DISABILITIES LAW PROGRAM

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MEMORANDUM

To: SCPD Policy & Law Committee

From: Brian J. Hartman

Re: Regulatory Initiatives

Date: July 8, 2014

I am providing my analysis of eleven (11) regulatory initiatives. Given the low number of relevant proposed regulations in the July issue of the Register of Regulations, I understand the SCPD Executive Committee will approve comments in lieu of convening the P&L Committee.

1. DPH Final Cancer Registry Regulation [18 DE Reg. 63 (July 1, 2014)]

The SCPD and GACEC commented on the proposed version of this regulation in May, 2014. A copy of the SCPD's May 29, 2014 memo is attached for facilitated reference. Both the SCPD and GACEC endorsed the concept of switching to an electronic reporting system subject to consideration of five (5) amendments. The Division of Public Health has now adopted a final regulation incorporating revisions to the five (5) sections highlighted by the Councils.

First, the Councils recommended deletion of a definition in §4.0 since it already appeared in §2.0. The Division agreed and deleted the redundant reference.

Second, the Councils recommended substitution of "it is" for "they are" in §4.0, sixth sentence. The Division effected the revision.

Third, the Councils noted that the eighth sentence in §4.0 lacked a predicate. DPH added a verb.

Fourth, the Councils recommended substitution of "include" for "request" in the ninth sentence in §4.0. DPH effected the revision.

Fifth, the Councils noted that §§4.0 and 5.0 omitted information required by the enabling legislation. The Division added language to conform to the statute.

Since the regulation is final, and the Division adopted all Council suggestions, a "thank you" communication would be appropriate.

2. DPH Final Cancer Treatment Program Regulation [18 DE Reg. 67 (July 1, 2014)]

The SCPD and GACEC submitted extensive comments on the proposed version of this regulation in April, 2014. A copy of the SCPD's April 30 memo is attached for facilitated reference. The Division of Public Health has now adopted a final regulation incorporating approximately nine (9) revisions to the standards.

First, the Councils observed that the definition of "uninsured" was counterintuitive. The Councils also recommended adoption of a "definitions" section rather than inserting a definition in the "purposes" section. The Division responded that the definition 'does have meaning for the agency" so it is being retained. The Division also declined to incorporate a "definitions" section as recommended by the Register of Regulations Administrative Code Style Manual.

Second, the Councils noted that the term "physician" was limiting and suggested adding a reference to "advanced practice nurse" or "licensed health care professional". DPH rejected the suggestions without providing a rationale.

Third, the Councils identified an extraneous word ("acting") in §3.1. The Division revised the reference to read "acting on behalf of the applicant".

Fourth, the Councils noted that DPH omitted several protected classes in its non-discrimination section. The Division revised the reference to include ten (10) protected classes.

Fifth, the Councils recommended adoption of parallel form in §4.1.5.1. DPH revised the section to achieve parallel form.

Sixth, the Councils identified inconsistent references in the context of retroactive coverage. DPH deleted some inconsistent language.

Seventh, the Councils recommended addition of a citation to 16 DE Admin Code 14120. DPH added the citation.

Eighth, the Councils identified some anomalies in the context of adoption of a net income standard. The Division made no change.

Ninth, the Councils strongly objected to a residency standard which requires an intention to remain in Delaware "permanently" while deleting "or for an indefinite period". DPH deleted "permanently, or for an indefinite period".

Tenth, the Councils recommended retention of a provision disallowing a "durational residence requirement". DPH retained the deletion. Given the amendment to §6.1, and the language in §6.3.1, the deletion is less objectionable.

Eleventh, the Councils recommended substitution of "may" for "shall" in §7.4. DPH did not adopt the recommendation.

Twelfth, the Councils suggested improving the grammar in §9.3. The Division adopted the Councils' suggested language.

Thirteenth, the Councils recommended a more flexible approach to reinstatement of benefits. The Division effected no change.

Fourteenth, the Councils recommended deletion of a section. The Division retained the section.

Fifteenth, the Councils recommended revision of references to "his/her" consistent with guidance in the Delaware Administrative Code Drafting & Style Manual. The Division edited the references somewhat.

Sixteenth, the Councils recommended adoption of a more robust appeal system. The Division effected no change.

Seventeenth, the GACEC noted some inconsistencies in numbering of sections. The Division amended the references.

Since the regulation is final, and the Division addressed each comment submitted by the Councils, I recommend no further action.

3. DOE Final Specialist Appraisal Process Regulation [18 DE Reg. 40 (July 1, 2014)]

The SCPD and GACEC commented on the proposed version of this regulation in May, 2014. A copy of the SCPD's May 29, 2014 letter is attached for facilitated reference. The Councils shared two (2) observations on the proposed standards. Other entities also submitted comments, including the Delaware State Education Association, Delaware Association of School Administrators, and local education associations. The Department of Education has now adopted a final regulation with a single amendment to the definition of "Student Achievement" based on Council commentary. Consistent with the SCPD's memo, the Councils submitted the following observations.

First, the grammar in the definition of "Student Achievement" was faulty. The Department corrected the grammar.

Second, the Councils objected to expansion of an authorization for districts and charter schools to waive/disregard some appraisal components, noting that §5.1 authorized schools to apply for approval of an alternate Professional Responsibilities Component. The Councils objected to this approach which undermines valid comparisons of data among districts and charter schools. The DOE effected no change in the standards but did comment as follows: "Data collection is certainly an imperative for the state, and the Department will take measures to ensure that the ability to conduct such comparisons if (sic "is") not eliminated while still allowing for districts and charters to build alternative systems." At 40.

Since the regulation is final, and the DOE addressed each of the Councils' comments, I recommend no further action.

4. DOE Final Teacher Appraisal Regulation [18 DE Reg. 31 (July 1, 2014)]

The SCPD and GACEC commented on the proposed version of this regulation in May, 2014. A copy of the SCPD's May 29, 2014 letter is attached for facilitated reference. The Councils shared two (2) observations on the proposed standards. Other entities also submitted comments, including the Delaware State Education Association, Delaware Association of School Administrators, and local education associations. The Department of Education has now adopted a final regulation with a single amendment to the definition of "Student Achievement" based on Council commentary. Consistent with the SCPD's memo, the Councils submitted the following observations.

First, the grammar in the definition of "Student Achievement" was faulty. The Department corrected the grammar.

Second, the Councils objected to expansion of an authorization for districts and charter schools to waive/disregard some appraisal components, noting that §5.1 authorized schools to apply for approval of an alternate Professional Responsibilities Component. The Councils objected to this approach which undermines valid comparisons of data among districts and charter schools. The DOE effected no change in the standards but did comment as follows: "Data collection is certainly an imperative for the state, and the Department will take measures to ensure that the ability to conduct such comparisons if (sic "is") not eliminated while still allowing for districts and charters to build alternative systems." At 32.

