be the basis upon which the performance of a specialist shall be evaluated by a certified evaluator:
 - 5.1.1 Planning and Preparation
- 5.1.1.1 Designing Coherent Programs or Services: Specialist designs activities and plans for services that support the needs of the students/clients/school/district.
- 5.1.1.2 Demonstrating Knowledge of Best Practice and Models of Delivery: Specialist uses practices and models of delivery that are aligned with local and national standards.
- 5.1.1.3 Demonstrating Knowledge of Students/Clients: Specialist shows knowledge of the needs and characteristics of the students/clients, including their approaches to leaning, knowledge, skills, and interests.
- 5.1.1.4 Demonstrating Knowledge of Resources: Specialist selects appropriate resources, either within or outside of the school, that supports the goals of the program.
- 5.1.2 Professional Practice and Delivery of Services
- 5.1.2.1 Creating an Environment to Support Student/Client Needs: Specialist creates an environment in which student/client needs are identified and valued. Specialist/student/client interactions show rapport that is grounded in mutual respect.
- 5.1.2.2 Demonstrating Flexibility and Responsiveness: Specialist has a repertoire of instructional or professional strategies and makes modifications to services based on needs of the students/clients.
- 5.1.2.3 Communicating Clearly and Accurately: Verbal and written communication is clear and

appropriate to students'/clients' age, background, needs, or level of understanding.

- 5.1.2.4 Delivering Services to Students/Clients: Specialist is responsive to the identified needs of the students/clients and meets standards of professional practice. The resources and materials are suitable and match the needs of the students/clients. The delivery of service is coherent.
- 5.1.3 Professional Collaboration and Consultation
- 5.1.3.1 Collaborating with Others: Specialist develops partnerships with school staff or external agencies to provide integrated services that meet student/client needs.
- 5.1.3.2 Serving as a Consultant to the School Community: Specialist shares expertise with school staff to assist them in their work or to respond to school-wide issues, problems, or concerns.
- 5.1.3.3 Providing Resources and Access: Specialist provides school-based resources to appropriate staff/students/clients or gives information about the effective use of the resources.
- 5.1.3.4 Maintaining Standards of Professional Practice: Specialist adheres to his/her professional standards of practice, including issues surrounding confidentiality.

5.1.4 Professional Responsibilities

- 5.1.4.1 Communicating with Families and School Staff: Specialist shares information in a variety of ways about school programs available to students and families. Specialist develops two-way communication with school staff and families about student progress, behavior, personal needs, or concerns.
- 5.1.4.2 Developing a Record System: Specialist keeps student/client records relevant to their services and shares information with appropriate school personnel.
- 5.1.4.3 Growing and Developing Professionally: Specialist participates in professional development to increase his/her knowledge of professional practice and delivery of service. Specialist chooses professional development that is aligned with the needs of the school/district/students/clients.
- 5.1.4.4 Reflecting on Professional Practice: Specialist engages in reflective thinking as an individual, as a team participant, or as a school/community member with the goal of improving professional practice and delivery of service.

5.1.5 Student Improvement

5.1.5.1 Showing Improvement on the DSTP: Specialist uses DSTP data analysis to inform school improvement and program decisions and participates in school improvement work.

- 5.1.5.2 Using Assessments to Promote Student/Client Improvement: Specialist creates or uses dependable assessments that accurately measure student/client needs, status, or performance and uses the assessment results to design services or programs to promote improvement.
- 5.2 Each of the five (5) components shall be weighted equally and assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.

5.2.1 Planning and Preparation

- 5.2.1.1 A satisfactory rating for this component shall mean the specialist demonstrates acceptable performance by meeting at least 3 of the following 4 criteria:
- 5.2.1.1.1 Consistently designs activities and plans for service that support the needs of the students/clients/ school/district.
- 5.2.1.1.2 Effectively uses practices and models of delivery that are aligned with local and national standards.
- 5.2.1.1.3 Shows a deep knowledge of the needs and characteristics of the students/clients and their approaches to learning, knowledge, skills, and interests.
- 5.2.1.1.4 Selects appropriate resources, either within or outside of the school, that support the goals of the program.
- 5.2.2 Professional Practice and Delivery of Services
- 5.2.2.1 A satisfactory rating for this component shall mean the specialist demonstrates acceptable performance by meeting at least 5 of the following 7 criteria:
- 5.2.2.1.1 Creates an environment in which student/client needs are identified and valued.
- 5.2.2.1.2 Interacts with students/clients in ways that show rapport and that is grounded in mutual respect.
- 5.2.2.1.3 Has an extensive repertoire of instructional or professional strategies and makes effective modifications to services based on needs of the students/clients.
- 5.2.2.1.4 Communicates clearly and appropriately with regard to students'/clients' age, background, needs, or level of understanding.
- 5.2.2.1.5 Provides services that are responsive to the identified needs of the students/clients and meets standards of professional practice.
- 5.2.2.1.6 Selects resources and materials that are suitable and match the needs of the students/clients.
 - 5.2.2.1.7 Delivers coherent services.
- 5.2.3 Professional Collaboration and Consultation

- 5.2.3.1 A satisfactory rating for this component shall mean the specialist demonstrates acceptable performance by meeting at least 4 of the following 5 criteria:
- 5.2.3.1.1 Develops partnerships with school staff or external agencies to provide integrated services that meet student/client needs.
- 5.2.3.1.2 Shares expertise with school staff to assist them in their work or responds to school-wide issues, problems, or concerns.
- 5.2.3.1.3 Provides school-based resources to appropriate staff/students/clients or gives appropriate information about the effective use of the resources.
- 5.2.3.1.4 Assists staff/students/clients in gaining access to resources outside of the school community that will meet identified needs.
- 5.2.3.1.5 Adheres to professional standards of practice, including issues surrounding confidentiality.
 - 5.2.4 Professional Responsibilities
- 5.2.4.1 A satisfactory rating for this component shall mean the specialist demonstrates acceptable performance by meeting at least 5 of the following 7 criteria:
- 5.2.4.1.1 Shares information in a variety of ways about school programs available to students and families.
- 5.2.4.1.2 Develops two-way communication with school staff and families about student progress, behavior, personal needs, or concerns.
- 5.2.4.1.3 Keeps accurate and up-to-date student/client records relevant to provided services.
- 5.2.4.1.4 Shares information with appropriate school personnel.
- 5.2.4.1.5 Participates in professional development to increase knowledge of professional practice and delivery of service.
- 5.2.4.1.6 Chooses professional development that is aligned with the needs of the school/district/students/clients.
- 5.2.4.1.7 Engages in reflective thinking as an individual, as a team participant, or as a school/community member with the goal of improving professional practice and delivery of service.
 - 5.2.5 Student Improvement
- 5.2.5.1 A satisfactory rating shall mean the specialist demonstrates acceptable performance in this component by meeting all two (2) out of three (3) of the criteria set forth below:

- which contribute to improvement in the school or district's State Progress Determination.
- 5.2.5.1.2 The average scale score for the aggregate group of students served by the specialist for the previous two (2) years on the DSTP in reading and math have increased, excluding those students pursuant to 14 **Del.C.** §1270(c).
- 5.2.5.1.3 The average scale score for the groups of students disaggregated by race/ethnicity, LEP, Special education and low income have increased for the previous two (2) years on the DSTP in reading and math, provided that there were a minimum of ten (10) students in a subgroup, excluding those students pursuant to 14 **Del.C.** §1270(c). If there were fewer than ten (10) students in a subgroup, the subgroup shall not be considered for these criteria.

6.0 Summative Evaluation Ratings

- 6.1 The Summative Evaluation shall include ratings of Satisfactory or Unsatisfactory on each of the five (5) components pursuant to 5.0.
- 6.2 The Summative Evaluation shall also include one of three overall ratings: "Effective", "Needs Improvement" or "Ineffective".
- 6.2.1 Effective shall mean that the specialist has received Satisfactory Component ratings in Component 5, Student Improvement and in at least three (3) four (4) of the other four (4) five (5) components of the appraisal criteria.
- 6.2.2 Needs Improvement shall mean that the specialist has received at least three (3) Satisfactory Component ratings out of the five (5) components of the appraisal criteria.
- 6.2.2.1 A specialist who has received an unsatisfactory rating on the student improvement component may have their next Summative Evaluation delayed until the Delaware Student Testing Program (DSTP) data is available for the current group of students being served by the specialist.
- 6.2.3 Ineffective shall mean that the specialist has received three (3) or more Unsatisfactory Component ratings out of the five (5) components of the appraisal criteria.
- 6.2.3.1 A specialist who has received an unsatisfactory rating on the student improvement component may have their next Summative Evaluation delayed until the Delaware Student Testing Program (DSTP) data is available for the current group of students being served by the specialist.
- 6.2.3.2 If a specialist's overall Summative Evaluation rating is determined to be "Needs Improvement"

for the third consecutive year, the rating shall be recategorized as Ineffective.

7.0 Pattern of ineffective practice defined.

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

Ineffective	Ineffective	
Needs Improvement	Ineffective	Needs Improvement
Needs Improvement	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Needs Improvement
Needs Improvement	Ineffective	Ineffective

8.0 Improvement Plan

- 8.1 An Improvement Plan shall be developed for a specialist who receives an overall rating of Needs Improvement or Ineffective on the Summative Evaluation or a rating of Unsatisfactory (Unsatisfactory Component Rating) on any component on the Summative Evaluation regardless of the overall rating.
- 8.1.1 An Improvement Plan shall also be developed if a specialist's performance during an observation is unsatisfactory. This unsatisfactory performance shall be noted by the evaluator on the Formative Feedback form by typing "PERFORMANCE IS UNSATISFACTORY" and initialing the statement.
 - 8.2 The Improvement Plan shall contain the following:
- 8.2.1 Identification of the specific deficiencies and recommended area(s) for growth;
- 8.2.2 Measurable goals for improving the deficiencies to satisfactory levels;
- 8.2.3 Specific professional development or activities to accomplish the goals;
- 8.2.4 Specific resources necessary to implement the plan, including but not limited to, opportunities for the specialist to work with curriculum specialist(s), subject-area specialist(s), instructional specialist(s) or others with relevant expertise;
- 8.2.5 Procedures and evidence that must be collected to determine that the goals of the plan were met;

- 8.2.6 Timeline for the plan, including intermediate check points to determine progress;
- 8.2.7 Procedures for determining satisfactory improvement.
- 8.3 The Improvement Plan shall be developed cooperatively by the specialist and evaluator. If the plan cannot be cooperatively developed, the evaluator shall have the authority and responsibility to determine the plan as specified in 8.2 above.
- 8.4 The specialist shall be held accountable for the implementation and completion of the Improvement Plan.
- 8.5 Upon completion of the Improvement Plan, the specialist and evaluator shall sign the documentation that determines the satisfactory or unsatisfactory completion of the plan.

9.0 Evaluator Credentials

- 9.1 Evaluators shall have completed the DPAS II training as developed by the Department of Education. Evaluators shall receive a certificate of completion which is valid for five (5) years and is renewable upon completion of professional development focused on DPAS II as specified by the Department of Education.
- 9.2 The training for the certificate of completion shall include techniques for observation and conferencing, content and relationships of frameworks for practice and a thorough review of the Technical Assistance Document. Activities in which participants practice implementation of DPAS II procedures shall be included in the training.
- 9.3 The credentialing process shall be conducted by the Department of Education.

10.0 Challenge Process

- 10.1 A specialist may challenge any rating on the Summative Evaluation, either a Component Rating or the Overall Rating, or a specialist may challenge the conclusions of an observation if the statement "PERFORMANCE IS UNSATISFACTORY" has been included on the Formative Feedback form by submitting additional information specific to the point of disagreement in writing within ten (10) working days of the date of the specialist's receipt of the Summative Evaluation. Such written response shall become part of the appraisal record and shall be attached to the Summative Evaluation. All challenges together with the record shall be forwarded to the supervisor of the evaluator.
- 10.1.1 Within ten (10) working days of receiving the written challenge, the supervisor of the evaluator shall review the record which consists of the Pre-observation Form(s) the Formative Feedback Form(s), the Summative Evaluation and the written challenge, and issue a written decision.

10.1.2 If the challenge is denied, the decision shall state the reasons for denial.

10.1.3 The decision of the supervisor of the evaluator shall be final.

8 DE Reg. 431 (9/1/04)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d)) 14 **DE Admin. Code** 324

REGULATORY IMPLEMENTING ORDER

324 Certification Driver Education and Traffic Safety Education Teacher

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 DE Admin. Code 324 Certification Driver Education and Traffic Safety Education Teacher. This regulation applies to the certification of educators, as established by 14 Del.C. §1220(a). It is necessary to amend this regulation to align it with changes in statute regarding educator certification, and to update the course requirements for the position. There are no approved educator preparation programs in Delaware for Driver Education teachers, and the programs previously offered in surrounding states have largely been eliminated. Therefore, reference to approved educator preparation program in Driver Education and Traffic Safety has been eliminated. The option of fulfilling the requirements for the position through DOE approved in-service programs has been added, to address the scarcity of course offerings at colleges and universities. The regulation will be renumbered 1564 to denote its movement to the Professional Standards Board portion of the Department of Education regulations. It will also be renamed Standard Certificate Driver Education and Traffic Safety Education Teacher to make it consistent with other regulations for standard certificates for educators. This regulation was previously published in the May 1, 2005 Register of Regulations, but a substantive change necessitated re-publication.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on June 24, 2005, in the form hereto attached as Exhibit "A". The notice invited written comments. No written comments were received.

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to adopt this regulation to comply with changes in statute regarding the licensure and certification of educators.

III. Decision to Adopt the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby adopted. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation 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 the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1564 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 1ST DAY OF SEPTEMBER, 2005

Harold Roberts, Chair Sharon Brittingham Norman Brown Heath Chasanov Edward Czerwinski Angela Dunmore Karen Gordon Barbara Grogg Bruce Harter Valerie Hoffmann Leslie Holden Carla Lawson Mary Mirabeau Gretchen Pikus Karen Schilling Ross Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 15TH DAY OF SEPTEMBER, 2005

STATE BOARD OF EDUCATION

Jean W. Allen, President

Richard M. Farmer, Jr., Vice President

Mary B. Graham, Esquire

Barbara Rutt

Dennis J. Savage

Dr. Claibourne D. Smith

324 Certification Driver Education And Traffic Safety Education Teacher

Effective July 1, 1993

1.0 The following shall be required for the Standard License for grades 9-12

- 1.1 Bachelor's degree from an accredited college and,
- **1.2 Professional Education**
- 1.2.1 Completion of an approved teacher preparation program in Driver Education and Traffic Safety Education or.
 - 1.2.2 A Standard Delaware Teacher's License or.
- 1.2.3 A minimum of 24 semester hours to include Human Development, Methods of Teaching Driver Education, Identifying/Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, and student teaching at the secondary (9-12) level and,
- 1.2.3.1 A valid Delaware driver's license or approval by the Delaware Department of Education and,
 - 1.2.4 Specific Teaching Field
- 1.2.4.1 A College Major in Driver Education/ Traffic Safety Education or,
- 1.2.4.2 Completion of an approved teacher preparation program in Driver Education and Traffic Safety Education or,
- 1.2.4.3 A minimum of 12 semester hours as indicated below:
- 1.2.4.3.1 Required: Driver Education

 Methods and Materials -3 semester hours, Driver Education

 In-Car Training -3 semester hours, General Safety

 Education -3 semester hours.
- 1.2.4.3.2 Elective: 3 semester hours selected from the following:
 - 1.2.4.3.2.1 Alcohol and/or Drug

Education, * Motorcycle

Education,

1.2.4.3.2.2 Safety Education, Psychology of Accident Prevention,

1.2.4.3.2.3 Organization/Administration/ Supervision of Safety, Driver, and/or Traffic Safety

1.2.4.3.2.4 Problems in Driver/Safety Education. First Aid.

1.2.4.3.2.5 Research and Evaluation in Driver/Safety Education, Traffic Engineering, Traffic Law and Enforcement, Principles of Accident Prevention/Safety, * Driving Simulation

1.2.4.3.2.6 Instructional Methods. * Multiple Car and Driving Range Instructional Methods and School Transportation.

* If assigned to teach on driver education equipment designated above, 3 semester hours of course work will be required as preparation for doing so.

2.0 Licenses that may be issued for this position include Standard and Limited Standard.

2.1 The Limited Standard License may be issued upon the request of a Delaware public school for a teacher employed for this position who needs only the 3 semester hour elective course required in 1.2.5.

1564 Standard Certificate Driver Education and Traffic Safety Education Teacher

1.0 Content:

<u>This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Driver Education and Traffic Safety Education Teacher.</u>

2.0 Definitions:

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

<u>"Department"</u> means the Delaware Department of Education.

"License" means a credential which authorizes the holder to engage in the practice for which the license is issued.

- "Standard Certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.
- 3.0 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Driver Education and Traffic Safety Education Teacher to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:
 - 3.1 Professional Education.
- 3.1.1 A bachelor's degree in any field from a regionally accredited college or university; and

3.1.3.1 A minimum of twelve (12) semester hours of pedagogy courses, taken either as part of a degree program or in addition to it, from a regionally accredited college or university to include:

3.1.3.1.1 Human Development;

3.1.3.1.2 <u>Identifying/Treating</u>

Exceptionalities;

3.1.3.1.3 Effective Teaching

Strategies; and

3.1.3.1.4 <u>Multicultural Education; and</u>

3.1.3.2 A minimum of nine (9) semester hours, or equivalent in-service courses approved by the Department, as indicated below:

3.1.3.2.1 <u>Driver Education - Methods</u>

and Materials -3 semester hours;

3.1.3.2.2 Driver Education - In-Car

Training -3 semester hours; and

<u>3.1.3.2.3</u> <u>Three (3) semester hours</u> <u>selected from the following:</u>

3.1.3.2.3.1 Alcohol and/or Drug

Education;

3.1.3.2.3.2 Current Issues in Driver

Education;

3.1.3.2.3.3 Organization/

Administration/Supervision of Safety, Driver, and/or Traffic Safety Education;

3.1.3.2.3.4 Problems in Driver/

Safety Education;

3.1.3.2.3.5 Research and Evaluation

in Driver/Safety Education;

3.1.3.2.3.6 First Aid;

3.1.3.2.3.7 Teaching Mentally and

Physically Challenged Individuals; or

3.1.3.2.3.8 Education for Safe

Living.

3.2 Other Requirements.

3.2.1 A valid driver's license.

3.2.2 The applicant's driving record shall not have more than five(5) points at the time of application.

3.2.3 The applicant's driver's license shall not have been suspended, revoked or disqualified in this State or any other jurisdiction for moving violations in the last five years and shall remain valid for the duration of the applicant's employment under this standard certificate.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d)) 14 **DE Admin. Code** 332

REGULATORY IMPLEMENTING ORDER

332 Certification Technology Education Teacher

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 DE Admin. Code 332 Certification Technology Education Teacher. The regulation concerns the requirements for certification of educational personnel to the certification of educators, pursuant to 14 Del.C. §1220(a). It is necessary to amend this regulation to align it with changes in statute regarding licensure and certification of educators, and to update the course requirements for the position. There are no approved educator preparation programs in Delaware for Technology Education teachers. The requirements have been aligned with the Delaware Technology Education student content standards and the national Technology Education content standards. The regulation will be renumbered 1568 to reflect its movement to the Professional Standards Board portion of the Department of Education regulations. It will also be renamed Standard Certificate Technology Education Teacher to make it consistent with other regulations for standard certificates for educators.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on June 24, 2005, in the form hereto attached as Exhibit "A". The notice invited written comments. Written comments were received from the Governor's Advisory Council for Exceptional Citizens supporting the amendment of the regulation.

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to adopt this regulation to comply with changes in statute regarding the licensure and certification of educators.

III. Decision to Adopt the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit

"B" is hereby adopted. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation 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 the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1568 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 1ST DAY OF SEPTEMBER, 2005

Harold Roberts, Chair Sharon Brittingham Norman Brown Heath Chasanov Edward Czerwinski Angela Dunmore Karen Gordon Barbara Grogg Bruce Harter Valerie Hoffmann Leslie Holden Carla Lawson Gretchen Pikus Mary Mirabeau Karen Schilling Ross Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 15TH DAY OF SEPTEMBER, 2005

STATE BOARD OF EDUCATION

Jean W. Allen, President Richard M. Farmer, Jr., Vice President Mary B. Graham, Esquire Barbara Rutt

Dennis J. Savage

Dr. Claibourne D. Smith

332 Certification Technology Education Teacher

Effective July 1, 1994 (Formerly Industrial Arts) 1.0 The following shall be required for the Standard license in the middle level grades and 9-12 and is valid at the elementary level (if appropriate elementary foundation courses have been successfully completed.) NOTE: Many colleges and universities are currently producing K-12 certified technology education teachers.

- 1.1 Bachelor's degree from an accredited college and,
- 1.2 Professional Education

1.2.1 Completion of an approved teacher education program in Technology Education or,

1.2.2 A minimum of 24 semester hours to include Human Development, Methods of Teaching Technology Education, Identifying/Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, and student teaching at the appropriate level (7-12) and,

- 1.3 Specific Teaching Field
 - 1.3.1 Major in Technology Education or,
- 1.3.2 Completion of an approved teacher education program in Technology Education or,
- 1.3.3 A minimum of 48 semester hours including at least two courses in each of the following technology system or equivalent areas:

1.3.3.1 Communications: Graphic Communications, Photography, Telecommunications, Electric Communications, Architectural Design, Drafting and Design, Research and Development in Communications, Audio-Video Communications, desk top Publishing, Pre-Engineering and other*.

1.3.3.2 Physical (Product and Transportation): Electricity/Electronics, Transportation Power, Construction, Control Systems, Materials and Processes, Manufacturing Enterprise, Pre- Engineering, Alternate Energy Systems, Aviation and Aero-Space, Research and Development in Physical technology, Material and Testing Processes, Structure Design and Evaluation, Non-metallic Processes, Metallic Processes, Production Systems, and other*.

1.3.3.3 Bio-Related: Waste Management, Fuels and Chemicals, Environment Technology, Cybernetics, Pre-Engineering, Health Care Systems, Ergonomics, Research and Development in Bio-related Technology, Bio-Technical Systems and other*.

*NOTE: This does not comprise an exhaustive list of possible course offerings. Other courses in these areas may be acceptable upon review.

2.0 The following shall be required for the Standard Technology Education Endorsement to the present License (for existing Industrial Arts Teachers holding a Standard or Professional Status Certificate) shall include the following components:

- 2.1 Introduction to Technology Education, K-12
- 2.2 Technology Foundations, Transfer and Assessment
- 2.3 Technology and Society
- 2.4 Current Trends and Practices In Implementing a Technology Education Program
- 2.5 Control Technology Systems, Computer Applications, Inventions and Innovations
- 3.0 The Technology Education endorsement shall be required for all current Industrial Arts certified teachers who have not completed an approved undergraduate or graduate technology education teacher preparation program by June 30, 1999.
 - 3.1 Timeline: 5 years.
- 3.2 The Department of Education shall offer the endorsement courses (one time on an in-service basis) to all current Industrial Arts certified teachers. Thereafter, cooperative efforts shall be established with local and surrounding higher education institutions to offer the required endorsement courses listed in 2.0.
- 4.0 Licenses that may be issued for this position include Standard and Limited Standard.
- 4.1 The Limited Standard License may be issued upon request of a Delaware public school district for a teacher employed for this position who meets the standards as set forth in 2.3 of regulation 301 General Regulations for Certification of Professional Public School Personnel.

1568 Standard Certificate Technology Education Teacher

1.0 Content

1.1 This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C**. §1220(a), for Technology Education Teacher (Grades K-12).

2.0 Definitions

- 2.1 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:
- <u>"Department"</u> means the Delaware Department of Education.
- "License" means a credential which authorizes the holder to engage in the practice for which the license is issued.
- **"Standard Certificate"** means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice a particular area, teach a particular subject, or teach a category of students.
- <u>"Standards Board"</u> means the Professional Standards Board established pursuant to 14 <u>Del.C.</u> §1201.

<u>"State Board"</u> means the State Board of Education of the State pursuant to 14 **Del.C.** §104.

3.0 Issuance of Standard Certificate

In accordance with 14 **Del.C**. §1220(a), the Department shall issue a Standard Certificate as a Technology Education Teacher to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

- 3.1 A bachelor's degree from an NCATE specialty organization recognized educator preparation program offered by a regionally accredited college or university with a major in technology education; or
- 3.2 A bachelor's degree from a state approved educator preparation program offered by a regionally accredited college or university, with a major in technology education, where the state approval body employed the appropriate NASDTEC standards or NCATE specialty organization standards with a major in technology education; or
- 3.3 <u>Passage of the appropriate PRAXISTM II test approved by the Standards Board and the State Board in Technology Education; or</u>
- 3.4 A bachelor's degree in any field from a regionally accredited college or university and completion of the semester hours indicated below from a regionally accredited college or university, taken either as part of a degree program or in addition to it:
- 3.4.1 A minimum of twenty-four (24) semester hours in technology systems or equivalent areas, with a minimum of six (6) semester hours in each of the three areas listed below and an additional six (6) semester hours in any one of the areas listed below:
- 3.4.1.1 <u>Communications (a minimum of six</u> (6) semester hours):
- <u>3.4.1.1.1</u> Courses which contain the applications of communication technologies which compose, store, send, receive, and understand ideas and information.
- 3.4.1.2 Physical Technology Systems (a minimum of six (6) semester hours):
- <u>3.4.1.2.1</u> <u>Production: Courses which</u> contain the analysis of goals, inputs, processes, outputs, and feedback of manufacturing and construction systems.
- <u>3.4.1.2.2</u> <u>Energy: Courses which</u> contain the principles and applications of radiant and potential energy, fluid and mechanical power.
- <u>3.4.1.2.3</u> <u>Transportation: Courses</u> which contain concepts and applications of land, air, space, and sea transportation.

3.4.1.3 <u>Bio-Related (a minimum of six (6)</u> semester hours):

3.4.1.3.1 <u>Courses which contain</u> techniques and methods for managing and retrofitting biorelated systems in existing and futuristic residential, commercial, and industrial environments; and

3.4.2 A minimum of twenty-one (21) semester hours of pedagogy from a regionally accredited college or university, or equivalent in-service courses approved by the Department, to include:

3.4.2.1 Human Development;

3.4.2.2 <u>Methods and Strategies for Teaching</u> Technology Education;

3.4.2.3 <u>Identifying/Treating Exceptionalities</u>;

3.4.2.4 Effective Teaching Strategies;

3.4.2.5 Multicultural Education;

3.4.2.6 Standards-Based Technology

Education in Delaware; and

3.4.2.7 Student Organizations.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d)) 14 **DE Admin. Code** 370

REGULATORY IMPLEMENTING ORDER

370 Certification Teacher of Autistic/Severely Disabled Children

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 DE Admin. Code 370 Certification Teacher of Autistic/Severely Disabled Children. The regulation concerns the requirements for certification of educational personnel to the certification of educators, pursuant to 14 Del.C. §1220(a). It is necessary to amend this regulation to align it with changes in statute regarding licensure and certification of educators, and to update the course requirements for the position. The regulation will be renumbered 1571 to reflect its movement to the Professional Standards Board section of the Department of Education regulations. It will also be renamed Standard Certificate Teacher of Children with Autism or Severe Disabilities to make it consistent with other regulations for standard certificates for educators.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on June 24, 2005, in the form hereto attached as Exhibit "A". The notice invited written comments. Written comments were received from the Governor's Advisory Council for Exceptional Citizens supporting the amendment of the regulation.

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to adopt this regulation to comply with changes in statute regarding the licensure and certification of educators.

III. Decision to Adopt the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby adopted. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation 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 the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1571 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 1ST DAY OF SEPTEMBER, 2005

Harold Roberts, Chair Sharon Brittingham Norman Brown Heath Chasanov Edward Czerwinski Angela Dunmore Karen Gordon Barbara Grogg Bruce Harter Valerie Hoffmann Leslie Holden Carla Lawson Mary Mirabeau Gretchen Pikus Karen Schilling Ross Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 15TH DAY OF SEPTEMBER, 2005

STATE BOARD OF EDUCATION

Jean W. Allen, President Richard M. Farmer, Jr., Vice President Mary B. Graham, Esquire Barbara Rutt Dennis J. Savage Dr. Claibourne D. Smith

370 Certification Teacher Of Autistic/Severely Disabled-Children

Effective July 1, 1993

- 1.0 The following shall be required for the Standard License.
- 1.1 Bachelor's degree from an accredited college or university with a major in Special Education, Education for the Severely Disabled, or associated fields and,

1.2 Professional Education

- 1.2.1 Completion of an approved program in the area of autism/severely disabled at either graduate or undergraduate level or.
- 1.2.2 Standard Delaware License Exceptional Children (Mildly and/or Moderately Disabled) and 15 semester hours relating to Autistic/Severely Disabled:
- 1.2.2.1 Nine semester hours required in Introduction/Survey of Autism and Severe Developmental Disabilities, Methods and Curriculum for Teaching the Autistic/Severely Disabled and Functional Communication Training.
- 1.2.2.2 Six semester hours from the following topic areas. Advanced Applied Behavior Analysis Adaptive Recreation Vocational Education for the Disabled, to include the Severely Disabled Transition & Community-based Programming for the Disabled, to include the Severely Disabled Preschool Education for the Disabled, to include the Severely Disabled.
- 1.2.3 Practicum of six semester hours of experience under supervision in a setting or settings specifically intended for the education of developmental and communication disorders. This requirement will apply only to individuals who met Standard Exceptional Children certification requirements without a student teaching experience.
- 2.0 The following shall be required for the Limited Standard License (not renewable)

- 2.1 The Limited Standard License may be issued for a period of three years at the request of a Delaware Public School District to a person who meets the requirements listed below and who is assigned as a teacher of autistic/severely disabled, to allow for the completion of the requirements for the Standard License as listed in 1.0.
- 2.1.1 The individual meets the base Delaware License requirements for Exceptional Children (Mildly/Moderately Disabled) and is eligible for a Standard License as stated under 1.1, 1.2, and 1.3 of the Exceptional Children License or.
- 2.1.2 The individual has a current, valid Delaware teaching License in the area of Exceptional Children (Mildly/Moderately Disabled) or,
- 2.1.3 The individual is eligible for a Standard Delaware License in the area of Exceptional Children (Mildly/Moderately Disabled) through the Interstate Reciprocity or National/Regional Accreditation systems or,
- 2.1.4 The individual is considered eligible for a Limited Standard License if successful completion of the Pre-Professional Skills Tests is the only requirement necessary or,
- 2.1.5 The individual is considered eligible for a Limited Standard License if the only requirement to be met is six semester hours refresher course work for certification in any area of Exceptional Children or renewal of a Delaware License in any area of exceptionalities.

3.0 Present Autistic Teachers Protected

- 3.1 Those teachers authorized prior to March 28, 1974, to teach classes for children with autism on the basis of Standard Elementary or Secondary Teaching Licenses, and who have the continued recommendation of the local district superintendent, shall be authorized to continue in such a teaching assignment in the district where the assignment was authorized. Authorization to teach in this circumstance does not constitute a license transferable to any other school district. If re-assignment out of autism occurs, the new requirements for Autistic/Severely Disabled must be met upon re-entry into any autistic/severely disabled position.
- 3.2 Those teachers authorized since January 1982 to teach classes for children with autism on the basis of a Standard Teacher of the Autistic Child License, shall be authorized to continue in such a teaching assignment, as well as to be authorized for a teaching assignment with severely disabled children.
- 3.3 Anyone holding a Limited Standard License issued previously and based on the 1/82 certification requirements for "Teacher of the Autistic Child" shall be allowed to complete those requirements, if on schedule. Should it seem advantageous to be re-evaluated based on the 7/90

requirements, such may be requested; however, the total time for the Limited Standard License will remain as on the original license.

4.0 Licenses that may be issued for this position include Standard and Limited Standard.

1571 Standard Certificate Teacher of Students with Autism or Severe Disabilities

1.0 Content:

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for a Teacher of Students with Autism or Severe Disabilities (Valid Grades K-12).

2.0 Definitions

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

<u>"Department"</u> means the Delaware Department of Education.

"License" means a credential which authorizes the holder to engage in the practice for which the license is issued.

"Standard Certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

- 3.0 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Teacher of Students with Autism or Severe Disabilities to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:
- 3.1 A bachelor's or a master's degree from an NCATE specialty organization recognized educator preparation program offered by a regionally accredited college or university, with a major in special education with a concentration in autism or severe disabilities; or
- 3.2 A bachelor's or a master's degree from a state approved educator preparation program offered by a regionally accredited college or university, with a major in special education with a concentration in autism or severe disabilities, where the state approval body employed the appropriate NASDTEC standards or NCATE specialty organization standards; or

3.3 A bachelor's or master's degree from a regionally accredited college or university with a major in special education; and

3.3.1 A minimum of fifteen (15) graduate credits in the areas of autism or severe disabilities from a regionally accredited college or university, as more specifically set forth in 3.3.1.1 through 3.3.1.5. With approval of a Committee comprised of the candidate's principal or other designated school administrator, the State Director of Autism Programs, a higher education representative who teaches one of the approved courses, and a DOE representative, other verifiable professional experiences may be substituted for no more than nine (9) of the required credits.

3.3.1.1 <u>Introduction/Survey of Autism and Severe Developmental Disabilities;</u>

3.3.1.2 <u>Methods of Instruction and Functional</u> Curriculum for Students with Autism/Severe Disabilities;

3.3.1.3 Functional Communication Training:

3.3.1.4 <u>Advanced Practicum in Behaviorally</u> Based Teaching Techniques; and

3.3.1.5 One elective chosen from among the following. To be considered as an elective for certification, a course must specifically reference students with autism and/or severe disabilities in the title, catalog description, or syllabus and address an area known to be of critical importance to students with autism and/or severe disabilities:

<u>3.3.1.5.1</u> <u>Medical Aspects of Severe</u> and Profound Disabilities;

3.3.1.5.2 Consultation and

Collaboration;

3.3.1.5.3 Assistive Technology;

3.3.1.5.4 Augmentative

Communication;

3.3.1.5.5 Evaluation and Assessment for Students with Significant Needs;

3.3.1.5.6 Seminar in Families and

Autism;

3.3.1.5.7 <u>Transition from Secondary</u>

Special Education;

3.3.1.5.8 Adaptive Recreation; or

3.3.1.5.9 Vocational Training and

Assessment: Severe Disabilities; or

<u>3.3.1.5.10</u> <u>Education of Students with Severe Disabilities/ Sensory Impairments.</u>

4.0 Present Teachers of Students with Autism or Severe Disabilities Protected

4.1 <u>The Department shall recognize a Standard Teacher</u> of the Autistic Child Standard or Professional Status Certificate issued by the Department between January 1,

1982 and August 31, 2005, if otherwise valid. A teacher holding a Standard Teacher of the Autistic Child Standard or Professional Status Certificate issued between January 1, 1982 and August 31, 2005shall be considered certified to teach classes for children with autism and/or severe disabilities.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d)) 14 **DE Admin. Code** 1514

REGULATORY IMPLEMENTING ORDER

1514 Revocation of Licenses and Certificates

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 DE Admin. Code 1514 Revocation of Licenses and Certificates. It is necessary to amend this regulation to comply with action taken by the General Assembly with the passage of HB 147, which amended 14 **Del.C.** §1218. Section 10113 (5) of the Administrative Procedures Act exempts amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulation. In Section 2.0, the definitions of "dismissal" and "educator" were amended to comply with changes in statute. Section 3.0, 3.1, 3.1.3, 3.2.1, 3.2.1.2, and 4.1.2 were amended to include a license holder's resignation or retirement pending dismissal for immorality, provided that clear and convincing evidence establishes misconduct.

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to adopt this regulation to comply with changes in statute.

III. Decision to Adopt the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby adopted. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation 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 the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1514 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 1ST DAY OF SEPTEMBER, 2005

Harold Roberts, Chair Sharon Brittingham Heath Chasanov Norman Brown Edward Czerwinski Angela Dunmore Karen Gordon Barbara Grogg Bruce Harter Valerie Hoffmann Leslie Holden Carla Lawson Mary Mirabeau Gretchen Pikus Carol Vukelich Karen Schilling Ross

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 15TH DAY OF SEPTEMBER, 2005

STATE BOARD OF EDUCATION

Jean W. Allen, President Richard M. Farmer, Jr., Vice President Mary B. Graham, Esquire Barbara Rutt Dennis J. Savage Dr. Claibourne D. Smith

1514 Revocation of Licenses and Certificates

1.0 Content

This regulation shall apply to the revocation of an initial license, continuing license and/or advanced license; or a limited standard, standard or professional status certificate

issued prior to August 31, 2003 for educators, pursuant to 14 **Del.C.** 1218.

2.0 Definitions

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

"Advanced License" means a license issued as part of the three-tiered licensure system set forth in 14 Del.C. 1213 and 1214.

"Continuing License" means a license issued as part of the three-tiered license system set forth in 14 **Del.C.** 1211 and 1212.

"Department" means the Delaware Department of Education.

"Dismissal" means (1) dismissal by a school board or board of directors where the license or certificate holder is employed by a public school district or a charter school for immorality, misconduct in office, incompetency, willful neglect of duty or disloyalty; or (2) the license or certificate holder=s voluntary resignation of employment in the face of disciplinary action for immorality; or (3) the license or certificate holder=s conviction of a crime which is evidence of immorality.

"Educator" means a public school employee who holds a license issued under the provisions of 14 Del. C., Chapter 12, and includes teachers and administrators, and as otherwise defined by the Standards Board and the State Board pursuant to 14 Del.C. §1203, but does not include substitute teachers. a person licensed and certified by the State under 14 Del.C., Chapter 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.

"Immorality" means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of his or her unfitness or otherwise.

"Initial License" means a license issued as part of the three-tiered licensure system set forth in 14 Del.C. 1210.

"License Holder" or "Licensee" means any individual who holds an Initial License, Continuing License and/or Advanced License, and until a Continuing License is issued, a Limited Standard, Standard, or Professional Status Certificate.

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

"Standards Board" means the Professional Standards Board established pursuant to 14 **Del.C.** 1205.

"State" means the State of Delaware.

3.0 Revocation of License or Certificate

An Initial, Continuing or Advanced License; or a Limited Standard, Standard, or Professional Status Certificate issued prior to August 31, 2003 may be revoked upon the dismissal of the license or certificate holder for immorality, misconduct in office, incompetency, willful neglect of duty or disloyalty, or upon the license holder's resignation or retirement pending dismissal for immorality, provided that clear and convincing evidence establishes the underlying misconduct, and must be revoked upon a finding that the license or certificate holder made a materially false or misleading statement in his or her license or certificate application.

- 3.1 Revocation Requested by a School District or Charter School.
- 3.1.1 When any license or certificate holder is dismissed by a school board, board of directors, or other employing authority for immorality, the board making such a determination pursuant to 14 **Del.C.** shall, upon final decision, give written notice to the Secretary of its desire to request the revocation of that individual's license or eertificate.
- 3.1.2 When any license or certificate holder is dismissed by a school board or board of directors or other employing authority for misconduct in office, incompetence, willful neglect of duty or disloyalty, the board making such a determination pursuant to 14 **Del.C.** may, upon final decision, give written notice to the Secretary of its desire to request the revocation of that individual's license or certificate.
- 3.1.3 When a license or certificate holder employed by a school board or board of directors or other employing authority voluntarily resigns in the face of disciplinary action for immorality and an investigation has been initiated by the school board or board of directors, or other employing authority, resigns employment or retires pending dismissal for immorality, the board shall, upon accepting the resignation or retirement, give written notice to the Secretary.
- 3.1.4 Upon receipt of written notification from the school board or board of directors or other employing authority, the Secretary shall give written notice to the license or certificate holder of the intended revocation and the reasons therefore. The notice of revocation shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Standards Board within

thirty (30 days. Hearings shall be conducted in accordance with the Standard Board's Hearing Procedures and Rules.

- 3.1.5 If the licensee fails to request a formal hearing before the Standards Board within thirty (30) days of the notice of revocation, the Secretary shall send written notification by certified mail to the individual revoking his/her license.
 - 3.2 Revocation by the Secretary of Education
- 3.2.1 The Secretary may initiate proceedings to revoke a license or certificate holder's license or certificate when she/he has good reason to believe that <u>clear and convincing evidence establishes that</u> any of the following circumstances exist:
- 3.2.1.1 The license or certificate holder has been convicted of a crime which is evidence of immorality;
- 3.2.1.2 The license or certificate holder who is not employed by a public school district or charter school or other employing authority has voluntarily resigned his/her employment or retired pending dismissal for immorality; in the face of an open investigation for immorality or
- 3.2.1.3 The license or certificate holder has had a certificate or license revoked in another state for immorality, misconduct in office, incompetency, willful neglect of duty or disloyalty or falsification of credentials.
- 3.2.2 The Secretary shall give written notice to the license or certificate holder of the intended revocation and the reasons therefore. The notice of revocation shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Standards Board within thirty (30) days. Hearings shall be conducted in accordance with the Standard Board's Hearing Procedures and Rules.
- 3.2.3 If the licensee fails to request a formal hearing before the Standards Board within thirty (30) days of the notice of revocation, the Secretary shall send written notification by certified mail to the individual revoking his/her license or certificate.

4.0 Duty of License or Certificate Holder to Report

- 4.1 Notwithstanding any other provisions stated herein, a license or certificate holder shall send written notification to the Secretary within thirty (30) days of the happening of any of the following events:
- 4.1.1 The license or certificate holder is dismissed by a school board, board of directors, or other employing authority for immorality;
- 4.1.2 The license or certificate holder voluntarily resigns employment or retires pending dismissal for immorality; in the face of disciplinary action for immorality and/or an open investigation for immorality
- 4.1.3 The license or certificate holder is convicted of a crime which is evidence of immorality; or

- 4.1.4 The license or certificate holder has had a certificate or license revoked in another state for immorality, misconduct in office, incompetency, willful neglect of duty, disloyality or falsification of credentials.
- 4.2 The failure of the license or certificate holder to report any of the above events to the Secretary of Education shall be grounds for revoking a license or certificate-provided that clear and convincing evidence establishes the underlying misconduct.

5.0 Full and Fair Hearing

When a license or certificate is revoked, all certificates held by the license or certificate holder shall be revoked. Educators are entitled to a full and fair hearing before the Professional Standards Board. Hearings shall be conducted in accordance with the Standards Board's Hearing Procedures and Rules.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d)) 14 **DE Admin. Code** 1515

REGULATORY IMPLEMENTING ORDER

1515 Emergency Certificate

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1515 Emergency Certificate. It is necessary to amend this regulation to comply with action taken by the General Assembly with the passage of HB 147, which amended 14 **Del.C.** §1218. Section 10113 (5) of the Administrative Procedures Act exempts amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulation. In Section 2.0, the definition of "educator" was amended to comply with changes in statute. Section 3.1, was amended to reflect the change set forth in the definition of "emergency certificate".