Since the regulation is final, and the DOE addressed each of the Councils' comments, I recommend no further action.

5. DOE Final Administrator Appraisal Process Regulation [18 DE Reg. 48 (July 1, 2014)]

The SCPD and GACEC commented on the proposed version of this regulation in May, 2014. A copy of the SCPD's May 29, 2014 letter is attached for facilitated reference. The Department of Education is now adopting a final regulation incorporating two (2) edits recommended by the Councils.

First, the Councils recommended adding a reference to a charter school principal in the definition of "credentialed evaluator". The DOE adopted a variation of the language proposed by the Councils.

Second, the Councils recommended a modification to §6.2.2. The DOE adopted the suggested revision verbatim.

Third, the Councils observed that the rating system could be viewed by reasonable persons as overly "weighting" the student improvement component. The DOE did not address the observation and retained the existing framework.

Since the regulation is final, and the DOE adopted revisions based on two (2) of three (3) Council observations, I recommend no further action.

6. DOE Final Educator Preparation Programs Regulation [18 DE Reg. 57 (July 1, 2014)]

The SCPD and GACEC commented on the proposed version of this regulation in May, 2014. A copy of the SCPD's May 29, 2014 letter is attached for facilitated reference. A copy of the Department of Education's June 27, 2014 letter responding to the SCPD's commentary is also attached. The DOE is now adopting a final regulation which incorporates several revisions prompted by the commentary.

First, the Councils recommended adding a statutory citation to §1.1. The DOE agreed and inserted the reference.

Second, the Councils recommended "adding a definition of DPAS-II which encompasses any DOE-approved replacement of the assessment system". The DOE did not add a definition but incorporated the recommendation into §6.1.4.3.

Third, the Councils recommended correction of grammar in the definition of "High Quality Clinical Supervisor". The DOE corrected the grammar.

Fourth, the Councils recommended a revision to the definition of "High Quality Clinical Supervisor". The DOE disagreed and retained the standard.

Fifth, the Councils recommended adoption of more precise standards for qualifying tests in §3.1.1. The DOE responded that its proposed standards were sufficient.

Sixth, the Councils recommended revision of §3.2.1.1.2 for consistency of form. The DOE agreed and adopted some conforming edits.

Seventh, the Councils recommended clarification in §3.2.1.2 that ratings referred to "summative" ratings. The DOE adopted a variation of recommended language.

Eighth, the Councils recommended inserting "Professional" before "Standards Board". The DOE adopted the amendment.

Ninth, the Councils recommended substitution of "may" for "shall" in §§7.3.1 and 7.3.2. The DOE opted to retain references to "shall".

Since the regulation is final, and the DOE addressed each of the Councils' comments, I recommend no further action.

7. DOE Prop. Supportive Instruction (Homebound) Reg. [18 DE Reg. 7 (July 1, 2014)]

The Department of Education is proposing to amend its supportive instruction (homebound) regulation. The current regulation disallows homebound for "normal pregnancies unless there are complications" and limits homebound to "a postpartum period not to exceed six weeks". At 9. The proposed regulation does an "about face" on these restrictions. A student would qualify for homebound "because of pregnancy, childbirth, or related medical conditions". A student would also be eligible for homebound during "a postpartum period for as long as deemed medically necessary." See proposed §§2.1.1.1. and 2.1.1.2.

I recommend endorsement subject to the following amendments.

First, in §1.0, definition of "supportive instruction", the list of qualifying conditions is "underinclusive" since pregnancy, childbirth, and related medical conditions are not covered. I recommend amending the first sentence as follows:

> "Supportive Instruction" is an alternative educational program provided at home, in a hospital or at a related site for a student temporarily at home or hospitalized for a sudden illness; injury; episodic flare up of a chronic condition; accident; or pregnancy, childbirth, or related medical conditions.

The term "considered to be of a temporary nature" would be deleted since it is redundant. The sentence already refers to "temporarily at home or hospital".

Second, §2.1. is similarly "underinclusive. I recommend amending the section to read as follows:

2.1. A student enrolled in a school district or charter school is eligible for supportive instruction when the district or charter school receives the required certification that one or more of the following conditions will prevent the student from attending school for at least ten (10) school days:

> 2.1.1. Sudden illness;
> 2.1.2. Accident;
> 2.1.3. Episodic flare up of a chronic condition;
> 2.1.4. Injury; or
> 2.1.5. Pregnancy, childbirth, or related condition.

The balance of §2.0 could then be renumbered: §2.1.1 becomes §2.2; §2.1.1.1 becomes §2.2.1; §2.1.1.2 become §2.2.2; §2.1.2 becomes §2.3; and §2.2 becomes §2.4.

I recommend sharing the above observations with the DOE and SBE.

8. DMMA Prop. Medicaid Primary Care Services Payment Reg. [18 DE Reg. 11 (July 1, 2014)]

The Division of Medicaid & Medical Assistance proposes to adopt a Medicaid Plan amendment. As background, the Affordable Care Act authorized an increase in Medicaid payments for certain primary care and vaccine administration. CMS approved a Delaware DMMA Medicaid Plan amendment in 2013 to implement the authorization. However, CMS issued April 14, 2014 guidance which is prompting DMMA to propose another "housekeeping" amendment to specify eligible CPT codes, including vaccine codes and evaluation and management codes.

Since the initiative is designed to conform to CMS guidance, I recommend endorsement.

9. DMMA Prop. Medicaid Telemedicine Regulation [18 DE Reg. 9 (July 1, 2014)]

The Division of Medicaid & Medical Assistance proposes to amend the Medicaid State Plan to clarify the scope of providers authorized to deliver services via telemedicine.

As background, CMS approved a Delaware Medicaid Plan in 2012 to use a telemedicine delivery system for providers enrolled in the Delaware Medical Assistance Program (DMAP). The SCPD issued a July 23, 2012 memo endorsing the concept of using telemedicine and prompted adoption of an amendment to include accommodations, including interpreter and audio-visual modification, where required by the ADA. See 16 DE Reg. 314, 317 (September 1, 2012).

The Division is now proposing to adopt a 1-sentence State Medicaid Plan amendment to clarify that providers may use a telemedicine delivery system for "any covered State Plan services that would typically be provided to an eligible individual in a face-to-face setting by an enrolled provider." The proposed amendment merits endorsement. Consistent with the attached June 16, 2014 Delaware News Journal article, telemedicine offers a useful option for individuals with disabilities seeking specialty care, particularly downstate residents. The attached April 12, 2014 Delaware News Journal article also reinforces the merits of telemedicine and predicts that Smartphone applications and body sensors will evolve to support telemedicine. The article notes the advantage of avoiding a doctor's office "only to wait in line with patients who have other diseases that we may catch."

10. DSS Prop. Child Care Sub. Prioritizing Service Needs Reg. [18 DE Reg. 19 (July 1, 2014)]

The Division of Social Services proposes to adopt some discrete amendments to its regulation listing priority individuals in the event DSS adopts a wait list for its Child Care Subsidy program.

I have the following observations.

First, DSS indicates that it is replacing the acronym "FS" (Food Stamp) with the acronym "FSP" (Food Supplement Program) in the new regulation. However, the latter acronym does not appear in the regulatory text.

Second, DSS recites that it is adding a priority of "teen parents enrolled in or attending middle school or high school and parent/caretakers enrolled in and participating in a General Diploma (GED) program." In contrast, although Par. A.4 includes teens attending middle or high school, the regulation omits any reference to persons participating in a GED program. Moreover, consistent with the attached May 29 SCPD memo to DSS on a related regulation, the term "GED" is "underinclusive". Therefore, DSS should consider inserting the following Par. 5 (and renumbering the balance of the list) as follows:

> 5. Teen parents enrolled in and participating in a program to acquire a General Education Diploma (GED) or similar secondary credential approved by the Delaware Department of Education.

I recommend sharing the above observations with the Division.

11. DSS Prop. Food Supp. Program Income Deductions Reg. [18 DE Reg. 14 (July 1, 2014)]

The Division of Social Services proposes to revise it Food Supplement Program standards to conform to changes in federal law.

As background, §4006 of the Agriculture Act of 2014 provides that households which receive a payment greater than $20 in Low Income Heating Assistance Program benefits in the current month or in the immediately preceding 12 months qualify for an allowance/deduction when determining eligibility for Food Supplement benefits. Based on the attached April 7, 2014 USDA guidance, the Division of Social Services is revising its standards to incorporate the change in the law. The proposed regulation also includes a few non-substantive revisions.

Since the regulatory amendments are required to conform to federal law, I recommend endorsement.

Attachments

8g:legis/714bils
F:pub/bjh/legis/2014p&l/714bils

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MEMORANDUM

DATE: May 29, 2014

TO: Ms. Deborah Harvey
Division of Public Health

FROM: Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: 17 DE Reg. 1035 [DPH Proposed Cancer Registry Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Public Health's (DPH's) proposal to amend the State of Delaware Cancer Registry regulations. Specifically, the Division proposes to amend its implementing regulations to convert health care provider reporting from a "paper" system to an "electronic" system. The proposed regulation was published as 17 DE Reg. 1035 in the May1, 2014 issue of the Register of Regulations. SCPD endorses the concept of switching to an electronic reporting system subject to consideration of the following amendments.

First, in §4.0, SCPD recommends deletion of the third sentence. It is redundant to reiterate the definition of a "non-hospital reporter" which is already defined in §2.0.

Second, in §4.0, sixth sentence, SCPD recommends substituting "it is" for "they are" since the antecedent noun (provider) is singular.

Third, in §4.0, the eighth "sentence" reads as follows: "All data required by the reporting requirements of the National Cancer Data Base established by the American College of Surgeons." This is not a sentence since it lacks a predicate.

Fourth, in §4.0, ninth sentence, SCPD believes "request" should be "include".

Fifth, §§4.0 and 5.0 condense the scope of information related to patient residence and employment. This may not comport with the enabling legislation. Consider the following:

A. Title 16 Del.C. §3204(2) requires reporting of the patient's "primary residential address".

The regulation omits any reference to collection of such information.

B. Section §3204(2) requires reporting of "the location and nature of the patient's primary past employment." The regulation deletes the requirement of reporting the "name and address of employer" and merely contemplates identification of type of occupation. This is not consistent with the enabling law.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our position or observations on the proposed regulation.

cc: Dr. Karyl Rattay
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

17reg1035 dph-cancer registry 5-29-14

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MEMORANDUM

DATE: April 30, 2014

TO: Ms. Deborah Harvey
Division of Public Health

FROM: Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: 17 DE Reg. 955 [DPH Proposed Cancer Treatment Program Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Public Health's (DPH's) proposal to revise its technical, financial, and residency eligibility requirements for the Delaware Cancer Treatment program. The SCPD commented on prior versions of the regulations in May and December of 2004, and in September of 2007. The proposed regulation was published as 17 DE Reg. 955 in the April 1, 2014 issue of the Register of Regulations. SCPD has the following observations.

First, DPH adds a new definition of "uninsured" as follows:

> 1.2. Definition of "uninsured" for purposes of this regulation - a person who meets all technical, financial, and residency requirements of this regulation.

This definition is counterintuitive and makes no sense. Literally, someone who is insured but not a Delaware resident would be considered "uninsured". Similarly, someone who is insured but "overincome" would be considered "uninsured". If the Division wishes to retain the reference, consider substituting "a person who meets §§4.1.4 - 4.1.6 of this regulation".

DPH should consider creation of a "definitions" section rather than inserting a definition in the "purposes" section. See Delaware Administrative Code Style Manual, §3.1. Indeed, the Manual recites as follows: "Define a term only if it is important and it is used more than once in the regulation." The term "uninsured is only used once (§1.1) in the regulation so there is technically no need for a definition of "uninsured". The better approach would be to establish a "definitions" section, substitute "Be uninsured" for "Have no health insurance" in §4.1.4, and then include all definitions in the definitions section, including "uninsured" and "inmate" and

"public institution" (currently defined in §4.3.1).

Second, the regulation limits authorization for treatment to a "physician". See §§4.1.1, 4.2.1, and 11.2. DPH may wish to consider adding references to "advanced practice nurse". See 24 Del.C. §1902(b)(1). Alternatively, DPH could adopt a generic term (e.g. "licensed health care professional" and add a definition of the term to cover physicians and advanced practice nurses.

Third, in §3.1, the Division may wish to consider deletion of the extraneous "acting" in the second sentence.

Fourth, in §3.1, the third sentence lists protected classes. It omits some classes. See Title 6 Del.C. §§4501, 4502(14), and 4503.

Fifth, in §4.1.5.1, DPH should consider correcting the grammar. There should be parallel form in lists. In this section, some items begin with nouns and some items begin with verbs. See Delaware Administrative Code Drafting & Style Manual, §6.2.3.

Sixth, the regulation is inconsistent in the context of retroactivity. On the one hand, §4.2.4 authorizes 3 months of retroactive coverage for children with no analogous authorization for adults in §4.1. It's unclear why 3-months retroactive coverage would be authorized for children but not adults. Moreover, 12 month retroactivity for children and adults is authorized by §12.7. The Division may wish to clarify its intention and adopt a uniform standard.