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to adopt this regulation to comply with changes in statute.

III. Decision to Adopt the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby adopted. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation 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 the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1515 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 1ST DAY OF SEPTEMBER, 2005

Harold Roberts, Chair Sharon Brittingham Norman Brown Heath Chasanov Edward Czerwinski Angela Dunmore Karen Gordon Barbara Grogg **Bruce Harter** Valerie Hoffmann Carla Lawson Leslie Holden Mary Mirabeau Gretchen Pikus Karen Schilling Ross Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 15TH DAY OF SEPTEMBER, 2005

STATE BOARD OF EDUCATION

Jean W. Allen, President
Richard M. Farmer, Jr., Vice President
Mary B. Graham, Esquire
Barbara Rutt
Dennis J. Savage
Dr. Claibourne D. Smith

1515 Emergency Certificate

1.0 Content:

This regulation shall apply to the issuance of an Emergency Certificate, pursuant to 14 **Del.C.** §1221.

7 DE Reg. 161 (8/1/03)

2.0 Definitions:

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

"Certified" means holding a certificate in a specific content area at designated grade levels.

"Department" means the Delaware Department of Education.

"Educator" means a public school employee who holds a license issued under the provisions of 14 Del.C. Ch. 12, and includes teachers and administrators, and as otherwise defined by the Standards Board and the State Board, pursuant to 14 Del.C. \$1203, but does not include substitute teachers. a person licensed and certified by the State under 14 Del.C., Chapter 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.

"Emergency Certificate" means a certificate issued to an educator who holds a valid Delaware Initial, Continuing, or Advanced License, but lacks necessary skills and knowledge to meet certification requirements in a specific content area.

"Employing District" means a school district, charter school, or other employing authority that proposes to employ an educator under an Emergency Certificate.

"Exigent Circumstances" 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/her immediate family, activation to active military duty, and other serious emergencies which necessitate the educator's temporarily leaving active service.

"Satisfactory Evaluation" means an overall rating of "basic" or higher on an annual DPAS summative evaluation.

"Standard Certificate" means a credential issued to verify that an educator has the prescribed knowledge, skill and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

7 DE Reg. 161 (8/1/03)

3.0 Issuance of Emergency Certificate

Upon request from the employing district, the Department may issue an Emergency Certificate, valid for up to three years, to an educator who holds a valid Delaware Initial, Continuing, or Advanced License, or a valid Standard or Professional Status Certificate, but who is not eligible for certification in the area of need. An Emergency Certificate may not be renewed. Notwithstanding the foregoing, an Emergency Certificate issued to an educator in a vocational trade and industry area is valid for up to six (6) years to provide time for completion of specified college level course work required for certification.

- 3.1 In its request for the issuance of an Emergency Certificate, the employing district must:
- 3.1.1 Document its efforts to hire a certified educator by supplying the Department with copies of job postings, recruitment efforts, and advertisements. Establish that the proposed recipient of an Emergency Certificate is competent by submitting evidence of the educator's license and other considerations, which may include, but are is not limited to, evidence of course work or work experience in the area for which the Emergency Certificate is requested, which the employing district applied in determining the proposed recipient's competence.
- 3.1.32 Set forth a written plan to support and assist the proposed recipient in achieving the skills and knowledge necessary to meet the applicable certification requirements.
- 3.2 Failure by the employing district to fulfill the conditions set forth in 3.1 above will result in denial of the Emergency Certificate.
- 3.3 The Emergency Certificate shall be in effect for three (3) years from the month in which the applicant is employed until the last day of the month of issuance three (3) years later, except in the case of an Emergency Certificate issued to a vocational trades and industry teacher, which shall expire on the last day of the month of issuance six (6) years later.
- 3.3.1 A certificate holder whose Emergency Certificate expires during the school year may have the Emergency Certificate extended until the last day of the fiscal year. This extension shall be considered an exigent circumstance and shall not exceed one (1) year in length.

7 DE Reg. 161 (8/1/03)

4.0 Employing District Status Report

At the end of each school year during which an Emergency Certificate is in effect, the employing district shall file a status report with the Department, which shall:

4.1 Establish that the recipient of the Emergency Certificate has demonstrated competence through receiving

- a satisfactory evaluation on the Delaware Performance Appraisal System.
- 4.2 Document the progress made by the recipient of the Emergency Certificate toward fulfilling the plan established by the employing district to meet the applicable certification requirements.
- 4.3 Failure by the employing district to fulfill the conditions set forth in 4.1 and 4.2 above will result in suspension of the Emergency Certificate. A suspension may be lifted upon fulfillment by the employing district of the conditions set forth in 4.1 and 4.2 above.
- **5.0** Prior to the expiration of an Emergency Certificate, the recipient must meet the requirements for issuance of a Standard Certificate (See 14 **Del.C.** §1516).
- **6.0** The Secretary of Education may, upon the written request of the superintendent of a local school district or charter school administrator or other employing authority, review credentials submitted in application for an Emergency Certificate on an individual basis and grant an Emergency Certificate to an applicant who otherwise does not meet the requirements for an Emergency Certificate, but whose effectiveness is documented by the local school district or charter school administrator or other employing authority.
- **7.0** An Emergency Certificate shall be revoked in the event the educator's Initial, Continuing, or Advanced License or Limited Standard, Standard, or Professional Status Certificate is revoked in accordance with 14 **DE Admin. Code** 1516. An educator is entitled to a full and fair hearing before the Professional Standards Board. Hearings shall be conducted in accordance with the Standards Board's Hearings Procedures and Rules.

7 DE Reg. 161 (8/1/03)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d)) 14 **DE Admin. Code** 1528

REGULATORY IMPLEMENTING ORDER

1528 Standard Certificate Foreign Language Teacher Comprehensive

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 DE Admin. Code 1528 Standard Certificate Foreign Language Teacher Comprehensive. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). It is necessary to amend this regulation to update the course requirements for the position, and to provide more appropriate options for native or heritage speakers to seek certification. while, at the same time, documenting their competence in the spoken and written language they seek to teach. References to foreign languages have been changed to world languages to reflect contemporary practice around language instruction. The regulation will be renamed Standard Certificate World Language Teacher Comprehensive to reflect the change in terminology. It is necessary to repeal regulation Standard Certificate Foreign Language Teacher Secondary and Regulation 1533 Standard Certificate Foreign Language Teacher Elementary as the content of these regulations has been incorporated into a comprehensive standard certificate which is valid for grades kindergarten through 12.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on June 24, 2005, in the form hereto attached as Exhibit "A". The notice invited written comments. Written comments were received from the Governor's Advisory Council for Exceptional Citizens supporting the amendment of the regulation.

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to adopt this regulation to comply with changes in statute regarding the licensure and certification of educators.

III. Decision to Adopt the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby adopted. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation 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 the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1528 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 1ST DAY OF SEPTEMBER, 2005

Harold Roberts, Chair Sharon Brittingham Norman Brown Heath Chasanov Edward Czerwinski Angela Dunmore Karen Gordon Barbara Grogg Bruce Harter Valerie Hoffmann Leslie Holden Carla Lawson Mary Mirabeau Gretchen Pikus Karen Schilling Ross Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 15TH DAY OF SEPTEMBER, 2005

STATE BOARD OF EDUCATION

Jean W. Allen, President Richard M. Farmer, Jr., Vice President Mary B. Graham, Esquire Barbara Rutt Dennis J. Savage Dr. Claibourne D. Smith

1528 Standard Certificate Foreign Language Teacher Comprehensive

1.0 Content

1.1 This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Foreign Language Teacher Comprehensive (Grades K-12).

2.0 Definitions

- 2.1 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:
- "Department" means the Delaware Department of Education.
- "License" means a credential which authorizes the holder to engage in the practice for which the license is issued.
- "Standard Certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.
- 3.0 In accordance with 14 **Pel.C.** §1220(a), the Department shall issue a Standard Certificate as a Foreign Language Teacher Comprehensive to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:
- 3.1 Bachelor's degree from a regionally-accredited college or university and,
 - 3.2 Professional Education
- 3.2.1Completion of an approved teacher education program in Elementary and Secondary Foreign Language Teaching in the language to be taught; or,
- 3.2.2A minimum of 27 semester hours to include Human Development, Methods of Teaching Foreign Language (methods courses to include second language acquisition); Identifying and Treating Exceptionalities; Effective Teaching Strategies; Multicultural Education; Second Language Assessment and Testing; Curriculum and Material Design; and,
- 3.2.3 Major in the language to be taught, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively* or,
- 3.2.4 A minimum of 30 semester hours above the intermediate level in the language to be taught, or 24 semester hours above the intermediate level in the language to be taught if the teacher has earned 30 semester hours in another language, including at least one semester, one winter

- session, or one summer session of study in a country in which the foreign language is spoken natively* or,
- 3.2.5 Demonstrated fluency in the language to be taught as determined by passing scores on the PRAXIS II tests in that language, as adopted by the Standards Board and the State Board and an Advanced Low Level on the ACTFL Oral Proficiency Interview and verification of study (at least as extensive as that noted above) in a country or community in which the foreign language is spoken natively.**
- * Persons not meeting the requirement for study abroad upon employment shall fulfill the requirement within three years. Through 3.3.4 an individual can meet the requirement for study abroad by demonstrating that he/she grew up and was educated in a country or an ethnic community (such as a China Town or Spanish Harlem) where the target language is the dominant language.
- 4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a Standard Certificate as a Foreign Language Teacher Comprehensive after that date must comply with the requirements set forth in 14 DE Admin. Code 1516.

1528 Standard Certificate World Language Teacher Comprehensive

1.0 Content

1.1 This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for World Language Teacher Comprehensive (Grades K-12).

2.0 Definitions

- 2.1 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:
- "Department" means the Delaware Department of Education.
- "License" means a credential which authorizes the holder to engage in the practice for which the license is issued.
- "Major or Its Equivalent" means a minimum of thirty
 (30) semester hours of course work in a particular content
 area.
- "Standard Certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.
- "Standards Board" means the Professional Standards Board established pursuant to 14 Del.C. §1201.
- "State Board" means the State Board of Education of the State pursuant to 14 Del.C. §104.

3.0 Issuance of Standard Certificate

In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a World Language Teacher Comprehensive to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

- 3.1 A bachelor's degree from an NCATE specialty organization recognized educator preparation program offered by a regionally accredited college or university, with a major in the world language for which a Standard Certificate is sought; or
- 3.2 A bachelor's degree from a state approved educator preparation program offered by a regionally accredited college or university, with a major in the world-language for which a Standard Certificate is sought, where the state approval body employed the appropriate NASDTEC standards or NCATE specialty organization standards; or
- 3.3 A bachelor's degree from a regionally accredited college or university, with a major in any field, and passage of the appropriate PRAXISTM II tests approved by the Standards Board and the State Board in the world language for which a Standard Certificate is sought; or
- 3.4 A bachelor's degree from a regionally accredited college or university, with a major in any field; and
- 3.4.1 Where no PRAXIS II test is available, nationally recognized equivalent tests, such as the American Council on the Teaching of Foreign Languages (ACTFL) Oral Proficiency Interview and the ACTFL Writing Proficiency Test, may be substituted, in conjunction with completion of the courses set forth in 3.4.2 and 3.4.3 below. For tests of languages using a Roman alphabet, candidates are required to achieve an Advanced Low Level on the oral skills and an Advanced Low Level on the writing skills based on the ACTFL Proficiency Guidelines. For tests of languages using a non-Roman alphabet, an Advanced Low Level on the oral skills and an Intermediate High level on the writing skills based on the ACTFL Proficiency Guidelines are required; and
- 3.4.2 A minimum of twelve (12) semester hours of language pedagogy courses from a regionally accredited college or university, taken either as part of a degree program or independent of it, to include at least three (3) credits in each of the following:
- 3.4.2.1 <u>Standards and Approaches in</u> Teaching World/Second Language;
 - 3.4.2.2 Second Language Acquisition
 - 3.4.2.3 Assessment and Testing in Second

Languages;

- <u>3.4.2.4</u> <u>Curriculum Design and Classroom</u> <u>Management for World / Second Language; and</u>
- 3.4.3 A minimum of three (3) semester hours of general education courses from a regionally accredited college or university, taken either as part of a degree program or independent of it, chosen from among the courses listed below:
- 3.4.3.1 <u>Human</u> <u>Development/Educational</u> Psychology;
- 3.4.3.2 <u>Identifying and Treating Exceptionalities</u>;
- 3.4.3.3 <u>Multicultural Education/ International</u> Education.

1529 Standard Certificate Foreign Language Teacher-Secondary

1.0 Content:

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.**—§1220(a), for Foreign Language Teacher Secondary (required in grades 9-12, and valid in grades 5-8 in a middle level school).

7 DE Reg. 775 (12/1/03)

2.0 Definitions

- 2.1 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:
- "Department" means the Delaware Department of Education.
- "License" means a credential which authorizes the holder to engage in the practice for which the license is issued.
- "Standard Certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

7 DE Reg. 775 (12/1/03)

- 3.0 In accordance with 14 **Pel.C.** §1220(a), the Department shall issue a Standard Certificate as a Foreign Language Teacher Secondary to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:
- 3.1 Bachelor's degree from an regionally accredited college or university and.
 - 3.2 Professional Education
- 3.2.1Completion of an approved teacher education program in the language to be taught or,

- 3.2.2A minimum of 24 semester hours to include Human Development, Methods of Teaching Foreign Language, Identifying/Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, Second Language Assessment and Testing, Curriculum and Material Design; and
- 3.2.3Major in the language to be taught, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively*; or,
- 3.2.4Minimum of up to 30 semester hours above the intermediate level for the language to be taught, or 24 semester hours above the intermediate level in the language to be taught if the teacher holds 30 semester hours in another language, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively* or,
- 3.2.5Demonstrated fluency in the language to be taught as determined by passing scores on the PRAXIS II tests in that language, as adopted by the Standards Board and the State Board and, an Advanced Low Level on the ACTFL Oral Proficiency Interview and verification of study (at least as extensive as that noted above) in a country or community in which the foreign language is spoken natively.*
- * Persons not meeting the requirement for study abroad upon employment shall fulfill the requirement within three years. Through 3.3.4, an individual can meet the requirement for study abroad by demonstrating that he/she grew up and was educated in a country or an ethnic community (such as a China Town or Spanish Harlem) where the target language is the dominant language.

7 DE Reg. 775 (12/1/03) 8 DE Reg. 80 (7/1/04)

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a Standard Certificate as a Foreign Language Teacher - Secondary after that date must comply with the requirements set forth in 14 **Del.C.** §1516.

7 DE Reg. 775 (12/1/03)

1533 Standard Certificate Foreign Language Teacher Elementary

1.0 Content

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Foreign Language Teacher Elementary (required in grades K-6, and valid in grades 7-8 in a middle level school).

7 DE Reg. 775 (12/1/03)

2.0 Definitions

- 2.1 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:
- "Department" means the Delaware Department of Education.
- "License" means a credential which authorizes the holder to engage in the practice for which the license is issued.
- "Standard Certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

7 DE Reg. 775 (12/1/03)

- 3.0 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Foreign Language Teacher Elementary to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:
- 3.1 Bachelor's degree from a regionally-accredited college or university and,
 - 3.2 Professional Education
- 3.2.1Completion of an approved teacher education program in Elementary Education/Foreign Language in the language to be taught or,
- 3.2.2Completion of an approved teacher education program in elementary education and,
- 3.2.2.1 A minimum of 6 semester hours in foreign language education to include Methods of Teaching Foreign Language at the Elementary School Level and Second Language Acquisition and,
- 3.2.2.2 Demonstrated knowledge of the culture in which the language is spoken natively including significant personal connection with that culture through life or work experience or appropriate course work in the culture; or.
- 3.2.3Completion of an approved secondary teacher education program in the language to be taught and,
- 3.2.3.1 A minimum of 6 semester hours in foreign language education to include Methods of Teaching Foreign Language at the Elementary School Level and Second Language acquisition and,
- 3.2.3.2 A minimum of 24 semester hours to include Child/Human Development, Methods of Teaching Foreign Language at the Elementary School Level including Second Language Acquisition, Identifying/Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, and,
 - 3.3 Specific Teaching Field

- 3.3.1Major in the language to be taught, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively* or,
- 3.3.2Completion of an approved teacher education program in the language to be taught, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively* or,
- 3.3.3A minimum of 30 semester hours above the intermediate level in the language to be taught, or 24 semester hours above the intermediate level in the language to be taught if the teacher has earned 30 semester hours in another language, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively* or,
- 3.3.4 Demonstrated fluency in the language to be taught as determined by passing scores on the PRAXIS II tests in that language, as adopted by the Standards Board and the State Board, and an Advanced Low Level on the ACTFL Oral Proficiency Interview and verification of study (at least as extensive as that noted above) in a country or community in which the foreign language is spoken natively*.

*Persons not meeting the requirement for study abroad upon employment shall fulfill the requirement within three years. Through 3.3.4, an individual can meet the requirement for study abroad by demonstrating that he/she grew up and was educated in a community (such as a China Town or Spanish Harlem) where the target language is the dominant language.

7 DE Reg. 775 (12/1/03) 8 DE Reg. 80 (7/1/04)

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a Standard Certificate as a Foreign Language Teacher – Elementary after that date must comply with the requirements set forth in 14 **Del.C.** §1516.

7 DE Reg. 775 (12/1/03)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

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

ORDER

Child Care Development Fund Services October 1, 2003 through September 30, 2005

Nature of the Proceedings

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to provide information of public interest with respect to the Child Care Development Fund State Plan for the period October 1, 2003 through September 30, 2005. The Department's proceedings 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 public comment pursuant to 29 **Delaware Code** Section 10115 in the August 2005 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 2005 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Provisions

Statutory Basis

- Section 658E of the Child Care & Development Block Grant of 1990, as amended;
- 45 CFR §§98.10 98.18; and,
- 45 CFR §98.41

Summary of Amendment

The previous "Notice of Intent" published in the June 2005 issue of the *Delaware Register* should have been promulgated as a "Proposed Regulation". The appropriate "Proposed Regulation" documents have since been submitted to the Registrar of Regulations pursuant to the Administrative Procedures Act (APA) and posted on the Delaware Regulations website. The "Notice of Intent" and the "Proposed Regulation" are identical in content. This "Final Order Regulation" completes the APA process.

1) Beginning June 2005 license exempt in-home providers are required to complete 45 hours of training

consisting of Health, Safety & Nutrition (9 hours); CPR and First Aid (6 hours); Child Development (15 hours); Understanding Children's Behavior (12 hours); and Understanding Early Literacy and Language Development (3 hours).

- 2) Existing providers have six months upon notice from The Family & Workplace Connection (FWC) to enroll and complete required training.
- 3) New providers must complete training within 90 days of beginning their contract with the Division of Social Services. Classes are provided by the FWC and are offered during the day and evening.

Summary of Comments Received with Agency Response

DSS thanks the State Council for Persons with Disabilities (SCPD) for the following endorsement to both the Notice of Intent and the Proposed Regulation: SCPD *endorses the concept* of the revisions to the State Plan since they address injury and infectious disease prevention as well as child abuse/neglect.

Findings of Fact

The Department finds that the proposed changes as set forth in the August 2005 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Child Care Development Fund State Plan for the period October 1, 2003 through September 30, 2005 is adopted and shall be final effective October 10, 2005.

Vincent P. Meconi, Secretary, DHSS, 9-13-05

DSS FINAL ORDER REGULATION #05-54

Section 6.4 - Health and Safety Requirements for In-Home Providers (658E(c)(2)(F), §§98.41, 98.16(j))

- 6.4.3 For in-home care that is NOT licensed, and therefore not reflected in NRCHSCC's compilation, the following health and safety requirements apply to child care services provided under the CCDF for:
 - The prevention and control of infectious disease (including age-appropriate immunizations)

In-home providers: provide or maintain clean furnishings, free from rodents and insects; maintain documentation of immunization status; separate children with symptoms of illness from other children in care; provide a clean and sanitary place for storing and changing diapers; wash hands before and after diapering and before

serving meals. In-home providers must self-certify that they intend to operate a healthy and safe facility.

Building and physical premises safety

In-home providers: Screens must be in good repair; protective receptacle covers for electrical; outlets have or have access to a working telephone; operable flash lights; first aid kits; adequate space for play and movement; storage of flammable materials away from children; kitchens must be clean and food storage areas clean; compliance with applicable community regulations; play equipment must be safe; outdoor area must be accessible by a safe route; play areas near hazards must be fenced or otherwise protected, in-home providers must self-certify.

Health and safety training

In-home providers: must read and review information provided about health and safety, and attend Office of Child Licensing workshops as deemed necessary.

In addition, these providers must attend an initial DSS sponsored workshop. This workshop explains DSS rules for eare, its reimbursement policies, payment and attendance reporting requirements, and provides tips for good child care and safety practices.

Also, the providers are required to have both a child abuse registry and criminal history check. A negative outcome results in termination of service.

<u>Providers are required to have both a child abuse</u> registry and criminal history check. A negative outcome results in termination of service.

In addition, these providers must attend an initial DSS sponsored workshop. This workshop explains DSS rules for care, its reimbursement policies, payment and attendance reporting requirements.

Beginning June 2005 license exempt in-home providers are required to complete 45 hours of training consisting of Health, Safety & Nutrition (9 hours); CPR and First Aid (6 hours); Child Development (15 hours); Understanding Children's Behavior (12 hours); and Understanding Early Literacy and Language Development (3 hours).

Existing providers have six months upon notice from The Family & Workplace Connection (FWC) to enroll and complete required training.

New providers must complete training within 90 days of beginning their contract with the Division of Social Services. Classes are provided by the FWC and are offered during the day and evening.

DIVISION OF SOCIAL SERVICES

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

ORDER

Self-Employment Income

Nature of the Proceedings

Delaware Health and Social Services ("Department") / Division of Social Services / Division of Medicaid & Medical Assistance initiated proceedings to amend several policies in the Division of Social Services Manual (DSSM) as it relates to implementing a simplified way to calculate self-employment income. 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 August 2005 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 2005 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposed Changes

Citations

- Section 812 of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996;
- 7 CFR 273.11(a)(2)(i); and,
- 7 CFR 273.2(b)(3)(v).
- 1. Instead of detailing each cost of doing business, Delaware proposes to mandate a flat percentage deduction of 44 percent to gross self-employment income as the cost of producing income. The 44 percent flat rate applies to all self-employment income cases for all assistance programs, including Cash Assistance, Child Care, Food Stamps and applicable Medical Assistance Programs.
- 2. The standard will be updated annually to reflect changes in the economy and the cost-of-living adjustment (COLA).
- 3. The standard deduction reflects an average of the self-employment costs which is 44 percent.
- 4. The change shall also be applied to ongoing cases at the time of the next review/redetermination or interim

change involving the affected policy unless otherwise indicated.

Summary of Comments Received with Agency Response

The State Council for Persons with Disabilities (SCPD) provided the following observations and recommendation summarized below. DSS and DMMA have considered each comment and responds as follows:

This simplified approach may benefit the Division since it should result in less paperwork and acquisition of business records, receipts, etc. It may also benefit consumers who will not have to produce as many records. However, a one-size-fits-all approach may be disadvantageous for self-employed persons who have above average costs (aka outliers). For example, a start-up business would generally be characterized by higher costs as initial inventory is acquired and business infrastructure developed. To reconcile these competing considerations, SCPD recommends authorization of a limited exception from application of the flat rate.

Some variation of the following provision could be adopted:

An exception to application of the standard deduction is authorized only for self-employed households who produce clear and convincing documentation that application of the standard deduction results in gross understatement of costs of at least 20%. In such circumstances, the documented costs may be substantiated for the standard deduction.

This provision would deter "quibbling" since the disparity must be gross. Moreover, the standard of proof justifying the exception is substantial, i.e., clear and convincing documentation. Finally, the incidence of "outliers" is probably low so program administration would not be burdened with a large number of requests for exceptions.

Agencies Response: DSS and DMMA have made the decision to implement the original flat rate deduction for all self-employed households. This policy change requires a waiver. The 44% deduction is based on the self-employment data that the households use. As with any waiver, approval is dependent on using a deduction figure that will be cost neutral for the Food Stamp Program. The flat rate deduction is similar to the standard earned income deduction applied to all working households regardless of their expenses.

DSS and DMMA expect that streamlining the verification process for self-employed individuals in this

manner will result in improved customer service in the application process.

Findings of Fact

The Department finds that the proposed changes as set forth in the August 2005 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) as it relates to implementing a simplified way to calculate self-employment income is adopted and shall be final effective October 10, 2005.

Vincent P. Meconi, Secretary, DHSS, 9-13-05

DSSM: 4004.1, 9074.2, 9075, 11003.9.1, 20210.16, 15120.2, 16230.1.2 and 17300.3.2.4.1

DSS FINAL ORDER REGULATIONS #05-56 REVISIONS:

CASH ASSISTANCE

4004.1 Sources of Earned Income

1. Wages – Gross earnings paid to the employee before deductions for taxes, FICA, insurance, etc. are counted. Sick pay or vacation pay is considered as a wage as long as it is paid as a wage. If sick pay is paid through an insurance company as disability pay, it is considered unearned income.

NOTE: Earnings paid to employees under contract are averaged over the number of months covered by the contract. EXAMPLE: A teacher is under contract for a full calendar year, but may choose to collect his pay during the school year. His wages for public assistance purposes are budgeted over the full year.

2. Self-employment – Gross earned income from self-employment is determined by subtracting business expenses (supplies, equipment, etc.) from gross proceeds. The individual's personal expenses (lunch, transportation, income tax, etc.) are not deducted as business expenses but are deducted by using the standard allowance for work connected expenses (See DSSM 4004.2 and 4004.3).

<u>Self-Employment Standard Deduction for Producing Income</u>

The cost for producing income is a standard deduction of the gross income. This standard deduction is a percentage of the gross income determined annually and listed in the Cost-of-Living Adjustment (COLA) notice each October.

The standard deduction is considered the cost to produce income. The gross income test is applied after the

standard deduction. The earned income deductions are then applied to the net self-employment income and any other earned income in the household.

The standard deduction applies to all self-employed households with costs to produce income. To receive the standard deduction, the self-employed household must provide and verify [they have it has] business costs to produce income. The verifications can include, but are not limited to, tax records, ledgers, business records, receipts, check receipts, and business statements. The self-employed household does not have to verify all [their its] business costs to receive the standard deduction.

<u>Self-employed households not claiming or verifying any costs to produce income will not receive the standard deduction.</u>

The self-employment standard deduction will be reviewed annually to determine if an adjustment in the percentage amount is needed.

Self-employed persons must submit evidence of gross proceeds and business expenses or income tax statements to verify earnings.

- 3. Farming Farming is defined as raising crops, livestock, or poultry for profit. Gross earned income from farming is determined by subtracting the farmer's operating expenses from sales. Produce grown for home consumption is not considered income.
- 4. Room and Board Income [See 4006 for treatment of eash payments for shared living expenses.] Income from the operation of a rooming and/or boarding home is considered earned income. The following disregards are deducted from gross proceeds as operating expenses. These expenses are deducted before any earned income disregards are subtracted from income.

Roomers only – subtract \$10.00 per month per person. (A roomer is a person who rents living space in the home.)

Boarders only — subtract \$30.00 per month per person. (A boarder is a person who purchases meals provided in the home, but does not live there.)

Roomers and Boarders – subtract \$46.00 per month per person. (A roomer and boarder does both.)

EXAMPLE:An individual operates a rooming and boarding home. She has three (3) roomers who each pay \$60.00 per month and two (2) roomers and boarders who each pay \$100.00 per month.

\$180.00 - Payment from roomers \$60 x 3
-30.00 - Disregards for roomers \$10 x 3
\$150.00
\$200.00 - Payment from roomers and boarders (\$100 x
2)
-92.00 - Disregard for roomers and boarders (\$46 x 2)

\$108.00

\$150.00 +108.00

\$258.00 Total gross income from roomers and boarders

(Earned income disregards appropriate to the category of assistance are subtracted in the budgeting process. See DSSM 4004.2 and 4004.3).

(Break in Continuity of Sections)

FOOD STAMPS

9074.2 Allowable Costs of Producing Self-Employment Income

- (1) Allowable costs of producing self-employment income include, but are not limited to:
 - The identifiable costs of labor;
 - stock
 - raw material;
 - seed and fertilizer:
 - payments on the principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods;
 - interest paid to purchase income-producing property;
 - insurance premiums; and
 - taxes paid on income-producing property.
- (2) The following items are not allowable costs of doing business:
 - net losses from previous periods;
- Federal, State and local income taxes, money set aside for retirement purposes, and other work-related personal expenses like transportation to and from work. (Work-related personal expenses are covered under the 20 percent earned income deduction.)
 - depreciation; and
- any amount that exceeds the payment a household receives from a boarder for lodging and meals.
- (3) Calculate the costs of producing self-employment income using the actual costs according to (b)(1) or determine self-employment expenses as follows:
- For income from day care, use the current reimbursement amounts used in the Child and Adult Care Food Program.
- For income from boarders, other than those in commercial boarding houses or from foster care boarders, use the maximum food stamp allotment for a household size that is equal to the number of boarders.

- For income from foster care boarders, refer to DSSM 9013.1.

9074.2 Self-Employment Standard Deduction for Producing Income

The cost for producing income is a standard deduction of the gross income. This standard deduction is a percentage of the gross income determined annually and is listed in the Cost-of-Living Adjustment (COLA) notice each October.

The standard deduction is considered the cost to produce income. The gross income test is applied after the standard deduction. The 20% earned income deduction is then applied to the net self-employment income and any other earned income in the household.

The standard deduction applies to all self-employed households with costs to produce income. To receive the standard deduction, self-employed households must provide and verify they have business costs to produce income. The verifications can include, but are not limited to, tax records, ledgers, business records, receipts, check receipts, and business statements. The self-employed household does not have to verify all its business costs to receive the standard deduction.

<u>Self-employed households not claiming or verifying any costs to produce income will not receive the standard deduction.</u>

The self-employment standard deduction will be reviewed annually to determine if an adjustment in the percentage amount is needed.

(Break in Continuity of Sections)

- 9075 Procedure for Calculating Income Which Can Be Annualized to Reflect Monthly Calculations
- 1) Add all gross self-employment (including capital gains) for the period of time over which the self-employment income is determined.
- 2) Subtract the total cost of producing the income self-employment standard deduction.
- 3) Divide the income by the number of months over which the income will be averaged.
- 4) For those households whose self-employment income is not averaged but is instead calculated on an anticipated basis, add any capital gains the household anticipates it will receive in the next 12 months, starting with the date the application is filed, and divide this amount by 12. This amount shall be used in successive certification periods during the next 12 months, except that a new average monthly amount shall be calculated over this 12-month period if the anticipated amount of capital gains changes. Add the anticipated monthly amount of capital gains to the

anticipated monthly self-employment income, and subtract the cost of producing the self-employment income. The cost of producing the self-employment income will be calculated by anticipating the monthly allowable costs of producing the self-employment income. self-employment standard deduction.

Calculation I - Gross Income

- (a) Anticipated capital gains for 12-month period beginning with date of application.
 - (b) + Anticipated gross self-employment income.
 - (c) = Gross self-employment income.

Calculation II - Costs of Operations

- (a) Gross allowable costs of operation.
- (b) + Gross depreciation.
- (c) = Total cost of operation.

Calculation III - Net Self-employment Income

- (a) Gross self-employment income.
- (b) Total cost of operation <u>self-employment</u> <u>standard deduction</u>
 - (c) Divided by 12
 - (d) = Net monthly self-employment income.

(Break In Continuity of Sections)

CHILD CARE

11003.9.1 Countable Income

- A. All sources of income, earned (such as wages) and unearned (such as child support, social security pensions, etc.) are countable income when determining a family's monthly gross income. Monthly gross income typically includes the following:
- 1. Money from wages or salary, such as total money earnings from work performed as an employee, including wages, salary, Armed Forces pay, commissions, tips, piece rate payments and cash bonuses earned before deductions are made for taxes, bonds, pensions, union dues, etc.
- 2. Gross income from farm or non-farm self-employment is determined by subtracting business expenses such as supplies, equipment, etc. from gross proceeds the self-employment standard deduction for producing income as described below. The individual's personal expenses (lunch, transportation, income tax, etc.) are not deducted as business expenses but are deducted by using the TANF standard allowance for work connected expenses. In the case of unusual situations (such as parent/caretaker just beginning business), refer to DSSM 9056 and 9074.

<u>Self-Employment Standard Deduction for Producing</u> Income

The cost for producing income is a standard deduction of the gross income. This standard deduction is a percentage of the gross income determined annually and listed in the Cost-of-Living Adjustment (COLA) notice each October.

The standard deduction is considered the cost to produce income. The gross income test is applied after the standard deduction. The earned income deductions are then applied to the net self-employment income and any other earned income in the household.

The standard deduction applies to all self-employed households with costs to produce income. To receive the standard deduction, the self-employed household must provide and verify they have business costs to produce income. The verifications can include, but are not limited to, tax records, ledgers, business records, receipts, check receipts, and business statements. The self-employed household does not have to verify all [their its] business costs to receive the standard deduction.

<u>Self-employed households not claiming or verifying any costs to produce income will not receive the standard deduction.</u>

(Break in Continuity of Sections)

MEDICAID/MEDICAL ASSISTANCE

15120.2 Financial Eligibility

TANF rules on income standards and methodologies (disregards, exclusions, allocations) apply to Section 1931 Medicaid except as provided in this section.

For Section 1931 Medicaid, there are two income tests to determine financial eligibility. The first test is a gross income test and the second is a net income test. For the gross income test, compare the family's gross income to 185% of the applicable standard of need. For the net income test, compare the family's net income to the applicable standard of need.

Financial eligibility for both applicant and recipient families will be calculated using the 30 and 1/3 disregard if applicable. This disregard allows the deduction of \$30 plus 1/3 of the remaining earned income after the standard allowance for work connected expenses is subtracted.

The \$30 plus 1/3 disregard is applied to earned income for four (4) consecutive months. If Medicaid under Section 1931 or employment ends before the fourth month, the earner is eligible for the disregard for four (4) additional months upon reapplication or re-employment.

When an earner's wages are so low (\$90 or less in the month) that the income is zero before any part of the \$30

plus 1/3 disregard can be applied, that month does not count as one of the four (4) consecutive months and the earner is eligible for the disregard for four (4) additional months.

After the \$30 plus 1/3 disregard has been applied for four (4) consecutive months, the 1/3 disregard is removed from the budget. The \$30 disregard continues to be deducted from earned income for eight (8) consecutive months. The \$30 disregard is not repeated if an individual stops working or 1931 Medicaid ends before the completion of the eight (8) consecutive months. If 1931 Medicaid ends and the family reapplies, the \$30 disregard from earned income is continued until the end of the original eight (8) consecutive months.

Unlike the \$30 plus 1/3 disregard which is dependent upon the family having sufficient earned income and being 1931 Medicaid recipients, the \$30 disregard is for a specific time period. This time period begins when the \$30 plus 1/3 disregard ends and is not dependent upon the family having earned income or 1931 Medicaid.

When an earner has received the \$30 and 1/3 disregard in four (4) consecutive months and the \$30 deduction has been available for eight (8) consecutive additional months, neither disregard can be applied to earned income until the individual has not received Medicaid under Section 1931 for twelve (12) consecutive months.

All earned income is disregarded for the second and third months of eligibility.

All earned income is disregarded for 12 months after employment causes ineligibility.

A self-employment standard deduction is used to calculate self-employment income. The self-employment standard deduction is considered the cost to produce income. The self-employment standard deduction is a percentage that is determined annually and announced in the Cost-of-Living Adjustment (COLA) Administrative Notice each October.

To calculate self-employment income, use the gross proceeds and subtract the self- employment standard deduction. The result is the amount included in the gross income test (185% of the applicable standard of need). Standard earned income deductions are then applied to the self-employment income for the net income test (the applicable standard of need).

To receive the self-employment standard deduction, the individual must provide verification that costs are incurred to produce the self-employment income. Verification can include, but is not limited to, tax records, ledgers, business records, receipts, check receipts, and business statements. The individual does not have to verify all business costs to receive the standard deduction.

If the individual does not claim or verify any costs to produce the self-employment income, the self-employment standard deduction will not be applied.

Any diversion assistance provided does not count as income.

Resources are not counted for Medicaid under Section 1931.

(Break in Continuity of Sections)

16230.1.2 Self Employment

Determine gross earned income from self-employment by subtracting allowable business expenses from gross proceeds. Business expenses are expenses directly related to producing the goods or services and without which the goods or services could not be produced. Allowable business expenses for the eligibility determination do not include all expenses that are allowed by the Internal Revenue Service.

Allowable business expenses include but are not limited to accounting fees, advertising, auto expense for business only, business travel expenses, cost of goods sold, employee wages, excess utilities (if business is in home), food costs for daycare, interest on loans, legal fees, liability insurance, licensing fees, repairs and maintenance.

Business expenses that are not allowable include depreciation, personal and entertainment expenses, personal transportation, purchase of capital equipment and payments on the principal of loans for capital assets or durable goods, rent or mortgage when business is in the home.

16230.1.2 Self-Employment Income

A self-employment standard deduction is used to calculate self-employment income. The self-employment standard deduction is considered the cost to produce income. The self-employment standard deduction is a percentage that is determined annually and announced in the Cost-of-Living Adjustment (COLA) Administrative Notice each October.

To calculate self-employment income, use the gross proceeds and subtract the self- employment standard deduction. The result is the amount included in the individual's gross income. Standard earned income deductions are then applied to the individual's gross income.

To receive the self-employment standard deduction, the individual must provide verification that costs are incurred to produce the self-employment income. Verification can include, but is not limited to, tax records, ledgers, business records, receipts, check receipts, and business statements. The individual does not have to verify all business costs to receive the standard deduction.

If the individual does not claim or verify any costs to produce the self-employment income, the self-employment standard deduction will not be applied.

(Break in Continuity of Sections)

17300.3.2.4.1 Self-Employment Income

A self-employment standard deduction is used to calculate self-employment income. The self-employment standard deduction is considered the cost to produce income. The self-employment standard deduction is a percentage that is determined annually and announced in the Cost-of-Living Adjustment (COLA) Administrative Notice each October.

To calculate self-employment income, use the gross proceeds and subtract the self-employment standard deduction. The result is the amount included in the individual's gross income. Standard earned income deductions are then applied to the individual's gross income.

To receive the self-employment standard deduction, the individual must provide verification that costs are incurred to produce the self-employment income. Verification can include, but is not limited to, tax records, ledgers, business records, receipts, check receipts, and business statements. The individual does not have to verify all business costs to receive the standard deduction.

If the individual does not claim or verify any costs to produce the self-employment income, the self-employment standard deduction will not be applied.

(Break in Continuity of Sections)

LONG TERM CARE MEDICAID

20210.16 Self Employment

The cost for producing income is a standard deduction of the gross income. This standard deduction is a percentage of the gross income determined annually and listed in the Cost-of-Living Adjustment (COLA) notice each October.

The standard deduction is considered the cost to produce income. The gross income test is applied after the standard deduction. The earned income deductions are then applied to the net self-employment income and any other earned income in the household. See DSSM 20240.3.

The standard deduction applies to all self-employed households with costs to produce income. To receive the standard deduction, the self-employed household must provide and verify [they have it has] business costs to produce income. The verifications can include, but are not limited to, tax records, ledgers, business records, receipts, check receipts, and business statements. The self-employed household does not have to verify all [their its] business costs to receive the standard deduction.

Self-employed households not claiming or verifying any costs to produce income will not receive the standard deduction.

The self-employment standard deduction will be reviewed annually to determine if an adjustment in the percentage amount is needed.

DIVISION OF SOCIAL SERVICES

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

ORDER

Client Cost Sharing for Pharmaceutical Services: Cumulative Maximum

Nature of the Proceedings

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

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the August 2005 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 2005 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Provisions

Citation

42 CFR §447.54(d), Maximum Allowable Charges, Cumulative Maximum

Amending the Following Title XIX Medicaid State Plan Pages

- Page 56a
- Attachment 4.18-A, Page 3

Amending the Following Sections of the Division of Social Services Manual

- 14960.1
- 14960.1.1

Summary of Amendment Provisions

To ensure that the state delivers an accessible medical assistance prescription drug program, the following describes the proposed change for pharmacy co-payments, effective July 1, 2005:

- A cumulative maximum is established as described below:
- \$15.00 cumulative monthly maximum co-payment amount aggregated for pharmacy services.

Once a client has met the individual monthly maximum co-payment for his or her prescriptions, the Point of Sale (POS) System will NOT indicate a co-payment is due. Medicaid will keep track of the cumulative number of prescriptions for a client with co-payments. Any prescriptions dispensed after the cumulative maximum monthly co-payment amount is met are not subject to a co-payment. Reversal of a previously filled prescription with a co-payment will require a refund of the co-payment to the individual, and will cause the next prescription filled for that client to be adjudicated with a co-payment.

By implementing this process, the Department ensures that a cumulative maximum is likely to benefit all eligible Medicaid clients with continued access to prescription medications.

The proposed cumulative maximum pharmacy requirements are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

Summary of Comments Received with Agency Response

The Governor's Advisory Council for Exceptional Citizens (GACEC); the State Council for Persons with Disabilities (SCPD); the Alliance for the Mentally Ill in Delaware (NAMI of Delaware); and, the Disabilities Law Program, CLASI, Inc. provided observations, comments and suggestions. DMMA considered each one, summarized below, and responds as follows:

Notice of Intent

1. As background, the GACEC and the SCPD consistently recommended that any Medicaid drug co-pay requirement include a cumulative maximum co-pay for high pharmacy users as authorized by 42 CFR §447.54(d). DSS consistently declined to adopt such a cap.

The Councils endorse this latest proposal consistent with our prior recommendations. We recommend a \$15.00 cap.

Agency Response: DMMA thanks the Councils for their endorsement.

2. NAMI-DE is grateful that the issue of co-pays for prescription drugs is being considered for revision. We ask that Health and Social Services also add a total exemption from co-pays for very low-income individuals.

Agency Response: The "Notice of Intent" of the proposed amendment published in the June 1, 2005 issue of the Delaware Register of Regulations relates only to Cumulative Maximum on pharmacy services. However, the maximum co-payment chargeable to a Medicaid client and the exemptions from co-payments are set by federal law at 42 CFR §447.54 and 42 CFR §447.53.