Seventh, the references to "inmate of a public institution.... as used in the Delaware Medicaid program" do not provide much guidance. It would be preferable to provide a citation to 16 DE Admin Code 14120 for clarity and ease of reference.

Eighth, the Division is switching from a net income to a gross income standard for most forms of earned income. See §§5.3.5 and 5.3.6. This creates an anomaly since rental income (§5.3.11 and 5.3.12) is reduced by expenses to amount to net income. Obviously, it would be more consumer-oriented to continue to count net earned income.

Ninth, the Division proposes to change the residency standard as follows:

> 6.1. A Delaware resident is an individual who lives in Delaware with the intention to remain permanently ~~or for an indefinite period~~ or where the individual is living and has entered into a job commitment, or seeking employment whether or not currently employed.

The deletion of "or for an indefinite period" is highly objectionable. Residency does not require an intention to remain in the State permanently. See 16 DE Admin Code 14110.5 -14110.8. See also 17 DE Reg. 386 (10/1/13). The term "or for an indefinite period" should be retained. DPH may wish to consult its assigned Attorney General for guidance.

Tenth, the Division proposes the following deletion:

Eligibility: ...

~~6.3.2. Will not be denied because of a durational residence requirement.~~

The implication of the change is to reinforce the proposed requirement in §6.1 that residency must be "permanent" to be eligible for the program. This is objectionable. Residency can be established without meeting a "permanency" standard. Section 6.3.2 should be retained.

Eleventh, the Division proposes the following revision:

7.4 Failure to provide requested documentation ~~may~~ will result in denial or termination of eligibility.

It would be preferable for the Division to retain discretion in how it addresses lack of documentation rather than adopting a "brittle" standard. For example, an individual may lack competency or attempt unsuccessfully to obtain documentation from other sources.

Twelfth, the grammar in §9.3 could be improved. The reference to "regardless as to if the individual" is somewhat awkward. Consider substituting "regardless of whether the individual".

Thirteenth, §11.2 recites as follows:

11.2 If eligibility is terminated, it may only be renewed for an individual who is diagnosed with a new primary cancer.

Literally, if someone became ineligible for one month due to excess earnings, or if someone's eligibility were terminated due to lack of documentation which is then located, this section would categorically preclude reinstatement or continued therapy in following months. This would be a harsh result. The section should be reconsidered. For example, for someone with variable income, could benefits be subject to "suspension" in a high-income month rather than outright termination of eligibility. Alternatively, if someone's eligibility is terminated (per §7.4) for lack of documentation, and the requested documentation is then acquired and submitted, reconsideration of eligibility should be allowed.

Fourteenth, the Division could consider deletion of §112.8 since no one would ostensibly be affected by this section in 2014 or later.

Fifteenth, in §10.1, the Division is modifying a reference to read "his/her". The Delaware Administrative Code Drafting & Style Manual (§3.3.2.1) discourages use of "him/her" and similar references. It would also be preferable to revise the multiple references to "his/her" in §5.6.2 and the reference to "his or her" in §3.2.

Sixteenth, appeal rights under §16.0 are meager and do not include even rudimentary due

process. Compare Goss v. Lopez, 397 U.S. 254 (1970). Cf. Title 29 Del.C. §10121-10129. DHSS could consider applying 16 DE Admin Code 5000 to the program.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations or recommendations on the proposed regulation.

cc: Dr. Karyl Rattay
Mr. Brian Posey
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council
17reg955 dph-cancer treatment 4-30-14

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May 29, 2014

Ms. Susan K. Haberstroh, Ed.D.
Department of Education
35 Commerce Way – Suite 1
Dover, DE 19904

RE: DOE Proposed Specialist Appraisal Regulation [17 DE Reg. 1018 (5/1/14)]

Dear Ms. Haberstroh:

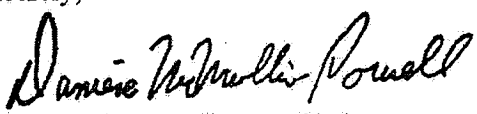
The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposal to amend the Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised published as 17 DE Reg. 1018 in the May 1, 2014 issue of the Register of Regulations. SCPD has the following observations on the revisions.

First, in §2.0, definition of "Student Achievement", the term "Students scores" is not grammatically correct. Substitute "Students' scores" or, for consistency with Pars. (b) and (c), "Student scores".

Second, in their commentary on the June 2013 regulation, the Council expressed concern with an authorization for districts and charter schools to waive/disregard some appraisal components. Proposed §5.1 expands this approach by authorizing districts and charter schools to apply for approval of an alternate Professional Responsibilities Component. SCPD objects to this approach which undermines uniformity in the specialist appraisal process and vitiates valid comparisons of data across districts and schools. Section 11.0 contemplates presentation of statewide data on the specialist appraisal process to the SBE annually. Moreover, the DOE publishes results of the assessment system now whose usefulness would be undermined by use of disparate standards across districts and schools. Cf. pp. 21-22 of DOE report covering DCAS II teacher results [Educator Effectiveness in Delaware: Recruitment to Retention (February, 2014)] published at http://www.doe.k12.de.us/tleu_files/From_Recruitment_to_Retention_Data_2-28-14.pdf.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations on the proposed regulation.

Sincerely,



Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

cc: The Honorable Mark Murphy, Secretary of Education
Dr. Donna Mitchell, Professional Standards Board
Dr. Teri Quinn Gray, State Board of Education
Ms. Mary Ann Mieczkowski
Ms. Paula Fontello, Esq.
Ms. Terry Hickey, Esq.
Ms. Ilona Kirshon, Esq.
Mr. Brian Hartman, Esq.
Developmental Disabilities Council
Governor's Advisory Council for Exceptional Citizens

17reg1018 doe-specialist appraisal process 5-29-14 doc

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May 29, 2014

Ms. Susan K. Haberstroh, Ed.D.
Department of Education
35 Commerce Way – Suite 1
Dover, DE 19904

RE: DOE Proposed Teacher Appraisal Regulation [17 DE Reg. 1014 (5/1/14)]

Dear Ms. Haberstroh:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposal to amend the Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised published as 17 DE Reg. 1014 in the May 1, 2014 issue of the Register of Regulations. SCPD has the following observations on the revisions.

First, in §2.0, definition of "Student Achievement", the term "Students scores" is not grammatically correct. Substitute "Students' scores" or, for consistency with Pars. (b) and (c), "Student scores".