Emergency and Proposed Regulations SCPD

Consistent with prior recommendations, SCPD prefers that no co-pay be imposed, but notes that the \$15.00 cap represents a compromise that lessens the financial burden on beneficiaries.

Agency Response: DMMA appreciates the commenter's input. The implementation of the pharmacy co-pay cumulative maximum preserves the amendment's intent, yet addresses the commenter's concern.

Delaware Law Program, CLASI, Inc.

First and foremost, the DLP wholeheartedly applauds the Department's decision to institute a monthly cumulative maximum co-payment amount of \$15.00. Such a maximum amount protects the State's desire for implementing costsharing provisions while yet providing some protection for the health and safety of citizens who rely on Medicaid for vital prescription medications. On behalf of the DLP's clients, we thank you.

Second, we would like to encourage the Department to take two actions in relation to this proposed amendment:

(1) Widely publicize the cumulative maximum copayment amount to clients as well as to pharmacy and health care providers.

In the last few months, the DLP has received many calls from clients expressing confusion about the copayment amounts and any processes related to the copayments. The DLP respectfully requests that information about the co-payment be mailed out to beneficiaries, providers, and also to interested organizations as soon as possible.

(2) Establish, implement, and publicize a process for clients with concerns about the co-payment maximum and how it is applied to them as a corollary to the amendment. Such a system could also provide a venue for other client concerns about co-payments, and create a structure for the federally-required process concerning the "inability to pay" co-payment provisions required by federal law.

Agency Response: Currently, the Department informs providers of pharmacy benefit changes through various methods, including mailings, website postings and newsletters. Most recently, a new feature was added to the DMAP website. This new tool is called the DMAP E-mail Notification Services (registration required for interested parties). This tool allows the DMAP to communicate important information to all users such as policy changes. Regarding the recommendation to publicize the cumulative maximum co-payment amount to clients as well as to pharmacy and health care providers please, view the following updated "Client Prescription Benefits Tri-fold" brochure mailed to new households currently eligible for Delaware Medical Assistance Program pharmacy benefits and posted on the DMAP website addressing pharmacy benefits:

$\frac{http://www.dmap.de.us/information/client.pharmacy.tri-}{fold.072505.pdf}$

Additionally, informational posters will be sent to participating DMAP pharmacy providers, advocacy organizations, State Service Centers and senior citizen centers to publicize the \$15.00 co-payment cap. Also, the Division's next mass mailings to clients will include an announcement of the co-payment cap.

The Pharmacy Provider is advised via the Point-of-Sale System (POS) regarding the client's liability for the drug copayment and the amount of the co-payment. Once a client has met the monthly maximum co-payment amount for his or her prescriptions, the POS will tell the pharmacist that no co-payment is due from the client and exempting the client from a co-payment until the end of the current co-payment year. The POS will track the cumulative number of prescriptions for a client with co-payments.

As previously notified, Medicaid clients may continue to call 1-800-372-2022 Monday through Friday, 8:00am to 4:30pm for questions or concerns about pharmacy benefits.

As previously published in the *Delaware Register*, the "calculations" for the maximum co-payment chargeable to a Medicaid client is *set* by federal law at 42 CFR §447.54; and, "exemptions" from co-payments are *set* at 42 CFR §447.53.

Findings of Fact

The Department finds that the proposed changes as set forth in the August 2005 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Child Care Development Fund State Plan for the period October 1, 2003 through September 30,

2005 is adopted and shall be final effective October 10, 2005.

Vincent P. Meconi, Secretary, DHSS, 9-13-05

DSS FINAL ORDER REGULATION #05-57a

Page 56a

Revision: HCFA-PM-91-4 (BPD) OMB No.: 0938-

AUGUST 1991

State/Territory: DELAWARE

Citation

4.18 (b) (3) (Continued)

42 CFR 447.51

- (iii) For the categorically needy and qualified through 447.58 Medicare beneficiaries, ATTACHMENT 4.18-A specifies the:
 - A. Service(s) for which a charge(s) is applied;
 - B. Nature of the charge imposed on each service;
 - C. Amount(s) of and basis for determining the charge(s);
 - D. Method used to collect the charge(s);
 - E. Basis for determining whether an individual is unable to pay the charge and the means by which such an individual is identified to providers;
 - F. Procedures for implementing and enforcing the exclusions from cost sharing contained in 42 CFR 447.53 (b); and
 - G. Cumulative maximum that applies to all deductible, coinsurance or co-payment charges imposed on a specified time period.
 - X Not applicable. There is no maximum.

Ш	Not applicable.	There	is
	no maximum.		

DSS FINAL ORDER REGULATION #05-57b

ATTACHMENT 4.18-A

Page 3

State Plan Under Title XIX of the Social Security Act
State: DELAWARE

- E. Cumulative maximums on charges:
- ☐ State policy does not provide maximums.
- X Cumulative maximum has been established as described below:

\$15.00 cumulative monthly maximum co-payment amount aggregated for pharmacy services.

Once a client has met the individual monthly maximum co-payment for his or her prescriptions, the Point of Sale (POS) System will NOT indicate a co-payment is due. Medicaid will keep track of the cumulative number of prescriptions for a client with co-payments. Any prescriptions dispensed after the cumulative maximum monthly co-payment amount is met are not subject to a co-payment. Reversal of a previously filled prescription with a co-payment will require a refund of the co-payment to the individual, and will cause the next prescription filled for that client to be adjudicated with a co-payment.

DSS FINAL ORDER REGULATION #05-57c

14960.1 Co-Payment Requirement

Effective January 10, 2005, <u>clients have</u> a nominal copayment will be imposed for generic and brand name prescription drugs as well as over-the-counter drugs prescribed by a practitioner.

The co-payment is based upon the cost of the drug as follows:

Medicaid Payment for the Drug	Co-payment
\$10.00 or less	\$.50
\$10.01 to \$25.00	\$1.00
\$25.01 to \$50.00	\$2.00
\$50.01 or more	\$3.00

The co-payment is imposed for each drug that is prescribed and dispensed.

149601.1 Cumulative Maximum Monthly Co-payment

Effective July 1, 2005, there is a cumulative maximum monthly co-payment amount equal to \$15.00 for each recipient. Any prescriptions dispensed after the cumulative maximum monthly co-payment amount is met are not subject to a co-payment.

DIVISION OF SOCIAL SERVICES

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

ORDER

Child Care Subsidy Program

Nature of the Proceedings

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to provide information of public interest with respect to the Child Care Subsidy Program. The Department's proceedings 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 public comment pursuant to 29 **Delaware Code** Section 10115 in the August 2005 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 2005 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Provisions

Statutory Basis

- TANF Temporary Assistance for Needy Families, a program established by Title IV-A of the Social Security Act and authorized by Title 31 of the Delaware Code;
- Title 7, Chapter II of the Code of Federal Regulations, Part 273.7(d)(iv)(3)(i);
- The Child Care and Development Block Grant (part of Categories 31 and 41) as amended by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996; and,
- Title XX of the Social Security Act and the Omnibus Budget Reconciliation Act (OBRA) of 1981 establishes child care under the Social Services Block Grant (part of Categories 31 and 41).

DSS is proposing to amend several sections in the Division of Social Services Manual (DSSM) to clarify and update existing Child Care Subsidy policy.

This includes updating, revising, clarifying, renumbering (and deleting where necessary) the following

policy sections due to the integration of the previous Child Care Management system into the current DCIS II Child Care eligibility system:

- DSSM 11002.1, 11002.4, 11002.6.2, 11002.9, 11003, 11003.4, 11003.7, 11003.7.5, 11003.9.1, 11003.9.2, 11003.9.3, 11003.9.5, 11003.10, 11004, 11004.1, 11004.2, 11004.2.1, 11004.3, 11004.3.1, 11004.4, 11004.4.1, 11004.5, 11004.6, 11004.8, 11004.9, 11004.9.1, 11004.11, 11004.12, 11005.2 and 11005.3;
- Updating DSSM 11003.3 to reflect the same language as the Food Stamp State Plan.

Additionally, DSSM 11003.7.8 is a new section establishing procedures for special needs cases.

Summary of Comments Received with Agency Response

DSS received no public comments.

Findings of Fact

The Department finds that the proposed changes as set forth in the August 2005 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Child Care Development Fund State Plan for the period October 1, 2003 through September 30, 2005 is adopted and shall be final effective October 10, 2005.

Vincent P. Meconi, Secretary, DHSS, 9-13-05

DSS FINAL ORDER REGULATION #05-53 REVISIONS:

11002.1 Purpose of Delaware's Child Care Subsidy Program

The purpose of Delaware's Child Care Subsidy Program is to provide support to <u>Delaware</u> families who need care and who <u>need</u> otherwise cannot pay for all or part of the cost of care.

11002.4 Persons Eligible

DSS provides child care services to eligible <u>Delaware</u> families with children who need care and who are under the age of 13, or children 13 to through 18 years of age who are physically or mentally incapable of caring for themselves or who are in need of protective services.

Under Title IV, Sections 401 and 402 of the Personal Responsibility and Work Opportunity Act of 1996, the Division is prohibited from using CCDBG and SSBG funds to pay for child care services for most persons who are not U.S. citizens. At State option, the Division may choose to use State only funds to pay for child care services for such persons. Certain aliens are exempt from this restriction for a period of five (5) years from the date of obtaining status as either a refugee, asylee, or one whose deportation is being withheld. In addition, aliens admitted for permanent residence who have worked forty (40) qualifying quarters and aliens and their spouses or unmarried dependent children who are either honorably discharged veterans or on active military duty are exempt from this restriction. For more detailed child care policy on citizenship, aliens and refugee's see DSSM 3024, these policies apply to the Child Care Subsidy Program.

The Division can provide Child Care services for eligible families where there is at least one U.S. citizen, legal alien or qualified refugee in the family. If one member of the family is a U.S. citizen, legal alien or qualified refugee and he/she meets both technical and financial eligibility criteria, Child Care services can be provided. The Division will evaluate non-US citizen cases on an individual basis.

Non-US citizens referred to the Child Care Subsidy Program through the Division of Family Services, due to a protective need, are eligible to receive services regardless of their citizenship status.

This policy must also be read in accordance with Section 11003, Eligibility Requirements. DSS provides a guarantee for certain forms of Child Care (Category Categories 11, 12, 13, and 21). This guarantee means that eligible families will receive child care services under these programs. Eligibility for other child care services (Category Categories 31, 41 and 51) does not come with this same guarantee. Funding for child care services in these programs is capped. Though families may have an eligible child for whom they need care, and though families may meet other requirements of need and income, this does not guarantee that DSS will provide child care. DSS reserves the right for its capped programs to limit, where appropriate, its child care services based on available resources and funding.

Eligible families generally include:

A. TANF recipients who work, or must attend school or are be involved participating in TANF Employment and Training activities, training which leads to work as part of DSS' Food Stamp Employment & Training (FS E&T) program or families who are participating in TANF activities.

B. <u>fFamilies</u> with low incomes, who work,

- C. <u>fF</u>amilies with low incomes who attend a job training or education program <u>as defined in section 11002.9</u>-,
- D. families who work and are transitioning off TANF.
- \underline{E} - \underline{D} . \underline{f} Eamilies who receive Food Stamps and who must participate in $E\&T_{\overline{1}}$.
- FE. Families who receive or need to receive protective services through the Division of Family Services, and .
- G-F. Eligible-families with a special need (either a child or parent).

11002.6.2 Federal Law/Regulation

In addition to the State Law noted above, Delaware's Child Care Subsidy Program operates under the authority of several rules, including:

- A. Providing child care to families receiving TANF benefits who must participate in Delaware's TANF <u>Employment and Training activities</u> or to persons who work and receive TANF (Categories 11 and 12).
- B. Establishes child care for certain TANF recipients who lose TANF because of work.
- Title 7, Chapter II of the Code of Federal Regulations, Part 273.7(A)(d)(iv)(3)(i) states: "A dependent care reimbursement shall be provided to an Employment and Training participant for all dependents requiring dependent eare unless otherwise prohibited by this section...if dependent care is necessary for participation of a household member in the Employment and Training program." "The State agency will reimburse the cost of dependent care it determines to be necessary for the participation of a household member in the E&T program up to the actual cost of dependent care, or the applicable payment rate for child care, whichever is lowest. The payment rates for child care are established in accordance with the Child Care and Development Block Grant provisions of 45 CFR 98.43, and are based on local market rate surveys. The State agency will provide a dependent care reimbursement to an E&T participant for all dependents requiring care unless otherwise prohibited by this section." Such child care is provided as part of the State's Food Stamp Employment and Training Program previously known as First Step - Food Stamps (Category 21).
- D:C. The Child Care and Development Block Grant (part of Category Categories 31 and 41) as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

The purpose of the CCDBG as stated in Rule 98.1 of the CFR is, "to increase the availability, affordability, and quality of child care services." The goals of the grant are:

- 1. to provide low-income families with the financial resources to find and afford quality child care,
- 2. to enhance the quality and increase the supply of child care for all families,
- 3. to provide <u>parent/earetakers</u> <u>parents/</u> <u>caretakers</u> with a broad range of options in addressing their child care needs,
 - 4. to strengthen the role of the family,
- 5. to improve the quality and coordination of child care programs and early childhood development programs, and
- 6. to increase the availability of early childhood development and before and after school services.
- <u>E.D.</u> Title XX of the Social Security Act and the Omnibus Budget Reconciliation Act of 1981 establishes child care under the Social Services Block Grant (part of Category Categories 31 and 41).

The purpose of child care services provided under SSBG is to provide support to families with young children in order for parents to work, obtain training, or receive an education. The program also allows child care to meet the special needs of the child or for the child's protection in cases of abuse and/or neglect.

11002.9 Definitions and Explanation of Terms

The following words and terms, when used in the context of these policies will, unless clearly indicated otherwise, have the following meanings.

- A. TANF Temporary Assistance for Needy Families, a program established by Title IV-A of the Social Security Act and authorized by Title 31 of the Delaware Code to provide benefits to needy children who are deprived of parental support and care. While on <u>TANF</u>, families are eligible for child care only as long as they are working or involved with Food Stamp Employment & Training (FS <u>E&T</u>) participating in a TANF Employment and Training activity <u>TANF</u> (<u>Category Categories</u> 11 and 12).
- B. At-Risk Families Low-income, working families who need child care in order to work, and are otherwise at risk of becoming eligible for TANF. Under the Division's CCMIS, At-Risk Families are part of Category 31.
- EB. Authorization Form 618d is the parent/earetaker's parents/caretakers authority to receive subsidized child care services and is the provider's authority to provide subsidized child care services to eligible parent/caretakers parents/caretakers. The authorization informs providers how much care a parent is authorized to receive, what DSS will pay the provider, and what parent/caretakers parents/caretakers must pay as part of their fee.

- D.<u>C.</u> Caregiver/Provider The person(s) whom DSS approves to provide child care services or the approved place where care is provided.
- E.D. Caretaker The adult responsible for the primary support and guardianship of the child. As used here, this adult is someone other than the child's parent who acts in place of the parent. If a caretaker is unrelated to the child and has not been awarded custody by Family Court or guardianship, the caretaker is referred to the Division of Family Services to make a determination to either approve the non-relative placement or remove the child.
- F.E. CCDBG Child Care and Development Block Grant. 45 CFR Parts 98 and 99 created by the Omnibus Budget Reconciliation Act of 1990 to provide federal funds without State match to:
 - 1. provide child care to low income families.
- 2. enhance the quality and increase the supply of child care,
- 3. provide parents the ability to choose their provider, and
- 4. increase the availability of early childhood programs and before and after school services.

Under the Division's CCMIS DCIS II Child Care Sub system, CCDBG is part of Category Categories 31 and 41.

- GF. CFR Code of Federal Regulations. These are the rules the Federal Government writes to implement federal legislation. Once written and approved, they have the force of law.
- <u>HG</u>. CCMIS Child Care Management Information System, the name used to describe the Division's information payment system for child care.
- H.H. Child A person under the age of 13, or children 13 to through 18 years of age if they are physically or mentally incapable of caring for themselves or in need of protective services.
- J. I. Child Care Category The CCMIS DCIS II Child Care Sub system code for the child care funding source. Case Managers choose category codes based on the parent/caretaker's parents/caretaker's technical eligibility for service. The codes are:
- 11 <u>Participants receiving</u> TANF <u>and not working</u>, but participating in TANF E&T;
 - 12 <u>Participants receiving</u> TANF <u>and</u> working;
 - 13 Transitional Child Care;
- 21 <u>Participants receiving</u> Food Stamps <u>who</u> <u>are mandatory or voluntary participants in</u> E&T <u>and not</u> receiving TANF;
- 31 SSBG, CCDBG, At-Risk and State funds: Income eligible participants. Participants who receive FS and are not E&T mandatory or voluntary;

- 41 A participant who is a qualified alien or U.S. citizen is coded as a category 41 when his or her eligibility allows a non U.S. citizen or nonqualified alien to receive child care services. (Example: One child is a citizen and one is not. The citizen child is a 41)
- <u>51 A participant is coded category 51 when s/</u> he is not a U.S. citizen or legal alien but receives Child Care services due to a family member in category 41.
- K.J. Child Care Certificate A form issued to a parent/caretaker which allows a parent/caretaker to choose a child care provider who does not have a contract with DSS. A certificate is not an authorization for child care, but a parent who wishes to select a non-contracted provider of their choice cannot get care unless the provider completes one.
- <u>L.K.</u> Child Care Fee The amount the parent/ caretaker must pay toward the cost of child care. The fee is based on the income of the parent(s) <u>and children</u>, or the child if the child lives with a caretaker, family size and a percentage of the cost of care based on type.
- M.L. Child Care Services Those activities that assist eligible families in the arrangement of child care for their children.
- N.M. Child Care Centers A place where licensed or license-exempt child care is provided on a regular basis for periods of less than 24 hours a day to 12 or more children, who are unattended by a parent or guardian.
- Θ .<u>N.</u> Child Care Type Refers to the setting or place where child care is provided. The four types of care are:
- 1. Center based (under CCMIS DCIS II Child Care Sub system Site #17 or 18),
- 2. Group Home (under—CCMIS DCIS II Child Care Sub system Site #16),
- 3. Family Home (under CCMIS DCIS II Child Care Sub system Site #15), and
- 4. In-Home (under CCMIS <u>DCIS II Child</u> <u>Care Sub system</u> Site #19).
- Q. P. Educational Program A program of instruction to achieve:
 - 1. a basic literacy level of 8.9;
 - 2. instruction in English as a second

language;

- 3. a GED, Adult Basic Education (ABE), or High School Diploma;
- 4. completion of approved special training or certificate courses; or

5. a post-secondary degree where the degree is part of an approved Employability Development Plan. DSS Employment and Training program.

The above definition excludes the pursuit of a graduate degree or second four-year college degree. A second associates degree may be attained if it leads to a bachelors degree. The completion of a second associate's degree can be authorized only if it has a significant chance of leading to employment.

- R.Q. Employment - Either part-time or full time work for which the parent/caretaker receives income. It also includes periods of up to one month when parent/earetakers parents/caretakers lose one job and need to search for another, or when one job ends and another job has yet to start.
- Family Size The total number of persons whose needs and income are considered together. This will always include the parent(s) and all their dependent children under 18.
- T. S. Family Child Care Home - A place where licensed care is provided for one to six children who are not related to the caregiver.
- TANF Child Care The name of the child U. T. care program for TANF recipients who work or who are participating in a TANF Employment and Training programin Food Stamp Employment & Training (FS E&T) - TANF. Under the CCMIS DCIS II Child Care Sub system, this is Category 11 and 12.
- ₩U. Food Stamp Employment and Training -The program by which certain unemployed mandatory and/ or voluntary Food Stamp recipients participate in activities to gain skills or receive training to obtain regular, paid employment. Persons can receive child care if they need care to participate. This is referred to as Food Stamp Employment & Training Food Stamps (FS E&T). Under the Division's CCMIS DCIS II Child Care Sub system, this is Category 21.
- ₩.V. In-Home Care - Care provided for a child in the child's own home by either a relative or non-relative, where such care is exempt from licensing requirements. It also refers to situations where care is provided by a relative in the relative's own home. This care is also exempt from licensing requirements.
- X.W. Income - Any type of money payment that is of gain or benefit to a family. Examples of income include, wages, social security pensions, public assistance payments, child support, etc.
- Income Eligible A family is financially Y.X. eligible to receive child care services based on the family's gross income. It also refers to child care programs under Category 31.

- Income Limit The maximum amount of AA. gross income a family can receive to remain financially eligible for child care services. Current income limit is 200 percent of the federal poverty level.
- Job Training /Training A program which either establishes or enhances a person's job skills. Such training either leads to employment or allows a person to maintain employment already obtained. Such training includes, but is not limited to: Food Stamp Employment & Training (FS E&T) contracted programs, JTPA WIA sponsored training programs, recognized school vocational programs, and on-the-job training programs.
- Large Family Child Care Home A place AC. where licensed care is provided for more than six but less than twelve children.
- Legal Care Care which is either licensed AD. or exempt from licensing requirements.
- Parent The child's natural mother, natural AE. legal father, adoptive mother or father, or step-parent.
- Parental Choice The right of parent/ AF. earetakers parents/caretakers to choose from a broad range of child care providers, the type and location of child care.
- Protective Services The supervision/ placement of a child by the Division of Family Services in order to monitor and prevent situations of abuse or neglect.
- Physical or Mental Incapacity A dysfunctional condition which disrupts the child's normal development patterns during which the child cannot function without special care and supervision. Such condition must be verified by either a doctor or other professional with the competence to do so.
- AI. Reimbursement Rates - The maximum dollar amount the State will pay for child care services.
- Relative Grandparents, aunts, uncles, AJ. brothers, sisters, cousins, and any other relative as defined by TANF policy, as they are related to the child.
- AK. Residing With - Living in the home of the parent or caretaker.
- SSBG Social Services Block Grant. AL. Under the CCMIS DCIS II Child Care Sub system, this is Category 31 child care.
- AM. Seamless Services - To the extent permitted by applicable laws, a family is able to retain the same provider regardless of the source of funding, and providers are able to provide services to children regardless of the basis for the family's eligibility for assistance or the source of payment.
- Self-Arranged Care Child care which AN. either parents or caretakers arrange on their own between themselves and providers. In this instance, the parent/ earetakers parents/caretakers choose to use a child care

certificate, but the provider does not accept the State reimbursement rate for child care services. DSS limits payment for self-arranged care to its regular provider rates. Parent/Caretakers Parents/caretakers, in addition to any parent fee they pay, must also pay the difference between DSS' reimbursement rates and the providers' charge.

- AO. Self-Initiated Clients who enter an education or training program on their own. The education or training program must be comparable to a Food Stamp Employment & Training (FS E&T) TANF education or training component. Self-initiated clients must receive child care services if there is a child care need.
- AP. Special Needs Child A child under <u>48 19</u> years of age whose physical, emotional, or developmental needs require special care. Both the need and care must be verified by a doctor or other professional with the competence to do so.
- AQ. Special Needs Parent/Caretaker An adult, who because of a special need, is unable on his/her own to care for children. The need must be verified by a doctor or other professional with the competence to do so.
- AR. Technical Eligibility Parent/caretakers

 Parents/caretakers meet requirements, other than financial, to receive child care services based on need and category.
- AS. Verification Written or oral documentation, demonstrating either need for service or sources of income.
- AT. Purchase of Care Plus (POC+) Care option that allows providers to charge for fee paying clients the difference between the DSS reimbursement rate up to the provider's private fee for service. The provider receives DSS rate, the DSS determined parent fee, and any additional provider-determined co-pay.
- AU. Work Force Investment Act (WIA) Federal Legislation that consolidates Employment and Training programs and funding streams. This legislation embodies the One Stop Employment and Training Service system under DOL.

8 DE Reg. 1154 (2/1/05)

11003 Eligibility Requirements

DSS provides child care services to eligible <u>Delaware</u> families with a child(ren) who resides in the home and who is under the age of 13, or children 13 to 18, <u>under 19</u> who are physically or mentally incapable of caring for themselves or <u>are</u> active with the Division of Family Services.

Under Title IV, Sections 401 and 402 of the Personal Responsibility and Work Opportunity Act of 1996, the Division is prohibited from using CCDBG and SSBG funds to pay for child care services for most persons who are not U.S. citizens. At State option, the Division may choose to

use State only funds to pay for child care services for such persons. Certain aliens are exempt from this restriction for a period of five (5) years from the date of obtaining status as either a refugee, asylee, or one whose deportation is being withheld. In addition, aliens admitted for permanent residence who have worked forty (40) qualifying quarters and aliens and their spouses or unmarried dependent children who are either honorably discharged veterans or on active military duty are exempt from this restriction.

The Division will provide Child Care services for eligible families where there is at least one U.S. citizen or legal alien in the family. If one member of the family is a U.S. citizen or legal alien and they meet both technical and financial eligibility criteria Child Care Services can be provided. The Division will evaluate non-U.S. citizen cases on an individual basis.

Non-US citizens referred to the Child Care subsidy program through the Division of Family Services, due to a protective need, are eligible to receive services regardless of their citizenship status.

A family needs service when parent/earetakers parents/ caretakers are required to be out of the home, or are reasonably unavailable (may be in the home but cannot provide supervision, such as a parent works a third shift, is in the home, but needs to rest), and no one else is available to provide supervision.

- A. Parent/caretakers <u>Parents/caretakers</u> need service to:
 - 1. accept employment,
 - 2. keep employment,
 - 3. participate in training leading to employment,
 - 4. participate in education,
- 5. work and the other parent/caretaker or adult household member is chronically ill or incapacitated,
- 6. have someone care for the children because of a parent/caretaker special need.
 - B. A child(ren) needs service to:
- 1. provide for a special need (physical or emotional disabilities, behavior problems, or developmental delays, etc.);
- 2. provide protective supervision in order to prevent abuse or neglect.

In addition to having an eligible child and a child care need, certain DSS child care programs require parent/earetakers parents/caretakers to meet income limits. Under certain other child care programs, DSS guarantees child care. These financial requirements along with other technical requirements help determine the parent/caretaker's child care category. Categories relate to the funding sources used by DSS to pay for child care services. The following sections

discuss the technical requirements for child care services based on category and need.

11003.3 Parent/Caretaker On Food Stamps

- A. DSS provides child care for a dependent child when a parent/caretaker receives Food Stamps and the parent/caretaker needs to:
- 1. participate in Food Stamp Employment and Training activities, or
- 2. volunteer to participate in Employment and Training activities (both are Category 21).
- B. Persons can volunteer to participate in E&T Food Stamps activities only as long as the activity for which they volunteer is a component activity of E&T Food Stamps. Acceptable E&T Food Stamps component activities are:
 - 1. Independent Job Search,
- 2. Self-Directed Job Search Training, One Stop Delivery System,
- 3. Basic Life Skills Enrichment, Adult Education, and Training,
- 4. High School and/or Adult Education, Workfare Program (ABAWD only).
- 5. Post-Secondary Education (first degree only), and
- 6. Vocational Skills Training. Refugee and Asylee Services.

Mandatory participants who fail to participate receive a sanction. Persons who receive a sanction lose their child care while the sanction remains in effect.

11003.4-Transitional Child Care (RESERVED)

Parent/caretakers who received TANF and who are working can continue to receive child care if they:

- A. stopped receiving TANF because of income from work or because their income disregards expired,
- B. request Transitional Child Care (Category 13).
 Parent/caretakers who meet the above requirements
 need to also meet financial eligibility requirements. They
 must have income equal to or under 200 percent of poverty.
 Parent/caretakers also need to be working in order to qualify.

Those TANF families not previously receiving any child care will get a letter from DSS alerting them to the possibility that they could be eligible for child care. They are told to contact the nearest child care office and to request TCC. Case Managers will need to make appointments for these families and the family will need to complete an application.

11003.7 Income Eligible Child Care

A. DSS provides child care to families who are financially eligible to receive care because the family's gross

income is equal to or under 200 percent of the federal poverty level and they have one or more of the following needs for care:

- 1. a low-income (200 percent or less of the federal poverty level) parent/caretaker needs child care in order to accept employment or remain employed and would be at risk of becoming eligible for TANF if child care were not provided (At-Risk Child Care, Category 31); or
- 2. a low-income (200 percent or less of the federal poverty level) parent/caretaker needs child care in order to work, attend a job training program, or participate in an educational program, or are is receiving or needs to receive protective services (CCDBG Child Care, Category 31); or

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- 3. a parent/caretaker needs child care to work or participate in education or training; searches one month for employment after losing a job; because the child or the parent/caretaker or other adult household member has special needs; because they care for a protective child who is active with the Division of Family Services or the parent/caretaker is homeless. (SSBG Child Care, Category 31).
- B. DSS programmed its CCMIS the DCIS II Child Care Sub system to include all the above child care needs into one category, Category 31. Therefore, Child Care Case Managers will only have to consider whether parent/earetakers parents/caretakers meet just one of the above needs to include them in a Category 31 funding stream. However, DSS also programmed its CCMIS the DCIS II Child Care Sub system so that it could make the policy distinctions needed to make payments from the appropriate funding source for each child in care. Though Child Care Case Managers will not have to make these distinctions, it is helpful to know them.

They are:

- At-Risk Child Care will only include parent/ earetakers parents/caretakers who need child care to accept a job or to keep a job.
- It will include parent/caretakers parents/caretakers who have the need for child care because of a special needs child or a protective child, but it will always coincide with the parent/caretaker's need to accept or keep a job.
 - 2. CCDBG Child Care will include:
- a. parent/caretakers parents/caretakers who need child care to accept or keep a job, and/or
 - b. participate in education or training, or
- c. children who receive or need to receive protective services.

It will also include parent/caretakers parents/ caretakers who need care because of a special needs child. It

will always coincide with the parent/caretaker's need to work or participate in education or training. It will not include parent/caretakers parents/caretakers who have a special need or other adult household member who has a special need.

- 3. SSBG Child Care will include:
- a. parent/caretakers parents/caretakers who need child care to accept or keep a job,
- b. <u>parent/caretakers</u> <u>parents/caretakers</u> who need child care to participate in education or training,
- c. parent/caretakers parents/caretakers whose only need is a special need child or special needs adult household member,
 - d. children who need protective services, or
- e. parent/caretakers parents/caretakers who are homeless.

11003.7.5 Income Eligible/Education and Post-Secondary Education

Parent/caretakers Parents/caretakers who participate in education and post-secondary education can receive income eligible child care for the duration of their participation as long as:

- A. their participation will lead to completion of high school, a high school equivalent or a GED; or
- B. their participation in post-secondary education was part of a TANF Employability Development Plan; Employment and Training program; or
- C. their participation in post-secondary education began as a requirement for while participation participating in the Food Stamp Employment & Training (FS E&T) program; and
- D. there is a reasonable expectation that the course of instruction will lead to a job within a foreseeable time frame, such as nursing students, medical technology students, secretarial or business students.

DSS will not authorize child care services for parent/ caretakers parents/caretakers who already have one four year college degree or are in a graduate program.

11003.7.8 Special Needs Children

Policy is yet to be decided.

The designation of special needs impacts both eligibility and parent fees.

<u>See section 11004.7 to determine eligibility for waiving the parent fee.</u>

Eligibility

A family can be eligible for Child Care for a child that is between ages 13 and under 19 if the child has a special need that requires child care. This would mean the child is unable to care for himself physically or emotionally, or Division of

Family Services (DFS) has referred the child for care due to a protective need.

Families with special needs children or adults must meet the **need** for services and income eligibility.

EXAMPLE: A financially eligible family with two working parents requests child care for their 14 year old child with Down Syndrome. The 14 year old is incapable of caring for himself due to the Down Syndrome. They would be eligible for Child Care due to the special needs of the child.

The special need of a child or an adult that directly results in the need for child care can in itself be the need for care when determining eligibility as long as they meet financial eligibility.

EXAMPLE: A financially eligible family of four with a working Father and a stay at home Mother requests child care for their 12 month old child with a developmental delay. In this case if it is verified that the child needs child care services to assist in increasing the development of the child, they would be eligible.

EXAMPLE: A financially eligible family of four with a working Father and a stay at home Mother requests child care for their two children ages 2 and 4. The mother was involved in a car accident and is unable to get out of bed. The special need of this mother would be the need for care.

All special needs for both the child and adult must be verified by using the Special Needs form.

Parent fees can be waived only in accordance with section 11004.7.

Special circumstances within a family may be considered on a case by case basis when determining the need for child care. These cases must be approved by the Child Care Administrator.

EXAMPLE: Two older grandparents have custody of their 4 yr old grandchild. The grandmother is unable to care for the child due to health reasons and the grandfather would like to look for work. There is no need for care since the grandfather is in the home. The circumstances of this four year old could qualify the grandparents for special needs child care. In this case still try to get a special needs form filled out that would address the 4 yr olds need to be in a day care setting with other children to enhance the child's social and emotional development.

Division of Family Services

DFS cases meet the need for service due to the DFS referral. DFS cases do not need to meet financial eligibility. DFS cases that are non citizens and do not meet our citizenship criteria are eligible for services due to the DFS referral. DCIS II Child Care Sub system would place these cases in Category 51.

11003.9.1 Countable Income

- A. <u>Countable income.</u> All sources of income, earned (such as wages) and unearned (such as child support, social security pensions, etc.) are countable income when determining a family's monthly gross income. Monthly gross income typically includes the following:
- 1. Money from wages or salary, such as total money earnings from work performed as an employee, including wages, salary, Armed Forces pay, commissions, tips, piece rate payments and cash bonuses earned before deductions are made for taxes, bonds, pensions, union dues, etc.
- 2. Gross income from farm or non-farm self-employment is determined by subtracting business expenses such as supplies, equipment, etc. from gross proceeds. The individual's personal expenses (lunch, transportation, income tax, etc.) are not deducted as business expenses but are deducted by using the TANF standard allowance for work connected expenses. In the case of unusual situations (such as parent/caretaker just beginning business), refer to DSSM 9056 and 9074.
- 32. Social Security pensions, <u>Supplemental Security Income</u>, <u>Veteran's benefits</u>, public assistance payments, net rental income, unemployment compensation, workers compensation, pensions, annuities, alimony, <u>adoption assistance</u>, <u>disability benefits</u>, <u>military allotments</u>, <u>Rail Road Retirement</u>, and child support.
 - B. <u>Disregarded Income</u>

Monies received from the following sources are not counted:

- 1. per capita payments to, or funds held in trust for, any individual in satisfaction of a judgement of Indian Claims Commission or the Court of Claims;
- 2. payments made pursuant to the Alaska Native Claims Settlement Act to the extent such payments are exempt from taxation under ESM 21(a) of the Act;
- 3. money received from the sale of property such as stocks, bonds, a house or a car (unless the person was engaged in the business of selling such property, in which case the net proceeds are counted as income from self-employment);
 - 4. withdrawal of bank deposits;
 - 5. money borrowed or given as gifts;
 - 6. capital gains;
- 7. the value of USDA donated foods and Food Stamp Act of 1964 as amended;
- 8. the value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food service program for children under the National School Lunch Act, as amended;

- 9. any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
- 10. earnings of a child under the age of 14 years of age
- 11.10. loans or grants such as scholarships obtained and used under conditions that preclude their use for current living costs;
- 12.11. any grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the Commissioner of Education under the Higher Education Act;
- 13.12. home produce utilized for household consumption;
- 44.13. all of the earned income of a minor or minor parent (under 18) who is a full-time student or a part-time student who is working but is not a full-time employee (such as high school students who are employed full-time during summer);
- 15.14. <u>all</u> payments derived from participation in projects under the Food Stamp Employment & Training (FS <u>E&T</u>) (such as <u>CWEP</u>) program or other job training programs; and
 - 16.15. all Vista income.; and
- 17.16. all income derived as a Census taker. during the period between April 1, 2000 and December 31, 2000.

Resources (such as cars, homes, savings accounts, life insurance, etc.) are not considered when determining financial eligibility or the parent fee.

11003.9.2 Whose Income to Count

In all Category Categories 13 and 31 cases, count all income attributable to the parent(s) as family income. Family as used here means those persons whose needs and income are considered together. A person who acts as a child's caretaker (as defined in Section 11002.9), is not included in the definition of family. In this instance, any income attributable to the child or children is the income which is counted.

Income of active DFS referrals/cases is excluded. Active DFS referrals/cases do not need to meet financial eligibility.

11003.9.3 Family Size

The people whose <u>needs</u> and <u>income</u> are considered together comprise the definition of family size. Family size is the basis upon which DSS looks at income to determine a family's financial eligibility. Therefore, knowing who to include in the determination of family size is an important

part in deciding financial eligibility. Rules to follow when considering family size are relationship and whose income is counted.

A. Parents (natural, legal, adoptive, or step) and their children under 18 living in the home, will always be included together in the make up of family size.

EXAMPLE 1: Ms. Brown, a single mother, lives together with her two year old daughter. She is applying for child care as a Category 31, income eligible case. Mrs. Brown and her daughter are a family size of two.

EXAMPLE 2: Susan Jones and Mark Evans live together as unmarried partners. Susan has a one year old child from a previous relationship. She applies for Category 13 31 child care. Susan and her child are a family size of two. Mark is not counted. His income is not considered since he is not the father of the child. (NOTE: If Mark Evans admits to being the natural parent of the child, his income is counted and this is a family of three.)

EXAMPLE 3: Ms. Johnson, a single parent, has three children ages 13, 10, and 5. She works and needs child care for her youngest child who attends preschool. She is applying for Category 31 child care. Even though she needs care for only one child, her family size is a family size of four when looking at financial eligibility.

EXAMPLE 4: Ms. Green cares for her three year old niece. Ms. Green works and needs child care. Since Ms. Green is not the parent of the child, she is considered a caretaker. Therefore, Ms. Green's income is not counted and she is not included in the family composition. Ms. Green's niece is considered a family size of one and any income attributable to the niece is countable income.

EXAMPLE 5: Mom and step-dad live with mom's two children, ages two and five, from a previous marriage. Mom and step-dad both work and need child care. Mom, step-dad, and her two children are a family size of four. Step-dad is included.

EXAMPLE 6: Mom and step-dad live with mom's three year old child from a previous marriage. Step-dad also has a five year old child from a previous marriage living in the home. Mom and step-dad both work and need child care. This family is a family size of four.

EXAMPLE 7: Mom and her unmarried partner have a child in common. Mom and the unmarried partner also have one child each from previous relationships. Since Mom and the unmarried partner have a child in common the needs and income of each parent will be considered for all three children. This would be a family size of 5. In this example the Child Care Sub system will first build the family together as one AG. If the AG fails the system will break this family down into 3 AG's to determine as many persons eligible as possible. The three AG's would be Mom,

unmarried partner and child in common, Mom and child from a previous relationship, unmarried partner and his child from a previous relationship.

B. Adults who are not the natural, legal, adoptive, or step-parent of the child or children under 18 living in the home are not included.

EXAMPLE: Mom lives with her grandmother. Mom has two children ages 10 and 6 for whom she needs after-school care. Mom and her two children are considered a family size of three. Grandmother is not included because she is not the parent of the children nor is her income counted.

NOTE: In all instances, the people counted together for family size when considering financial eligibility are the same people counted for family size when considering the family's child care fee.

11003.9.5 Making Income Determinations

DSS programmed the CCMIS DCIS II Child Care Subsystem to automatically make financial eligibility decisions. As long as the appropriate income for the appropriate persons is entered into the system, and as long as the correct family size is entered calculated, the CCMIS DCIS II Child Care Subsystem will calculate income and determine eligibility.

In the event of system failure, use 4 1/3 weeks per month to compute a person's monthly gross income. If there is a variance in wages, use the average of the last month's wages or the average of the last three month's wages, whichever is less.

The following are examples for converting various pay schedules to monthly income:

- A. Client A is paid \$200.00 per week 200 x 4.33 = 866/month.
- B. Client A is paid \$200 per week, but has a varying work schedule. Week one \$200; week two \$100; week three \$176; week four \$200. 200 + 100 + 176 + 200 = 676 divided by 4 = 169/week average. 676 + 169/week average.
- C. Client B is paid \$400 every other week. \$400 x 2.16 = \$864.
- D. Client C is paid \$950 twice a month. $$950 \times 2 = $1900/month$.
- E. Other sources of income, such as child support, are added to wages either as the actual amount received or as an average of the amount received in the past three months.

11003.10 Changes In Need Or Income

Parent/caretakers Parents/caretakers are required to report changes that affect either their need for child care or their income. Parent/caretakers Parents/caretakers are to

report these changes to their Child Care Case Manager within 10 days. The types of changes that parent/caretakers parents/caretakers are to report are:

- A. loss of job;
- B. new employment;
- C. for Category 13, 21, or 31cases, any increase or decrease in wages or income resulting in a change to income of \$75 or more per month;
- D. for Category 13, 21, or 31 cases, any other change to income which will result in an increase or decrease to income of \$75 or more (such as a change in child support); or
- E. D. any change in education/training or other status which would impact the parent/earetakers parents/caretakers need for care.

11004 Application Processing

Any parent/caretaker who expresses a desire for child care services may apply by contacting a DSS office. The process to actually obtain child care services starts when parent/caretakers parents/caretakers contact a Case Manager. Consider this an informal inquiry unless or until it results in the completion of a written application. (Form 600, Eligibility Screening Application).

An informal inquiry typically involves a parent/ caretaker's phone call or unannounced child care office visit to seek information about eligibility for child care services. Process all informal inquiries by doing a simple review of the parent/caretaker's need in the creation of a child care case in the CCMIS DCIS II Child Care Sub system, but will likely include a CCMIS search for any information which might be on file. Following this simple screening, parents/ earetakers parents/caretakers are told they either appear eligible or ineligible for service. Case Managers will schedule a formal interview for those parent/caretakers who appear eligible, while For those applicants who appear to be eligible, proceed with the formal application process, schedule an appointment or send them the application and outline the necessary information to be returned with the signed application. Case Managers will inform those parent/ earetakers parents/caretakers who do not appear eligible of their right to file a formal application if they still so choose.

During the informal process, no obligation exists to provide parent/earetakers parents/caretakers with a written decision of the eligibility finding nor are parent/earetakers parents/caretakers able to appeal an informal decision. In either case, however, Case Managers will always conduct or schedule a formal interview for parent/earetakers parents/caretakers who appear eligible or those who assert their right to make a formal request.

The formal application process is detailed below, including the requirements for authorizing child care services, the minimum requirements for verifying eligibility information, the standards for determining child care fees, and conditions for when and why a child care case should either continue or close. Review this information in close conjunction with the Client Management Section of the CCMIS User Manual. The Client Management Section of the User Manual details the automated process for creating cases, authorizing service, and for reauthorizing or closing service. Where appropriate, the policy information presented here will make specific reference to the User Manual.

11004.1 Formal Application Process

The formal application process will always consist of the following:

- A. a Case Manager, parent/caretaker interview: (in person or over the phone)
- B. a review and verification of eligibility requirements;
- C. a review of the parent information about child care certificates;
- D. a determination of eligibility along with written parent/caretaker notification of the eligibility decision;
- E. completion of the Child Care Eligibility Screening Form (Form 600); Application for Child Care Assistance;
- F. as necessary, a determination of the child care fee;
- G. creation of a case in the CCMIS DCIS II Child Care Sub system;
- H. as appropriate, completion of the Service Authorization Form (Form 618d);
- I. completion of the Child Care Payment Agreement (Form 626); and
- J. a review of the parent/caretaker's rights and responsibilities, such as keeping their Case Manager informed of changes.

11004.2 Interviews

Case Managers normally conduct face to face formal interviews. This means that Case Managers normally schedule office appointments for parent/caretakers. However, there may be occasions where a face to face interview is not necessary.

Complete an interview either over the phone or in person.

EXAMPLE: A parent is receiving Food Stamp
Employment & Training (FS E&T)AFDC Child Care

(Category 12). The parent has an increase in income which closes her AFDC. Her AFDC child care also closes. She is still working and needs child care.. The parent qualifies for Transitional Child Care. In this instance, sends the parent CCMIS generated AFDC_letter 4030 (AFDC closing with text noting the possibility for getting another form of care). If the parent calls and requests continuation of child care, the Case Manager need not schedule the parent for a face-to-face interview to allow this.

Other instances may exist when face to-face interviews may be waived before authorizing care (for example, because of a job, a parent needs to start care immediately). However, consult a supervisor before doing so.

Schedule appointments for formal interviews in the following manner.

When scheduling an applicant for an interview do so in the following manner.

- A. As soon as reasonably possible after the parent/caretaker makes an informal contact set a specific day and time for an interview. Consider the parent/caretaker's schedule and attempt to schedule appointments at parent/caretaker convenience.
- B. Advise the parent/caretakers parents/caretakers of the information they will need to bring to the formal interview. At a minimum parent/caretakers parents/caretakers should bring:
- 1. if employed, current pay stubs <u>covering the 30</u> <u>days immediately before</u> <u>from the most recent month of</u> the date of application or a letter or employer statement <u>(on company letterhead)</u> noting the employer's name, the parent/caretaker's work schedule, earnings, <u>frequency of pay</u>, and start date;
- 2. if in training and/or school, a statement from the school/training program with starting and completion dates and days and hours required to attend or a copy of a registration form and class schedule;
 - 3. any other income information;
- 4. any other information which may have a bearing on establishing need, such as:
- a. in cases of a special need for either a child or an adult, parent/caretakers parents/caretakers must complete the Special Needs Form (Form #601);
- b. for a protective need, <u>a</u> complete<u>d</u> the Division of Family Services Referral; or
- c. provide some other written documentation from a recognized professional (such as doctor, social worker, nurse, school counselor, etc.) of the special needs.
- C. Along with appointment information, send and/or give parent/caretakers parents/caretakers a child care certificate package and a list of approximately five available contracted providers. Instruct parent/caretakers parents/

caretakers to select a provider prior to the formal interview. Even though parent/caretakers parents/caretakers may ultimately select providers under contract with DSS, provide them with enough information to make an informed choice. Therefore, in all instances, send and/or give parent/caretakers parents/caretakers a certificate package and Guide to Quality Child Care booklet. Inform clients that if they fail to provide the DSS Case Manager with a provider within 60 days of eligibility confirmation and noticing, their case will close.

- D. For parent/caretakers parents/caretakers who come into the office without a scheduled appointment, conduct the formal interview process that same day if possible. However, the parent/caretakers parents/caretakers need to select a child care provider before care can be authorized.
- E. Though verification of the appropriate information to establish need is important, the system will authorize Presumptive Child Care service ean be authorized for approximately one month while certain information verification is pending. in an emergency. In this case, the system will, give notice of needed information, authorize child care for approximately one month (depending on the date of application) and end date the authorization.; allow parent/caretakers If the system does not authorize Presumptive Child Care, parents/caretakers will be given ten days from the date of the initial application to secure and provide the necessary documentation. If the parents/ caretakers receive Presumptive Child Care and the initial application date in this case occurs between the first and the ninth of the month, the authorization for care will extend to the end of the current month. If the initial application in this ease occurs from the tenth of the month or after, authorization for care will extend to the end of the following month. (For more information on Presumptive Child Care see section 11004.8.) If after the ten days, documentation is not provided, send the parent/earetaker a Failure To Provide Information Closing letter notice (CCMIS letter 4020) informing the parent/caretaker that services will end. If the parent/caretaker provides documentation, extend the authorization accordingly.

EXAMPLE 1: A parent comes into the office on January 6 and needs to start work beginning January 7. The parent meets eligibility criteria. The system will Authorize authorize Presumptive Child Care until January 31 and give the parent until January 22 16 to provide proof of employment. If by January 22 16 the parent provides proof, Create a new authorization to reflect a new authorization end date of June 30., enter the information and verification into the system and run SFU/EDBC. The system will generate a new authorization with the end date of June 30th. If by January 17 the parent fails to provide proof, CCMIS a DCIS

<u>II Child Care Sub system</u> letter 4020 <u>notice</u> is mailed informing the parent that child care services will end as of January 31.

EXAMPLE 2: A parent comes into the office on January 12 and needs to start work beginning January 13. The parent meets eligibility requirements. The system will Authorize authorize care until February 28 and give the parent until January 22 to provide proof. If By by January 22 the parent provides proof- enter the information and verification into the system and run SFU/ EDBC. The system will generate a new authorization with an end date of June 30th. Create a new authorization to reflect the new authorization end date of June 30. If by January 22 the parent fails to provide proof, CCMIS a DCIS II Child Care Sub system letter notice4020 is mailed informing the parent that child care will end as of February 28.

11004.2.1 Conducting the Interview

The formal interview will include:

- A. an evaluation of parent/caretaker parents/caretakers need for child care services (see Section 11003);
- B. a determination of financial eligibility as needed;
- C. an assessment of the family's child care needs as well as the needs of the child(ren) to be placed in care;
- D. an explanation of the available types of child care; the choices parent/earetakers parents/caretakers have regarding these provider types; the various provider requirements regarding licensure, possible co-pays, health, and safety, including record of immunization; and required child abuse and criminal history checks;
- E. an explanation of DSS payment rates and parent fee scale, including a discussion of how fees are assessed, where fees are to be paid, what happens if the fee is not paid, and how parent/earetakers parents/caretakers are to keep DSS informed of changes that affect fees;
- F. an explanation of parent/earetakers parents/caretakers rights and responsibilities;
- G. completion of the Child Care Screening Application Application for Child Care Assistance, and as applicable completion of the Child Care Authorization and the Child Care Payment Agreement form; and
- H. verification of appropriate information establishing need and income.

Upon concluding the interview, generate a CCMIS Approval (2000) or Denial (3000 or 3010) letter. This letter informs the parent/caretaker of the eligibility decision, the reason for the decision if eligibility is denied, and each child who is eligible or ineligible to receive services.

The entire process, from the time when parent/earetakers parents/caretakers make an informal request for child care to the time when a decision is finally made, should take no longer than one month.

Parent/earetakers <u>Parents/caretakers</u> who fail to keep their initial appointment for <u>a formal an</u> interview are given the opportunity to reschedule.

11004.3 Review and Verification of Eligibility Requirements

As part of the formal application process, use the parent/earetaker parents/caretakers interview to review and verify eligibility requirements. This interview will always include an evaluation of the parent/earetaker parents/caretakers need for child care and, as appropriate, a determination of financial eligibility. Section 11003, Eligibility Requirements, provides guidance for this review.

When a parent/caretaker makes a contact to inquire about child care, ask the following questions of the parent/caretaker to determine and verify need (these questions follow the eligibility requirements noted in Section 11003 and match CCMIS DCIS II Child Care Sub system need codes in the CCMIS User Manual, Section 9.8).

- A. Is the parent/caretaker employed or <u>in</u> do they need <u>of</u> child care to accept employment? (Category 12 for Non-Food Stamp Employment & Training (FS E&T) <u>TANF</u> employed or Category 31 if not on TANF)? The caretaker must be part of the TANF grant to be a Category 12.
- B. Is the parent/caretaker a former AFDC recipient who is now employed and no longer receiving AFDC because of this employment (Category 13 TCC)? Is the parent a TANF Employment and Training participant and needs care to participate in a TANF Employment and Training activity? (Category 11)
- C. Is the parent/caretaker a Food Stamp Employment & Training (FS E&T) participant? (Remember, for a caretaker to be a Food Stamp Employment & Training (FS E&T) AFDC participant, she/he must be part of the AFDC grant. This is Category 11 or 21.)
- D. Is the parent/caretaker a self-initiated participant (Food Stamp Employment & Training (FS E&T), —AFDC) TANE, or a volunteer (Food Stamp) for mandatory or voluntary Food Stamp Employment & Training (FS E&T)? (This includes is Categorie 11 or 21.)
- E. Is the parent/caretaker enrolled in and regularly attending a training program or going to school? (Category 31)?
- F. Is a special needs child or parent/caretaker in the household? (Category 31)?
- G. Is there a protective referral from Family Services? (Category 31)?

H. If the parent/caretaker meets a Category 13 or 31 need, is their the family income equal to or below 200 percent of the federal poverty level needs?

Use the appropriate documents identified in Section 11004.2 to verify the need for service. However, verification will not delay authorization of service in the event documentation is not immediately available. See Section 11004.3.1 Service Priorities, to determine what may delay service. Authorize service while allowing parent/earetakers parents/caretakers ten days to provide the appropriate verification. If the client is applying for services the system will automatically determine eligibility for Presumptive Child Care. The system will generate the appropriate notices, request the information and end date the authorization. If the client does not meet Presumptive requirements and fails to provide requested information the system will close the case and give appropriate notice. (For more detail on Presumptive Child Care see section 11004.8) If after this time documentation is not provided, send the parent/caretaker the Failure to Provide Information Closing letter (CCMIS letter 4020) informing the parent/caretaker that services will end (see Section 11004.2 for details).

Place the appropriate category and service need in the marked boxes of the Child Care Screening Application (Form 600).

11004.3.1 Service Priorities

In addition to the eligibility questions in Section 11004.3, determine if the applicant meets a priority for service. If the applicant has a need, but is not a service priority, services may be delayed. Delay services by placing non-service priority applicants on a waiting list while authorizing service for those who are a priority. The following families qualify for priority service:

- A. Food Stamp Employment & Training (FS E&T)

 AFDC participants in approved Food Stamp Employment &
 Training (FS E&T) components TANF recipients who are
 Workfare mandatory and not working (Category 11);
- B. Non-Food Stamp Employment & Training (FS E&T) families in Child Care TANF recipients who are working; (Category 12);
- C. families who qualify for Transitional Child Care in Category 13;
- DC. families qualifying for child care services under the Food Stamp Employment & Training (FS E&T) program in an approved Food Stamp Employment & Training (FS E&T) AFDC component Individuals receiving FS who are mandatory E&T participants; (Category 21);

- <u>E.D.</u> <u>Families in Category 31 with the following need for service:</u>
- 1. teen parents who attend high school or ABE or GED programs,
 - 2. special needs parent/caretaker or child, and
- 3. homeless families as defined in Section 11003.7.2:
- 4. <u>families who meet the 75% of FPL criteria in Section 11004.7</u>
- F. E. protective children as referred by Family Services up to the number agreed upon between DSS and Family Services.

Parent/caretakers Parents/caretakers in the above circumstances will continue to receive child care services as long as they meet the service need and they continue to meet program requirements, e.g., they continue in Food Stamp Employment & Training (FS E&T).

11004.4 Child Care Certificates

As part of the formal application process, inform all parent/caretakers parents/caretakers of their right to choose a child care provider. Parent/caretakers Parents/caretakers may elect to use a provider under contract with DSS or elect to receive a child care certificate. The child care certificate allows parent/caretakers parents/caretakers to select any licensed non-contract provider or license-exempt provider. The child care certificate is part of a package of information provided to parent/caretakers parents/caretakers as part of the formal application process. It is necessary to not only provide parent/earetakers parents/caretakers with a copy of this package, but explain the purpose of this package and ensure that parent/caretakers parents/caretakers reasonably understand its contents.

11004.4.1 Explanation of Certificates

Use the following as a guide to explain the child care certificate package.

- A. <u>Parents/caretakers</u> <u>Parent/caretakers</u> can use this package to select a child care provider of their choice. However, they must select care that is legal. Legal care is care that is licensed or that is exempt from licensing requirements.
- B. Licensed Care: In Delaware, all family child care homes, group homes, and child care centers must have a license to operate. Do not allow a parent to select an unlicensed family, group, or center child care provider.
- C. License-exempt Care: The following provider types are exempt from licensing requirements in Delaware:
- 1. persons who come into the child's own home to care for the parent/caretaker's child,

- 2. relatives who provide care in their home for the parent/caretaker's child;
 - 3. public or private school care,
 - 4. preschools and kindergarten care, and
 - 5. before and after school care programs.

Though the above provider types are exempt from licensing requirements, they are still required to meet certain health and safety standards. These standards are:

- 1. maintaining documentation of the child's immunization record,
 - 2. safe and clean building premises,
- 3. providers and those 18 and older who live in the home where care is being provided must not have any record of child abuse or neglect (do not allow persons to provide care where there is a known record of abuse or neglect), and
- 4. relatives who provide care cannot be part of the welfare grant.
- D. Once <u>parents/caretakers</u> parent/caretakers know the appropriate provider to select, they also need to know how DSS will pay for the care provided. DSS has established rates above which it will not pay (see Appendix II for current reimbursement rates).

<u>Parents/caretakers</u> Parent/earetakers will need to know these rates and whether or not the provider is willing to accept them. If the provider is willing, the certificate will act just like a DSS contract and DSS will pay the provider directly less any child care fee. If the provider is not willing, the parent/caretaker will self-arrange care with the individual provider.

If the provider contracted purchase of care slots are full, the provider may offer the parent/caretaker the option of receiving service as a purchase of care plus client. The provider then receives the regular DSS subsidy from the Division, the DSS determined parent fee and any additional fee determined by the provider from the parent/caretaker.

If the provider is not willing to accept purchase of care plus, the parent/caretaker will self-arrange care with the individual provider. The parent/caretaker will pay the provider and submit an original receipt to DSS for reimbursement. The parent/caretaker, however, will only receive reimbursement up to the DSS statewide limit.

E. The provider will need to complete and return the original copy of the actual child care certificate before Case Managers can authorize care. Relative and non-relative providers will also complete and return the Child Abuse/Neglect History Clearance Form or forms for all members 18 and older living in the home. If this form is not returned, discontinue care. Other exempt providers will need to keep a completed child/abuse and criminal history declaration statement on file for each child care staff member.

- F. Service will not be delayed because of an incomplete child abuse clearance check, but remind <u>parents/caretakers</u> parent/caretakers that DSS will not pay for care if, after authorization, the check should reveal a history of abuse or neglect.
- G. Allow <u>parents/caretakers</u> <u>parent/earetakers</u> one month to use a certificate. If the certificate is not used within that time, it no longer remains valid and the <u>parents/caretakers</u> <u>parent/caretakers</u> will need to obtain a new certificate if they still wish to receive service.
- H. The original copy of the child care certificate is completed and returned by the provider. The certificate package provides instructions for completion. The provider should keep a copy.
- I. The client has 60 days from confirmation of eligibility to provide the DSS Case Manager with the name of his/her provider. If the client fails to provide this information his/her case will close.
 - 8 DE Reg 1153 (2/1/05)

11004.5 Determination of Eligibility

DSS programmed the CCMIS DCIS II Child Care Subsystem to make eligibility decisions. As Case Managers enter the appropriate parent/caretaker information, the CCMIS DCIS II Child Care Subsystem will notify Case Managers whether they can proceed to authorize service. As a case is determined either eligible or ineligible, use the appropriate letter of the CCMIS letter function the DCIS II Child Care Subsystem will send the appropriate notice to inform the parent/caretaker of the DSS child care eligibility decision. Letters are not automatically generated by the CCMIS; therefore, ensure they complete this step. Parent/earetakers Parents/caretakers, whether ineligible eligible or not, will always receive a written decision regarding their official request for child care services.

11004.6 Child Care Eligibility Screening Application

Complete a an Child Care Eligibility Screening Application Application for Child Care Assistance for all parent/caretakers parents/caretakers before authorizing child care services. The information from this form becomes the basis upon which child care services are authorized. Therefore, the information should be as complete and accurate as possible. It is important for the parent/caretaker requesting service to sign this application. Their signature represents their official request for service. If a face-to-face interview is not conducted to obtain the information to complete the application, obtain the parent/caretaker signature on the application at the earliest opportunity after service is authorized. Do not allow parent/caretakers parents/

<u>caretakers</u> to receive services beyond one month without having a signed application on file.

When it is necessary to authorize new child care services to parent/caretakers parents/caretakers because of a category change (such as parent/caretakers parents/caretakers going from a Category 11 to 13 31), it is not necessary to have parent/caretakers parents/caretakers complete a new child care servening application. This enables DSS to maintain the concept of seamless service.

11004.8 - Creation Of A Case In The CCMIS-Presumptive Child Care Services

It will not be possible to complete a child care application until a case is created in the CCMIS. Only by creating a case is it possible to authorize and allow payment for child care services. If the CCMIS is not functioning when the parent/caretaker is interviewed, manually complete the information needed to create a case and authorize care, and enter the information into the CCMIS at the earliest opportunity. The beginning date for service in this instance will be the actual interview date or the date the parent/caretaker needs service to begin. Follow the Client Management Section of the CCMIS User Manual.

In creating a case, observe the following rules.

- A. The first person entered in the case is the casehead, e.g parent/caretaker.
- B. Complete a search of the Master Client Index (MCI) for each participant before initiating new records (see the User Manual for instructions). If clients are not currently receiving DSS benefits, ask if clients ever received benefits in the past. This will assist the MCI search.
- C. Register each participant (i.e. parent/caretaker or child) who is not already registered in the Master Client Index
- D: CCMIS data screens have required data fields. These fields are "starred" on the CCMIS data screens. It is necessary to complete the data for these fields before the system will allow ease processing to proceed.
- E. When entering a "new" case, enter an "N" for Action Type (see the User Manual for coding instructions).
- F. Review dates for new cases on the CASE INFORMATION screen should have a maximum time period of six months from the date of application (use end of month dates, e.g. January 31). Time periods can be for less time, but must never exceed six months. This date does not correspond to the authorization ending date, but is used for Case Manager worklisting purposes. The next review period is the time during which redetermination of parent/caretaker eligibility is done to ensure that child care services can either continue or should close.

G. DSS programmed the CCMIS to allow for entry of information related to category and need at the child level instead of the case level. DSS did this to enable Case Managers to split children into different categories when all the children from the same household cannot be placed into one category.

EXAMPLE: Two children are in the home, one child is part of the AFDC grant and can receive care under Category 12 and the other child in the home is not part of the AFDC grant. The parent/caretaker also needs child care for this child. By entering information at the child level, it is possible to place this child into a Category 31 and spilt the two children by category for funding purposes.

Case Managers, therefore, determine category and need based on the parent/caretaker's circumstances, but enter this information in the CCMIS at the level of the child.

- H. It is not possible to add income sources or employers for active DCIS cases (i.e. open in AFDC or Food Stamps). However, it is possible to adjust wages or other income sources. Remember it is from these income sources that the CCMIS will determine financial eligibility and fees. Case Managers should make every effort, therefore, to ensure this information is accurate.
- I. Once all appropriate casehead information has been entered, add the "child" participant(s) to the case. Add child participant(s) in the same way as the casehead. However, enter information related to category and need, and the fee waived reason (if the fee is to be waived), at the child level for this information to register in the CCMIS. If this is a Category 11 or 12 case, the CCMIS waives the fee automatically.

Presumptive Child Care is a limited one to two month eligibility period and authorization for child care. This will be automatically generated when a mandatory verification field is in the "pending verification" status and the parent/caretaker did not receive Child Care in the previous month.

When the case is entered into the DCIS II Child Care Sub system and the status is pending due to verification needed, the system automatically calculates the 10 day period allowed for the return of necessary information. If the case is entered and the 10 day calculation falls prior to adverse action, the system will generate an authorization for the current month only. If the case is entered and the 10 day calculation falls after adverse action the system will generate an authorization for the current month and the next month only. Eligibility will be denied after the presumptive period if the client does not return the necessary information. It will be necessary to change the appropriate fields and check verified if the client returns the necessary information. The system will generate the appropriate notices.

If a client was opened in Presumptive Child Care or denied Presumptive Child Care in the previous determination, Presumptive Child Care will not be issued.

11004.9 Authorizing Service

See Administrative Notice: A-7-99 Child Care Issues

Once a case is created, service must be authorized before parent/earetakers parents/caretakers can receive subsidized child care. Authorization is both the name for the form (618d) and the process to grant parent/earetakers parents/caretakers child care services (see Section 11002.9 for definition).

Complete a separate authorization for each child who is eligible to receive child care services. Therefore, if there is more than one child in a family who needs service, complete separate authorizations for each child. Complete an authorization by creating one in the CCMIS DCIS II Child Care Sub system. Again, as when entering a case, CCMIS in DCIS II authorization data screens have required data fields which are "starred." highlighted. Complete these data fields before proceeding. Follow the rules below in creating authorizations.

- A. Obtain provider information before completing an authorization. This means that if parents/caretakers wish to select a provider by using a child care certificate, they must have the certificate returned before an authorization can be issued.
- B. Parent/caretakers Parents/caretakers can only choose providers who are either self-arranged, licensed exempt or who can be matched to existing information in the Site Referral function of the CCMIS DCIS II Child Care Subsystem. If the provider selected has a contract with DSS, this provider will be listed in the CCMIS DCIS II under the Site Referral section. Access these providers through their site ID# or site search. Finally, if parent/caretakers parents/caretakers use a certificate and they select a contracted provider, consider this as contracted care even though the parent/caretaker used a certificate.
- C. When parent/caretakers parents/caretakers wish to self-arrange child care, ensure the parent submits the information on the Self-Arranged Provider Agreement and Registration Form. When parent/caretakers parents/caretakers wish to arrange certificate child care, ensure the parent submits the information on the Child Care Certificate Provider Agreement and Registration Form. Send the appropriate form to the Child Care Monitor for CCMIS processing. The monitor will notify the Case Manager when the information is data entered.
- D. When the monitor notifies the Case Manager that data has been entered in CCMIS, enter effective and expiration dates on the authorization. Effective dates will

always start when service is due to begin. In most cases, service will begin either the same day the authorization is completed or on a date in the near future. However, there may be occasions when service will begin prior to the actual date of the child care interview.

EXAMPLE 1: The TANF parent who self-initiates a Food Stamp Employment & Training (FS E&T) training or education component. In this case, make the authorization effective as of the date the parent started the component activity if the parent needed child care for the activity- and was financially eligible.

EXAMPLE 2: When a Child Care Case Manager receives a protective referral from Family Services after child care services have already started.

EXAMPLE 3: A parent/caretaker who has already obtained child care, but who meets the eligibility criteria for Transitional Child Care, e.g. the parent/caretaker's AFDC case closed because of employment, they are now getting child care on their own, but did not realize until now that they could qualify for TCC.

The ending date for the authorization period means the last day for which Case Managers can authorize care. The authorization period will differ depending upon the child care category can not exceed the recertification date. This is for all categories of care.

- 1. For categories 11, 12, and 21 child care, authorize care for periods of up to one year.
- 2. For Category 13, Transitional Child Care, authorize care for the parent/caretaker's entire eligibility period up to a maximum of 12 months.

NOTE: Eligibility for TCC begins the first month after the closing of the AFDC case and extends for 12 consecutive months.

3. For Category 31 child care, authorize care for periods of up to six months or less depending upon the parent/caretaker's circumstances.

Though care can be authorized for periods greater than six months, it is still necessary to review each child care case at least every six months to ensure that the parent/caretaker remains eligible for services.

As noted above, the ending date will always be the last day of the month of the authorization period.

EXAMPLE: A Category 11, 12, or 21 case has an effective date of January 17 and an ending date of December 31 of the same year, the last day of the one year authorization period.

F.E. Ensure that service is authorized only for the days and hours that parent/earetakers parents/caretakers actually need care. Therefore, only enter the following on the DCIS II Child Care Authorization Detail screens.

- 1. the appropriate number of days per week that parent/caretakers parents/caretakers will need care, for example 1, 2, 3, 4, or 5 days;
- 2. the appropriate type of care needed, half-day (P), full-day (X), day and a half (T), or two full days (D) (supervisory approval is necessary for T and D care);
- 3. whether absent days are paid (absent days correspond to the number of authorized days, however, when care is self-arranged, DSS pays only for the days the child attends care). If a client is authorized for 7 days s/he does not receive paid absent days;
 - 4. whether extended care is authorized; and
 - 5. whether school care is authorized.

Refer to the User Manual to enter the appropriate codes.

G. When completing authorizations for Food Stamp Employment & Training (FS E&T) participants (Categories 11 or 21), complete the Employment and Training type and the Employment and Training component fields of the authorization screen. Employment and Training type refers to whether the participant is mandatory or a volunteer. Components refer to participant activities. The User Manual contains the appropriate codes.

H.F. The remaining fields (Category, Waive Fee Reason, Family Size, and Family Income) of the authorization screen are system completed, depending upon the information previously entered. on the CHILD CARE CASE INFORMATION screen. The authorization is now complete. Press the appropriate key to post the authorization in the system. Click the 'save' button. Complete separate authorizations if there are more children who need care.

11004.9.1 Changing Authorizations

Complete a change to an existing authorization whenever a situation occurs within the authorization period which requires a change to the parent/caretaker's situation. The CCMIS DCIS II Child Care Sub system defines this as a Change Authorization. Examples of when Change Authorizations occur are:

A. a change in the authorized level of service, for example number of days, type of service, absent days, etc.;

- B. a change of provider;
- C. a change in category;
- D. a change in parent/caretaker need;
- E. a change in family size;
- F. a change in income; or
- G. a change in the child care fee.

To make any changes necessary to the current Authorization, navigate to the Child Care Authorization Details II screen, make the change and re-run SFU/EDBC.

Change Authorizations always affect future events, meaning the change will affect future transactions (i.e., future payments for child care).

If the change, however, needs to be made to old transactions (authorizations for which DSS already made payment), complete a "Correct Transaction". See the Correct Transaction Section of the User Manual. The Correct Transaction function will, however, only affect positive changes, meaning the change caused an increase in service or a change in the child care fee, thereby increasing the provider payment. If the change were negative, meaning a decrease in service, process as an overpayment.

When changes to an authorization cause a decrease in parent/caretaker service (e.g., less care, increase in fee), DSS considers this a negative change. According to the CCMIS DCIS II Child Care Sub system, negative changes will occur the first day of the next month. Provide the parent/caretaker with adequate and timely notice whenever such a negative change occurs. DSS programmed the CCMIS DCIS II Child Care Sub system to allow for timely notice. Therefore, any negative change will not cause a change to the authorization unless sufficient time remains in the current month for Case Managers to send the parent/caretaker notice of this change. If there is not sufficient time, the change will not occur until the first day of the month following the next month.

EXAMPLE: On January 20, Case Manager X is notified by parent Y of an increase in parent Y's income. Case Manager X posts the adjusted income to the ACTIVE CLIENT EMPLOYMENT SUMMARY DCIS II income screen. (enter an "X" for Change on the CHILD CARE CASE INFORMATION screen).

The adjusted income will increase the child care fee on the authorization, which is a negative change (i.e., parent Y will have to pay a higher fee). Since this change occurs after January 20 (change does not occur until the next work day), the CCMIS DCIS II Child Care Sub system will not make parent Y's new fee effective until March 1. Case Manager X The DCIS II Child Care Sub system sends parent Y a letter notifying parent Y of the higher fee, (see the Letter function in the User Manual).

NOTE: The CCMIS does not automatically produce letters. Case Managers must complete this function.

DSS considers changes which increase the level of parent/caretaker service (e.g., increase in the number of days, reduction in fee) a positive change. The CCMIS DCIS II Child Care Sub system is programmed to allow positive client changes to occur the first day of the current month.

A neutral change, like a change in category, will generally take place the first day of the next month. However, some category changes, going from a Category 11

or 12 (no fee) to a Category 13 31 will cause a negative change. The parent/caretaker will now have to pay a fee.

EXAMPLE: Parent Y who was a Food Stamp Employment & Training (FS E&T) TANF participant and a Category 11 obtains a job. The job causes parent Y's TANF case to close. Parent Y can no longer get Category 11 child care, but qualifies for Category 11-31.31, TCC. Complete a Change Authorization to do a category change. Enter new income in the DCIS II income screens. Parent Y's TANF case is due to close on January 31, but the change is not completed until after January 21. Notify parent Y of the TANF closing. Verify parent Y's request for TCC and then make the category change from 11 to 13. Notify parent Y of the new child care fee. The category change takes place as of March 1. The DCIS II Child Care Sub system will automatically change the category code from 11 to 31, and give notice once the client is no longer eligible for TANF but continues to be eligible under category 31.

The expiration dates for Change Authorizations will remain the same as on the original authorization.

Correct Transactions

If a change needs to be made to an old transaction (authorizations for which DSS already made payment), go to the Correct Transaction screen. The Correct Transaction function is located in DCIS II Child Care Sub system. Correct transactions can only be completed for positive changes, meaning the change caused an increase in service or a change in the child care fee, thereby increasing the provider payment. The only areas that can be changed on a transaction are:

- A. family size increase
- B. income decrease
- C. waive fee code added
- D. absent days change from no to yes
- E. extended care changes from no to yes
- F. days per week
- G. type of day

Case Managers can only make corrections in the above areas to transactions created within the last 3 months. Supervisors may make changes in the above areas to any past transaction. Changes to transactions that are not editable (not listed above) will have to be referred to the Child Care Monitors.

If the change was negative, meaning a decrease in services, process an overpayment.

11004.11 Review/Determination

See Administrative Notice: A-7-99 Child Care Issues

Authorizations remain effective for the entire authorization period as long as parent/earetakers parents/

<u>caretakers</u> continue to meet the requirements for service (such as the parent/caretaker remains a Food Stamp Employment & Training (FS E&T) participant, keeps employment, remains income eligible, etc.). At least once every six months and just prior to the end of each authorization period, review/redetermine the circumstances of each parent/caretaker to see if child care services can continue. The review/redetermination process will differ for each child care category.

- A. For Category 11, 12, and 21 child care cases, perform the following every six months:
- 1. review each Category 11 and 21 case to ensure the parent/caretaker is still active with Food Stamp Employment & Training (FS E&T) by having the parent/caretaker provide some proof they are a Food Stamp Employment & Training (FS E&T) participant;
- 2. review each Category 12 case to ensure that the parent/caretaker is still employed by having the parent/caretaker provide some proof of employment.

For this review, It will not always be necessary to schedule parent/earetakers parents/caretakers for a face-to-face interview or to repeat the application process. As long as parent/earetakers parents/caretakers provide some proof that they remain employed, a Food Stamp or TANF Employment & Training (FS E&T) participant or remain an employed TANF recipient, and verify income or special needs and remain income eligible, they remain eligible for child care services. However, at least once per year, schedule parent/earetakersparents/earetakers for a face-to-face interview.

Prior to the end of each authorization period, not only complete the review described above, but also complete a new authorization under Action Type "R" for redetermination and set new dates for the next authorization period.

Because parent/earetakers receiving Category 11, 12, and 21 child care can receive child care as long as they meet requirements, Do not allow an authorization to end or close a ease without first providing parent/caretakers with timely and adequate notice. Do not simply send Category 11, 12, and 21 families a redetermination notice and then close a case if there is no response to this notice (i.e. they either fail to keep an appointment or fail to provide requested information). Send a separate ten day closing notice to parent/caretakers who fail without good cause to keep an appointment or provide proof of information about Food Stamp Employment & Training (FS E&T) or employment. If after ten days there is no response, close the ease at the end of the current month. However, if the ten days extends into the next month, the case will not close until the end of the following month.

EXAMPLE: A parent fails to keep a redetermination interview scheduled for January 21. Send a notice advising the parent that child care will end February 28, the end of the following month.

If parent/caretakers parents/caretakers fail to show for a recertification interview or fail to provide necessary documentation, close the Child Care case. If the parents/caretakers provide good cause for their failure to act, and the case has not closed, continue service. If the case has closed complete the redetermination and backdate to the first day of the month the authorization would have begun.

Good cause can be anything believed to be reasonable, but generally includes things such as:

- 1. illness:
- 2. court required appearance;
- 3. a household emergency (fire, heating problem, family crisis, etc.);
 - 4. lack of transportation; or
 - 5. bad weather.

Do not allow an authorization to end or close a case without first providing ensuring the parent/caretakers parents/caretakers with were given timely and adequate notice.

If it is believed that good cause does not exist, but the parent/caretaker requests a fair hearing, close the case after proper notice. Child care services for Category 11, 12, and 21 do not continue pending the outcome of a fair hearing.

If a Category 11, 12, or 21 case is closed without providing timely and adequate notice, it is to be administratively reopened to ensure uninterrupted service.

- B. For Category 13 child care cases, at least every six months:
- 1. review each Category 13 case to ensure the parent/caretakers are still employed by having them provide some proof of employment;
- 2. review income and family size information to determine income eligibility and to reset the child care fee (if income changes the fee, do a Change Authorization to set a new fee);
- 3. complete a new Child Care Payment Agreement Form resulting from a change in fee;

NOTE: If the fee increases, the new fee will not take effect until proper notice is given. When the Change Authorization is completed, the CCMIS DCIS II Child Care Subsystem will determine whether the change can occur the first day of the next month or the first day of the month following the next month.

4. close the parent/caretaker if income is over the 200 percent of poverty limit.

NOTE: Give proper notice. If unable to give ten day notice of the closing before the end of the month, then the case will not close until the last day of the next month.

For this initial review, it will not be necessary to conduct a face-to-face interview or to repeat the application process. However, parent/caretakers will have to submit documentation for Case Managers to verify employment and income.

Prior to the end of the TCC authorization period, send parent/earetakers an appointment letter for a redetermination interview. At this appointment, redetermine the parent/earetaker's eligibility for service as a Category 31 child care case. Service cannot continue if the parent/earetakers fail to meet Category 31 eligibility requirements.

If parent/earetakers fail, without good cause, to either provide proof of employment and income or to keep their appointment, follow the notice requirements noted above regarding Category 11, 12, and 21 cases. Note the following difference: TCC services can continue pending a fair hearing request, but only within the 12 month limitation.

Parent/caretakers whose TCC eligibility ends, but who meet requirements for Category 31 child care, can continue receiving child care. Complete a new authorization under Action Type "R" for redetermination. Complete a category change and set a new authorization period. Since this is now a Category 31 case, the authorization period should now be six months.

C. For Category 31 child care cases, perform the following at least every six months:

See Administrative Notice: A-7-99 Child Care Issues

- 1. complete a redetermination by scheduling parent/caretakers for a redetermination interview and requesting parent/caretakers to provide verification of need and income:
- 2. at the redetermination interview, redetermine eligibility using the criteria in Section 11003, Eligibility Requirements;
- 3. update case information (it will not be necessary for the parent/earetaker to complete a new application);
- 4. update the child care fee by reviewing income and family size;
- 5. complete a new Child Care Payment Agreement Form;

NOTE: Complete a new form whether the fee changes or not. Also, if the fee increases, the fee will not take effect until proper notice is given. Do not use the approval letter in the CCMIS to notify parent/earetakers of the fee change. Use instead the Child Care Approval Letter after Redetermination (Form 629).

6. complete a new authorization under Action Type "R" for redetermination and set new dates for the authorization or close the ease if the parent/caretaker is no longer eligible.

Parent/caretakers who fail without good cause to keep their redetermination interview, or who do not provide verification of need and income, will have their child care case close. Though there is no requirement in Category 31 eases to provide parent/caretakers with notice of this closing, send a Generic Closing Letter (Form 630), to the parent/caretaker. State the reason for the closing on this form.

In situations where good cause is believed (such as a parent/caretaker calls the Case Manager with this information), or where the parent/caretaker is unable to keep the interview appointment due to illness, it is possible to do a redetermination for one month to allow the parent/caretaker time for another interview.

Parent/caretakers Parents/caretakers whose child care case closes because of their failure to keep a redetermination interview or provide verification of need and income may request a fair hearing. Child care services, however, will not continue past the authorization end date.

In the event the agency errs in not completing a redetermination before a parent/caretaker's current authorization expires (such as change of Case Manager eauses no redetermination letter to go out), still do a redetermination authorization, backdated to the first day of the month the new authorization would have begun had the agency not erred.

Parent/caretakers Parents/caretakers whose child care cases close because they failed to keep a redetermination or provide verification, can reapply for service (see instructions for reopening a case in the User Manual). However, if DSS is in a "wait list" situation, these parent/caretakers parents/caretakers will be subject to DSS' priority service order (see Section 11004.3.1).

11004.12 Closing Cases

A parent/caretaker's authorization for service should end when any of the following occurs:

- A. the parent/caretaker need no longer exists,
- B. the parent/caretaker's income exceeds income limits,
- C. the parent/caretaker fails to pay the child care fee fees or fails to make arrangements to pay past fees owed,
- D. the parent/caretaker refuses to provide <u>requested</u> <u>information or verification of eligibility</u>,
- E. the parent/caretaker is a Food Stamp Employment & Training (FS E&T) participant who is sanctioned,
- F. a protective case fails to follow the Division of Family Services case plan,

- G. a TCC parent/earetaker quits a job without good reason.
 - H.G. at the request of the parent/caretaker, and
 - 4.H. if program funds should be reduced, and,
- <u>I.</u> <u>if a parent/caretaker is a TANF child care</u> participant who is sanctioned.

When a case needs to be closed due to one of the above reasons, complete the Close Case function in the CCMIS (see instructions for closing cases in the User Manual).

When closing cases for Categories 11, 12, 13, and 21, send the appropriate closing notice which provides a ten day notice. (see discussion above in Section 11004.11). Even though DSS programmed the CCMIS DCIS II Child Care Sub system to allow for ten day notice before an authorization closes—, and informs the participant of his/her right to a Fair Hearing., separately send the notice through the CCMIS letter function. For Category 31 cases, send a Generic Closing Letter (Form 630). State the reason for the closing on this form.

When parent/caretakers make a request to close their case, allow a minimum of five care days to notify providers of the case closing. Again the CCMIS is programmed to make allowance for this time.

When a case and the authorization is closed the system will end date the case and authorization the last day of the current month or the next month if 10 day notice can not be given.

11005.2 Parent/Caretaker Responsibilities

- A. <u>Parent/caretakers</u> <u>Parents/caretakers</u> have the responsibility to give accurate information to Case Managers concerning their financial status and their need for service. Failure to provide <u>requested and</u> accurate information could lead to a denial and/or termination of service.
- B. Parent/caretakers Parents/caretakers have the responsibility to report changes in their financial status and need for service as these changes occur. Failure to do so could lead to termination of service.
- C. Parent/earetakers Parents/caretakers have the responsibility to pay their assessed child care fee. Parent/earetakers Parents/caretakers pay the fee directly to the provider at a schedule determined by the provider. Providers have the right to deny service to parent/earetakers parents/caretakers who fail to pay their fees.
- D. Parent/earetakers Parents/caretakers have the responsibility to abide by the provider's rules and procedures regarding the operation of their child care facility. Failure to do so could lead to termination from the provider's program. (Such a termination will not cause termination from DSS' subsidized child care services, but can make it difficult for DSS to locate another placement.)

E. Parent/caretakers Parents/caretakers have the responsibility to reimburse DSS for any payments made on their behalf for which they were not eligible. DSS has the right to recoup such overpayments. In cases where fraud is suspected, recovery must be attempted.

11005.3 Child Care Case Records

Child care case records are maintained in accordance with DSSM policies as noted in Section 1000 under the heading Administration. However, ensure that child care case records contain, at a minimum, the following information:

- A. a copy of the Child Care Screening Application Application for Child Care Assistance (Form 600);
- B. verification of child care need, such as pay stubs and/or employer letter, school or training registration, special needs form;
- C. verification of income, such as pay stubs or employer letter;
- D. as applicable, documentation of a request for Transitional Child Care services;
- E.D. a copy of the Child Care Payment Agreement (Form 601b); and
- F.E. any information pertinent to the child care case, such as protective referral, etc.

Authorizations, client notices, and other pertinent case information is contained in the CCMIS DCIS II Child Care Sub system. The CCMIS DCIS II Child Care Sub system is considered an electronic case file and, therefore, equally or more valuable as the manual record. Maintain both the manual file as well as the electronic file in an up-to-date manner.

*Please Note: As the rest of the sections were not amended, they are not being published. A complete set of the rules and regulations for the Division of Social Services is available at:

http://www.dhss.delaware.gov/dhss/dss/index.html

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 310, 2304, 2307 and 2312 (18 **Del.C.** §§ 311, 2034, 2307and 2312) 18 **DE Admin. Code** 703

ORDER

703 Prohibited Practices Related to the Nonrenewal of Residential Homeowners Policies

A public hearing was held on September 1, 2005 to receive comments on proposed Regulation 703 relating to notices of termination and nonrenewal of homeowners insurance policies. Public notice of the hearing and publication of proposed Regulation 703 in the *Register of Regulations* and two newspapers of general circulation was in conformity with Delaware law. Seventeen persons attended the public hearing. Written comments were received into the record from seven insurers that were critical of the proposed regulation and one written comment was received in favor of the proposed regulation from an individual. The oral statements made at the hearing were transcribed as required by law.

Summary of the Evidence and Information Submitted

The proposed regulation was promulgated to protect individual consumers from a nonrenewal or cancellation of a residential homeowners insurance policy due solely to the fact that the consumer had made a non-claim inquiry about any matter relating to the policy or from a cancellation or nonrenewal of a policy based on a claim that could reasonably have been anticipated by the insurer at the time that it sold the policyholder his or her policy. Insurers would still be permitted under the proposed regulation to underwrite based on claims by increasing the premiums of homeowners who made claims, as permitted by their approved rate schedules. One of the themes common to all of the insurers' comments was that the proposed regulation exceeded the Commissioner's authority to promulgate regulations pursuant to State law and that the regulation conflicted with existing State law.

The insurers complained that the scope of the proposed regulation intruded into the insurers' ability to properly underwrite risks by including information related to actual losses, irrespective of whether payments were made on the claim, of the insured. Some of the insurers took the position that any information obtained by the insurer regarding the insured was an appropriate basis to make underwriting

decisions. The insurers also claimed that nothing in 18 **Del.C.** Ch. 23 authorizes the Commissioner to create new unfair trade practices since 18 **Del.C.** §2304 legislatively limits those acts that constitute unfair trade practices and anything not included therein is not prohibited.