Second, in their commentary on the June 2013 regulation, the Council expressed concern with an authorization for districts and charter schools to waive/disregard some appraisal components. Proposed §5.1 expands this approach by authorizing districts and charter schools to apply for approval of an alternate Professional Responsibilities Component. SCPD objects to this approach which undermines uniformity in the specialist appraisal process and vitiates valid comparisons of data across districts and schools. Section 11.0 contemplates presentation of statewide data on the teacher appraisal process to the SBE annually. Moreover, the DOE publishes results of the assessment system now whose usefulness would be undermined by use of disparate standards across districts and schools. See pp. 21-22 of DOE report covering DCAS II teacher results [Educator Effectiveness in Delaware: Recruitment to Retention (February, 2014)] published at http://www.doe.k12.de.us/tleu_files/From_Recruitment_to_Retention_Data_2-28-14.pdf

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations on the proposed regulation.

Sincerely,

Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

cc: The Honorable Mark Murphy, Secretary of Education
Dr. Donna Mitchell, Professional Standards Board
Dr. Teri Quinn Gray, State Board of Education
Ms. Mary Ann Mieczkowski
Ms. Paula Fontello, Esq.
Ms. Terry Hickey, Esq.
Ms. Ilona Kirshon, Esq.
Mr. Brian Hartman, Esq.
Developmental Disabilities Council
Governor's Advisory Council for Exceptional Citizens

17reg1014 doe-teacher appraisal process 5-29-14 doc

STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
DOVER, DE 19901

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May 29, 2014

Ms. Susan K. Haberstroh, Ed.D.
Department of Education
35 Commerce Way – Suite 1
Dover, DE 19904

RE: DOE Proposed Administrator Appraisal Process Regulation [17 DE Reg. 1021 (5/1/14)]

Dear Ms. Haberstroh:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposal to amend the Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised published as 17 DE Reg. 1021 in the May 1, 2014 issue of the Register of Regulations. SCPD has the following observations.

First, in §2.0, the definition of "credentialed evaluator" requires a district superintendent to be evaluated by members of the local board of education. SCPD recommends modifying the definition to read "...A superintendent or charter school principal shall be evaluated by member(s) of the Board..." The definition of Board includes a charter school board of directors. In other regulations, the DOE refers to the chief executive officer of a charter school as the principal. See, e.g., 14 DE Reg. 211.

Second, in §6.2.2, SCPD recommends modifying the reference to read "...and a Satisfactory or Exceeds rating in the Student Improvement Component." Otherwise, an administrator with an Effective or Highly Effective rating in 3 of the first 4 appraisal components and an Exceeds rating in the Student Improvement Component would not be covered.

Third, in its criteria for "Needs Improvement" and "Ineffective', the DOE is ostensibly heavily "weighting" the Student Improvement Component. For example, an administrator who scores Highly Effective in the first four appraisal components while achieving an Unsatisfactory rating in the Student Achievement Component is given the lowest label, "Ineffective". Conversely, an administrator who has 1 Effective and 3 Ineffective ratings on the first four appraisal components while achieving a Satisfactory rating in the Student Achievement Component is euphemistically labeled "Needs

Improvement". Reasonable persons may differ on the merits of this approach.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations on the proposed regulation.

Sincerely,

Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

cc: The Honorable Mark Murphy, Secretary of Education
Dr. Donna Mitchell, Professional Standards Board
Dr. Teri Quinn Gray, State Board of Education
Ms. Mary Ann Mieczkowski
Ms. Paula Fontello, Esq.
Ms. Terry Hickey, Esq.
Ms. Ilona Kirshon, Esq.
Mr. Brian Hartman, Esq.
Developmental Disabilities Council
Governor's Advisory Council for Exceptional Citizens

17reg1021 doe-administrator appraisal process 5-29-14 doc

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May 29, 2014

Ms. Susan K. Haberstroh, Ed.D.
Department of Education
35 Commerce Way – Suite 1
Dover, DE 19904

RE: DOE Proposed Approval of Educator Preparation Programs Regulation [17 DE Reg. 1030 (5/1/14)]

Dear Ms. Haberstroh:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposal to adopt a new version of its standards covering educator preparation programs and initial licensure. The proposed regulation was published as 17 DE Reg. 1030 in the May 1, 2014 issue of the Register of Regulations.

As background, the primary impetus behind the revisions is to conform to S.B. 51 enacted in 2013 and to align to changes in the national teacher accrediting agency. A non-exhaustive list of changes is compiled in the Synopsis of Subject Matter of the Regulation. Parenthetically, a University of Delaware professor authored the attached April 27, 2014 News Journal article which questions some of the statutory and regulatory standards. The professor is dubious that a "raising the bar" approach for prospective teachers will result in improved teaching. Overall, the new standards are quite rigorous and impose far-reaching obligations on education preparation providers. SCPD has the following observations on the proposed regulation.

First, in §1.1, SCPD recommends modifying the reference to "14 Del.C. §§122(b)(22) and 1280(a)" since both statutes impose a licensing and DOE approval requirement.

Second, the regulation contains multiple references to the DPAS-II. See, e.g., §2.0, definition of "High Quality Cooperating Teacher"; and §6.1.4.3. In other regulations published this month, the DOE notes that it may approve a different appraisal system. See 17 DE Reg. 1018, §1.0 (May 1, 2014); and 17 DE Reg. 1014, §1.0. The DOE may wish to consider adding a definition of DPAS-II which encompasses any DOE-approved replacement of the assessment system.

Third, in §2.0, definition of "High Quality Clinical Supervisor", there's a plural pronoun (they) with a singular antecedent (supervisor). Consider substituting "...field in which supervision is provided...".

Fourth, in §2.0, the definition of "High Quality Clinical Supervisor" would allow a supervisor to qualify under this standard even if rated "Ineffective" on all five DPAS-II components if the supervisor achieved a satisfactory rating on some other evaluation system. The latter evaluation

system could be a brief, in-house assessment. The DOE may wish to reconsider whether this option should be less "open-ended".

Fifth, Title 14 Del.C. §1280(b)(2) authorizes entry of students into an educator preparation program based on "achieving a minimum score on a standardized test normed to the general college-bound population, such as Praxis, SAT, or ACT, as approved by the Department." In contrast, §3.1.1 merely refers to "achieving a score deemed to be College Ready on a test of general knowledge normed to the college-bound population." Although there is a definition of "College Ready", the Legislature expected the DOE to identify and approve qualifying tests, not simply say any test of general knowledge nationally normed for college-bound students is acceptable. There may be many tests of general knowledge with norms for incoming college students which are not comparable to the Praxis, SAT, or ACT. In deference to the statute, the DOE may wish to define qualifying tests as the Praxis, SAT, and ACT and other tests approved by the Administrator.

Sixth, in §3.2.1.1.2, there is a lack of consistent form. See Register of Regulations Style Manual, §6.2.3. Consider substituting "A recipient of" for "Receives".