Findings of Fact

The proposed regulation was promulgated to protect the residential consumer from a nonrenewal or cancellation of a residential homeowners insurance policy due solely to the fact that the consumer had made a non-claim inquiry about any matter relating to the policy or from a cancellation or nonrenewal of a policy based on a claim that could reasonably have been anticipated by the insurer at the time that it sold the policyholder his or her policy. Section 5 of the proposed regulation clearly states that the insurer's right to terminate or nonrenew a policy is not affected by any claim that substantially changes or increases the insurer's risk or by the consumer's refusal or failure to make necessary or material changes or repairs resulting from a notice by the insurer that failure to make such changes or repairs will constitute a breach of contractual duties. conditions or warranties that will result in a change or increase in the hazard or in the risk assumed by the carrier subsequent to the date the policy was issued.

The Commissioner has broad authority to promulgate regulations based on the laws of this State. The Commissioner has specific authority under 18 Del.C. §2304(16)(f) to require insurers in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear. I find, as a matter of law, that the sanction of non-renewal, with its dire consequences for homeowners¹, is not a fair or equitable means of resolving claims which do not fall into the exceptions enumerated in the proposed regulation, especially when insurers retain the ability to adjust premiums based on those claims. Alternatively, 18 Del.C. §2307 gives the Commissioner broad authority to take action against insurers that engage in any practice that the Commissioner, following any inquiry required by law, determines to be an unfair business practice. Section 2307 explicitly gives permission to the Commissioner to define unfair business practices which are not enumerated in other portions of Title 18, Chapter 23.

A mere inquiry about coverage or any matter relating to a policy, or the occurrence of an incident that does not result in any payment or benefit to the policyholder does not represent the type of claim that would justify a rate increase under 18 Del.C. §2503 or an event that would allow cancellation, nonrenewal or termination under 18 Del.C. §4123. A concern was raised at the hearing as to whether Section 5 of the regulation would prohibit an insurer from non-renewing the policy of a policyholder who called the insurer to affirmatively state that the policyholder had commenced activities in his or her home which were in violation of the terms of the policy. As I stated at the outset of the hearing, nothing in the proposed regulation impedes insurers from using their existing authority under 18 Del.C. §4123 to cancel a homeowners policy for any of the reasons enumerated in that section. To the extent the insurers are already in compliance with Forms and Rates Bulletin 28, it is an indication that the insurers recognize that consumers should not face increases in premiums or cancellation, nonrenewal or termination of their policy for an event that does not result in an actual loss for the insurer.

I also note that there were two typographical errors in the regulation as originally proposed and published: The word "nonrenewal" was misspelled in the contents and the word "any" should be substituted for the word "and" in the first line of section 7.0. Those corrections may be made without re-publication pursuant to 29 **Del.C.** §10113.

Decision and Order

Based on the provisions of 18 **Del.C.** §§311, 2304, 2307 and 2312 and the record in this docket, I hereby adopt Regulation 703 and make the following non-substantial changes to the text of the proposed regulation: The word "Nonrenewal" is changed in the list of contents and the word "any" is substituted for the word "and" in the first line of section 7.0.

Text and Citation

The text of the proposed amendments to Regulation 907 last appeared in the *Register of Regulations* Vol. 9, Issue 2, pages 196-7, August 1, 2005.

IT IS SO ORDERED this 14th day of September, 2005.

Matthew Denn, Insurance Commissioner

Consequences of nonrenewal include the inability to find replacement insurance for homeowners in areas where coverage has become scarce, and dramatic rate increases for other carriers after their nonrenewals are reported to national databases used by other insurers in calculating premiums for new policyholders

703 Prohibited Practices Related to the Nonrenewal of Residential Homeowners Policies

1.0 Authority

This regulation is adopted by the Commissioner pursuant to the authority granted by 18 **Del.C.** §§311, 2304, 2307 and 2312, and promulgated in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Chapter 101.

2.0 Scope

This regulation applies to homeowners insurance, as defined herein.

3.0 Definitions

"Homeowners policy" or "homeowners insurance" means property insurance, as defined at 18 Del.C. §4103(4)d and 4120, insuring any real or personal property used by a person as a permanent or temporary place of residence.

"Inquiry" means any contact initiated by an insured that is not the filing or reporting of a claim to an insurer.

"Insurer" shall have the meaning assigned to it at 18 **Del.C.** §102(3)

"Nonrenew" shall have the meaning assigned to it at 18 **Del.C.** §4121(c).

"Predicate unfair trade practice" shall mean an act which shall constitute part of the pattern of acts necessary to show activity occurring with sufficient frequency to constitute an unfair trade practice under 18 **Del.C.** §2304(16).

4.0 Inquiries

An insurer that considers an inquiry regarding (1) a homeowners policy or (2) a loss under that policy to be a claim for purposes of making underwriting decisions, including but not limited to decisions to nonrenew a policy, shall have engaged in a predicate unfair trade practice.

5.0 Nonrenewal

An insurer that nonrenews a homeowners policy solely on the basis of claims asserted against that policy shall have engaged in a predicate unfair trade practice, *provided* that it shall not constitute a predicate unfair trade practice for an insurer to nonrenew a policy:

5.1 on the basis of claims asserted against that policy if the claim or claims demonstrate that there has been a substantial change or increase in the hazard or in the risk assumed by the carrier subsequent to the date the policy was issued and such nonrewnal is applied to other homeowners policies similarly situated; or

<u>5.2</u> on the basis of the consumer's refusal or failure to make necessary or material changes or repairs resulting from

a notice by the insurer that failure to make such changes or repairs will constitute a breach of contractual duties, conditions or warranties that will change or increase in the hazard or in the risk assumed by the carrier subsequent to the date the policy was issued.

6.0 Non-Exclusive Remedy

Nothing in this regulation shall limit the Commissioner's authority under 18 **Del.C.** §2307(a) to determine that acts which are not specifically enumerated in Title 18 of the **Delaware Code** constitute unfair trade practices.

7.0 Severability

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

8.0 Prior Bulletins

<u>This Regulation shall supersede Insurance Department</u> <u>Form and Rates Bulletin No. 28, issued January 20, 2004.</u>

9.0 Effective Date

This Regulation shall become effective October 11, 2005.

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 310, 311, 2301 *et seq.* and 2501 *et seq.* (18 **Del.C.** §§310, 311, 2031 *et seq* and 2501 *et seq*) 18 **DE Admin. Code** 907

ORDER

907 Records Relating To Consumer Complaints

A public hearing was held on September 6, 2005 to receive comments on proposed Regulation 907 relating to establishing a method by which founded consumer complaints against an insurer can be recorded, tracked in the Department of Insurance and such records be made available to the public. Public notice of the hearings and publication of proposed Regulation 907 in the *Register of Regulations* and two newspapers of general circulation was in conformity with Delaware law. Twenty-one persons attended the public hearing. Written comments were received into the record from four persons or entities in favor of the proposed

regulation and from nine persons critical of the proposed regulation. The oral statements made at the hearing were transcribed as required by law.

Summary of the Evidence and Information Submitted

The proposed regulation was promulgated to provide a method whereby the Department could, on a predictable basis, identify founded complaints (as that term is defined in the regulation) and make that information readily available to the public. The written comments and persons in favor of the regulation noted that such information would be important to the consumers to allow them to make informed choices about their insurance coverage.

The insurers were supportive of public accessibility to properly identified statistical information but felt that the proposed regulation was not sufficiently clear to accomplish its stated goal. The concerns included the lack of a precise definition of a founded complaint, the treatment of legitimate disputes, the negative incentive to mediate issues with customers, and the conflict with other regulations designed to resolve consumer issues such as Regulation 901. Of the nine comments received from insurance companies or trade organizations, four were from health insurers (one of which was from a trade organization representing health insurers) that were specifically concerned about the relationship of the proposed regulation to the pre-existing commitment to arbitration under the Patient Bill of Rights as embodied in Regulation 1301.

Findings of Fact

Under the Delaware Freedom of Information Act, the Department of Insurance would be obligated by law to provide public access to public records not exempted by law which would include the results of cases arbitrated under any law or regulation including Regulations 901 and 1301 (except for the disclosure of personal health or financial information). As a general matter, I have the authority to compile and publish statistical information on both general and specific matters that come before the Department. See generally, for example, 18 **Del.C.** §314(b) relating to the public inspection of the records of the Department and 18 **Del.C.** §321(f) relating to the discretionary authority to release examination information to the public and 18 **Del.C.** §310(b) the authority reasonably implied from Title 18 of the **Delaware Code**.

Members of the public generally and the insurance consumer in particular have a vested interest in having that information available that will allow the consumer to make an informed and knowledgeable decision about insurance coverage. The consumer is entitled to know not only the costs and coverage limits of insurance but the insurer's "track record" as it relates to claims handling and payment. This regulation merely takes an inherent right of the Commissioner and creates a standardized methodology to minimize the potentially harmful consequences that concern the insurers when it comes to publicizing information related to their performance. In that regard, the regulation creates a very discrete category of founded complaints so that complaints upon which there is a good faith basis for the insurer to contest and which ultimately get resolved are not subject to inclusion in the founded complaint computation. As a further protection for all involved, a contested claim is referred for a hearing with all of the Title 18 Chapter 3 protections before the complaint can be considered founded.

The issue of whether a complaint is founded is mutually exclusive of a proceeding for arbitration under Regulation 901 or 1301. If a complaint is not resolved under sections 6.1-6.3 of the regulation and goes to arbitration, there is no double penalty since the question of whether the complaint is founded bears no statistical relationship to the resolution of the complaint through arbitration. Even though a health arbitration may track differently because it arises under an internal review process required by 18 **Del.C.** §332 it still comes into the Department as the result of a complaint. A proceeding under this regulation is not established for the purpose of individual consumer relief. It is designed to track how insurers handle complaints which is a policy matter that is not substantively opposed by the insurers.

Decision and Order

Based on the provisions of 18 **Del.C.** §§310, 311, 2301 *et seq.* and 2501 *et seq.* and the record in this docket, I hereby adopt Regulation 907 to be effective on October 11, 2005.

Text and Citation

The text of the proposed amendments to Regulation 907 last appeared in the *Register of Regulations* Vol. 9, Issue 2, pages 197-9, August 1, 2005.

IT IS SO ORDERED this 14th day of September, 2005.

Matthew Denn, Insurance Commissioner

907 Records Relating To Consumer Complaints

1.0 Authority

This regulation is adopted by the Commissioner pursuant to the authority granted by 18 **Del.C.** §§310, 311, 2301 et. seq. and 2501 et. seq., and promulgated in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Chapter 101.

2.0 Scope

Except as indicated herein, this regulation applies to all complaints relating to insurance, as defined below.

3.0 Definitions

"Complaint" shall mean any expression of a grievance against an insurer made in any form to the Delaware Department of Insurance. An allegation of insurance fraud, as defined at 18 Del.C. §2407, shall be treated pursuant to procedures authorized under 18 Del.C. Chapter 24 of the Delaware Code and shall not be considered a complaint for purposes of this regulation. Statements that contain allegations of insurance fraud as well as complaints that would not, if true, constitute insurance fraud shall be treated in relevant part according to 18 Del.C. Chapter 24 and this regulation.

"<u>Department</u>" means the Delaware Department of Insurance.

"Founded," with respect to a complaint, means:

- that the insurer's act, acts, omission, or omissions did not comply with a provision of Title 18 of the **Delaware Code**, regulations promulgated by the Department, or other applicable Delaware statute or regulation; or
- that the insurer's act, acts, omission, or omissions contravened or were inconsistent with a rate filing, form filing, or other filing made with the Department; or
- that the insurer's act, acts, omission, or omissions contravened or were inconsistent with a provision or provisions of the agreement to which the individual making the complaint was a party or third party beneficiary; or
- that the insurer's act, acts, omission, or omissions contravened or were inconsistent with formal standards or practices of the insurer which were relied upon by the insurer in satisfying the requirements any examination conducted by the Department, alone or in conjunction with the Insurance Departments of other states.

"Insurance" shall have the meaning assigned to it at 18 **Del.C.** §102(2).

"Insurer" shall have the meaning assigned to it at 18 **Del.C.** §102(3).

4.0 Tracking of Complaints

It is the policy of the Department that Delaware consumers should be aware of the volume and type of founded complaints that have been resolved against insurers with whom they do business or are contemplating doing business under the provisions of this regulation.

5.0 Intake of Complaints

Any communication with the Department that constitutes a complaint shall be formally recorded as such by the Department, assigned an identifying number, and tracked until it is resolved through one of the methods described in Section 6.0.

<u>6.0</u> Resolution of Complaints

Complaints shall be resolved in one of the following manners:

- 6.1 <u>Complaints Lacking Merit</u>. The Department may determine that the complaint did not have merit in which case it shall not be deemed to be founded.
- 6.2 **Resolved In Favor of Consumer**. The Department, through negotiation or mediation, may resolve a complaint, absent any formal proceeding, with some benefit accruing to the consumer. Any resolution in favor of the consumer shall be considered a complaint resolved in favor of the consumer.
- 6.3 **Referral for Formal Process**. The Department may initiate a proceeding to make a formal determination as to whether the complaint is founded. The Department shall provide a 60 day written notice to the insurer that the complaint has been received and that the complaint will be referred for a formal determination under section 7.0 of this regulation unless the complaint is otherwise resolved within 60 days. Absent a notice from the insurer that the complaint is not subject to informal resolution within 60 days from the time the insurer receives notice of the complaint, the Department will proceed to resolve the complaint formally or informally, in its discretion after the 60 day period without further notice to the insurer. If, within the 60 day notice period, the insurer notifies the Department that the matter is not subject to resolution, such notice shall be a waiver of the balance of the notice period and the Department can proceed to a formal determination. Any resolution in favor of the consumer shall be considered founded complaint. At any time after notice or before the conclusion of a formal proceeding, the parties shall have the right to resolve the

complaint informally under sections 6.1 and 6.2 of this regulation.

6.4 Other. The Department shall classify complaints resolved in a manner other than those listed in subsections 6.1 through 6.3 as "other" in which case the complaint will not be considered founded.

7.0 Formal Determinations

If the Department initiates a proceeding to determine whether a complaint is founded, it shall follow the procedures outlined in 18 **Del.C.** §§323 through 329, and, where consistent with those sections, shall also treat that proceeding as a case decision under 29 **Del.C.** Chapter 101. A complaint may be resolved in favor of a consumer after a formal proceeding is initiated. This Regulation shall not prohibit the Commissioner from taking any action otherwise permitted by the **Delaware Code** on behalf of a consumer or consumers related to a complaint prior to the completion of formal proceedings.

8.0 Publication of Findings

The Department shall make available to the public the following information:

- 8.1 The details of each founded complaint and action taken by the Insurance Department in response thereto, with information related to the identify of the complaining party deleted;
- 8.2 Statistical information regarding the number of founded complaints against each insurer licensed to do business in the State of Delaware, including information permitting consumers to assess such statistics in the context of the total amount of business done in the state by each insurer.

9.0 Severability

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

10.0 Prior Bulletins and Regulations

This Regulation shall supersede any prior bulletin or regulation of the Department to the extent that such bulletin or regulation is inconsistent with the provisions of this Regulation.

11.0 Inconsistent Statutes

This regulation shall not apply to any type of complaint that the Department is expressly required by the Delaware Code to treat in a manner inconsistent with this regulation.

12.0 Effective Date

<u>This Regulation shall become effective October 11, 2005, and information shall be made public pursuant to Section 8.0 commencing January 1, 2006.</u>

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

2000 Board of Occupational Therapists Statutory Authority: 24 Delaware Code, Section 2006(b) (24 **Del.C.** §2006(b)) 24 **DE Admin. Code** 2000

ORDER

At its meeting on September 27, 2005, the Board of Occupational Therapy changed its Rules by deleting Rules 3.0 and 4.0 in order to conform to SB No. 179 of the 143rd General Assembly which struck the temporary licensure provisions in 24 **Del.C.** §2012. The remaining provisions were renumbered according.

Summary of the Evidence and Information Submitted

None

Findings of Fact

A temporary license is no longer available to applicants for licensure pending the successful completion of the NBCOT licensure examination. No notice or period of public comment is necessary under 29 **Del.C.** §10113(a) since the change merely makes the Rule consistent with the law. The statute has been effective since July 21, 2005 when it was signed by the Governor.

Decision and Effective Date

The Board of Occupational Therapy deletes Rules 3.0 and 4.0 of its Rules and Regulations to be consistent with the bill that has been effective since July 21, 2005.

Text and Citation

Rules of the Board of Occupational Therapy

SO ORDERED this 27th day of September, 2005.

BOARD OF OCCUPATIONAL THERAPY

Michael von Reider, President Michele Maahs Virginia Mirro

1.0 Supervision/consultation Requirements for Occupational Therapy Assistants

1.1 "Occupational therapy assistant" shall mean a person licensed to assist in the practice of occupational therapy under the supervision of an occupational therapist. 24 **Del.C.** §2002(4).(emphasis added)

"Under the supervision of an occupational therapist" means the interactive process between the licensed occupational therapist and the occupational therapy assistant. It shall be more than a paper review or cosignature. The supervising occupational therapist is responsible for insuring the extent, kind, and quality of the services rendered by the occupational therapy assistant.

The phrase, "Under the supervision of an occupational therapist," as used in the definition of occupational therapist assistant includes, but is not limited to the following requirements:

- 1.1.1 Communicating to the occupational therapy assistant the results of patient/client evaluation and discussing the goals and program plan for the patient/client;
- 1.1.2 In accordance with supervision level and applicable health care, educational, professional and institutional regulations, reevaluating the patient/client, reviewing the documentation, modifying the program plan if necessary and co-signing the plan.
 - 1.1.3 Case management;
 - 1.1.4 Determining program termination;
- 1.1.5 Providing information, instruction and assistance as needed;
- 1.1.6 Observing the occupational therapy assistant periodically; and
- 1.1.7 Preparing on a regular basis, but at least annually, a written appraisal of the occupational therapy assistant's performance and discussion of that appraisal with the assistant.

The supervisor may assign to a competent occupational therapy assistant the administration of standardized tests, the performance of activities of daily living evaluations and other elements of patient/client

evaluation and reevaluation that do not require the professional judgment and skill of an occupational therapist.

- 1.2 Supervision for Occupational Therapy Assistants is defined as follows:
- 1.2.1 Direct Supervision requires the supervising occupational therapist to be on the premises and immediately available to provide aid, direction, and instruction while treatment is performed in any setting including home care. Occupational therapy assistants with experience of less than one (1) full year are required to have direct supervision.
- 1.2.2 Routine Supervision requires direct contact at least every two (2) weeks at the site of work, with interim supervision occurring by other methods, such as telephonic or written communication.
- 1.2.3 General Supervision requires at least monthly direct contact, with supervision available as needed by other methods.
 - 1.3 Minimum supervision requirements:
- 1.3.1 Occupational therapy assistants with experience of less than one (1) full year are required to have direct supervision.

Occupational therapy assistants with experience greater than one (1) full year must be supervised under either direct, routine or general supervision based upon skill and experience in the field as determined by the supervising OT.

- 1.3.2 Supervising occupational therapists must have at least one (1) year clinical experience after they have received permanent licensure.
- 1.3.3 An occupational therapist may supervise up to three (3) occupational therapy assistants but never more than two (2) occupational therapy assistants who are under direct supervision at the same time.
- 1.3.4 Levels of supervision should be determined by the occupational therapist before the individuals enter into a supervisor/supervisee relationship. The chosen level of supervision should be reevaluated regularly for effectiveness.
- 1.3.5 The supervising occupational therapist, in collaboration with the occupational therapy assistant, shall maintain a written supervisory plan specifying the level of supervision and shall document the supervision of each occupational therapy assistant. Levels of supervision should be determined by the occupational therapist before the individuals enter into a supervisor/supervisee relationship. The chosen level of supervision should be reevaluated regularly for effectiveness. This plan shall be reviewed at least every six months or more frequently as demands of service changes.
- 1.3.6 A supervisor who is temporarily unable to provide supervision shall arrange for substitute supervision

by an occupational therapist licensed by the Board with at least one (1) year of clinical experience, as defined above, to provide supervision as specified by Rule 1.0 of these rules and regulations.

2.0 Licensure Procedures:

- 2.1 To apply for an initial license, including relicensure after expiration, an applicant shall submit to the Board:
- 2.1.1 A completed notarized application on the form approved by the Board;
- 2.1.2 Verification of a passing score on the NBCOT standardized exam submitted by the exam service or NBCOT:
- 2.1.2.1 If the date of application for licensure is more than three years following the successful completion of the NBCOT exam, the applicant shall submit proof of twenty (20) hours of continuing education in the two years preceding the application in accordance with Rule 5.0 of these rules and regulations.
- 2.1.3 Official transcript and proof of successful completion of field work submitted by the school directly to the Board office;
 - 2.1.4 Fee payable to the State of Delaware.
- 2.2 To apply for a reciprocal license, in addition to the requirements listed in 24 **Del.C.** §2011, an applicant shall submit the following to the Board:
- 2.2.1 A completed notarized application on the form approved by the Board;
- 2.2.2 Verification of a passing score on the NBCOT standardized exam submitted by the exam service or NBCOT:
- 2.2.3 Letter of verification from any state in which the applicant has been licensed (the applicant is responsible for forwarding the blank verification form to all states where they are now or ever have been licensed);
 - 2.2.4 Fee payable to the State of Delaware.
 - 2.3 To apply for renewal, an applicant shall submit:
- 2.3.1 A completed renewal application on the form approved by the Board;
- 2.3.2 Evidence of meeting continuing education requirements as designated by the Board in Rule 5;
- 2.3.3 Renewal fee payable to the State of Delaware.
 - 2.4 To apply for inactive status:

A licensee may, upon written request to the Board, have his/her license placed on inactive status if he/she is not actively engaged in the practice of occupational therapy in the State.

- 2.5 To apply for reactivation of an inactive license, a licensee shall submit:
 - 2.5.1 A letter requesting reactivation;

- 2.5.2 A completed application for renewal
- 2.5.3 Proof of continuing education attained within the past two years (20 contact hours). The twenty (20) hours must be in accordance with Rule 5.0 of these rules and regulations;
 - 2.5.4 Fee payable to the State of Delaware.
- 2.6 To apply for reinstatement of an expired license, an applicant shall submit (within three (3) years of the expiration date):
 - 2.6.1 A completed application for renewal;
- 2.6.2 Proof of continuing education attained within the past two years (20 contact hours). The twenty (20) hours must be in accordance with Rule 5.0 of these rules and regulations;
- 2.6.3 Licensure and late fee payable to the State of Delaware.

6 DE Reg. 1331 (4/1/03)

3.0 Temporary Licensure/Examination Eligible OT:

- 3.1 To apply for a temporary license, an applicant shall submit to the Board:
- 3.1.1 A completed, notarized application on the form approved by the Board;
- 3.1.2 Official transcript and proof of successful completion of field work submitted by the school directly to the Board office;
- 3.1.3 A letter indicating the date on which the applicant proposes to take the NBCOT examination;
- 3.1.4 A signed agreement from an occupational therapist currently licensed by the state of Delaware certifying that the applicant will be supervised while practicing, in accordance with the definitions for supervision as stated herein, in 3.3;
 - 3.1.5 Fee payable to the State of Delaware.
- 3.2 Following the examination, the temporary licensee shall submit to the Board a notarized copy of the verification of exam scores, if the Board has not directly received the results of the examination. If the temporary licensee has not successfully passed the examination the temporary license will be surrendered to the Board immediately upon notification of exam results.
- 3.3 Supervision of the exam-eligible occupational therapist with a temporary license shall be defined as follows:
- 3.3.1 The supervising occupational therapist must hold a current license to practice in the state of Delaware;
- 3.3.2 Must have completed a minimum of one year of practice from the date of their permanent licensure status;

- 3.3.3 Supervision must consist of daily face to face contact between the supervisor and the temporary licensee;
- 3.3.4 The supervising occupational therapist shall at no time supervise more than four (4) temporarily licensed occupational therapists. In the event that the temporary licensees should be working at separate sites, the supervising therapist shall supervise no more than two (2) temporarily-licensed therapists. A supervising therapist can assume responsibility for no more than five (5) including temporarily licensed OTAs and OTAs and licensed OTAs.

4.9 Temporary Licensure/Examination Eligible OTA:

- 4.1 To apply for a temporary license, an applicant shall submit to the Board:
- 4.1.1 A completed, notarized, application on the form provided by the Board;
- 4.1.2 Official transcript and proof of successful completion of field work submitted by the school directly to the Board Office:
- 4.1.3 A letter indicating the date on which the applicant proposes to take the NBCOT examination;
- 4.1.4 A signed agreement from an occupational therapist currently licensed by the state of Delaware certifying that the applicant will be supervised while practicing, in accordance with the definitions for supervision as stated herein, in 4.3:
 - 4.1.5 Fee payable to the State of Delaware.
- 4.2 Following the examination, if the Board has not directly received the results of the examination, the temporary licensee shall submit to the Board a notarized copy of the verification of exam scores. If the temporary licensee has not successfully passed the examination, the temporary license will be surrendered to the Board immediately upon notification of exam results.
- 4.3 Supervision for the examination-eligible occupational therapy assistant with a temporary license shall be defined as follows:
- 4.3.1 The supervising occupational therapist must hold a current license to practice in the state of Delaware;
- 4.3.2 Must have completed a minimum of one year of practice from the date of their permanent licensure status:
- 4.3.3 Direct Supervision as defined in Rule 1 shall be required of all temporarily licensed occupational therapy assistants;
- 4.3.4 The supervising occupational therapist shall at no time supervise more than three (3) temporarily licensed occupational therapy assistants. A supervising therapist can assume responsibility for no more than five (5)

including temporarily licensed OT, OTAs and licensed OTAs).

3.0 5.0 Continuing Education

- 3.1 5.1 Continuing Education Content Hours
- 3.1.1 5.1.1 Proof of continuing education (CE) is required for license renewal and shall be submitted by May 31st of each renewal year. A licensee who submits continuing education that is not approved by the Board will be notified so that he or she may obtain additional CE to substitute before the license expiration date of July 31.
- 3.1.2 5.1.2 A log of CE on a form approved by the Board shall be maintained and submitted. Documentation of the CE should not be routinely sent with the log but must be retained during the licensure period to be submitted if the renewal application is selected for CE audit. Random audits will be performed by the Board to ensure compliance with the CE requirement. Licensees selected for the random audit shall submit attendance verification.
- 3.1.3 Solution 5.1.3 Contact hours shall be prorated for new licensees in accordance with the following schedule:
- 3.1.3.1 5.1.3.1 *21 months up to and including 24 months remaining in the licensing cycle requires 20 hours
- 3.1.3.2 5.1.3.2 *16 months up to an including 20 months remaining in the licensing cycle requires 15 hours
- 3.1.3.3 5.1.3.3 *11 months up to and including 15 months remaining in the licensing cycle requires 10 hours
- 3.1.3.4 5.1.3.4 *10 months or less remaining in the licensing cycle exempt
- 3.2 5.2 Definition of Acceptable Continuing Education Credits:

Activities must be earned in two (2) or more of the six (6) categories for continuing education beginning in section 5.5.

- 3.3 5.3 Continuing Education Content:
- 3.3.1 5.3.1 Activities must be in a field of health and social services related to occupational therapy, must be related to a licensee's current or anticipated roles and responsibilities in occupational therapy, and must directly or indirectly serve to protect the public by enhancing the licensee's continuing competence.
- 3.3.2 5.3.2 Approval will be at the discretion of the Board. A licensee or continuing education provider may request prior approval by the Board by submitting an outline of the activity at least six weeks before it is scheduled. The Board pre-approves continuing education activities sponsored or approved by AOTA or offered by AOTA-approved providers as long as the content is not within the

exclusion in Rule 5.5.1 for courses covering documentation for reimbursement or other business matters.

3.3.3 5.3.3 CE earned in excess of the required credits for the two (2) year period may not be carried over to the next biennial period.

3.4 5.4 Definition of Contact Hours:

- 3.4.1 5.4.1 "Contact Hour" means a unit of measure for a continuing education activity. One contact hour equals 60 minutes in a learning activity, excluding meals and breaks."
- 3.4.2 One (1) academic semester hour shall be equal to fifteen (15) contact hours.
- 3.4.3 5.4.3 One (1) academic quarter hour shall be equal to ten (10) contact hours.
- 3.4.4 5.4.4. The preparing of original lectures, seminars, or workshops in occupational therapy or health care subjects shall be granted one (1) contact hour for preparation fro each contact hour of presentation. Credit for preparation shall be give for the first presentation only.

3.5 Scontinuing Education Activities:

- 3.5.1 5.5.1 Courses: The maximum credit for course work shall not exceed nineteen (19) hours. Extension courses, refresher courses, workshops, seminars, lectures, conferences, and non patient-specific in-service training qualify under this provision as long as they are presented in a structured educational experience beyond entry-level academic degree level and satisfy the criteria in 5.3.1. Excluded are any job related duties in the workplace such a fire safety, OSHA or CPR. Also excluded are courses covering documentation for reimbursement or other business matters.
- 3.5.1.1 5.5.1.1 Course work involving alternative therapies shall be limited to five(5) hours,.
- 3.5.1.2 5.5.1.2 Course work by homestudy/correspondence shall be limited to ten (10) hours,
- 3.5.2 5.5.2 Professional Meetings & Activities: The maximum number of credit hours shall not exceed ten (10) hours. Approved credit includes attendance at: DOTA business meetings, AOTA business meetings, AOTA Representative Assembly meetings. NBCOT meetings, OT Licensure Board meetings and AOTA National Round Table discussions. Credit will be given for participation as an elected or appointed member/officer on a board, committee or council in the field of health and social service related to occupational therapy. Seminars or other training related to management or administration are considered professional activities. Excluded are any job related meetings such a department meetings, supervision of students and business meetings within the work setting.
- 3.5.3 Publications: The maximum number of credit hours shall not exceed fifteen (15) hours. These

include writing chapters, books, abstracts, book reviews accepted for publication and media/ video for professional development in any venue.

- 3.5.4 5.5.4 Presentations: The maximum number of credit hours shall not exceed fifteen (15) hours. This includes workshops and community service organizations presentations that the licensee presents. Credit will not be given for the presentation of information that the licensee has already been given credit for under another category. Excluded are presentations that are part of a licensee's job duties. The preparation of original lectures, seminars, or workshops in occupational therapy or health care subjects shall be granted one (1) hour for preparation for each contact hour of presentation. Credit for preparation shall be given for the first presentation only.
- 3.5.5 5.5.5 Research/Grants: Credit may be awarded one time for contact hours per study/topic regardless of length of project, not to exceed ten (10) hours. Contact hours accumulated under this category may not be used under the publication category. Licensees must submit documentation of authorship or letters from authorizing entity to receive continuing education credit.
- 3.5.6 5.5.6 Specialty Certification: Approval for credit hours for specialty certification, requiring successful completion of courses and exams attained during the current licensure period will be at the discretion of the Board. Examples include Certified Hand Therapist (CHT) and Occupational Therapist, Board Certified in Pediatrics (BCP).
- 3.6 5.6 The Board may waive or postpone all or part of the continuing education activity requirements of these regulations if an occupational therapist or occupational therapy assistant submits written request for a waiver and provides evidence to the satisfaction of the Board of an illness, injury, financial hardship, family hardship, or other similar extenuating circumstance which precluded the individual's completion of the requirements.

4.0 6.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

- 4.1 6.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.
- 4.2 6.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary

Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

- 4.3 6.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).
- 4.4 6.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.
- 4.5 6.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.
- $\underline{4.6}$ 6.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:
- 4.6.1 6.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

- 4.6.2 6.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.
- 4.6.3 6.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.
- 4.6.4 6.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.
- 4.6.5 6.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.
- 4.6.6 6.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.
- 4.7 6.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.
- 4.8 6.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of

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Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

- 4.9 6.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.
- 4.10 6.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.
- 4.11 6.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.
- 4.12 6.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

<u>5.0</u> 7.0 Crimes substantially related to practice of occupational therapy

- 5.1 7.4 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 the following crimes, is deemed to be a crime substantially related to the practice of occupational therapy in the State of Delaware without regard to the place of conviction:
- 5.1.1 7.1.1 Unlawful harm to law enforcement or seeing eye dogs. 7 **Del.C.** §1717
- <u>5.1.2</u> 7.1.2 Aggravated meancing. 11 **Del.C.** §602(b)
- <u>5.1.3</u> 7.1.3 Reckless endangering. 11 **Del.C.** §604
- <u>5.1.4</u> Abuse of a pregnant female in the second degree. 11 **Del.C.** §605
- $\underline{5.1.5}$ 7.1.5 Abuse of a pregnant female in the first degree. 11 **Del.C.** $\S606$
- 5.1.6 7.1.6 Assault in the second degree. 11 **Del.C.** 612

- 5.1.7 Assault in the first degree. 11 **Del.C.**
- 5.1.8 7.1.8 Felony abuse of a sports official. 11 **Del.C.** 614
- $\underline{5.1.9}$ $\underline{7.1.9}$ Assault by abuse of neglect. 11 **Del.C.** §615
- $\underline{5.1.10}$ 7.1.10 Felony Terroristic threatening. 11 **Del.C.** $\S621$
- $\underline{5.1.11}$ **7.1.11** Unlawful administering drugs. 11 **Del.C.** $\S625$
- <u>5.1.12</u> 7.1.12 Unlawful administering controlled substance or counterfeit substance or narcotic drugs. 11 **Del.C.** §626
- 5.1.13 7.1.13 Vehicular assault in the first degree. 11 **Del.C.** §629
- <u>5.1.14</u> 7.1.14 Criminally negligent homicide. 11 **Del.C.** §631
 - <u>5.1.15</u> **7.1.15** Manslaughter. 11 **Del.C.** §632
- <u>5.1.16</u> 7.1.16 Murder by abuse or neglect in the second degree. 11 **Del.C.** §633
- $\underline{5.1.17}$ $\overline{7.1.17}$ Murder by abuse or neglect in the first degree. 11 **Del.C.** §634
- $\underline{5.1.18}$ 7.1.18 Murder in the second degree. 11 **Del.C.** §635
- $\underline{5.1.19}$ 7.1.19 Murder in the first degree. 11 **Del.C.** §636
 - 5.1.20 **7.1.20** Sexual harassment. 11 **Del.C.** §763
- <u>5.1.21</u> 7.1.21 Unlawful sexual contact in the second degree. 11 **Del.C.** §768
- 5.1.22 The first degree. 11 **Del.C.** §769
- $\underline{5.1.23}$ 7.1.23 Rape in the fourth degree. 11 **Del.C.** §770
- $\underline{5.1.24}$ 7.1.24 Rape in the third degree. 11 **Del.C.** §771
- $\underline{5.1.25}$ $\overline{7.1.25}$ Rape in the second degree. 11 **Del.C.** §772
- 5.1.26 7.1.26 Rape in the first degree. 11 **Del.C.** §773
 - 5.1.27 7.1.27 Sexual extorition. 11 **Del.C.** §776
 - 5.1.28 Bestiality. 11 **Del.C.** §777
 - 5.1.29 7.1.29 Continuous sexual abuse of a child.
- 11 **Del.C.** §778
- $\underline{5.1.30}$ 7.1.30 Dangerous crime against a child. 11 **Del.C.** §779
- $\underline{5.1.31}$ $\overline{7.1.31}$ Unlawful imprisonment in the first degree. 11 **Del.C.** §782
- $\underline{5.1.32}$ 7.1.32 Kidnapping in the second degree. 11 **Del.C.** §783
- $\underline{5.1.33}$ 7.1.33 Kidnapping in the first degree. 11 **Del.C.** §783A

- <u>5.1.34</u> 7.1.34 Acts constituting coercion. 11 **Del.C.** §791
- 5.1.35 The Second degree 5.1.35 Burglary in the seco
- $\underline{5.1.36}$ 7.1.36 Burglary in the first degree. 11 **Del.C.** §826
- $\underline{5.1.37}$ 7.1.37 Robbery in the second degree. 11 **Del.C.** §831
- $\underline{5.1.38}$ 7.1.38 Robbery in the first degree. 11 **Del.C.** §832
- $\underline{5.1.39}$ 7.1.39 Carjacking in the second degree. 11 **Del.C.** §835
- $\underline{5.1.40}$ $\overline{7.1.40}$ Carjacking in the first degree. 11 **Del.C.** §836
 - 5.1.41 7.1.41 Extortion. 11 **Del.C.** §846
 - 5.1.42 7.1.42 Identity theft. 11 **Del.C.** §854
 - 5.1.43 7.1.43 Felony forgery. 11 **Del.C.** §861
- $\underline{5.1.44}$ 7.1.44 Falsifying business records. 11 **Del.C.** §871
- $\underline{5.1.45}$ 7.1.45 Felony unlawful use of a credit card. 11 **Del.C.** \$903
 - <u>5.1.46</u> Insurance fraud. 11 **Del.C.** §913
 - 5.1.47 Health care fraud. 11 **Del.C.** §913A
- <u>5.1.48</u> 7.1.48 Dealing in children. 11 **Del.C.** §1100
- $\underline{5.1.49}$ 7.1.49 Endangering the welfare of a child. 11 **Del.C.** \$1102
- $\underline{5.1.50}$ 7.150 Endangering the welfare of an incompetent person. 11 **Del.C.** §1105
- 5.1.51 Unlawfully dealing with a child. 11 **Del.C.** §1106
- $\underline{5.1.52}$ 7.1.52 Sexual exploitation of a child. 11 **Del.C.** §1108
- 5.1.53 7.1.53 Unlawful dealing in child pornography. 11 **Del.C.** §1109
- <u>5.1.55</u> 7.1.55 Sexual offenders; prohibitions from school zones. 11 **Del.C.** §1112
- $\underline{5.1.56}$ 7.1.56 Sexual solicitation of a child. 11 **Del.C.** §1112A
- 5.1.57 7.1.57 Terroristic threatening of public officials or public servants. 11 **Del.C.** §1240
- <u>5.1.58</u> 7.1.58 Felony abetting the violation of driver's license restrictions. 11 **Del.C.** §1249
- <u>5.1.59</u> 7.1.59 Felony offenses against law enforcement animals. 11 **Del.C.** §1250
- $\underline{5.1.60}$ 7.1.60 Felony hate crimes. 11 **Del.C.** §1304
 - 5.1.61 7.1.61 Felony stalking. 11 **Del.C.** §1312A

- $\underline{5.1.62}$ 7.1.62 Felony cruelty to animals. 11 **Del.C.** §1325
- 5.1.63 7.1.63 Felony maintaining a dangerous animal. 11 **Del.C.** §1327(a)
- <u>5.1.64</u> 7.1.64 Felony violation of privacy. 11 **Del.C.** §1335(a)
 - <u>5.1.65</u> 7.1.65 Adulteration. 11 **Del.C.** §1339
- $\underline{5.1.66}$ 7.1.66 Promoting prostitution in the second degree. 11 **Del.C.** §1352
- $\underline{5.1.67}$ 7.1.67 Promoting prostitution in the first degree. 11 **Del.C.** §1353
 - 5.1.68 7.1.68 Obscenity. 11 **Del.C.** §1361
- $\underline{5.1.69}$ $\overline{7.1.69}$ Carrying a concealed deadly weapon. 11 **Del.C.** $\S1442$
- $\underline{5.1.70}$ 7.1.70 Felony unlawful dealing with a dangerous weapon. 11 **Del.C.** $\S1445(a)$
- <u>5.1.71</u> 7.1.71 Felony possession of a deadly weapon during the commission of a felony. 11 **Del.C.** §1447
- <u>5.1.72</u> Possession of a firearm during a commission of a felony. 11 **Del.C.** §1447A
- <u>5.1.73</u> 7.1.73 Possession and purchase of deadly weapons by persons prohibited. 11 **Del.C.** §1448
- 5.1.74 Felony Possession of a weapon in a Safe School and Recreation Zone. 11 **Del.C.** §1457
- $\underline{5.1.75}$ 7.1.75 Duty to report child abuse or neglect. 16 **Del.C.** §903
- <u>5.1.76</u> 7.1.76 Abuse, neglect, mistreatment or financial exploitation of residents or patients in a nursing or similar facility. 16 **Del.C.** §1136
- <u>5.1.77</u> 7.1.77 Felony falsification or destruction of records related to maintenance medical treatment. 16 **Del.C.** §2513
- <u>5.1.78</u> 7.1.78 Manufacture, delivery or possession with intent to deliver schedule I or II narcotic drugs. 16 **Del.C.** §4751
- <u>5.1.79</u> 7.1.79 Manufacture, delivery or possession with intent to deliver Schedule I, II, III, IV, or V non-narcotic drugs. 16 **Del.C.** §4752
- <u>5.1.80</u> 7.1.80 Unlawful delivery or noncontrolled substances. 16 **Del.C.** §4752A
- <u>5.1.81</u> 7.1.81 Possession, consumption, or use of controlled substances. 16 **Del.C.** §4753
- <u>5.1.82</u> 7.1.82 Trafficking in marijuana, cocaine, illegal drugs, metamphetamines, L.S.D., or designer drugs. 16 **Del.C.** §4753A.
- <u>5.1.83</u> 7.1.83 Possession, consumption, or use of non-narcotic controlled substances classified in Schedule I, II, III, IV, or V. 16 **Del.C.** § 4754
- <u>5.1.84</u> 7.1.84 Crimes related to controlled substances. 16 **Del.C.** §4756

- $\underline{5.1.85}$ $\overline{7.1.85}$ Distribution of controlled substances to persons under 21 years of age. 16 **Del.C.** §4761
- $\underline{5.1.86}$ 7.1.86 Distribution, delivery or possession of a controlled substance within 1,000 feet of school property. 16 **Del.C.** §4767
- <u>5.1.87</u> 7.1.87 Distribution, delivery or possession of a controlled substance within 300 feet of park, recreation area, church, synagogue or other place of worship. 16 **Del.C.** \$4768
- <u>5.1.88</u> 7.1.88 Felony obtaining benefit under false representation. 31 **Del.C.** §1003
- <u>5.1.89</u> 7.1.89 Felony falsification of reports, statements, or documents. 31 **Del.C.** §1004
- $\underline{5.1.90}$ 7.1.90 Kickback schemes and solicitation. 31 **Del.C.** $\S1005$
- <u>5.1.91</u> 7.1.91 Conversion of benefit payment. 31 **Del.C.** §1006
- <u>5.1.92</u> 7.1.92 Intentional abuse, neglect, mistreatment, or exploitation of an infirm adult. 31 **Del.C.** 83913
- 5.2 7.2 Crimes substantially related to the practice of occupational therapy 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.

DEPARTMENT OF TRANSPORTATION

DIVISION OF PLANNING AND POLICY

17 Delaware Code, Sections 132, 190 and Chapter 10, and 29 Delaware Code Section 8404 (4) and (8) (17 **Del.C.** §§190, 29 **Del.C.** §8404(4)(8))

ORDER

Delaware Bicycle Facility Master Plan

Summary of the Evidence and Information Submitted

The Department published a draft of the Statewide Bicycle Facility Master Plan in the June 1, 2005 edition of the *Delaware Register of Regulations*. Publication in the *Delaware Register of Regulations* also signified the start of a 30-day public comment period that began on the same date and ended on June 30, 2005.

As a result of the aforementioned public outreach, the following is a summary of the comments received related to the Draft Plan:

Comments

The Department received an email from Joseph Lazorick, Construction Manager for Montchanin Development Group, that generally supported the Draft Plan.

The Department received an email from Thomas Benton Sr. in response to the bike plan draft that indicated a walkway is needed across the bridge at Delcastle High School.

The Department received an email from Alison Burris, Outreach Manager for the Wilmington Area Planning Council (WILMAPCO), that generally supported the draft plan. Two points of concern presented by Ms. Burris included providing a DelDOT phone number or website link to address minor maintenance issues and expanding the prioritization requirement from 1/4 mile of schools, colleges and employers to 1 mile.

The Department received an email from Enno Krebbers that generally supports the Draft Plan. Mr. Krebbers suggested that in addition to bicycle connections with Maryland and Pennsylvania the plan consider a bicycle connection with New Jersey. Currently it is possible to reach New Jersey by way of the Cape May/Lewes Ferry, but not via a bridge connection.

The Department received an email from Robert J. Downs, who had specific comments and concerns about bicycles on Route 1 in the Rehoboth area. Mr. Downs is concerned that bicyclists do not appear to follow the rules of the road and create a hazardous condition for both riders and drivers. Mr. Downs suggests that enforcement of the rules of the road and ticketing of bicyclists may aid in making the roadways safer.

In addition to the above, Department staff and its technical team made the following comments on the Draft Plan as part of their final review of the document.

- With respect to the maps, the inclusion of the "Type of Facility Matrix" is confusing.
- With respect to the maps, there are two segments of recreational connector routes in Sussex County that are incorrectly mapped.
- Page 3 of the report reviews the "Role of the Plan". This summary of the "Role of the Plan" does not seem to accurately reflect the role.
- Pages 11, 17, and 19 of the report and pages 5 and 7 of Appendix A incorrectly identify the minimum width of a wide-outside travel lane to be shared by motorist and bicyclists.
- Page 17 of the report does not include a 4 foot minimum facility guideline for uncurbed sections.
- Section 2.3.1 reviews the definitions of a bikeway. The definitions are confusing.
- Table 3.1 and Table A.1 need clarification of the abbreviations used.
- Figure 3.6 represents conditions that may or may not be in conformance with AASHTO guidelines. Labels should be added to clarify which are in conformance and which are not.
- Section 7.0 waiver process does not appear to accommodate changes initiated by DelDOT Planning. It is important that it be possible to initiate the waiver process from either Engineering or Planning.

Findings of Fact

Based upon the comments received and summarized above, the following changes were made the Draft Plan and the Maps:

- Mapping Changes: The "Type of Facility Matrix" was removed from all maps to simplify map layout.
- Mapping Corrections: Two segments of recreational connector routes were not correctly displayed on the Susses County map. These segments were corrected.
- Report Correction: The minimum guideline width for wide-outside travel lanes was incorrectly identified as 12 feet. According to AASHTO and DelDOT Road Design Manual guidelines, the minimum width for a wide-outside travel lane to be shared by motorist and bicyclists on a designated route is 14 feet. This was corrected on pages 11, 17, and 10 of the report and pages 5 and 7 of Appendix A.
- Report Change: Additional explanation was provided in the "Role of the Plan" section on page 3 for sake of clarity.
- Report Change: Several sentences were removed from Section 2.3.1 on Bikeways on pages 11 and 12 for the sake of clarity.
- Report Change: A key, identifying abbreviations for required and preferred guidelines, was added to Table 3.1 and Table A.1.
- Report Change: Labels were added to the pictures in Figure 3.6 to identify which conditions were and were not in conformance with AASHTO guidelines for the sake of clarity.
- Report Change: The distances at which priority should be given to bicycle facility improvements near schools and bicycle supportive employers was changed from 1/4 mile to 1 miles as a result of a public comment. Alison Burris commented that the 1/4 miles distance was too short and should be lengthened to 1 mile. Changes were made accordingly to section 5.1.2, 6.1 and 6.2 of the report.
- Report Change: Additional explanation of the waiver process was added to Section 7.0 for clarification purposes.

These changes were made to the Draft Plan, and they are noted in the full citation that is part of the submission to the *Delaware Register of Regulations*. Additions are underlined and deletions are struck through.

Text and Citation

See Executive Summary and Plan.

Decision

Pursuant to the authority in 17 **Delaware Code**, Section 132, 190, and Chapter 10, and 29 **Delaware Code**, Section 8404 (4) and (8), as well as federal authority, and after due notice as required under the Administrative Procedures Act, the Department of Transportation hereby adopts the Delaware Bicycle Facility Master Plan effective October 10, 2005.

Comments or questions regarding the plan and how it will be administered should be directed to:

Joseph Cantalupo, Assistant Director of Planning Delaware Department of Transportation PO Box 778 Dover, DE 19903 (302) 760-2121 (telephone) (302) 739-2251 (fax) joseph.cantalupo@state.de.us

PDF Version of Plan (Adobe Acrobat Reader required)

APPROVED: Nathan Hayward III, Secretary, Delaware Department of Transportation, 9/13/05 ATTEST: Martha N. Dobson, Director, Division of Technology and Support Services, 9/14/05

Introduction

The Bicycle Facility Master Plan was developed in order to define and implement a statewide system of designated, onroad bicycle routes. By designating a system of routes, DelDOT will take advantage of the existing system of roadways to provide improved bicycle travel options. The Bicycle Facility Master Plan provides specific guidance as to the location and nature of "appropriate accommodations" along DelDOT-maintained roadways.

The overall purpose of the Plan is to recognize bicycling as an integral part of the transportation system and provide for suitable accommodations for bicycles on the statewide roadway network. Implementation of the plan will achieve the following goals:

- Integrate existing bicycle routes and trails to a larger, statewide bicycle network.
- Establish bicycle routes between municipalities, activity centers, and recreational areas throughout the state.

Role of the Plan

The Bicycle Facilities Master Plan provides DelDOT with three tools with which to design and construct a continuous statewide network of bicycle facilities:

- A statewide network of on-road bikeways. The plan designates a set of on-road bikeways which connect Delaware's municipalities, activity centers, and recreational destinations.
- A set of design recommendations for each type of bikeway. These will guide DelDOT and developers, letting them know what types of facilities are expected along each DelDOT-maintained roadway.
- An implementation plan that identifies roles for stakeholders. Interviews with state agency staff and other stakeholders allowed DelDOT to distinguish DelDOT agency roles and roles for other stakeholders (Refer to Page 10 outline).

The Bicycle Facility Master Plan will be considered in conjunction with several other policies and programs including:

- DelDOT Rails-to-Trails Program
- Local and regional bicycle master plans
- DNREC's Greenways and Trails Master Plan

Bicycle Facility Needs

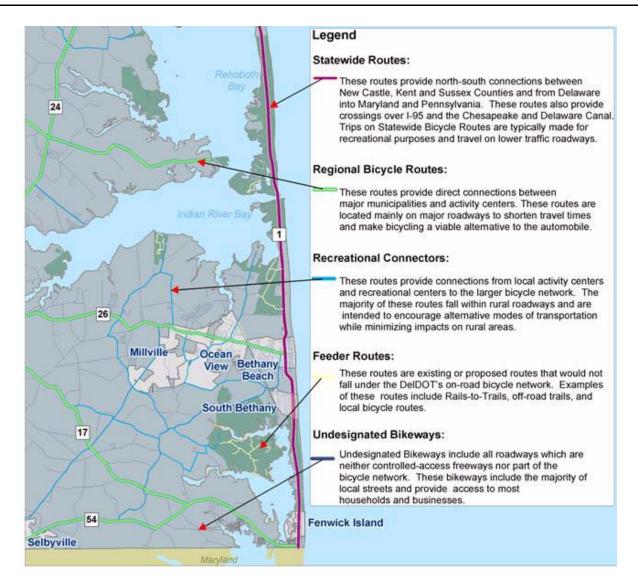
In order to understand the specific needs of bicyclists in Delaware, a public outreach program was undertaken for this Plan. As part of this process, participants identified a set of basic facility needs which influence their decision whether or not they are willing to bicycle (or let their children ride bicycles) on roadways.

Those basic needs were:

- Clearly identified routes with consistently designed bikeways and signage.
- A continuous network of bikeways connecting to residences, activity centers and recreational destinations.
- Provision of safe crossings
- Additional consideration for the needs of children

Facility Recommendations Route Recommendations

The proposed network will consist of a hierarchy of bikeways, covering a range of mobility needs.



Design Recommendations

The routes in the statewide bicycle network will be improved incrementally as part of the regular cycle of DelDOT road construction and maintenance. Roadway projects with planned bicycle facilities will be based on the new bicycle facility design guidelines established in both the Facility Plan and the Road Design Manual. Some of the facilities which will be improved include:

- **Bikeways.** For each type of designated bicycle route there are required and preferred bicycle facility features which should be installed. (See below) In satisfying the required features, Statewide, Regional, and Recreational Connectors bicycle routes can be built as bike lanes, shared shoulders, or wide outside travel lanes as determined by DelDOT staff. Refer to Page 4 for descriptions of bikeway types.
- **Traffic Controls.** Traffic Controls may include signage, lane striping, bike lane symbols, and traffic signals. The Plan provides specific guidance as to the usage and placement of traffic controls along bikeways.
- Intersection Treatments. The Plan details how striping, signage, and other bicycle facility improvements should be treated at intersections.
- **Bridge Treatments.** Delaware's bridges represent one of largest challenges to providing continuous bicycle routes. The design recommendations for bridge treatments are intended to enhance the safety of bicyclists.

- Interchange Treatments. Bikeways crossing interchanges should be designed to minimize the conflict points between automobile traffic and bicyclists.
- Other Design Considerations. The Plan also establishes guidance on drainage inlet grates, utility covers, and railroad crossings that are compatible with bicycling.

Bicycle Facility Features by Facility Master Plan Route Type R = Required P = Preferred	Type of Bicycle Routes	Statewide Bicycle Route	Regional Bicycle Route	Recreational Connector
Minimum Facility Width		5'	5'	5'
Facility Improvements				
Bike Route Number Signs		R	R	n/a
Warning & Regulatory Signs		R	R	R
Bicycle Symbols		R	R	P
Bicycle Friendly Drainage Grates		R	R	R
Right angles railroad crossings		R	R	R
Utility Covers out of path or flush		R	R	R

Description of Bikeways:

Bike Lane. Design guidelines include a 5 foot minimum lane width with striping, bike symbols, and route designation. Warning and regulatory signage shall be provided. The guidelines for Bike Lanes establish preferential use by bicyclists. This type of facility is most beneficial for less experienced riders (Group C) but difficult to fit within existing roadways.



Shared Shoulders. The paved shoulder should be a minimum of 5 feet wide. Includes some signage and bicycle symbols. This bicycle facility is intended to be shared by bicyclist and motorists. A shared bikeway maintains emergency use of the shoulder for motorist breakdowns/emergencies while providing a facility for bicyclists separated from the travel lane. Parking on shoulders should be prohibited. This type of facility is suitable for Type B or basic bicyclists.



Wide Outside Travel Lane. The guidelines include a [4214] foot wide outside travel lane to be shared by motorists and bicyclists. Warning and regulatory signage may be included but no striping shall be provided. This bikeway is most applicable for roadways with low speeds and lower traffic volumes and is intended for more advanced bicyclists.

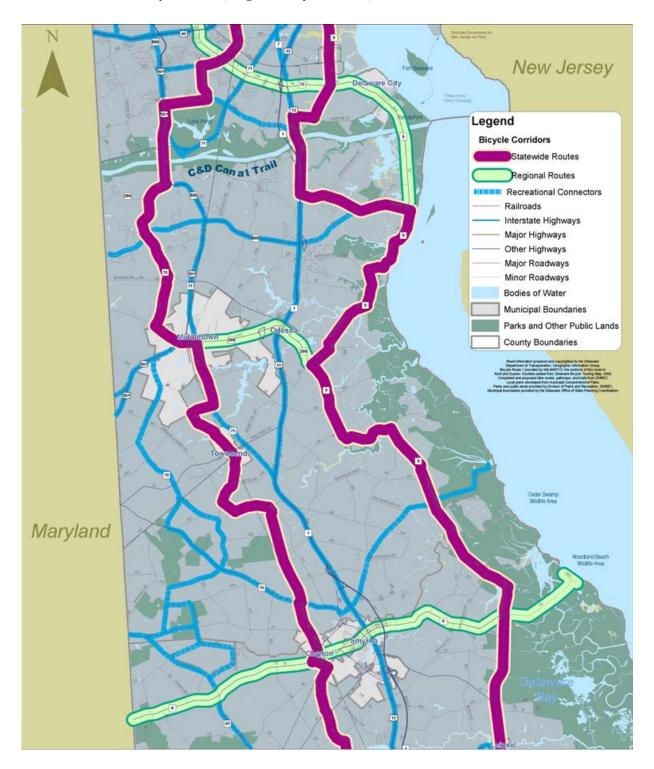


Northern New Castle County Statewide Bicycle Routes, Regional Bicycle Routes, and Recreational Connectors



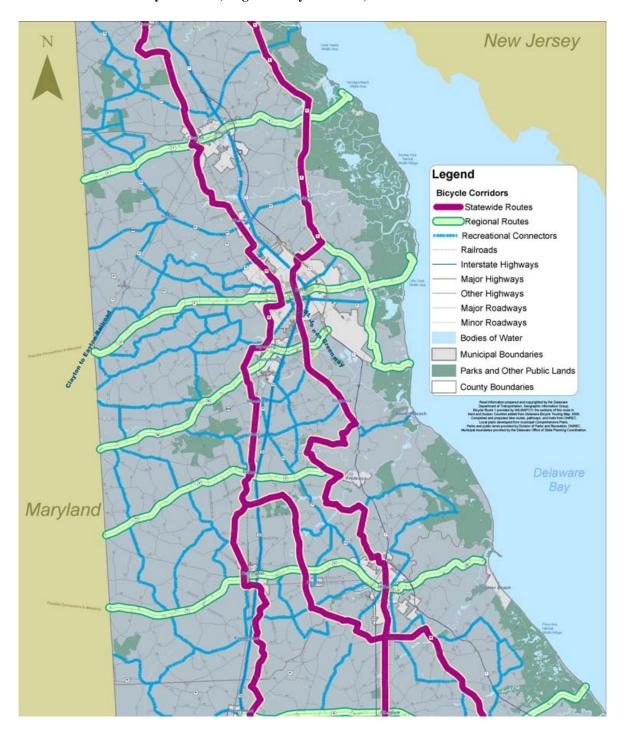
The Plan recommends 126 miles of Statewide Bicycle Routes, 71 miles of Regional Bicycle Routes, and 301 miles of Recreational Connectors in New Castle County.

Southern New Castle County Statewide Bicycle Routes, Regional Bicycle Routes, and Recreational Connectors



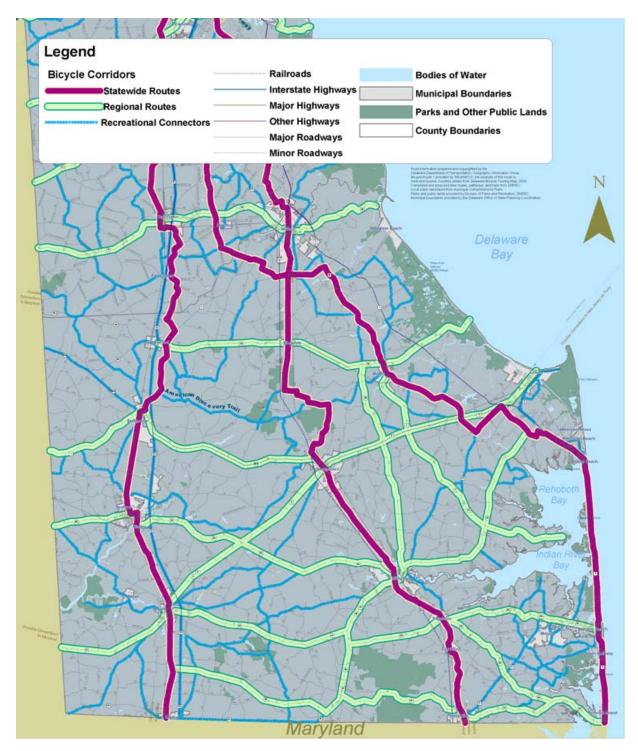
The Plan recommends 126 miles of Statewide Bicycle Routes, 71 miles of Regional Bicycle Routes, and 301 miles of Recreational Connectors in New Castle County.

Kent County Statewide Bicycle Routes, Regional Bicycle Routes, and Recreational Connectors



The Plan recommends 92 miles of Statewide Bicycle Routes, 102 Regional Bicycle Routes, and 307 miles of Recreational Connectors in Kent County.

Sussex County Statewide Bicycle Routes, Regional Bicycle Routes, and Recreational Connectors



The Plan recommends 117 miles of Statewide Bicycle Routes, 227 miles of Regional Bicycle Routes, and 366 miles of Recreational Connectors in Sussex County.

Plan Implementation

The key to implementing the Bicycle Facility Master Plan will be to integrate the recommendations into the regular cycle of roadway planning, design, construction, and maintenance.

Planning. DelDOT staff will be aware of the designated bicycle routes early, so that they can begin to evaluate bicycle facilities' impacts on design and right-of-way requirements for a roadway project.

Design. The DelDOT *Road Design Manual* notes that the selection of a facility type should be determined in part by the presence of state and local bicycle master plans. This Facility Plan fulfills that role. Therefore, where a roadway project occurs along a route designated by the Bicycle Facility Master Plan, the project team should apply the appropriate design guidelines for the planned route.

Construction. Making DelDOT construction staff aware of the designated bikeways in the Bicycle Facility Master Plan will improve their understanding of the significance of site-specific bicycle improvements.

Maintenance. The DelDOT *Road Design Manual* provides guidance on pavement treatments regarding the transitions between the travel lane, shoulder, and gutter pan which should be taken into consideration during repaving projects to improve bicycling conditions.

The chart summarizes stakeholder roles in the plan's implementation.

		Role in Plan Implementation					
Sta	akeholder	Planning and Development		Design		Construction	
	Planning - Transportati on Solutions	2 Use Bicycle Facility Master Plan	2	Ensure developers Apply Bicycle Facility Master Plan design standards to designated routes	2	Ensure improvements developed in planning and design properly implemented in the field	
DelDOT	Maintenanc e & Operations				2	Ensure repaying, reconstruction, and maintenance projects take into account design standards for bikeways	
	Traffic Engineering		2	Consider bicycle crossings when determining timing of signals			
	Delaware	² Identify transit facilities suitable			2	Provide bicycle lockers, bike racks at	
Local Municipalities		 Develop local network of Feeder Routes which connect into statewide bicycle network Nominate transportation enhancement (TE) projects to tie Feeder Routes into Statewide and Regional Bicycle Routes 	2	Assist DelDOT in identifying local constraints, opportunities along designated bikeways			
Delaware Department of Natural Resources and Environmental Control (DNREC)		Provide feedback to DelDOT through Council on Greenways and Trails					
Delaware Bicycle Council		 Pass along feedback from cyclists using the statewide bicycle network Advise DelDOT on areas requiring improvements Conduct bicycle safety programs 					

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Metropolitan			
Planning	2	Review projects submitted for	
Organizations		the Transportation Improvement	
(Dover-Kent		Project, ensure projects take into	
MPO,		account bicycle mobility	
WILMAPCO			
	2	Provide DelDOT with accurate	
Delaware State		bicycle accident data to identify	
Police Department		conditions and locations	
Tonce Department		requiring bicycle facility	
		improvements	
Delaware Office of	2	Pass along feedback from public	
Highway Safety &		regarding bicycle safety on	
Homeland		DelDOT roadways	
Security	2	Conduct bicycle safety programs	
Delaware	2	Work with DelDOT in	
Department of		identifying schools for Safe	
Education		Routes to School pilot project	

*PLEASE NOTE: DUE TO THE SIZE OF THE PROPOSED REGULATION IT IS NOT BEING PUBLISHED HERE. TO OBTAIN A COPY CONTACT EITHER THE DEPARTMENT OF TRANSPORTATION OF THE REGISTRAR'S OFFICE.

PDF Version (Adobe Acrobat Reader required)

GOVERNOR'S EXECUTIVE ORDERS

STATE OF DELAWARE EXECUTIVE DEPARTMENT DOVER

EXECUTIVE ORDER

NUMBER SEVENTY-ONE

RE: Directing The Delaware Emergency Management Agency To Organize Volunteers For Response Efforts Involving Hurricane Katrina And Its Aftermath

WHEREAS, in 1996, Delaware became a party to the Emergency Management Assistance Compact ("EMAC"), codified at Title 20 of the Delaware Code, Chapter 34, an interstate compact that provides for mutual assistance between requesting states in managing gubernatorial-declared emergencies or disasters; and

WHEREAS, as a result of Hurricane Katrina and its aftermath, emergency assistance has been requested of the State of Delaware through the EMAC; and

WHEREAS, in order to facilitate the deployment of professional volunteers and certain State employees who will provide services in affected states that request assistance in accordance with EMAC and other applicable provisions of Delaware law, and to invoke the emergency powers of the Governor, an executive order is appropriate,

NOW THEREFORE, I, RUTH ANN MINNER, by virtue of the authority vested in me as Governor of the State of Delaware, including without limitation such powers as are available under Title 20 of the Delaware Code, do hereby declare and order as follows:

- 1. I authorize and direct the Delaware Emergency Management Agency during this emergency period, to engage, deploy and coordinate available professional volunteers and certain State employees to states affected by Hurricane Katrina that request assistance under the EMAC, and/or other applicable provisions of Delaware law.
- 2. I further authorize and direct that volunteers coordinated and deployed by the Delaware Emergency Management Agency pursuant to this Order shall be deemed officers of the State of Delaware under the EMAC or other applicable provisions of Delaware law, and shall enjoy all privileges and immunities available to officials and employees of this State while deployed by the Delaware Emergency Management Agency. Nothing in this Order is intended to or will prevent the application of any other

immunity or liability exemption otherwise available to such volunteers as provided for by any applicable law.

APPROVED: September 6, 2005

Ruth Ann Minner, Governor

ATTEST:

Harriet Smith Windsor, Secretary of State

GOVEI	RNOR'S APPOINTMENTS	
BOARD/COMMISSION OFFICE	N APPOINTEE	TERM OF OFFICE
Advisory Council to the Division of Developmental Disabilities Serv	Mr. Anthony L. Horstman	7/29/2006
Advisory Council to the Division of Abuse and Mental Health	Substance Ms. Andrea Guest Mr. James J. Lafferty Ms. Elizabeth B. Pertzoff Ms. Janet A. Ray Mr. Gary L. Wirt	8/30/2008 8/30/2008 8/30/2008 8/30/2008 8/30/2008
Board of Accountancy	Ms. Joyce P. Dyer Ms. Norma L. Rohleder	8/25/2008 8/25/2008
Board of Architects	Ms. Julia C. Hopkins Ms. Jean N. McCool	8/7/2006 8/24/2008
Board of Cosmetology and Barberin	g Mr. John H. Cook, Jr.	4/5/2007
Board of Dental Examiners	Wanda Gardiner Smith, D.D.S.	8/30/2008
Board of Examiners of Nursing Hom Administrators	Mr. Michael R. S. Bundek Ms. Lillie Mae Johnson	8/25/2008 8/25/2008
Board of Geologists	Mr. Scott C. Blaier	8/25/2008
Daniel of Landanana Analita stans	Ma Dovi D Wooth alla	9/25/2009

Board of Landscape Architecture Mr. Paul P. Westhelle 8/25/2008 **Board of Nursing** Ms. Margaret E. Ingram 8/24/2008 Reverend James C. Vanderwall 8/24/2008 Ms. Rebecca D. Walker 8/24/2008 **Board of Pilot Commissioners** The Honorable David D. Brady 6/20/2007 Mr. William Walker **Board of Plumbing Examiners** 8/24/2008 Board of Podiatry Roman C. Orsini, D.P.M. 8/24/2008 Child Death, Near Death and Stillbirth Review Sergeant Phillip H. Hill 8/30/2008 Commission Ms. Janice M. Mink 8/30/2008 Child Placement Review Board Excecutive Mr. Donald F. Schneck 8/24/2008 DELAWARE REGISTER OF REGULATIONS, VOL. 9, ISSUE 4, SATURDAY, OCTOBER 1, 2005

GOVERNOR	621	
BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Child Placement Review Board-Kent	Ms. Mary Austria	8/30/2008
	Ms. Evelyn Figueroa	8/30/2008
	Mr. William Moyer	8/30/2008
	Ms. Denise R. Stokes	8/30/2008
	Ms. Dana S. Stonesifer	8/30/2008
Child Placement Review Board-New Castle	Ms. Melissa W. Flynn	8/30/2008
	Ms. Mary Jane Johnson	8/30/2008
	Ms. Judith A. Miller	8/30/2008
	Ms. K. Sun Moon	8/30/2008
	Ms. Mary R. Morgan	8/30/2008
	Ms. Donna Morton	8/30/2008
	Ms. Judith Smith	8/30/2008
	Ms. S. Ann Southmayd	8/30/2008
	Ms. Carol A. Stewart	8/30/2008
Commission for the Purchase of Products and	Mr. James T. Case, III	8/30/2009
Services of the Blind and Other Severely	Mr. Jayson D. Crouch	8/30/2009
Handicapped Individuals	Mr. Martin E. Mullane	8/30/2009
Council on Archives	Ms. Joan R. Hoge	7/20/2007
	Mr. R. Brian Page	8/25/2008
Council on Archives, Chair	Mr. C. Russell McCabe, II	7/20/2007
Council on Banking	Mr. Clinton W. Walker	8/24/2008
Council on Correction	Ms. Yolanda R. Robinson	8/24/2008
Council on Development Finance	Mr. Steven Biener	8/24/2008
•	Mr. Thomas A. Gilligan	8/24/2008
	Mr. Donald J. Lynch	8/24/2008
Council on Forestry	Mr. Steven L. Ditmer, Sr.	8/24/2008
	Ms. Grace W. Lowe	8/24/2008
	Mr. Timothy Taraila	12/23/2006
Council on Libraries	Ms. Sheila B. Anderson	8/30/2008
	Mr. Newton E. Crouse	8/30/2008
	Ms. Jean D. Gandek	8/30/2008

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Council on Libraries	Mr. S. Maynard Turk	8/30/2008
	Ms. Catherine W. Wojewodzki	8/30/2008
Council on Shell Fisheries	Mr. Charles R. Auman	8/24/2008
Council on Social Services	Ms. Joan L. Caulk	8/25/2008
	Ms. Mable F. Cephas	8/25/2008
	Ms. Betty Jo Collins	8/25/2008
	Ms. Retha S. Fisher	8/25/2008
	Mr. Ryan K. Messatzzia	8/25/2008
Council on Transportation	Mr. Irwin G. Burton	8/24/2008
	Mr. Marvin J. Davis	8/24/2008
	Mr. Harry H. Isaacs, Jr.	8/24/2008
Delaware Bicycle Council	Mr. John W. Schneider, Jr.	10/20/2006
Delaware Greenways and Trails Council	Mr. Malcolm E. Baird	8/25/2008
ř	Mr. James Brown	8/25/2008
	Ms. Diane K. Wilson	8/25/2008
Delaware Greenways and Trails Council,	Chair, Mr. Paul H. Morrill, Jr.	8/25/2008
Delaware Health Resources Board	Mr. S. Bernard Ableman	8/30/2008
	Ms. Katherine R. Deitcher	8/30/2008
	John A. Forest, Jr., M.D.	8/30/2008
	Ms. Joann O. Hasse	8/30/2008
	Dana J. Jefferson, Ph.D.	8/30/2008
	Mr. William F. O'Connor	8/30/2008
	Mr. Richard D. Pack	8/30/2008
	Jaime H. Rivera, M.D.	8/30/2008
	Mr. J. Kenneth Saunders	8/30/2008
	Mr. Frank Smith	8/30/2008
	Ms. Yrene E. Waldron	8/30/2008
Delaware Health Resources Board, Chair	Ms. Phyllis A. Sheppard	8/30/2008
Delaware Heritage Commission	Mr. Walter E. Kee, Jr.	2/6/2007
	Jonathan S. Russ, Ph.D.	12/23/2006
Delaware Humanities Council	Wilma Mishoe, Ed.D.	8/30/2008

DELAWARE REGISTER OF REGULATIONS, VOL. 9, ISSUE 4, SATURDAY, OCTOBER 1, 2005

GOVERNOR'S APPOINTMENTS 6			
BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE	
Delaware Institute of Medical Education and Research, member of the Board of Directors	Carl E. Turner, M.D.	8/24/2008	
Delaware Nursing Home Residents Quality Assurance Commission	Ms. Karen E. Gallagher Ms. Vicki Lee Givens	8/24/2008 8/24/2008	
Delaware Open Space Council	Mr. D. Wayne Holden	8/24/2009	
Delaware State Arts Council	Ms. Keyla I. DiSalvo Mr. Gary E. Grunder Mr. Brian S. Miller Ms. Joyce H. Stoner	8/24/2008 8/24/2008 8/24/2008 7/19/2007	
Dental Hygiene Advisory Committee	Ms. Fay S. Rust	8/25/2008	
Developmental Disabilities Council	Ms. Earline Bessix Mr. Vince A. Boehm, Jr. Mr. Mark A. DeVore Ms. Sheila M. Donnelly Ms. Elizabeth A. McLaughlin Mr. James A. Tapert Mr. Raymond L. Townsend	8/24/2011 8/24/2011 8/24/2011 8/24/2011 8/24/2011 8/24/2011	
Dover/Kent Metropolitan Planning Organization PAC	Mr. Horace W. Cook Mr. Donald L. Erhart	8/31/2007 8/31/2007	
Governor's Commission on Community and Volunteer Service	Ms. Evangeline E. Austin The Honorable Gerald L. Brady Mr. John R. Danzeisen Mr. Joseph Duffy Edward W. Goate, Ed.D. Mr. Jose Quinones Ms. Margaret E. Strine Mr. Tony E. Windsor	8/24/2007 8/24/2007 8/24/2008 8/24/2008 8/24/2008 8/24/2008 8/24/2008 8/24/2008	
Governor's Commission on Community- Based Alternatives for Individuals with Disabilities	Mr. Larry D. Henderson	Pleasure of the Governor	

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Interagency Coordinating Council	Susan A. Cycyk, M.Ed.	8/30/2008
Kent County Vocational-Technical Board of Education	Mr. Kenneth W. Edwards Mr. William Dale Hammond Ms. Linda K. Hargett	8/24/2012 8/24/2012 9/25/2008
Parks and Recreation Council	Mr. William J. Hopkins Mr. Ronald F. Whittington	8/30/2008 8/30/2008
State Emergency Response Commission	Mr. Ralph T. Baker Mr. Alfred F. Johnson, Jr. Ms. Pamela Meitner Mr. John R. Peirce Mr. Steven M. Scruggs	8/30/2007 8/30/2007 8/30/2007 8/30/2007
State Employee Benefits Advisory Council	Corporal Edwin Justiniano	8/30/2008
State Examining Board of Physical Therapists and Athletic Trainers	Ms. Sharon L. Harris Mr. Gary T. Nowell	8/25/2008 8/25/2008
State Independent Living Council	Ms. Shirley A. Gipson Ms. Catherine R. McKelvey Mr. Peter K. Mitchell	8/29/2008 8/29/2008 8/29/2008
Unemployment Compensation Advisory Council	Mr. Robert L. Byrd Mr. Daniel W. Wolfensberger	8/24/2008 8/24/2008
Vocational Rehabilitation Advisory Council for DVI	Ms. Deedra V. Robinson-Clark Ms. Melissa H. Shahan Mr. Stewart H. Wiggins	8/25/2008 8/25/2008 8/25/2008
Welfare Employment Committee	Mr. William J. Bergmann Mr. James R. Gettier Ms. Catherine C. Halen Ms. Donita L. Sing	8/30/2008 8/30/2008 8/30/2008 8/30/2008
Wilmington Area Planning Council (WILMAPCO)	Ms. Lee Ann Walling	Pleasure of the Governor

DEPARTMENT OF EDUCATION PROFESSIONAL STANDARDS BOARD

IMPLEMENTING ORDER

Professional Standards Board Procedures Manual

Background and Context of Regulation

The Professional Standards Board's *Procedures Manual* includes descriptions of the Board's organization and operations, its meeting procedures and its rules of hearing practice, among other items.

The Professional Standards Board concludes that it is necessary to adopt the *Procedures Manual* to replace bylaws which were adopted in 2000. The *Procedures Manual* includes changes in the structure of the board resulting from statutory changes.

The Standards Board *Hearing Procedures and Rules*, which were originally adopted on February 8, 2001, were incorporated as an appendix to the *Procedures Manual* and were amended to clarify deadlines and methods of delivery of petitions, to specify the use of a hearing officer, to specify that a written list of witnesses must be delivered prior to a hearing, and to set forth information on the burden of proof and standard of review.

These changes are exempted from the procedural requirements of the *Administrative Procedures Act* pursuant to 29 **Del.C**. 10113(b)(1), (2, (4) and (5). As a result, the Professional Standards Board may adopt these changes informally.

Order Adopting Regulations

The Professional Standards Board concludes that it is appropriate to amend the *Procedures Manual* as described above. The amended regulation is attached as Exhibit "A; and is hereby adopted by the Professional Standards Board as its *Procedures Manual*, effective immediately.

IT IS SO ORDERED THIS FIRST DAY OF SEPTEMBER, 2005

PROFESSIONAL STANDARDS BOARD

Harold Roberts, Chair
Leslie Holden, Vice Chair
Norman Brown
Angela Dunmore
Barbara Grogg
Valerie Hoffmann

Harold Roberts, Chair
Sharon Brittingham
Heath Chasanov
Edward Czerwinski
Karen Gordon
Bruce Harter
Carla Lawson

Mary Mirabeau Karen Schilling Ross Gretchen Pikus Carol Vukelich

Appendix A

Initial adoption date February 8, 2001 Revised 9/1/05 (Vol. 9, Issue 4)

1.0 Scope and Purpose of Rules

The Professional Standards Board ("the Standards Board") is authorized by *Chapter 12* of the Education Code (Title 14 of the *Delaware Code*) to adopt or approve rules and regulations and to hold hearings related to proposed licensing and certification actions by the Department of Education. The Standards Board is also governed by the *Administrative Procedures Act* (Chapter 101, of Title 29 of the *Delaware Code*).

These Hearing Procedures and Rules ("Rules") shall govern the practice and procedure before the Standards Board in hearings and regulatory proceedings.

2.0 General Provisions

- 2.1 These Rules shall be liberally construed to secure a just, economical, and reasonably expeditious determination of the issues presented in accordance with the Standards Board's statutory responsibilities and with the *Administrative Procedures Act*.
- 2.2 The Standards Board may, for good cause, and to the extent consistent with law, waive any of these Rules, either upon application or upon its own motion.
- 2.3 Whether a proceeding constitutes an evidentiary hearing or regulatory action shall be decided by the Standards Board on the basis of the applicable laws. A party's designation of the proceeding shall not be controlling on the Standards Board or binding on the party.
- 2.4 The Standards Board may appoint a representative to act as a hearing officer for any proceeding before the Standards Board. Except as otherwise specifically provided, the duties imposed, and the authority provided, to the Standards Board by these Rules shall also extend to its hearing officers.
- 2.5 Notwithstanding any part of these Rules to the contrary, the Standards Board, or its counsel, designee or hearing officer, may conduct pre-hearing conferences and teleconferences to clarify issues, confer interim relief, specify procedures and otherwise expedite the proceedings.
- 2.6 The Standards Board may administer oaths, take testimony, hear proofs and receive exhibits into evidence at any hearing. Testimony at any hearing shall be under oath or affirmation.

- 2.7 The Standards Board may elect to conduct joint hearings with the State Board of Education and other state and local agencies. These Rules may be modified as necessary for joint hearings.
- 2.8 Any party to a proceeding before the Standards Board may be represented by counsel. An attorney representing a party in a proceeding before the Standards Board shall notify the Executive Director of the Standards Board ("Executive Director") of the representation in writing as soon as practical. Attorneys who are not members of the Delaware Bar may be permitted to appear *pro hac vice* before the Standards Board in accordance with Rule 72 of the Rules of the Delaware Supreme Court.
- 2.9 The Standards Board may continue, adjourn or postpone proceedings for good cause at the request of a party or on its own initiative. Absent a showing of exceptional circumstances, requests for postponements of any matter scheduled to be heard by the Standards Board shall be submitted to the Executive Director in writing at least three (3) business days before the date scheduled for the proceeding. The Chair of the Standards Board shall then decide whether to grant or deny the request for postponement. If a hearing officer has been appointed, the request for postponement shall be submitted to the hearing officer, who shall then decide whether to grant or deny the request.
- 2.10 A copy of any document filed with or submitted to the Standards Board or its hearing officer shall be provided to all other parties in the proceeding, or to their legal counsel.
- 2.11 For purposes of these Rules, unless otherwise specified, "day" shall mean a calendar day. "Business day" shall mean weekdays Monday through Friday, except when those days fall on a legal holiday.

3.0 Evidentiary Hearings

- 3.1 Section 3.0 governs proceedings where a statute or regulation provides the right to an original hearing before the Standards Board to decide a specific controversy or dispute.
 - 3.2 Petitions for Hearing
- 3.2.1 A party may initiate a hearing on matters within the Standards Board's jurisdiction by mailing or delivering a petition for hearing to the Executive Director. The petition shall be in writing and shall be signed by the party making the request (or by the party's authorized representative). It shall set forth the grounds for the action in reasonable detail and shall identify the source of the Standards Board's authority to decide the matter. Petitions may not be delivered to the Executive Director by facsimile or other electronic means.

- 3.2.2 The petition for hearing must be postmarked or delivered to the Executive Director within thirty (30) days of the petitioning party's receipt of notice that official action has been taken by an authorized person, organization, board or agency.
- 3.2.3 A copy of the petition for hearing shall be sent to all other parties to the proceeding at the time it is mailed or delivered to the Executive Director. A copy of any other paper or document filed with the Standards Board or its hearing officer shall be provided to all other parties to the proceeding at the same time it is mailed or delivered to the Standards Board or its hearing officer. If the party is represented by legal counsel, delivery to legal counsel is sufficient.
- 3.2.4 Upon receipt of an adequately detailed petition for hearing, the Executive Director shall assign the matter to a hearing officer from a roster of hearing officers approved by the Standards Board. The Executive Director shall provide the petition for hearing and the hearing officer assignment to the Standards Board at its next regularly scheduled meeting.
- 3.2.5 The Standards Board or the hearing officer, in their discretion, may direct the person, organization, board or agency taking official action to file a written response to a Petition for hearing.
- 3.2.6 A party shall be deemed to have consented to a closed hearing unless the party notifies the Executive Director in writing that a public hearing is requested. Such notice must be delivered to the Executive Director within five (5) days of the receipt of the notice scheduling the hearing.
- 3.2.7 Parties shall keep the Standards Board informed of their current addresses and telephone numbers during the pendency of any proceedings.
 - 3.3 Formal Hearings Procedures
- 3.3.1.1 The hearing will proceed with the party with the burden of proof first presenting its evidence and case. The other party, if any, may then present its case. The party with the burden of proof will then have an opportunity to present rebuttal evidence.
- 3.3.1.2 Opening and closing arguments and post hearing submissions of briefs or legal memoranda will be permitted at the discretion of the Standards Board or hearing officer.
- 3.3.1.3 Any person who testifies as a witness shall also be subject to cross examination by the other parties to the proceeding. Any witness is also subject to examination by the Standards Board or its hearing officer.
 - 3.3.2 Evidence
- 3.3.2.1 Strict rules of evidence shall not apply. Evidence having probative value commonly accepted

by reasonably prudent people in the conduct of their affairs may be admitted into evidence.

- 3.3.2.2 The Standards Board or its hearing officer may exclude evidence and limit testimony as provided in Section 10125(b) of the *Administrative Procedures Act*.
- 3.3.2.3 Objections to the admission of evidence shall be brief and shall state the grounds for the objection. Objections to the form of the question will not be considered.
- 3.3.2.4 Any document introduced into evidence at the hearing shall be marked by the Standards Board or the hearing officer and shall be made a part of the record of the hearing. The party offering the document into evidence shall provide a copy of the document to each of the other parties and to each of the Standards Board members present for the hearing unless otherwise directed.
- 3.3.2.5 Requests for subpoenas for witnesses or other sources of evidence shall be delivered to the Executive Director in writing at least fifteen (15) days before the date of the hearing, unless additional time is allowed for good cause. The party requesting the subpoena is responsible for delivering it to the person to whom it is directed.
- 3.3.2.6 A written list of witnesses a party intends to call during a hearing shall be delivered to the Executive Director and to all other parties at least five (5) days prior to a hearing. The Standards Board or its hearing officer, in its discretion, may refuse to receive into evidence any testimony of a witness who has not been named on the witness list.
- 3.3.2.7 Witnesses may be sequestered at the discretion of the Standards Board or its hearing officer upon request of any party.
 - 3.4 Creation of Record before Standards Board
- 3.4.1 Any party may request the presence of a stenographic reporter on notice to the Executive Director at least ten (10) days prior to the date of the hearing. The requesting party shall be liable for the expense of the reporter and of any transcript the party requests.
- 3.4.2 If a stenographic reporter is not present at the hearing, the Standards Board shall cause an electronic recording of the hearing to be made by tape recorder or other suitable device. Electronic recordings shall be destroyed unless a written request to preserve it is made to the Executive Director within three months of the conclusion of the hearing.
 - 3.5 Burden of Proof and Standard of Review
- 3.5.1 The burden of proof in license or certification denial actions is on the applicant to show by a preponderance of the evidence that he or she meets the

- requirements of the applicable laws and regulations relating to the issuance of a license or certificate.
- 3.5.2 The burden of proof in license or certification disciplinary actions is on the person, organization, board or agency taking official action to establish by clear and convincing evidence that the licensee has failed to comply with the applicable laws and regulations relating to the retention of a license or certificate.
- 3.6 Standards Board Decision
- 3.6.1 When the Standards Board has appointed a hearing officer, the hearing officer shall submit a proposed written decision for the consideration of the Standards Board.
- 3.6.2 The proposed decision shall comply with Section 10126(a) of the *Administrative Procedures Act*. The proposed decision shall be submitted to the Standards Board and the parties within 20 days of the conclusion of the proceedings before the hearing officer.
- 3.6.3 The parties shall have twenty (20) days from the date the proposed order is delivered to them to submit in writing to the Standards Board and the other party any exceptions, comments and arguments respecting the proposed order. The parties may agree to shorten or waive the comment period, or to consent to the hearing officer's recommendation without additional information. When the parties consent to the hearing officer's recommendation, they shall so advise the Executive Director.
- 3.6.4 To the extent possible, the Standards Board shall consider a matter conducted by a hearing officer at its next regular meeting following the parties' submissions, if any, or the end of the comment period, whichever comes first.
- 3.6.5 The Standards Board shall consider the entire record of the case and the hearing officer's proposed decision and written comments thereto, if any, in reaching its final decision. The Standards Board's decision shall be incorporated in a final order, which shall be signed and mailed to the parties by certified mail.