Seventh, in §3.2.1.2, consider substituting "with a summative effective or highly effective rating under 14 DE Admin Code 108" for "deemed effective or highly effective under 14 DE Admin Code 108". Otherwise, administrators could posit that they qualify based on ratings on individual appraisal components.

Eighth, in §3.4.1.1.1, consider inserting "Professional" before "Standards Board".

Ninth, in §§7.3.1 and 7.3.2, SCPD recommends substituting "may" for "shall". If a Unit or Program fails to meet only a technical or minor standard, the DOE literally has no discretion but to revoke approval. This is a rather "brittle" approach which unnecessarily limits DOE discretion.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations on the proposed regulation.

Sincerely,

Daniese McMullin-Powell

Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

cc: The Honorable Mark Murphy, Secretary of Education
Dr. Donna Mitchell, Professional Standards Board
Dr. Teri Quinn Gray, State Board of Education
Ms. Mary Ann Mieczkowski
Ms. Paula Fontello, Esq.
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Mr. Brian Hartman, Esq.
Developmental Disabilities Council
Governor's Advisory Council for Exceptional Citizens

RAISE THE BAR

(CAREFULLY)

IN TEACHER EDUCATION

Calls for higher admission standards not the answer in shaping better educators

FRANK B. MURRAY

Calls to "raise the bar" for admission to Delaware's teacher education programs, like those that will take effect this July from Delaware's Senate Bill 51, are based on a reasonable assumption that the bar and the quality it represents are related so that raising one would lead to increases in the other. When that relationship is weak (the typical case) or non-linear, it is likely, however, that raising the bar will have no effect on quality and may in fact lower it.

The field of education has not in fact established many causal links between standards and the educational outcomes allegedly influenced by them. We know very little about what must come before what in intellectual and academic development, for example. While there are studies showing links between some sensori-motor skills and beginning reading, reading can also be acquired without those skills in place. Typically educational prerequisites and selection criteria are promoted on their making a kind of sense, like knowing the names of letters before one can learn to read; but knowing letter names is not in fact related to beginning reading as one can read without knowing the names of the letters. Diagramming sentences would also seem to be sensibly useful for developing writing, but it has no independent link to composition and writing either, if only because any number of competent writers have never diagrammed a sentence. Knowing algebra might seem like a prerequisite for knowing geometry, or chemistry for physics, but each can be understood without the study of the other. Historically, educators argued that the study of Latin was a pre-requisite foundation for learning other languages or the study of Aristotelian logic was indispensible for critical thinking only to have it turn out that each has no particular benefit for language or critical thinking performance.

In teacher education, there is a per-

See TEACHERS, Page A22

Teachers: Higher quality evaluation of teaching a better target

Continued from Page A21

fectly reasonable presumption that academic achievement, represented by high grades in subject matter, license and admission test scores should be associated with teaching skill. The Teacher Education Accreditation Council (TEAC) has found throughout the history of its accrediting over 200 programs nationally since 1997 that ratings of teacher candidates' performances in the classroom tends to have a zero or even a slightly negative correlation with several common academic measures – college grades, scores on state licensure tests, and scores on college admission tests.

The consequences of raising the GPA standard when the relationship between grades and teaching performance is curvilinear is that there are also increases in the percentages of admitted candidates who turn out to be weaker in their teaching performance than had the program not raised its GPA bar past the point of curvature. While raising the bar inevitably gives the program fewer candidates, it also gives it proportionately more candidates who prove to be weaker teachers and the program loses proportionately more who would have been as good as those who graduate. Thus, the popular call to raise the bar for the standards for those entitled to enter teacher education programs must be considered carefully and only after a systematic investigation into the precise relationship between the standard and the quality it is thought to represent.

Typically one finds that none of the grades or standardized admission test measures has a meaningful or significant relationship with the clinical assessments of actual teaching. While grades and standardized test scores are positively and significantly related to each other, they often are not related to the assessment of the candidate's teaching performance.

There are a number of possible explanations for this consistently weak relationship between measures of academic accomplishment and ratings of teaching accomplishment. There could be two separate and distinct "factors" – the ability to get high grades and scores and the ability to relate effectively to young people and teach them successfully. If that were the case, it is no surprise that the academic and clinical measures are not related. The lack of relationship could be due to limited variation that stems from documented grade and rating inflation. This explanation is weakened by the fact that there are statistically significant correlations among the inflated clinical measures themselves and among the inflated academic measures themselves, but just not between them. Perhaps candidates with the relatively lower academic measures can't perform well in the classroom because they lack the subject matter knowledge and allied pedagogical knowledge to do the job well, and perhaps the extremely able scholars have difficulty coping with and motivating struggling learners. These downturns at either end of the range of performance might also account for the zero correlations. It might also be that teachers need only a modest level of academic attainments to succeed in the classroom. After that level or tipping point is reached, additional academic attainments make no appreciable difference.

It is also possible that the lack of relationship is simply due to poorly crafted assessments in which none of the program's academic measures assess any teaching performance and none of the clinical assessments deal with the academic content of the program. We do in fact occasionally find significant positive relationships in the few instances when the pedagogical and content courses also have clinical components and when the clinical courses have academic content in the subject matter and pedagogy.

The "raising-the-bar" for grades, license scores, admission scores are advocated by policy makers, like those who sponsored and voted for Bill 51, because they think that doing so will eventually improve teaching. This "raising-the-bar" approach for the prospective teacher, however, has another serious weakness. It overestimates the influence internal personal characteristics (like ability, disposition, knowledge, motivation, personality, etc.,) have in accounting for and explaining teaching behavior and it underestimates the influence of external situational factors and actions. This bias leads education reformers to focus on the characteristics and traits of the teacher and not directly on the features of teaching acts themselves, the very things the reformers seek to influence. The shift in focus from the teacher to teaching entails the study of, and the subsequent improving of, the routines, artifacts, lessons and methods of teaching a particular subject.

To have standards for teaching, and not just for the teacher, requires a determination of whether the pupils learned anything more or better as a result of the changes the reformers put in place. One pre-requisite for these raising-the-bar reforms, would be to raise a different bar, not for the standards about teacher traits per se, but for the quality of the evidence we accept as evidence for the standard that teaching was effective. This is this bar that tells us that the evidence we have accepted (or rejected) allows us to accurately distinguish truly low quality from truly high quality teaching.

This is the bar or standard we have for the authenticity, accuracy, reliability and validity of the evidence used by teacher education programs to support their confident claim that their graduates can teach effectively. This bar for the standard of teaching sets the criterion by which we know that the teacher's students have learned what was expected of them in the lesson.

This is the signature criterion of a quality preparation program and for that reason should be the signature and only standard for the state's standards for teacher education programs.