4.0 Public Regulatory Hearings

- 4.1 Section 4.0 governs public hearings before the Standards Board or its hearing officers where the Standards Board decides to hold such hearings before adopting or approving rules and regulations or taking other regulatory action.
- 4.2 Notice that the Standards Board has scheduled a public regulatory hearing shall be provided as required in Section 10115 of the *Administrative Procedures Act*. Notice of the public hearing shall also be circulated to individuals and agencies on the Standards Board's mailing list for meeting agendas. The notice of the hearing shall indicate

whether the Standards Board will conduct the hearing, or designate a hearing officer for that purpose.

- 4.3 Creation of record of public hearing
- 4.3.1 Any party may request the presence of a stenographic reporter on notice to the Executive Director at least ten (10) days prior to the date of the hearing. The requesting party shall be liable for the expense of the reporter and of any transcript the party requests.
- 4.3.2 If a stenographic reporter is not present at the hearing, the Standards Board shall cause an electronic recording of the hearing to be made by tape recorder or other suitable device. Electronic recordings shall be destroyed unless a written request to preserve it is made to the Executive Director within three months of the conclusion of the hearing. Any party requesting that a written transcript be made from the recording shall bear the cost of producing the transcript.

4.4 Subpoenas

- 4.4.1 The Standards Board or its hearing officer may issue subpoenas for witnesses or other evidence for the public hearing. Where possible, such subpoenas shall be delivered to the party to whom they are directed at least ten (10) days prior to the public hearing.
- 4.4.2 The Standards Board or its hearing officer may also, in its discretion, issue subpoenas at the request of a person interested in the proceedings. Requests for such subpoenas shall be delivered to the Executive Director at least fifteen (15) days prior to the date of the hearing, unless additional time is allowed for good cause.

4.5 Documents

- 4.5.1 The Standards Board or its hearing officer shall, at the beginning of the hearing, mark as exhibits any documents it has received from the public as comment and any other documents, which it will consider in reaching its decision. Documents received during the hearing shall also be marked as exhibits.
- 4.5.2 Any person or party submitting a document before or during a public hearing shall provide at least twenty (20) copies of the document to the Standards Board, unless directed otherwise.

4.6 Witnesses

- 4.6.1 The order of witnesses appearing at a hearing shall be determined by the Standards Board or its hearing officer. The Standards Board or its hearing officer may direct an agency or organization to designate a single person to present the agency or organization's position at a public hearing.
- 4.6.2 The Standards Board or its hearing officer may limit a witness's testimony and the admission of other evidence to exclude irrelevant, insubstantial or unduly repetitious proof.

- 4.6.3 Any person who testifies at a public hearing shall be subject to examination by the Standards Board or its hearing officer. The Standards Board or its hearing officer may in their discretion allow cross examination of any witness by other participants in the proceedings.
- 4.7 At the conclusion of the public hearing, the Standards Board shall issue its findings and conclusions in a written order in the form provided in Section 10118(b) of the *Administrative Procedures Act*. The Board's order shall be rendered within a reasonable time after the public hearing.

DEPARTMENT OF ELECTIONS COMMISSIONER OF ELECTIONS

Authority

Help America Vote Act

Required by Public Law 107-252 Revised 08/31/2005

The Help America Vote Act of 2002 (HAVA) is federal election reform legislation, which directs the states to make changes in how they approach elections. This legislation establishes voting systems standards that address standards for voting machines, voter registration and polling place accessibility, among other voting issues. The federal election legislation reform authorizes funds to assist the states in complying with the new mandates. To date Delaware is eligible to receive over \$16 million dollars to change or upgrade Delaware's election infrastructure.

Delaware is one of six states in the nation that replaced punch card or lever machines. Delaware purchased Direct Recording Electronic (DRE) machines in 1996 as replacements for the state's fleet of aging lever machines that had been used since the mid-1950s. We have had a statewide election management system since the early 1990s using standard procedures ranging from collection voter information from the Departments of Election in each county to maintaining a single statewide database by the Commissioner of Elections.

HAVA requires that all states implement the mandates in the act. To be eligible to receive federal grant dollars to accomplish these mandates, to obtain the final grant funding Delaware must amend it's State Plan and present a revised expenditure budget which includes the additional \$7,200,000.00. The existing task force which was appointed from various government and private sector stakeholders will continue to provide comments in the writing of the revised State Plan.

Although this process has been difficult, we in elections consider HAVA another step in the continuing process to achieve excellence. We have come a long way in improving physical accessibility, voter education programs, access to the voting process, election administration, technology standards, and election staff training.

I look forward to the challenges HAVA brings to Delaware.

Frank B. Calio, Delaware Commissioner of Elections

Introduction

The Help America Vote Act of 1992 (HAVA) requires that states change key elements of their election management systems to create a uniform and non-discriminatory election administration. Delaware has already made a substantial investment in the State's election system. The Department replaced lever voting machines in 1996 and created a unified statewide election management system in the early 1990's. The State already complies with many HAVA mandates with DRE voting equipment and a computerized statewide voter file which is accessible to county election officials. Delaware welcomes the opportunity make our election management system better.

The administration of elections in Delaware is a state responsibility accomplished by the Department of Elections. The Department consists of the Commissioner of Elections and the Departments of Elections in each of Delaware's three counties. The Commissioner of Elections is appointed by the Governor and confirmed by the State Senate. The Commissioner is responsible for establishing and assuring election management standards incorporating uniformity in the conduct of elections, the application of election standards, voting equipment among other duties. The Departments of Elections for each county report to respective Boards of Election that are appointed by the Governor. The Commissioner is a member of each board. The Departments conduct elections in accordance with the **Delaware Code** and with standards and operating procedures established by the Commissioner.

To plan the implementation of the Help America Vote Act (HAVA), the Commissioner appointed the HAVA Task Force, whose membership is listed in Section 13 of this report, and established a state HAVA website to receive comments as the plan evolved. At the beginning of the process, the Commissioner's Office analyzed HAVA requirements noting where the State was already in compliance and where changes were needed. That analysis is included as Appendix A to this report and reflects

the changes to date. Implementation of HAVA requires several changes to state law which have been passed by Delaware's General Assembly. The statute is included in Appendix B.

Because Delaware is a small state, the Commissioner's Office and the Departments of Elections in each county have a uniform application of law, standards, and procedures affecting the essential elements of the electoral process while recognizing the differing histories and needs of each regional office. The goal is that election management will be uniform throughout the State.

We have been working hard to accomplish our current goals and those of HAVA, the State has come a long way in assuring the completion of the HAVA requirements by 2006. Cost effectiveness and continuing maintenance administration are integral parts of the planning process. Many plans have now been formalized by the elections community. Where several opportunities existed before in the scope of our planning to reach compliance, we have now made our decisions. This amended State Plan addresses those changes.

State Plan Required Elements--Title III Requirements and Other Activities

SEC. 254 (1) TITLE III REQUIREMENTS AND 2512(A)(2).

- (a) IN GENERAL The state plan shall contain a description of each of the following:
- (1) How the State will use the requirements payment to meet the requirements of title III (equipment and administration), and, if applicable under section 251 (a)(2), to carry out other activities to improve the administration of elections

We began addressing the required changes by selecting elements of the requirements that had to be implemented first. Since Title I monies were all the funding we had at that time, we proceeded to make the necessary changes to the Delaware voting system anticipating that Title II funding would arrive before the deadline for implementation of the more expensive voting machines and polling place accessibility actions. Whenever possible, we incorporated requirements changes into our standard programs and operating systems. Since elections for federal office occur every two years, operating dual systems is not feasible or cost effective.

To date the State has purchased 37 Danaher ELECT*ronic* 1242 for training and additional polling place coverage with Title I funding. Although these machines are newer than our current machines, the older machines' operating systems are scheduled to be upgraded to an equal status as the new machines. Since that purchase the Department has ordered 550 new Danaher ELECT*ronic* 1242 complete with the audio modules for individuals with visual impairments. At the same time we are retrofitting our upgraded machines with audio modules so that all of the voting machines meet the requirements. This work is scheduled to be completed in the summer of 2005.

A. SEC. 301 (a) REQUIREMENTS VOTING SYSTEM STANDARDS

All primary, general and special elections are conducted in accordance with **Delaware Code**, Title 15, using Danaher Controls *ELECT*ronic 1242 (model 6T) full-face ballot Direct Recording Electronic (DRE) voting machines. The machines are stored, maintained, ballots programmed by the Departments of Elections in each county following standards produced by the Commissioner of Elections. The Departments and their boards of elections also certify and secure the machines for each election. These voting machines now meet the requirements of section 301 accessibility for individuals with disabilities.

The Department had identified three options for meeting the Section 301 mandates: (1) upgrade some or all of the existing equipment to meet the accessibility requirement; (2) purchase one new and fully accessible DRE system for each polling place; and (3) purchase all new voting equipment.

With the receipt of Title II funding the State decided to upgrade all of the existing equipment to meet the accessibility requirement and to purchase 550 additional machines with Title II monies spending all of the \$4,150,00.00 award on our Election Management System. Previously, the State purchased 37 new voting machines with Title I funds.

Delaware uses paper ballots for absentee voting. To comply with section 301, the State created an education program and provided instructions as required by section 301(a)(1)(B). Under existing provisions of the **Delaware Code**, the Commissioner prepares the instructions based upon shared practices in the Departments of Elections in each county.

The Delaware Legislature passed legislation defining what is to constitute a vote for each voting system in use. The legislation is included in Appendix B. Changes have been made to training manuals and programs accommodating the new standards.

Our intent is to use the requirements payments to:

- Upgrade, supplement, and/or replace voting machines;
- Train poll workers on new or modified voting equipment;
- Hire additional poll workers to manage the audio module and the provisional voting process:
- Purchase additional voting machines, to make sure that there are sufficient
- Voting machines for hands-on training of poll workers and demonstrations;
- Create as much accessibility as possible in each polling place including technology assistance devices.
- Purchase or rent additional storage space for voting machines;
- Retain a portion of funding to provide a maintenance of effort for future years

B. SEC. 302 PROVISIONAL VOTING AND VOTING INFORMATION

Enacted legislation authorizes provisional voting in state law. Poll workers are trained using the statewide standard in each county to offer provisional ballots under the conditions set forth in Section 302 of HAVA. As a transition measure, the state intends to hire additional poll workers so that provisional voters will not be discouraged by long waits to cast their ballots. The ballots will be cast on paper and sealed using a double envelope system similar to that used for absentee ballots. Each completed ballot will be assigned a tracking number. The Departments of Elections for each of the counties will meet the day following the election to determine the eligibility of provisional voters in accordance with Delaware law. The Commissioner of Elections has created a "free access" system so that provisional voters can determine whether their ballots were counted and, if not, the reason why. This system is similar to the existing polling place locator access program.

The Department of Elections in each county posted voting information on Election Day at each polling place as follows:

- A sample of the Election Day ballot;
- The election date and polling place hours;
- Instructions on how to vote and how to vote by provisional ballot;
- Instructions about mail-in registrants and information for first-time voters;
- General information on voting rights under applicable federal and state laws, including information on the right
 of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if these
 rights are alleged to have been violated;
- General information on federal and state laws regarding prohibitions on acts of fraud and misrepresentation.

The Commissioner of Elections in collaboration with the Departments of Elections in each county have agreed to use the adopted standards to produce statewide uniformity of information and practice.

The following items have been adopted and are currently in use throughout the elections community:

- Printing instructions and ballots for Provisional Voting;
- Preparing and printing HAVA-unique training materials for poll workers;
- Hiring additional poll workers to handle Provisional Voting;
- Creating a web- and telephone-based free access system;
- Programming to integrate provisional votes into the Vote Tally system;
- Preparing and printing information required by HAVA for posting on Election Day.

C. SEC. 303 COMPUTERIZED STATEWIDE VOTER REGISTRATION REQUIREMENTS AND REQUIREMENTS FOR VOTERS WHO REGISTER BY MAIL

Delaware currently has a statewide, computerized voter registration database administered, maintained, and evaluated by the Commissioner of Elections. The Departments of Elections in each county register voters in each county using standard applications. Those applications are forwarded to the Commissioner along with applications executed at the Division of Motor Vehicles, other state agencies as required by the National Voter Registration Act, or Organized Voter Registration Drives which are administered by the Commissioner of Elections. Since voters register on paper forms, the Departments of Elections in each county verify informational elements when registering applicants and before entering their names into the statewide system. All election officials have immediate access to the data once it is entered at the county level.

Delaware has made several changes in voter registration in order to implement HAVA. Voter registration forms have been revised to ask for the individual's driver's license number, the last 4 digits if a Social Security Number or the State assigns a unique identifier to individuals who do not provide a either. The State has an on-going file maintenance program which checks various data elements with other databases form Vital Statistics and the Delaware Justice Department. Legislation has been enacted to comply with the mandates regarding identification for persons who register by mail after January 1, 2003. The Commissioner of Elections has signed and agreement with the Division of Motor vehicles to share data file information in July of 2005. The State's Division of Motor Vehicles has to complete an agreement with the Social Security Administration to match information as required by section 303(a)(5)(B).

Implementing these changes required:

- Programming to enhance the computerized statewide database;
- The redesign and reprinting of registration forms;
- Training for agency and election office personnel who take and process registration applications;
- Training for poll workers to know when to ask for voter identification and what forms of identification are acceptable;
- General education for voters, election officials, poll workers and the public.

SEC. 254 (2) DISTRIBUTION OF REQUIREMENTS PAYMENTS

- (2) How the State will distribute and monitor the distribution of the requirements payment to units of local government and other entities in the State for carrying out the activities described in paragraph (1) including a description of
 - (A) the criteria to be used to determine the eligibility of such units or entities for receiving the payment; and
- (B) the methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under paragraph (8).

(2)(A) ELIGIBILITY CRITERIA - LOCAL GOVERNMENT UNITS AND OTHER ENTITIES

There are no local government units involved since the Departments of Elections in each county are a state agency, each with its own budget appropriated by the General Assembly. They do, however, serve counties and they will receive resources to carry out HAVA mandates as a statewide effort.

Supplies and equipment are requisitioned by the Departments of Election in each county and purchased by Commissioner of Elections for distribution. Any RFPs that are necessary will be developed by the elections community and offered by the Commissioner.

B. MONITORING PERFORMANCE OF LOCAL UNITS

The State has decided to use a single audit procedure to tack expenditures by the Departments of Elections in each county by maintaining all HAVA expenditures on a State level in the Commissioner's Office. The State will audit HAVA expenditures through its normal audit procedures. The three county Departments of Elections will report to the Commissioner of Elections on how the expenditures contribute to the appropriate performance measures that were adopted as described in section 8.

SEC. 254 (3) EDUCATIONAL PROGRAMS FOR VOTERS, ELECTION OFFICIALS AND POLL WORKERS

(3) How the State will provide for programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of Title III.

The Commissioner of Elections maintains the standards for training and educational programs utilizing a staff employee who is an Educator/Trainer. This individual presents training programs to state agencies, like the Department of Motor Vehicles, and registrars for Organized Voter Registration programs. Since the implementation of HAVA, the Commissioner, with the Departments of Elections in each county, have trained the poll workers, election officials, produced informational and educational materials and programs in a manner consistent with the statewide standards in consultation with the Department's Trainer/Educator.

- Developed statewide standards for training Election Officers and Poll Workers;
- Held monthly meetings for elections planning for training elections officials;
- Created programs to educate the public, candidates, elected officials and other stakeholders in the electoral process and methods of voting;
- Disseminated instructions on voter identification requirements and provided other training as appropriate to organized groups involved in mail registration campaigns;
- Researched innovative models and technologies for training delivery.
- Began development of educational curriculum to be used in Delaware schools as part of the social studies curriculum to be integrated into the Student/Parent Mock Election project.

SEC. 254 (4) VOTING SYSTEM GUIDELINES

(4) How the State will adopt voting system guidelines and processes which are consistent with the requirements of section 301.

The State through the Commissioner of Elections purchases voting equipment in Delaware. Legislation enacted in July 2003 requires that all voting systems purchased in the future be certified by the National Association of State Election Directors and/or the Election Assistance Commission. The DRE equipment now in use throughout the State is HAVA compliant including persons with visual disabilities. The State has purchased audio units that will be integrated into the current voting machines for persons with visual disabilities by August of 2005.

SEC. 254 (5) STATE ELECTION FUND

(5) How the State will establish a fund described in subsection (b) (Elections Fund) for purposes of administering the State's activities under this part, including information on fund management.

The State has established an election fund with the Mellon Financial Corporation (State of Delaware-General Collection Account). The Commissioner of Elections, as the chief state election official, is the single managing authority for receipt of election funds. After complying with the Single Point of Contact procedure established by the Office of Management and Budget, which is the submission of an expenditure budget for the State Clearinghouse, the funds are transferred to the Commissioner of Election's appropriations.

The management of the election fund is consistent with current Delaware Financial Management System. The Department understands that it must provide periodic reports on the use of the Election Fund to the Election Assistance Commission and that the Election Fund is subject to audit by various federal and state entities. The Commissioner of Elections will report the status of the fund at least annually to the State Plan Task Force Committee.

SEC. 254 (6) DELAWARE'S PROPOSED BUDGET

The State's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on:

(A) the costs of the activities required to be carried out to meet the requirements of title III

- (B) the portion of the requirements payment which will be used to carry out activities to meet such requirements; and
- (C) the portion of the requirements payment which will be used to carry out other activities.

To date, Delaware has purchased 550 voting machines from Title II funds and 37 form Title I funds. The current inventory of 990 machines have been upgraded with an audio module making all the voting machines in Delaware accessible. The Department spent the FY '04 payment of \$4,150,000.00 plus the State Match on an Election Management Voting System. Table 1, below. (the FY '03 requirements payments from Title I and Title II plus the State Match). Instead of purchasing one new DRE for every poling place, Delaware purchased additional DREs and upgraded our existing machines.

The revised budget is attached as APPENDIX C on page 44

The cost of Title III Requirements = \$7,964,765.07

The portion of the requirements payment used to carry out these activities -47.53%

The portion of the requirements payment used to carry out other activities -48.31%.

SEC. 254 (7) MAINTENANCE LEVEL OF STATE FUNDING

(7) How the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.

The State will fund the Commissioner's Office and the Departments of Elections for the counties for expenditures at or above 2000 levels for activities consistent with HAVA. The total appropriation prior to 2000 was \$3,264,102.73. Currently the State exceeds this expenditure level. The State currently holds HAVA funds in an interest bearing account. Department expects to realized some interest to use for the maintenance of effort above the State appropriation. It is clear that the new programs and equipment will added to the Election Management System will create future costs for the State.

SEC. 254 (8) STATE PERFORMANCE MEASURES AND GOALS

(8) How the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met.

Implementation requires two types of measures: 1. "Milestones" are steps toward the achievement of a definite goal, such as the implementation of the voter identification requirement, together with an assignment of responsibilities and timelines; 2. Delaware uses the term, "performance measure," for indicators of how well a system is working. For example, the percentage of first-time mail registrants who fail to provide the required identification either when they register or at the polling place is an indicator of how effective the voter information component of the mail registration system is.

SEC. 254 (9) ADMINISTRATIVE COMPLAINT PROCEDURES

A description of the uniform, nondiscriminatory State-based administrative complaint procedures in effect under section 402.

The process is described in the legislation that was enacted in July, 2003. A copy is of the Act is in Appendix B.

SEC. 254 (10) EFFECT OF TITLE I PAYMENTS

(10) If the State received any payment under title I, a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities.

The effect of Title I payments will be to strengthen Delaware's Election Management System. Since it is not feasible for the State to manage dual voting systems, one federal and one state, we have integrated the changes into one Election Management System. Delaware planed to spent \$185,000.00 from Title I plus \$4,150,000.00 from Title II on new voting

systems. However, this equipment must still be maintained over time. Thus, the effect of the Title I expenditures is to create a stable infrastructure to conduct Delaware elections and to plan for the future needs of our voters.

SEC. 254 (11) STATE PLAN MANAGEMENT

- (11) How the State will conduct ongoing management of the plan except that the State may not make any material change in the administration of the plan unless the change
- (A) is developed and published in the Federal Register in accordance with section 255 in the same manner as the State plan;
- (B) is subject to public notice and comment in accordance with section 256 in the same manner as the State plan; and
- (C) takes effect only after the expiration of the 30-day period, which begins on the date the change, is published in the Federal Register in accordance with subparagraph (A).

The Commissioner of Elections manages the plan in collaboration with the Departments of Elections in each county and members of the HAVA Task Force. Each member of the Department maintains essential functions in the Election Management System. Standards and procedures for essential elements of HAVA administration are written in a state manual to ensure uniformity of application.

The Commissioner of Elections will conduct annual meetings with the HAVA Task Force to review reports from the Departments of Elections in each county and the Commissioner's Office on the implementation of HAVA requirements and any changes in expected costs or federal appropriations. The Task Force may recommend changes to the plan. If the Commissioner of Elections determines the State Plan requires material change, he will conduct public hearings and resubmit those changes according to procedures in the original State Plan.

SEC. 254 (12) STATE PLAN EFFECTS FROM PREVIOUS FISCAL YEAR

(12) In the case of a State with a State plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for such previous fiscal year.

This State Plan is the amended State Plan required under the Help America Vote Act of 2002 (HAVA). There was a plan in effect during the fiscal year, 2005.

Changes that have been made to the State Plan which was in effect in previous years involve future planning. With the passage of time, we now know the total amount of Delaware's appropriation and knowing that enables the State choose the option to purchase new machines and to upgrade our fleet of voting machines producing a standard, compliant Election Voting System instead of just placing one compliant machine in each polling place.

We decided to spend more than we planned on Educational Programs in social studies in Delaware schools which are available to all public, private and parochial schools in the state. In 2004 we reached 54000 school children throughout the state with a civics curriculum which is available on-line at:

http://www.state.de.us/election/information/mockelection/mockelection.shtml.

We have expanded training programs to include more people using portable technology like DVDs, CDs and audio files. Also, staff training and educational programs are under development to improve performance.

SEC 254. (13) DESCRIPTION OF HAVA COMMITTEE

(13) A description of the committee which participated in the development of the State plan in accordance with section 255 and the procedures followed by the committee under such section and section 256.

Pursuant to Section 255, the Chief State Election Official, Frank B. Calio, Commissioner of Elections, appointed an advisory committee composed of citizens, elections officials, the Governor's Office, state officials and interested persons or

organizations creating a HAVA Task Force. The composition of that committee has changed over time and is reflected in the list of members. These members are contacted to provide comment to the Revised State Plan for 2005.

The task force met for the first time on March 13, 2003, in Dover, Delaware. The membership formed subject matter committees during the April 3, 2003 meeting at the Silver Lake Conference Center. These groups scheduled meetings to draft sections of the State Plan. The draft sections were consolidated into one state plan.

The first plan was published on May 16, 2003 and is on the State's HAVA website (http://www.state.de.us/hava). The website was established to provide public information and notice. It also served as an on-line work area for committee members to make suggestions and share information electronically. It enables the public to transmit comments electronically, as well as, to view or download information about the State Plan for Delaware. The Task Force met again on June 16 to review comments and approve a plan. Dr. Robert Montjoy, of Auburn University, participated in the meeting. The committee agreed to make a number of changes, especially in the language describing the roles of the different elections offices, the budget for meeting Title III requirements, and the manner in which sections of the plan covered by pending legislation are presented.

The revised state plan was composed via e-mail correspondence.

This plan was amended in August of 2005, posted for public hearing in Delaware for 30 days and forwarded to the Election Assistance Commission for inclusion in the federal register.

		STATE HAVA TASK FORCE
MEMBER N	NAME	REPRESENTING
Bob	Goodhart	Division for the Visually Impaired
Randy	Reynolds	Delaware Technology and Information
Virginia	Lane	Office of the Commissioner
Deborah	Grier	Office of the Commissioner
Elaine	Manlove	Department of Elections for New Castle County
Howard	Sholl	Department of Elections for New Castle County
Joyce	Wright	Department of Elections for Kent County
Diana	Robertson	Department of Elections for Kent County
Ken	McDowell	Department of Elections for Sussex County
Jean	Turner	Department of Elections for Sussex County
Frank	Calio	Commissioner of Elections
Nancy	Bastidas	Governor's Council on Hispanic Affairs
Andrew	DalNogare	State House of Representatives
Lett	Diswood	League of Women Voters
Charles	Brittingham	NAACP- State Conference
Robert	Scoglietti	Office of the Budget
	Representative	Office of the Governor
Jack	Markell	Office of the Treasurer
Dick	Carter	State Senate
John	Frazer	Controller General's Office
Kyle	Hodges	State Council for Persons with Disabilities
Laura	Waterland	Delaware Disabilities Law Program

Article I. APPENDIX A: A Comparison of Delaware's Existing Election System with the Requirements of HAVA as of June 1, 2003.

GAP ANALYSIS			
VOTING SYSTEM STANDARDS	REQUIREMENT	ACTION	
	STATUS	REQUIRED	
SEC. 301. VOTING SYSTEMS STANDARDS.			
(a) RequirementsEach voting system used in an election for			
Federal office shall meet the following requirements:			
(1) In general			
(A) Except as provided in subparagraph (B), the voting system			
(including any lever voting system, optical scanning voting			
system, or direct recording electronic system) shall		_	
(i) permit the voter to verify (in a private and independent manner)	MEETS	NONE	
the votes selected by the voter on the ballot before the ballot is			
cast and counted;	MESTO	NONE	
(ii) provide the voter with the opportunity (in a private and	MEETS	NONE	
independent manner) to change the ballot or correct any error			
before the ballot is cast and counted (including the opportunity to			
correct the error through the issuance of a replacement ballot if			
the voter was otherwise unable to change the ballot or correct any			
error); and			
(iii) if the voter selects votes for more than one			
candidate for a single office (I) notify the voter that the voter has selected more than one	MEETS	NONE	
	IVILLIS	NONE	
candidate for a single office on the ballot; (II) notify the voter before the ballot is cast and counted of	MEETS	NONE	
the effect of casting multiple votes for the office; and		THE STATE OF THE S	
(III) provide the voter with the opportunity to correct the	MEETS	NONE	
ballot before the ballot is cast and counted.			
(B) A State or jurisdiction that uses a paper ballot voting system, a punch card	MEETS	NONE	
voting system, or a central count voting system (including mail-in absentee			
ballots and mail-in ballots), may meet the requirements of subparagraph (A)(iii)			
by			
(i) establishing a voter education program specific to that voting			
system that notifies each voter of the effect of casting multiple votes for an			
office; and			
(ii) providing the voter with instructions on how to correct the ballot			
before it is cast and counted (including instructions on how to correct the error			
through the issuance of a replacement ballot if the voter was otherwise unable to			
change the ballot or correct any error).			
, , , , , , , , , , , , , , , , , , , ,			
(C) The voting system shall ensure that any notification required under this	MEETS	NONE	
paragraph preserves privacy of the voter and the confidentiality of the ballot.			
(2) Audit capacity			
(A) In generalThe voting system shall produce a record with an audit	MEETS	NONE	
capacity for such system.			
(B) Manual audit capacity			
(I) The voting system shall produce a permanent	MEETS	NONE	
paper record with a manual audit capacity for such system.			

(ii) The voting system shall provide the voter with an opportunity	MEETS	NONE
to change the ballot or correct any error before the permanent paper record is	WILLIO	None
record is produced.		
(iii) The paper record produced under subparagraph (A) shall be	MEETS	NONE
available as an official record for any recount conducted with respect to any		
election in which the system is used.		
(3) Accessibility for individuals with disabilities.—		
The voting system shall—		
(A) be accessible for individuals with disabilities, including nonvisual	MEETS	The State will meet this
accessibility for the blind and visually impaired, in a manner that provides the		element by modifying
same opportunity for access and participation (including privacy and		existing equipment or
independence) as for other voters;		purchasing new
(D) potinfy the requirement of subnarrowsh (A) through the use of at least	MEETS	equipment. The State will meet this
(B) satisfy the requirement of subparagraph (A) through the use of at least	IVIEE IS	
one direct recording electronic voting system or other voting system equipped for		element by modifying
individuals with disabilities at each polling place; and		existing equipment or
		purchasing new
(C) if purchased with funds made available under title II on or after January 1,	NA	equipment. NONE
2007, meet the voting system standards for disability access (as outlined in this	1473	110112
paragraph).		
k~.~â.~k.·).		
(4) Alternative language accessibility. —	NA	NONE
The voting system shall provide alternative language accessibility pursuant	INA	NONE
• • • • • • • • • • • • • • • • • • • •		
to the requirements of section 203 of the Voting Rights Act of 1965 (42 U.S.C.		
1973aa-1a).		
(5) Error rates. —	MEETS	NONE
The error rate of the voting system in counting ballots (determined by taking		
into account only those errors which are attributable to the voting system and not		
attributable to an act of the voter) shall comply with the error rate standards		
established under section 3.2.1 of the voting systems standards issued by the		
Federal Election Commission which are in effect on the date of the enactment of		
this Act.	MEETS	NONE
(6) Uniform definition of what constitutes a vote. —	IVIEE IS	NONE
Each State shall adopt uniform and nondiscriminatory standards that define		
what constitutes a vote and what will be counted as a vote for each category of		
voting system used in the State.		
(d) Effective DateEach State and jurisdiction shall be required to comply with	MEETS	NONE
(d) Effective DateEach State and jurisdiction shall be required to comply with the requirements of this section on and after January 1, 2006.	MEETS	NONE
the requirements of this section on and after January 1, 2006.		NONE
the requirements of this section on and after January 1, 2006. (a) Provisional Voting RequirementsIf an individual declares that such individual	is	NONE
the requirements of this section on and after January 1, 2006. (a) Provisional Voting RequirementsIf an individual declares that such individual a registered voter in the jurisdiction in which the individual desires to vote and that	is	NONE
the requirements of this section on and after January 1, 2006. (a) Provisional Voting RequirementsIf an individual declares that such individual a registered voter in the jurisdiction in which the individual desires to vote and that individual is eligible to vote in an election for Federal office, but the name of the	is	NONE
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the requirements of this section on and after January 1, 2006. (a) Provisional Voting RequirementsIf an individual declares that such individual a registered voter in the jurisdiction in which the individual desires to vote and that individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to cast a provisional ballot as follows: (1) An election official at the polling place shall notify the individual that the individual may cast a provisional ballot in that election. (2) The individual shall be permitted to cast a provisional ballot at that	is the ual	NONE
the requirements of this section on and after January 1, 2006. (a) Provisional Voting RequirementsIf an individual declares that such individual a registered voter in the jurisdiction in which the individual desires to vote and that individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to cast a provisional ballot as follows: (1) An election official at the polling place shall notify the individual that the individual may cast a provisional ballot in that election. (2) The individual shall be permitted to cast a provisional ballot at that polling place upon the execution of a written affirmation by the individual	is the ual	NONE

(B) Eligible to vote in that election.	MEETS	NONE
GAP ANALYSIS		
ONI AINEIGIO	CURRENT STATE	ACTION REQUIRED
PROVISIONAL VOTING	STATUS	ACTION REQUIRED
SEC. 302. PROVISIONAL VOTING AND VOTING INFORMATION REQUIREMEN	ITS	
(3) An election official at the polling place shall transmit the ballot cast by	MEETS	NONE
the individual or the voter information contained in the written affirmation		
executed by the individual under paragraph (2) to an appropriate State or local		
election official for prompt verification under paragraph (4).		
(4) If the appropriate State or local election official to whom the ballot or	MEETS	NONE
voter information is transmitted under Paragraph (3) determines that the		
individual is eligible under State law to vote, the individual's provisional		
ballot shall be counted as a vote in that election in accordance with State law.		
(5)(A) At the time that an individual casts a provisional ballot, the	MEETS	NONE
appropriate State or local election official shall give the individual written		
information that states that any individual who casts a provisional ballot will		
be able to ascertain under the system established under subparagraph (B)		
whether the vote was counted, and, if the vote was not counted the reason		
that the vote was not counted. (B) The appropriate State or local election official shall establish a free	MEETS	NONE
access system (such as a toll-free telephone number or an internet website)	-	
that any individual who casts a provisional ballot may access to discover		
whether the vote of that individual was counted, and, if the vote was not		
counted, the reason that the vote was not counted.		
States described in section 4(b) of the National Voter Registration Act of	NA	Delaware is not
1993 (42 U.S.C. 1973gg-2(b)) may meet the requirements of this subsection		described in this
using voter registration procedures established under applicable State law.		section.
The appropriate State or local official shall establish and maintain		
reasonable procedures necessary to protect the security, confidentiality, and		
integrity of personal information collected, stored, or otherwise used by the		
free access system established under paragraph (5)(B). Access to information about an individual provisional ballot shall be restricted to the		
individual who cast the ballot.		
(b) Voting Information Requirements		
(1) Public posting on election dayThe appropriate State or local	MEETS	NONE
election official shall cause voting information to be publicly posted at each polling place on the day of each election for Federal office.		
(2) Voting information definedIn this section, the term "voting information"	!	
means		
 (A) a sample version of the ballot that will be used for that election; (B) information regarding the date of the election and the hours during 	MEETS MEETS	NONE.
which polling places will be open;	WEETS	NONE.
(C) instructions on how to vote, including how to cast a vote and how	MEETS	NONE
to cast a provisional ballot;		
(D) instructions for mail-in registrants and first- time voters under	MEETS	NONE
section 303(b); (E) general information on voting rights under applicable Federal and	MEETS	NONE
State laws, including information on the right of an individual to cast a		
provisional ballot and instructions on how to contact the appropriate		
officials if these rights are alleged to have been violated; and	MEETO	NONE
(F) general information on Federal and State laws Regarding prohibitions on acts of fraud and misrepresentation.	MEETS	NONE
איטיווטונוטווס טון מעוס טו וומעע מווע ווווסופאופטפוונמנוטוו.		

(c) Voters Who Vote After the Polls CloseAny individual who votes in an election for Federal office as a result of a Federal or State court order or any other order extending the time established for closing the polls by a State law in effect	MEETS	NONE
10 days before the date of that election may only vote in that election by casting a provisional ballot under subsection (a). Any such ballot cast under the preceding sentence shall be separated and held apart from other provisional ballots cast by those not affected by the order.		
GAP ANALYSIS		
THE THREE PARTY OF THE PARTY OF	CURRENT STATE	ACTION DECLUDED
COMPUTERIZED VOTER REGISTRATION	STATUS	ACTION REQUIRED
(a) Computerized Statewide Voter Registration List Requirements		
(1) Implementation	MEETO	NONE
(A) In generalExcept as provided in subparagraph (B), each State, acting through the chief State election official, shall implement, in a uniform	MEETS	NONE
and nondiscriminatory manner, a single, uniform, official, centralized,		
interactive computerized statewide voter registration list defined,		
maintained, and administered at the State level that contains the name and		
registration information of every legally registered voter in the State and		
assigns a unique identifier to each legally registered voter in the State (in		
this subsection referred to as the ``computerized list"), and includes the		
following:		
(I)The computerized list shall serve as the single system for	MEETS	NONE
storing and managing the official list of registered voters		
throughout the State.	MEETO	NONE
(ii) The computerized list contains the name and registration information of every legally registered voter in the State.	MEETS	NONE
(iii) Under the computerized list, a unique identifier is assigned to		
each legally registered voter in the State.	MEETS	NONE
(iv) The computerized list shall be coordinated with other agency	MEETS	The State will make
databases within the State.		enhancements to the
		system and pursue
		automating interaction
		with agencies that now
		have a manual interface.
(v) Any election official in the State, including any local election	MEETS	NONE
official, may obtain immediate electronic access to the		
information contained in the computerized list.		
(vi) All voter registration information obtained by any local election	MEETS	NONE
official in the State shall be electronically entered into the computerized list on an		
expedited basis at the time the information is provided to the local official. (vii) The chief State election official shall provide such support as	MEETS	NONE
may be required so that local election officials are able to enter information as	WEETS	NONE
described in clause (vi).		
(viii) The computerized list shall serve as the official voter	MEETS	NONE
registration list for the conduct of all elections for Federal office in the State.		
(B) ExceptionThe requirement under subparagraph (A) shall not	NA	NA
apply to a State in which, under a State law in effect continuously on and after the		
date of the enactment of this Act, there is no voter registration requirement for		
individuals in the State with respect to elections for Federal office. (2) Computerized list maintenance		
(A) In generalThe appropriate State or local election official		
shall perform list maintenance with respect to the computerized		
list on a regular basis as follows:		

(i) If an individual is to be removed from the computerized	MEETS	NONE
	IVILLIS	NONE
list, such individual shall be removed in accordance with the		
provisions of the National Voter Registration Act of 1993 (42 U.S.C.		
1973gg et seq.), including subsections (a)(4), (c)(2), (d), and (e) of		
section 8 of such Act (42 U.S.C. 1973gg-6).	MEETO	NONE
(ii) For purposes of removing names of ineligible voters	MEETS	NONE
from the official list of eligible voters(I) under section 8(a)(3)(B) of		
such Act (42 U.S.C. 1973gg-6(a)(3)(B)), the State shall coordinate		
the computerized list with State agency records on felony status;		
and (II) by reason of the death of the registrant under section		
8(a)(4)(A) of such Act (42 U.S.C. 1973gg-6(a)(4)(A)), the State		
shall coordinate the computerized list with State agency records on		
death.		
(iii) Notwithstanding the preceding provisions of this	MEETS	NONE
subparagraph, if a State is described in section 4(b) of the National		
Voter Registration Act of 1993 (42 U.S.C. 1973gg- 2(b)), that State		
shall remove the names of ineligible voters from the computerized		
list in accordance with State law.		
(B) ConductThe list maintenance performed undersubparagraph		
(i) the name of each registered voter appears in the	MEETS	NONE
computerized list;		
(ii) only voters who are not registered or who are not	MEETS	NONE
eligible to vote are removed from the computerized list; and	115550	110115
(iii) duplicate names are eliminated from the computerized	MEETS	NONE
list.	MEETC	NONE
(3) Technological security of computerized listThe appropriate State or local	MEETS	NONE
official shall provide adequate technological security measures to prevent the		
unauthorized access to the computerized list established under this section. (4) Minimum standard for accuracy of state voter registration recordsThe State	MEETS	NONE
	IVIEETS	NONE
election system shall include provisions to ensure that voter registration records		
in the State are accurate and are updated regularly, including the following: (A) A system of file maintenance that makes a reasonable effort to remove	MEETS	NONE
	WILLIS	INOINE
registrants who are ineligible to vote from the official list of registered voters.		
Under such a system, consistent with the National Voter Registration Act of 1993		
(42 U.S.C. 1973gg et seq.), registrants who have not responded to a notice and		
who have not voted in 2 consecutive general elections for Federal office shall be		
removed from the official list of registered voters, except that no registrant may be		
removed solely by reason of failure to vote.	MEETO	NONE
(B) Safeguards to ensure that eligible voters are not removed in error from	MEETS	NONE
the official list of eligible voters.		
(5) Verification of voter registration information		
(A) Requiring provision of certain information by applicants (i) In generalExcept as provided in clause (ii),	MEETS	NONE
	WILLIG	THO INC.
withstanding any other provision of law, an		
application for voter registration for an election for		
Federal office may not be accepted or processed		
by a State unless the application includes—in the		
case of an applicant who has been issued a		
current and valid driver's license, the applicant's		
driver's license number; or in the case of any		
other applicant (other than an applicant to whom		
this clause (ii) applies), the last 4 digits of the		
applicant's social security number.		

(ii)Special rule for applicants without driver's license or	MEETS	NONE
social security numberIf an applicant for voter		
registration for an election for Federal office has		
not been issued a current and valid driver's		
license or a social security number, the State shall		
assign the applicant a number which will serve to		
identify the applicant for voter registration		
, , , , ,		
purposes. To the extent that the State has a		
computerized list in effect under this subsection		
and the list assigns unique identifying numbers to		
registrants, the number assigned under this		
clause shall be the unique identifying number		
assigned under the list.	MEETO	NONE
(iii) Determination of validity of numbers providedThe State	MEETS	NONE
shall determine whether the information provided by an		
individual is sufficient to meet the requirements of this		
subparagraph, in accordance with State law.		
(B) Requirements for state officials (i)Sharing information in databasesThe chief State	PARTIALLY MEETS	The State will meet
, ,	PARTIALLY WEETS	
election official and the official responsible for		this requirement
the State motor vehicle authority of a State shall		
enter into an agreement to match information in		
the database of the statewide voter registration		
system with information in the database of the		
motor vehicle authority to the extent required to		
enable each such official to verify the accuracy		
of the information provided on applications for		
voter registration.		
(ii) Agreements with commissioner of social security.—	DOES NOT MEET	The DMV is awaiting a
The official responsible for the State motor vehicle authority shall		response from the
enter into an agreement with the Commissioner of Social Security under section		Social Security
205(r)(8) of the Social Security Act (as added by subparagraph (C)).		Administration.
(b) Requirements for Voters Who Register by Mail		
In generalNotwithstanding section 6(c) of the National Voter		
Registration Act of 1993 (42 U.S.C.1973gg-4(c)) and subject		
to paragraph (3), a State shall, in a uniform and nondiscriminatory		
manner, require an individual to meet the requirements of		
paragraph (2) if		
(A) the individual registered to vote in a jurisdiction by mail; and		
(B)(i) the individual has not previously voted in an election for		
Federal office in the State; or		
(ii) the individual has not previously voted in such an election		
in the jurisdiction and the jurisdiction is located in a State		
that does not have a computerized list that complies with		
the requirements of subsection (a).		
(2) Requirements		
(A) In generalAn individual meets the requirements of this		
paragraph if the individual	LAFETO	LNONE
(i) in the case of an individual who votes in person— (I) presents to	MEETS	NONE
the appropriate State or local election official a current and valid photo		
identification; or (II) presents to the appropriate State or local election		
official a copy of a current utility bill, bank statement, government		
check, paycheck, or other government document that shows the name		
and address of the voter; or		

(ii) in the case of an individual who votes by mail, submits with the	MEETS	NONE
ballot(I) a copy of a current and valid photo identification; or (II) a copy		
of a current utility bill, bank statement, government check, paycheck, or		
other government document that shows the name and address of the		
voter.		
(B) Provisional Voting		
(i) In personAn individual who desires to vote in person, but who	MEETS	NONE
does not meet the requirements of subparagraph (A)(i), may cast a		1.10112
provisional ballot under section 302(a).		
(ii) By mailAn individual who desires to vote by mail but who does	MEETS	NONE
not meet the requirements of subparagraph (A)(ii) may cast such a	WEETO	NONE
ballot by mail and the ballot shall be counted as a provisional ballot in		
,		
accordance with section 302(a). (3) InapplicabilityParagraph (1) shall not apply in the case of a person		
(A) who registers to vote by mail under section 6 of		
the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4)		
and submits as part of such registration either (i) a copy of a current and valid photo identification; or	MEETS	NONE
(B)(i) who registers to vote by mail under section 6 of the National	MEETS	NONE
Voter Registration Act of 1993 (42 U.S.C. 1973gg-4) and submits with such	WEETO	NONE
, , , , , , , , , , , , , , , , , , , ,		
registration either(I) a driver's license number; or (II) at least the last 4 digits of		
the individual's social security number; and	MEETO	NONE
(ii) a copy of a current utility bill, bank statement, government	MEETS	NONE.
check, paycheck, or government document that shows the name and address of		
the voter;	MEETO	NONE
(iii) with respect to whom a State or local election officia matches	MEETS	NONE
the information submitted under clause (i) with an existing State identification		
record bearing the same number, name and date of birth as provided in such		
registration; or		
(C) who is		1
(i) entitled to vote by absentee ballot under the Uniformed	MEETS	NONE
and Overseas Citizens Absentee Voting Act (42		
U.S.C. 1973ff-1 et seq.);		
(ii) provided the right to vote otherwise than in person under	MEETS	NONE
section 3(b)(2)(B)(ii) of the Voting Accessibility for		
the Elderly and Handicapped Act (42 U.S.C.		
1973ee- (b)(2)(B)(ii)); or		
(iii)entitled to vote otherwise than in person under any other	MEETS	NONE
Federal law.		
(4) Contents of mail registration form		
(A) In generalThe mail voter registration form developed		
under section 6 of the National Voter Registration Act of 1993		
(42 U.S.C.1973gg-4) shall include the following:		
(i) The question "Are you a citizen of the United States of	NA	
America?" and boxes for the applicant to check to indicate		
whether the applicant is or is not a citizen of the United States.		
(ii) The question "Will you be 18 years of age on or before	NA	
election day?" and boxes for the applicant to check to indicate		
whether or not the applicant will be 18 years of age or older on		
election day. (ii)The statement "If you checked 'no' in response to either	NA	
of these questions, do not complete this form.".		
(iv) A statement informing the individual that the form is	NA	
submitted by mail and the individual is registering for the first		
time, the appropriate information required under this section		
must be submitted with the mail-in registration form in order to		
avoid the additional identification requirements upon voting for		
the first time		i e

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GENERAL NOTICES

(B) Incomplete formsIf an applicant for voter registration fails to	MEETS	NONE
answer the question included on the voter registration form pursuant to		
subparagraph (A)(i), the registrar shall notify the applicant of the failure and		
provide the applicant with an opportunity to complete the form in a timely		
manner to allow for the completion of the registration form prior to the next		
election for Federal office (subject to State law).		

Article II Appendix B - HAVA LEGISLATION

STATE SENATE 142nd GENERAL ASSEMBLY SENATE BILL NO. 153 AN ACT TO AMEND TITLE 15 OF THE DELAWARE CODE RELATING TO ELECTIONS.

WHEREAS, the Help America Vote Act of 2002 imposes several mandates upon the state; and WHEREAS, it is necessary to implement the Help America Vote Act of 2002; NOW, THEREFORE BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Delaware Code, Title 15, §1302 by striking the aforesaid section in its entirety and substituting in lieu thereof:

§1302 Voter registration application.

- (a) The Commissioner of Elections, in consultation with the Departments of Elections for the counties, shall promulgate the voter registration application and shall set the effective date of each new version. The application shall be updated as necessary to comply with state and federal law and/or to facilitate administration of the State's voter registration program. The application shall be uniform throughout the state and shall be used for all voter registration transactions within the state.
- (b) The application shall be in two parts. The Departments of Elections for the counties shall send the original part of each application that was accepted and processed to the Commissioner of Elections office. The Departments of Elections for the counties shall maintain the second copy in the County Master Record. The records contained in the County Master Record shall remain in the office of each department and not be removed for any reason except as provided by law.
- (c) The voter registration application shall include a question asking whether or not the applicant is a citizen of the United States. The Departments of Elections for the counties shall reject the applications of new registrants who indicate that they are not citizens of the United States or who fail to answer the question. The departments shall notify such persons by first-class mail that their application has been rejected and the reason(s) thereto. Persons already registered to vote who indicate that they are not citizens of the United States shall be notified by first-class mail that their voter registration shall be cancelled at the expiration of 15 days if they do not affirm in writing that they are citizens of the United States. The departments shall cancel the voter registration of any person who fails to affirm in writing that they are United States citizens after the expiration of the aforesaid 15-day period. Persons who subsequently affirm in writing to a department that they are United States citizens shall be reinstated by the department as a registered voter.
- (d) The voter registration application shall include a place for the applicant's home telephone number; provided, however, that the provision of a telephone number shall be annotated on the form as being optional, and no application shall be rejected for lack thereof. Any registered voter may have his/her telephone number removed from the electronic voter registration files by making a request of the department of elections for the county in which they are registered either by telephone or in writing.
- (e) The applicant's signature may be a digitized signature obtained by a state agency as part of a process that includes registering a person to vote or updating his/her voter registration information.
- (f) The Commissioner of Elections, in collaboration with the Departments of Elections for the counties, may examine methods to streamline the voter registration process through the application of technology. The Commissioner of Elections, in consultation with the Departments of Elections for the counties, may adopt and implement such technology. In the event that the process adopted conflicts with subsection "(b)" above, that subsection shall be considered null and void. These innovations may include adoption of a paperless or semi-paperless registration process.

- (g) The Commissioner of Elections shall make the State's Voter Registration Application available on the internet by January 1, 2006.
- Section 2. Amend Delaware Code, Title 15 by inserting as §2015 the following:

§2015. Late registration procedures for military and overseas citizens.

An individual who has been discharged or separated from the Uniformed Services, the merchant marine, or from employment outside of the territorial limits of the United States too late to register to vote for a primary or general election but within 60 days of the date of a primary or general election, shall be entitled to register to vote for the purpose of voting in that and ensuing primary or general elections after presenting documentation of his/her discharge, separation, or termination of employment to the Department of Elections for the county in which he/she resides. This exception includes any accompanying family members who are otherwise eligible to register to vote.

Section 3. Amend Delaware Code, Title 15 by inserting as §2016 the following:

§2016. Enfranchisement of citizens who have never resided in the United States.

If a United States citizen outside of the United States who has never lived in the United States has a parent who is a qualified elector of the State, then that person is eligible to register and vote where his/her parent is a qualified elector.

Section 4. Amend Delaware Code, Title 15 by inserting as §2033 the following:

§2033. Special procedures for persons who register to vote by mail and have not voted in the State in an election for federal office.

- (a) A person who registers to vote by mail on or after January 1, 2003 shall submit with his/her application a copy of a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the voter. Should the person not include a copy of the required identification with the voter registration application, the voter shall provide a valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the voter prior to voting for the first time at a polling place in the State. If the person fails to show required identification at the polling place, he/she shall be permitted to vote by Provisional Ballot. The poll lists and signature cards for each polling place shall identify those persons who must show proper identification before being permitted to vote.
- (b) A registrant may satisfy the requirement to submit identification by subsequently submitting a voter registration application through a source not subject to the provisions of this section (e.g. through the Division of Motor Vehicles).
- (c) A person who votes by absentee ballot and who registered to vote for the first time by mail and did not submit a copy of any of the required identification documents shall submit a copy of one or more of the documents listed in subsection "a" above showing the person's name and address with the Absentee Ballot. The Absentee Ballot from a person who is required to submit identification, and who does not, shall not be counted.
- (d) This section does not apply to persons listed in §5502 (1) and §5502 (2) of this title or to persons identified in subsection "a" above who submitted their driver's license number (includes State ID card number) or Social Security Number that the Department of Elections for a county is able to use to verify an existing State Identification record bearing the same number, the name and date of birth as provided by the applicant.

Section 5. Amend Delaware Code, Title 15, Chapter 49, by inserting as subchapter IV the following:

Subchapter IV. Administrative Complaint Procedure

§4990. Applicability.

The Administrative Complaint Process shall only apply to alleged violations of Title III of the Help America Vote Act of 2002 to include an alleged violation that has occurred, is occurring or is about to occur.

§4991. Process.

(a) The person making a complaint shall submit the complaint to the Commissioner of Elections or any of the Departments of Elections for the counties. The complaint shall be in writing, notarized, and signed and sworn to by the person making the complaint.

- (b) If one of the Departments for the counties receives such a complaint, the Department shall forward it to the Commissioner of Elections on the same business day that it is received.
- (c) The Commissioner of Elections shall notify the complainant(s) of receipt of the complaint and provide the complainant(s) a description of the complaint resolution process.
 - (d) The Commissioner of Elections may consolidate similar complaints.
 - (e) If requested by the complainant(s), there shall be a hearing for the record.
- (f) The Commissioner of Elections shall appoint a person or persons to examine the complaint, gather information about the circumstances and then determine whether or not there was a violation of Title III.
- (g) If the person handling the complaint determines that a violation has occurred, he/she shall recommend a suitable remedy to the Commissioner of Elections. The Commissioner may accept, reject or modify any proposed remedy.
 - (h) If the person handling the complaint determines that a violation did not occur, the complaint shall be dismissed.
 - (i) The Commissioner of Elections shall publish the results of the resolution of each complaint as he/she sees fit.
- (j) A final determination shall be made on each complaint as quickly as possible, but no later than 90 days following the date that the complaint was filed unless the complainant consents to a longer period for resolving the complaint.
- (k) If the complaint is not resolved within 90 days and the complainant has not agreed to a longer period, the Commissioner of Elections shall take such steps as necessary to resolve the complaint within the next 60 days. The original complaint and all information developed in the previous attempt(s) to resolve the issue(s) shall be made available to the person(s) subsequently charged with resolving the complaint.
 - (1) The Commissioner of Elections shall develop a system for tracking complaints alleging Title III violations.

Section 6. Amend Delaware Code, Title 15, §4910 (a) by striking said subsection in its entirety and substituting in lieu thereof:

§4910. Instruction sheets; sample ballots.

- (a) The Commissioner of Elections, in collaboration with the Departments of Elections for the counties, shall design poster(s) that will be uniform throughout the State. The poster(s) shall be publicly displayed in each polling place on the day of the election. The poster(s) shall contain the following information:
 - (1) Information stating the date and hours during which the polling place will be open;
 - (2) Instructions on how to vote, including how to cast a vote and how to cast a Provisional Ballot;
- (3) Instructions for mail-in registrants who are first-time voters under Section 303(b) of the Help America Vote Act of 2002;
- (4) General information on voting rights under applicable Federal and State laws, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if these rights are alleged to have been violated; and
- (5) General information on Federal and State laws regarding prohibitions on acts of fraud and misrepresentation.

Section 7. Amend Subchapter II, Chapter 49, Title 15 of the Delaware Code by inserting as §4948 the following:

§4948. Provisional Ballots.

- (a) Provisional ballots shall be used in primary and general elections conducted under the provisions of this title. Provisional ballots shall not be used in public school elections or municipal elections unless specifically authorized in Title 14, Title 15 and/or the respective town or city charter.
- (b) A person claiming to be properly registered in an Election District, but whose eligibility to vote at that Election District cannot be determined, shall be entitled to vote a Provisional Ballot. Election officers shall inform a person who is not being permitted to vote for whatever reason that he/she may cast a provisional ballot in that election. The Inspector shall return all voted Provisional Ballots to the Department of Elections for the county responsible for the Election District on the night of the election.
- (c) Persons voting a Provisional Ballot shall present proof of identity and address to the Election Officers. The type of ID shown by the voter shall be annotated on the Provisional Ballot Envelope. If the person does not show proof of identity or address, the person shall be permitted to vote by Provisional Ballot and the fact that he/she did not show proof of identity and/or address shall be annotated on the Provisional Ballot Envelope.

- (d) If Superior Court or another court of competent jurisdiction orders that some or all polling places in a county of the state be kept open beyond the normal time for closing, all persons who arrive to vote at the polling place(s) ordered to be kept open after the normal time for closing shall vote by Provisional Ballot. The Election Officers shall keep such ballots separate and return them to the Department of Elections for the county responsible for the Election District on the night of the election.
- (e) Provisional Ballots shall be as much as possible in the same form as Absentee Ballots except that only federal offices shall be listed and they shall be labeled as Provisional Ballots. The Departments of Elections for the counties shall provide to each Election District Provisional Ballots for 6% of the registered voters in the Election District as of 45 days prior to the date of the election. Regardless of the number of ballots required by this subsection, the Departments of Elections for the counties shall provide a minimum of 15 Provisional Ballots to each Election District. Each Department of Elections for the counties shall deliver additional Provisional Ballots, envelopes, instructions or voter information sheets to the polling place for an Election District when notified by an Election Officer from the district that the supply of some or all of the Provisional Ballot materials is very low.
- (f) Election Officers shall give whatever assistance is requested by a voter who is voting by Provisional Ballot. When that assistance includes marking or assisting in marking the person's ballot, two Election Officers with different political party affiliations shall provide that assistance.
- (g) A voter who spoils his or her ballot shall, upon request, be given a replacement ballot after surrendering the spoiled ballot.
 - (h) Tallying Provisional Ballots.
- (1) At 12 noon the day following an election in which Provisional Ballots were used, the Department of Elections for each county shall meet to examine the Provisional Ballots, determine which of the ballots should be tallied in accordance with the rules stated below, and then tally those ballots.
- (2) The Attorney General shall appoint a Deputy Attorney General to advise each of the Departments of Elections for the counties as requested during the Provisional Ballot tallying process.
- (3) The county chairperson of each political party with a candidate on a Provisional Ballot within the county may appoint in writing one observer to be in the room where Provisional Ballots are being reviewed and tallied.
- (4) The Departments of Elections for each county shall sit until the disposition of every Provisional Ballot has been determined. Each county Department of Elections shall establish an appropriate schedule of breaks, meals and rest periods.
- (5) Where the Provisional Ballot affidavit is incomplete, the ballot shall be set aside, not opened and the votes not tallied. An incomplete affidavit shall be defined as one that does not include all of the following information: full name, complete address, political party affiliation (Primary Elections only), and date of birth.
- (6) Where the person who voted by Provisional Ballot did not show suitable identification at the polling place, the ballot shall be set aside, not opened and the votes not tallied.
- (7) Provisional Ballots cast by persons who are not registered to vote in the state or who are not registered to vote in the Election District in which they were cast shall be set aside, not opened and the votes not tallied.
- (8) A Provisional Ballot cast by a person who is registered to vote and who has moved into the Election District shall be counted if the person voted at the correct polling place for his/her new address.
- (9) Each Department of Elections for a county shall tally the Provisional Ballots that meet the above criteria. After all of the Provisional Ballots determined as meeting the above criteria have been tallied, the Department of Elections for the county shall deliver one copy of the Provisional Ballot Tally Sheet for each Election District, all the Provisional Ballots cast in the election, and all affidavits, envelopes and supporting documentation to the Prothonotary.
 - (i) Post Election Processing and Notification.
- (1)As soon as practical, but not later than 30 days following an election in which Provisional Ballots were used, the Department of Elections for each county shall enter the appropriate data into a free access system so that a person who voted by Provisional Ballot may determine whether or not his/her ballot was counted, and if it was not counted, the reason(s) for which it was not counted.
- (2) The respective Department of Elections for a county shall use the Provisional Ballot affidavit as authority to register a person to vote who voted by Provisional Ballot in an election and who is not already registered to vote providing that the minimum information required to register a person to vote is provided. The Provisional Ballot envelope shall be used to

GENERAL NOTICES

transfer a registered voter's address and/or update his/her name when the address and/or name is different than the information on the person's voter registration record.

Section 8. Amend Delaware Code, Title 15, §4972, by striking the aforesaid section in its entirety and substituting in lieu thereof the following.

§4972. Rules regarding what constitutes a legal vote.

- (a) Votes cast on a direct recording electronic voting machine shall be considered legal votes once the voter has taken the necessary action(s) to cast his/her ballot. A voter who has cast his/her ballot on a direct recording electronic voting machine shall not be permitted to cast a second ballot under any circumstances.
- (b) Votes cast at any election on paper ballots shall be counted for whom they are intended as far as can be ascertained by the marks on the ballot. The following rules shall be observed in determining those votes on paper ballots that shall be counted:
- (1) The voter shall mark the ballot for his/her selections by placing a distinct mark in the box at the right of the name of the candidate and or response to a question for which he/she wants to vote;
- (2) Where a voter indicates his/her selections in a manner not in accordance with paragraph "1" above, the Election Officers shall attempt to determine from the marks on the ballot the candidate or response that the voter intended to select:
- (3) If it is not possible to determine a voter's choice for an office or response to a question, the ballot shall not be counted for that office or question but shall be counted for all other offices and questions on the ballot where the voter's intention can be determined;
- (4) A voter may only vote for two or more choices for any office or question when specifically instructed on the ballot that it is allowable;
- (5) Where a voter is permitted to make more than one choice for candidates and or responses to a question, he/she may make fewer than the allowable number of choices;
- (6) If a ballot is marked for more names or responses than are permitted, it shall not be counted for that office or question, but it shall be counted for all other offices or questions on the ballot in accordance with these rules; and
- (7) If a ballot has been defaced or torn so that it is impossible to determine the voter's choice for one or more offices or questions, it shall not be counted for such offices or questions but shall be counted for all other offices and questions where the voter's choice(s) can be determined.
- Section 9. Amend Delaware Code, Title 15, §5001A (a) by inserting as subsections (12) and (13) the following:
- (12) It shall permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted.
- (13) It shall provide the voter the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and corrected (including the opportunity to correct the error through the issuance of a replacement ballot before the voter has cast his/her ballot if the voter was otherwise unable to change the ballot or correct any error).
- Section 10. Amend Delaware Code, Title 15, §5001A (b) by striking the second sentence in its entirety and substituting in lieu thereof the following:
- (b) All voting devices used in any election shall provide the voter the opportunity to make his/her selections and cast his/her ballot in secrecy through placement of the devices in the polling place or through the use of curtains or other devices.
- Section 11. Amend Delaware Code, Title 15, §5001A by adding the following as subsection (d):
- (d) Any voting device, machine or system purchased by the State shall be certified by the National Association of State Election Directors or the Election Assistance Commission as meeting or exceeding the Voluntary Voting Systems Standards or Guidelines as promulgated by the Federal Election Commission or the Election Assistance Commission prior to delivery to and acceptance by the State.
- Section 12. Amend Delaware Code, Title 15, §5004A by inserting the following at the end of the section:

The Commissioner of Elections, in collaboration with the Departments of Elections for the counties, shall gather information from other jurisdictions using the same or similar systems and then establish an appropriate registered voter to voting device ratio for voting systems purchased after July 1, 2003.

- Section 13. Amend Delaware Code, Title 15, §5005A by adding the following as subsection (d):
- (d) Nothing in this section shall preclude the use of an electronic device where the ballot is electronically generated and displayed or which has the capability to generate and display multiple ballots.
- Section 14. Amend Delaware Code, Title 15, §5503 (d) by adding the following as the second sentence:
- (d) Additionally, the Departments of Elections for the counties shall accept facsimile transmissions of affidavits for absentee ballots.
- Section 15. Amend Delaware Code, Title 15, §5523 by inserting the following as subsection (d):
- (d) An FPCA submitted by a person who qualifies under any of the reasons set forth in §5502(1) or §5502(2) of this chapter shall be valid for the next two general elections.
- Section 16. Amend Delaware Code, Title 15, by inserting as §5526 the following:

§5526. Emergency Authority for the Commissioner of Elections.

- (a) In the event that a national or local emergency makes substantial compliance with the provisions of this title and/ or the Uniformed and Overseas Citizens Absentee Voting Act impossible or unreasonable for some of all of the citizens covered under §5502(1) or §5502(2) of this title, the Commissioner of Elections may direct the use of special procedures to facilitate absentee voting for those citizens directly affected who are eligible to vote in the State. Such an emergency may be a natural and/or humanitarian disaster; and/or armed conflict involving United States Armed Forces to include mobilized State National Guard and/or Reserve components.
- (b) The Commissioner of Elections shall consult with the Governor and the Federal Voting Assistance Program or its successor prior to directing the use of the special procedures cited in subsection "a" above.
- (c) The Commissioner of Elections, in collaboration with the Departments of Elections for the counties, shall promulgate special procedures to be followed in the event that such a national or local emergency occurs.

SYNOPSIS

This legislation if enacted will implement the Help America Vote Act of 2002 (HAVA), implement some recommendations regarding voting and registration of military and overseas and make other changes. Specifically, it provides that the Commissioner of Elections shall promulgate the voter registration application and deletes the list of items required in order to provide flexibility in quickly dealing with changes in federal law. It directs that a question dealing with citizenship be added and that a digitized signature obtained by a state agency in a process that includes voter registration be acceptable as an applicant's signature. It authorizes the Departments of Elections for the counties to accept facsimile transmissions of Affidavits for Absentee Ballots from all citizens. It adds the following provisions to comply with HAVA: establishes procedures for dealing with persons who registered by mail and have not voted in an election for federal office, establishes an Administrative Complaints Procedure for handling violations of HAVA's Title III mandate, provides for posting additional information in the polling place, authorizes Provisional Voting, defines what constitutes a legal vote, and modifies the standards for electronic voting systems, devices and/or machines. It, also, provides that military and overseas citizens who return to the United States within 60 days of an election and establish residence in Delaware can register to vote after the normal deadline, that citizens born abroad who have never lived in the State can register and vote if one of their parents is a qualified elector, and gives the Commissioner of Elections authority to direct the use of special procedures in handling the delivery and transmission of ballots to military and overseas citizens in the event of a national or local emergency.

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ITEM		≻ 8	≻ ¤	≻ &	≻ &	TIND	TIM E/	Expenditure	Title I	Title II	Title II	EXTENDED DESCRIPTION
						COST	<u> </u>		\$3,630,324.00	\$391,937.00	\$192,000.00	
		04	05	90	07				\$1,369,676.00	\$4,150,000.00	\$7,446,830.00	Amounts by Title
									\$5,000,000.00	\$4,541,937.00	\$7,638,830.00	
TITLE I	\$5,000,000.00											
Voting Systems	Voting Machines	×				\$5,026.76	37	\$185,990.12	\$4,814,009.88			New Voting Machines
Standards						\$5,026.76		\$185,990.12				
Voting Systems		×				\$13,933.26	1	<u>\$13,933.26</u>	\$4,800,076.62			Training Poll Workers
Changes						\$13,933.26		\$13,933.26				
												 Training Election Officials, Poll
Voting Systems		×				\$35,073.35	_	\$35,073.35	\$4,765,003.27			Workers and Volunteers
Training						\$35,073.35		\$35,073.35				
Provisional Voting	State	×				\$303,277,41	-	\$303,277,41	\$4 461 725 86			 Ballot Look-up System
0						\$303,277.41		\$303,277.41				
Computeriz	State	×				\$250 117 29	-	\$250 117 29	\$4 211 608 57			 Statewide Voter Database
Voter List						\$250,117.29		\$250,117.29				
Election												 Registration
Improveme						\$251,986.59	_	\$251.986.59	\$3.959.621.98			Forms, Materials, Services
						\$251,986.59		\$251,986.59				
Educating Voters	State	×				\$33,421.23	1	\$33,421.23	\$3,926,200.75			 Statewide Voter Database
						\$33,421.23		\$33,421.23				
State Plan		×				\$2,400.00	_	\$2,400.00	\$3,923,800.75			Consultant services

						\$2,400.00		\$2,400.00			
											Consultant Consultant
Accessibilit											State Polling
У		×				\$3,000.00	_	\$3,000.00	\$3,920,800.75		Places
						\$3,000.00		\$3,000.00			
Toll Free Line	Complaints	×				\$30.113.00	1	\$30.113.00	\$3.890.687.75		 Hotline for Voters
						\$30,113.00		\$30,113.00			
											 Consistent
											Media Efforts to
											Inform the Public
											about HAVA and
Advertising	Commissioner		×	×	×	\$6,000.00	9	\$36,000.00	\$3,884,800.75		Voting
			×	×	×	\$2,000.00	12	\$24,000.00	\$3,860,800.75		Radio
											:
			×	×	×	\$0.00	0	\$0.00	\$3,860,800.75		Television
											 Printed Notices
											of Election -
			×	×	×	\$5,000.00	2	\$10,000.00	\$3,874,800.75		HAVA Rights
											• Cable/IV
											Notices of Election –
			×	×	×	\$13,000.00	2	\$26,000.00	\$3,848,800.75		
											Direct Mail
											Notices of Election -
				×		\$150,000.00	-	\$150,000.00	\$3,698,800.75		HAVA Rights
	;										• Newspapers
	New Castle										Notices of Election -
	County		×	×	×	\$10,000.00	2	\$20,000.00	\$3,678,800.75		HAVA Rights
											 Newspapers
											Notices of Election -
	Kent County		×	×	×	\$10,000.00	2	\$20,000.00	\$3,658,800.75		HAVA Rights
											 Newspapers
											Notices of Election -
	Sussex County		×	×	×	\$10,000.00	2	\$20,000.00	\$3,638,800.75		HAVA Rights
											 Staff Training,
											Education and
											Agency Based
Casual/											Training for Public
Seasonal											Instruction for Voter
Staff	Commissioner		×	×	×	\$1,000.00	100	\$100,000.00	\$3,538,800.75		Registration Events

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										Programmer 1-
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										Located at Dept. of
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Commissioner	oner		×	×	×	\$25,117.00	က	\$75,351.00	\$2,558,293.75	Accounting Specialist
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Commissioner	oner			×		\$10,000.00	_	\$10,000.00	\$2,349,101.99	Answer System
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	Kent County	×			\$15,000.00	1	\$15,000.00	\$2,309,101.99	Kent County
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Programmi	Commissioner	<u> </u>		×	\$80,000,00	۳	\$240,000,00	\$2 054 101 99	Campaign Finance Database
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									Materials for
									Unexpected
									Operational
Materials		×		×	\$32,000.00	က	\$96,000.00	\$293,101.99	Department Needs
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									Unscheduled Parts,
									Systems Expansions
Equipment		×	×	×	\$12,000.00	6	\$108,000.00	\$185,101.99	Department

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Warehouse			×		θ	838.000.00	2	\$76,000.00	\$109,101,99		Expanded Warehouse Space Voting Machines - New Castle County Airport Location
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Web Hosting	Commissioner		×			\$5,000.00	12	\$60,000.00	\$49,101.99		 Off Site Hosting Pending Available State Space - Campaign Finance
						\$5,000.00		\$60,000.00			
Travel	Commissioner		×	× ×		\$20,000.00	-	\$20,000.00	\$29,101.99		 National Conferences and Training Events
					\$	\$20,000.00		\$20,000.00			
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					9)	\$11,416.75		\$29,101.90			
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Voting Machines Retrofits	nes Retrofits		×			\$1,100.00	100	\$1,100,000. <u>0</u>		\$3,441,937.00	 Retrofit Current Voting Machine Inventory with Audio Modules
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			\$27.00		\$13,500.00			Delivery Charges to Central Location
								:
Delivery		×	\$20.000.00		\$20.000.00	7806\$	8908.437.00	 Testing Voting Machine Contract Specifications
			\$20,000.00		\$20,000.00			
						-		
Machine Supplies		×	\$250,000.00	1	\$250,000.00	\$658,	\$658,437.00	Paper Tapes, Printers,
			\$250,000,00		\$250,000,00			Electronic Poll Lists in each Poll
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								Two Year Costs of
Transportation to Polls	Is		\$30,000.00	1	\$30,000.00	\$628,	\$628,437.00	Moving Additional Voting Machines
			\$30,000.00		\$30,000.00			
								 Testing Machine
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2		<	\$40,000,00		040,000,00	9		3,000,000,000
))		2000			
								Remote Testing
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Testing Vendor Software	/are	×	\$45,000.00	1	\$45,000.00	\$543,	\$543,437.00	Software
			\$45,000.00		\$45,000.00			
Training		×	\$40,000.00	1	\$40,000.00	\$503,	\$503,437.00	 Staff Training
			\$40,000.00		\$40,000.00			
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Tompored Morobound Ctoff	#0,0	-	170 000 00	0.0	170,000,00	6333	\$222 427 00	Complete Voting
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×		×				;	×		×							×	
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Supplemental		Misc		Title II \$7,4 ²		- + - + - + - + - + - + - + - + - + - +	Architectural Accessibility		Voter File Improvements							Maintenance	

DEPARTMENT OF FINANCE DIVISION OF REVENUE

Technical Information Memorandum 2005-1 Hurricane Katrina Special Tax Relief

The Delaware Division of Revenue has implemented special relief for taxpayers in the Presidential Disaster Areas struck by Hurricane Katrina in conjunction with the issuance of IR-2005-84 by the IRS on August 30, 2005.

Taxpayers in the effected area generally will have until Oct. 31, 2005, to file tax returns and submit tax payments. The Delaware Division of Revenue will abate interest and any late filing or late payment penalties that would otherwise apply. This relief includes the September 15th due date for estimated taxes and for calendar-year corporate returns with automatic extensions. In addition, collections and collection enforcement procedures will be deferred for six months for any taxpayer residing in the effected areas who makes such a request.

The disaster areas designated for individual relief include:

- 31 Louisiana parishes: Acadia, Ascension, Assumption, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Pointe Coupee, Plaquemines, St. Bernard, St. Charles, St. Helena, St. James, St. John, St. Mary, St. Martin, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Washington, West Baton Rouge and West Feliciana;
- 15 Mississippi counties: Amite, Forrest, George, Greene, Hancock, Harrison, Jackson, Lamar, Marion, Pearl River, Perry, Pike, Stone, Walthall, and Wilkinson; and
- Three Alabama counties: Baldwin, Mobile and Washington.
- Among the tax relief details are the following:
- The Disaster Designation for this area is "Hurricane Katrina" — taxpayers mark their State of Delaware tax related forms with this designation in red.

Patrick T. Carter, Director of Revenue

DELAWARE COUNCIL ON POLICE TRAINING

NOTICE OF PUBLIC HEARING

The Council on Police Training (COPT), in accordance with 11 **Delaware Code** Section 8404(a)(14) and 29 **Delaware Code** Section 10115 of the Administrative Procedures Act, hereby gives notice that it shall hold a public hearing on October 11, 2005 at 9:00 a.m., in the first-floor conference room at the Delaware State Police Training Academy, N. DuPont Highway, Dover, Delaware 19903.

The Council on Police Training will receive written comments or oral testimony from interested persons regarding the following regulations to amend the current COPT Regulation II-14 (Minimum Standards Qualification Course of Fire) and current COPT Regulation II-15 (Firearms Instructor Retraining). The final date for interested persons to submit written comments shall be the date of the public hearing. Written comments should be addressed to: Captain Harry W. Downes, Jr., Director, Delaware State Police Training Academy, P.O. Box 430, Dover, DE 19903-0430.

Anyone wishing to make written or oral comments who would like a copy of the proposed regulations may contact the COPT at (302) 739-5903, or write to the above address.

DEPARTMENT OF AGRICULTURE OFFICE OF THE SECRETARY

1200 Nutrient Management

NOTICE OF RESCHEDULED PUBLIC HEARING

Pursuant to 29 **Del.C.** §10115, I hereby recommend the proposed amendments to the certification regulations to be posted in the *Register of Regulations*.

Synopsis: Certification by the Delaware Nutrient Management Program, 2320 S. Dupont Hwy., Dover, DE 19901, is required (3 **Del.C.** §2201 - 2290) for all who apply fertilizer and/or animal manure greater than 10 acres or who manage animals greater than 8,000 pounds of live animal weight. As required by the regulations, certain continuing education credits are needed in order to maintain certification. The proposed changes reduce the required credits in order to maintain consistency with recertification requirements from regional programs.

Comments on the proposed changes will be accepted from September 1, 2005 until October 11, 2005. Any comments should be provided to William Rohrer, Program Administrator. A hearing for the proposed regulations will

be conducted at the Delaware Department of Agriculture on November 8, 2005 at 7:00 p.m.

Ammendments: Paragraph 7.0, reference 1200 Nutrient Management, 1201 Nutrient Management Certification Regulations.

HARNESS RACING COMMISSION NOTICE OF PUBLIC HEARING

501 Harness Racing Rules and Regulations

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to amend rules 8.4.3.4.2 and 8.4.3.5.9 to permit the use of Commission approved blood collection containers. The Commission will hold a public hearing on the proposed rule change on October 20, 2005. Written comments should be sent to Administrator of Harness Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901.

DEPARTMENT OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, October 20, 2005 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL
ASSISTANCE
NOTICE OF PUBLIC COMMENT PERIOD

Pharmaceutical Services – Multi-State Pooling Rebate Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan to expand the recently approved preferred drug list by participating in a Medicaid Multi-State Pooling Rebate Program to reduce the cost of pharmaceuticals in a clinically sound way.

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

materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by October 31, 2005.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE WITHDRAWAL OF NOTICE OF INTENT

Pharmaceutical Services: Mail Order Pharmacy Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, notice is hereby given that the Notice of Intent published in the General Notices section of Volume 8, Issue 12 of the June 1, 2005 issue of the *Delaware Register of Regulations* has been withdrawn.

Summary of Withdrawal

On June 1, 2005, the Division of Medicaid and Medical Assistance (DMMA) published for public comment a notice of intent to submit an amendment to the Title XIX Medicaid State Plan to the Centers for Medicare and Medicaid Services (CMS) to implement mail order prescription service. DMMA withdraws its notice of intent published on June 1, 2005 at 8 **DE Reg.** 1737 as of October 1, 2005.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE NOTICE OF PUBLIC COMMENT PERIOD

Long Term Care Nursing Facilities

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**), and with 42CFR §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 is proposing to amend the Title XIX Medicaid State Plan regarding the reimbursement methodology for nursing facilities. Additionally, the proposed rule is technical in nature to change a reference from the HCFA (Health Care Financing

Administration) to the CMS (Centers for Medicare and Medicaid Services).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by October 31, 2005.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE NOTICE OF PUBLIC COMMENT PERIOD

Long Term Care Medicaid

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend a rule in the Division of Social Services Manual (DSSM) used to determine eligibility for medical assistance. Additionally, the proposed rule is technical in nature to change a reference from the Division of Social Services to the Division of Medicaid and Medical Assistance.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by October 31, 2005.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE NOTICE OF PUBLIC COMMENT PERIOD

Assisted Living Medicaid Waiver Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend a rule in the Division of Social Services Manual (DSSM) related to the Assisted Living Medicaid Waiver Program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by October 31, 2005.

DIVISION OF SOCIAL SERVICES NOTICE OF PUBLIC COMMENT PERIOD

Case Record Maintenance and Retention

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the language in the Division of Social Services Manual (DSSM) as it relates to the retention period for case records.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by October 31, 2005.

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

DEPARTMENT OF INSURANCE NOTICE OF PUBLIC HEARING

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice that a PUBLIC HEARING will be held on Tuesday November 1, 2005 at 2:00 p.m. in the Consumer Services Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to receive public comment in **Docket No. 2005-140**, proposed amendments to **Regulation 607** relating to **Defensive Driving Course Discount Automobiles and Motorcycles.**

The primary purpose for proposing amendments to Regulation 907 is to eliminate the Defensive Driving Credentials Committee and revise the methods by which the Department of Insurance receives and processes complaints against course providers and instructors. There are conforming amendments in the balance of the text to delete references to the Defensive Driving Credentials Committee as well as to eliminate outdated text. The text of the proposed amendments is reproduced in the October 2005 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at http://www.state.de.us/inscom/departments/documents/ProposedRegs/ProposedRegs.shtml.

The hearing will be conducted in accordance with 18 **Del.C.** §311 and the Delaware Administrative Procedures Act, 29 **Del.C.** Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the hearing. Written comments, testimony or other written materials concerning the proposed change to the regulation must be received by the Department of Insurance no later than 2:00 p.m., Tuesday, November 1, 2005, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.5566 or email to michael.rich@state.de.us. If you are disabled and might need assistance in this matter, please contact Julia Blevins at 302.739.4251 ext. 111 or Julia.Blevins@state.de.us.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL DIVISION OF AIR AND WASTE MANAGEMENT NOTICE OF PUBLIC HEARING

Regulations Governing the Control of Air Pollution

The Air Quality Management Section will hold three public workshops regarding the development of Source Category Permits pursuant to the State of Delaware "Regulations Governing the Control of Air Pollution" Regulation No. 2 - PERMITS, Section 2.1(b), Regulation No. 2 Section 10, and Regulation No. 30 - TITLE V STATE OPERATING PERMIT PROGRAM, Section 6(d) for dry cleaning shops. These workshops will cover the draft Source Category Permit and will provide dry cleaning business owners with instructions and assistance for completing permit applications. The workshops will be held on October 25, 2005 from 7-10 pm at the Delaware Technical and Community College Terry Campus Conference Center, on October 26, 2005 from 7-10 pm at the Delaware Technical and Community College Stanton Campus Conference Center, and on October 27, 2005 from 7-10 pm at the Delaware Technical and Community College Stanton

Campus Conference Center. Please note that a Korean interpreter will attend the October 27th workshop.

For further information please contact Valerie Gray, in Dover, at (302) 739-9402.

DIVISION OF WATER RESOURCES NOTICE OF PUBLIC HEARING

Proposed Total Maximum Daily Loads (TMDLs) for the Chester River, Choptank River, Marshyhope Creek and Pocomoke River Watersheds, Delaware

Brief Synopsis of the Subject, Substance, and Issues

Department of Natural The Resources and Environmental Control (DNREC) is proposing to adopt Total Maximum Daily Loads (TMDLs) Regulations for nitrogen, phosphorous, and bacteria for the Chester River, Choptank River, Marshyhope Creek and Pocomoke River Watersheds in Delaware. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS) to account for uncertainties and future growth.

Notice of Public Hearing and Comment

A public hearing will be held at 6:00 p.m., Thursday, October 27, 2005, at the University of Delaware Cooperative Extension Service, Research and Education Center, 16684 County Seat Highway (Route 9), Georgetown, Delaware 19947. The hearing record will remain open until 4:30 p.m., Monday, October 31, 2005. Please send written comments to Hassan Mirsajadi, Watershed Assessment Section, Division of Water Resources, Department of Natural Resources and Environmental Control, 820 Silver Lake Boulevard, Suite 220, Dover, DE 19904-2464, (302) 739-9939, facsimile: (302)739-6140, email: (Hassan.Mirsajadi@state.de.us). All written comments must be received by 4:30 p.m., Monday, October 31, 2005.

Additional information and supporting technical documents may be obtained by contacting Hassan Mirsajadi at the above address.

DEPARTMENT OF STATE OFFICE OF THE STATE BANKING COMMISSIONER NOTICE OF PUBLIC HEARING

Summary

The State Bank Commissioner proposes to adopt new Regulation 904 ("Exceptions to Tying Restrictions"), which implements §929(f) of Title 5 of the **Delaware Code** by authorizing certain conduct as exceptions to the anti-tying restrictions of §929. These exceptions are in addition to those elsewhere in §929. The State Bank Commissioner would adopt the proposed new Regulation 904 on or after November 4, 2005. Other regulations issued by the State Bank Commissioner are not affected by these proposals. The State Bank Commissioner is issuing this regulation in accordance with Title 5 of the **Delaware Code**.

Comments

A copy of the proposed new regulation is published in the *Delaware Register of Regulations*. A copy is also on file in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, DE 19901 and is available for inspection during regular office hours. Copies are available upon request.

Interested parties are invited to comment or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner as to whether this proposed new regulation should be adopted, rejected or modified. Written materials submitted will be available for inspection at the above address. Comments must be received at or before the public hearing scheduled for November 4, 2005.

Public Hearing

A public hearing on the proposed regulation will be held in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, DE 19901 on Friday, November 4, 2005 commencing at 10:00 a.m. This notice is issued pursuant to the requirements of Subchapter III of Chapter 11 and Chapter 101 of Title 29 of the **Delaware Code**.

DIVISION OF PROFESSIONAL REGULATION NOTICE OF RESCHEDULED PUBLIC HEARING

The Delaware Board of Nursing in accordance with 24 **Del.C.** §1906(1) has proposed changes to its rules and regulations related to the reporting of continuing education. The proposed change provides that nurses will be able to attest to the completion of the required number of contact hours by approved providers, rather than documenting date, program name, provider and number of contact hours. The full text of the proposed regulation was published in the *Register of Regulations*, Vol. 9, Issue 2, on August 1, 2005 (8 **DE Reg 226**).

The public hearing originally scheduled for September 14, 2005 at 9:00 a.m. has been rescheduled to October 12, 2005 at 9:00 a.m. The public hearing will be held 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. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Nursing, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

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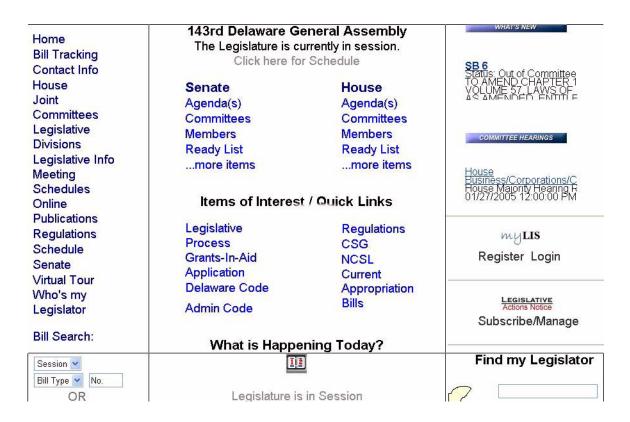
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