Frank B. Murray is H. Rodney Sharp Professor, School of Education, University of Delaware.

CC: TH, JB, BSH
7/02/14

Delaware Department of Education

DEPARTMENT OF EDUCATION
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June 27, 2014

Ms. Terri A. Hancharick
Governor's Advisory Council for Exceptional Citizens
George V. Massey Station
516 West Loockerman Street
Dover, DE 19904

Dear Ms. Hancharick:

The Delaware Department of Education (DDOE) is in receipt of your May 15, 2014 letter with comments regarding the proposed regulation **DE Admin. Code 290 Approval of Educator Preparation Programs.**

We appreciate your comments and are pleased to advise you that we have accepted the first three suggestions as mentioned your letter. The following is our response to the other suggestions mentioned in your letter:

GACEC Comment: The fourth suggestion, noted in §2.0 definition of "High Quality Clinical Supervisor" would allow a supervisor to qualify under this standard even if rated "Ineffective" on all five DPAS-II components if the supervisor achieved a satisfactory rating on some other evaluation system. The latter evaluation system could be a brief, in-house assessment. The DOE may wish to reconsider whether this option should be less "open-ended."

DDOE Response: "High Quality Clinical Supervisor" refers to the program supervisor employed by the institution of higher education, not an employee of a school. Therefore, this person would not be rated on the DPAS-II or other Department-approved educator rating system.

GACEC Comment: The fifth suggestion, noted in Title 14 Del C. §1280(b) (2) authorizes entry of students into an educator preparation program based on "achieving a minimum score on a standardized test normed to the general college-bound population, such as Praxis, SAT, or ACT, as approved by the Department." In contrast, §3.1.1 merely refers to "achieving a score deemed to be College Ready on a test of general knowledge normed to the college-bound population." Although there is a definition of "College-Ready", the Legislature expected the DOE to identify and approve qualifying tests, not simply say any test of general knowledge nationally normed for college-bound students is acceptable. There may be many tests of general knowledge with norms for incoming college students which are not comparable to the Praxis, SAT, or ACT. In deference to the statue, the DOE may wish to define qualifying tests as the Praxis, SAT, and ACT and other tests approved by the Administrator.

JUL 02 2014

DDOE Response: The Department feels that the current definition in regulation and the language in code provide enough authority to the Department for enforcement without overreaching into the operations of the individual institutions of higher education who must meet the requirement.

We are in agreement with your suggestions for the sixth, seventh and eighth comments as noted in your letter.

GACEC Comment: The ninth suggestion as noted in §7.3.1 and §7.3.2, SCPD recommends substituting "may" for "shall". If a Unit or Program fails to meet only a technical or minor standard, the DOE literally has no discretion but to revoke approval. This is a rather "brittle" approach which unnecessarily limits DOE discretion.

DDOE Response: The Department feels the current language provides clarity and fidelity to the process for program approval as outlined in the regulation, and that the regulation provides enough discretion and flexibility in implementation of this process to ensure that revocation is enforced responsibly.

The DDOE appreciates the time and effort the SCPD has provided in connection with the development and promulgation of this regulation.

Sincerely,

Tina M. Shockley

Tina M. Shockley,
Education Associate – Policy Advisor

TMS/tms

cc: Mark T. Murphy, Secretary of Education
Teri Quinn Gray, State Board of Education
Susan Haberstroh, Department of Education
Christopher Ruszkowski, Department of Education
Paula Fontello, Esq.
Terry Hickey, Esq.
Ilona Kirshon, Esq.

Teledoctors save downstate families time, miles

James Fisher, The News Journal 1:40 p.m. EDT June 16, 2014

(Photo: KYLE GRANTHAM/THE NEWS JOURNAL)

SEAFORD – Nicole Tolosa had rearranged her family's life so they could shuttle her 6-year-old son, Ezekiel, upstate for treatment and therapy for his hearing problems. He has cochlear implants in his ears – the first one when he was 13 months old – and calibrating them meant frequent visits to audiologists at Nemours/Alfred I. duPont Hospital for Children in Wilmington.

That was a long slog from where Tolosa, her husband and their four kids lived in Millsboro, but they managed by making the appointments whole-family trips, with stops for shopping and eating out. "If his appointment was at 2 p.m., we were having to leave here by noon," Tolosa said. "It became expensive. You're spending that gas money, paying tolls, having to eat out."

So when Nemours doctors asked Tolosa if she wanted to try a new way of getting Ezekiel the help he needed, by conducting appointments via a webcam set up at a Nemours' office in Seaford, she leapt at the chance.

For the past few weeks, she and her son did the therapy in a large children's exam room equipped with a remotely controlled webcam and a large television screen that showed Ezekiel the doctors he'd been working with in Wilmington. For sessions of an hour or more, they walked him through games and tests designed to show whether the delicate computer and sensors he wears to hear were well-tuned to his auditory nerves.

"It really freed up an entire day. That's what I feel like," Tolosa said. "It was very extensive therapy, but I felt like it wasn't more difficult than being there. And I'd definitely rather drive a half-hour instead of two."

Ezekiel was the first Nemours patient to use the audiology department's newly acquired telemedicine equipment in routine care, according to Yell Inverso and Liesl Looney, two pediatric doctors of audiology who work with the 6-year-old.

In an interview conducted using the video chat system, Inverso demonstrated how doctors on her end, in Wilmington, can move the Seaford clinic camera's field of view around the room and zoom in or out. The clarity of their voices was crisper than what you'd hear on a landline or cellphone call, and the video showing them on a living-room-size TV screen hardly skipped.

"What's great about a setup like this compared to a computer with Skype, for example, is that we can manipulate the camera. If you were the parent right now, sitting behind the child, I could zoom in on you. Or if the child decided to move around the room I can actually change the direction of the camera and capture the whole experience as if the child were right here with us," Inverso said.

The Seaford clinic is some 80 miles south of the main Nemours campus, and significantly closer for Sussex County and some Kent County patients.

"The more often we can see a family and the more often we can program the implant, the higher the success level of the child," Inverso said. "The greater the distance, the more of a struggle it is and the the more of a hardship it is for families. ... That's time a child is not in school, when they need to be."

Other Nemours departments – and, for that matter, other regional hospitals, including Christiana Care Health System – have been using telemedicine for a few years, but they're still smoothing out how it works for their particular departments. Dr. Nick Slamon, Nemours' fellowship program director for pediatric critical care, notes his hospital has used iPad FaceTime calls to look at patients at medical centers in Delaware, Maryland and Pennsylvania, helping figure out whether they need to be transported to Nemours.

More recently, the hospital started making those video-call connections even within its own departments, from one end of the hospital to the other. "We're able to make a virtual connection in 30 seconds versus about five minutes, which can be a harrowing five minutes," Slamon said. "We can give a few interventions, saying 'Do this and this,' while we're on our way up to see them."

The collection of far-away hospitals that Nemours can use iPads to collaborate with on patient transfers, is expanding, Slamon said. Nanticoke Hospital in Seaford joined two months ago, and Beebe Healthcare in Lewes might soon link in as well.

Contact James Fisher at (302) 983-6772, on Twitter @JamesFisherTNJ (http://www.twitter.com/JamesFisherTNJ) or jfisher@delawareonline.com (mailto:jfisher@delawareonline.com).

Technology will drive the promising future of medicine

Vivek Wadhwa *12:08 a.m. EDT April 12, 2014*

Health care is a misnomer for our medical system. It should be called sick care. Doctors, hospitals and pharmaceutical companies only make money when we are in bad health. If we could instead prevent illness and disease, it would turn the entire medical system on its head and increase the quality of our lives.

The good news is that technology is on its way to letting us do this. It is now moving so rapidly that within a decade the small handheld medical reader used by Dr. Leonard McCoy in "Star Trek" – the tricorder – will look primitive. We are moving into an era of data-driven, crowd-sourced, participatory, genomics-based medicine. Just as our bathroom scales give us instant readings of our weight, wearable devices will monitor our health and warn us when we are about to get sick. Our doctors – or their artificial intelligence replacements – will prescribe medicines or lifestyle changes based on our full medical history, holistic self and genetic composition.

It wasn't long ago when our only recourse when we doubted our doctor's prescription was to seek a second opinion. Now when we need information about an ailment we search on the Internet. We have access to more medical knowledge than our doctors used to have via their medical books and journals, and our information is more up-to-date than those medical books were. We can read about the latest medical advances anywhere in the world. We can visit online forums to learn from others with the same symptoms, provide each other with support and discuss the side effects of our medicines. We can download mobile applications that help us manage our health. All of this can be done by anyone with a smartphone.

Our smartphones also contain a wide array of sensors, including an accelerometer that keeps track of our movement, a high-definition camera that can photograph external ailments and transmit them for analysis, and a global positioning system that knows where we have been. Wearable devices such as Fitbit, Nike and Jawbone are commonly being used to monitor the intensity of our activity; a heart monitor such as one from Alivecor can display our electrocardiogram; several products on the market can monitor our blood pressure, blood glucose, blood oxygen, respiration and even our sleep. Soon we will have sensors that analyze our bowel and bladder habits and food intake. All of these will feed data into our smartphones and cloud-based personal lockers. Our smartphone will become a medical device akin to the "Star Trek" tricorder.

When we get sick, we won't need to go – in high temperature and in severe pain – to our doctors' offices, only to wait in line with patients who have other diseases that we may catch. Our doctors will come to us, over the Internet. Telemedicine is already a fast-growing field; doctors have been assisting people in remote areas by using two-way video, email and smartphones. They will increasingly assist us in our homes. Our smartphone and body sensors will provide them with better medical data than they usually have today.

Then our smartphones will evolve further and do part of the job of doctors.

The same type of artificial intelligence technology that IBM Watson used to defeat champions on the TV game show "Jeopardy" will monitor our health data, predict disease and advise on how to improve our health. Already, IBM Watson has learned about all the advances in oncology and is better at diagnosing cancer than our human doctors. Watson and its competitors will soon learn about every other field of medicine, and will provide us with better, and better-informed, advice than our doctors do. They will take a more holistic view of our bodies, lifestyles and symptoms than our doctors can. They will, after all, have our full medical history from childhood, know where we have been, and keep track of our medical data on a minute-by-minute basis. Most doctors still work from brief, unintelligible, hand-scribbled notes and try to make a judgment about what medicines to prescribe us in a 10- to 15-minute consultation; they treat symptoms of interest but can overlook the bigger picture of where the treatment leads.

Artificial intelligence technologies will also analyze continual data from millions of patients and on the medications that they have taken to determine which of these truly had a positive effect; which simply created adverse reactions and new ailments; and which did both. This will transform the way in which drugs are tested and prescribed. In the hands of independent researchers, these data will upend the pharmaceutical industry – which works on limited clinical-trial data and sometimes chooses to ignore information that does not suit it.

This is just the tip of the iceberg.

We learned how to sequence the genome about a decade ago, and sequencing it cost billions. Today a full human genome sequence costs as little as $1,000. At the rate at which prices are dropping, it will cost less within five years than a blood test does today. So it is now becoming affordable to compare one person's DNA with another's, learn what diseases those with similar genetics have had in common, and discover how effective different medications or other interventions were in treating them. Today, medicines are prescribed on a one-size-fits-all basis. In the future, you can expect to see doctors tailor treatment for diseases on the basis of an individual's genomic information and lifestyle.

We can also now "write" DNA. In the emerging field of synthetic biology, researchers and even high-school students, are creating new organisms and synthetic life forms. Entrepreneurs have developed software tools to "design" DNA. These technologies provide the ability to generate designer drugs, therapeutic vaccines and microorganisms. Like all technologies that modify fundamental biology without a complete understanding of how environment, DNA, protein production and cell biology interact, this introduces new risks because we could engineer dangerous new organisms. But, used appropriately, this field may dramatically affect the development of novel, and more effective, therapeutics.

Ultimately, disease prevention is about lifestyle and habits as well as about genome and exposure to disease. Technology combined with good habits can create the health care system that we really need. We're not dependent on Big Pharma, the medical establishment, or even the Food and Drug Administration. Medicine has become an information technology. The advances in health care are being developed by entrepreneurs and scientists all over the world. There is no stopping this.

Vivek Wadhwa is a fellow at Rock Center for Corporate Governance at Stanford University, director of Research at Duke University, and distinguished scholar at Singularity and Emory universities. His past appointments include Harvard Law School and University of California Berkeley. This piece reflects his opinion.

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MEMORANDUM

DATE: May 29, 2014

TO: Ms. Sharon L. Summers, DSS
Policy, Program & Development Unit

FROM: Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: 17 DE Reg. 1038 [DSS Proposed Child Care Subsidy Eligibility Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Social Services' (DSS) proposal to amend its regulations regarding the Child Care Subsidy Program. Specifically, the Division proposes some discrete changes to the eligibility standards for persons seeking subsidized child care assistance funded by the federal Child Care Development Fund. The proposed regulation expands eligibility to cover parents/caretakers who need services based on the following: 1) enrolled and attending middle school or high school; or 2) enrolled and participating in a General Education Diploma (GED) program. The proposed regulation was published as 17 DE Reg. 1038 in the May 1, 2014 issue of the Register of Regulations. The SCPD endorses the proposed regulation subject to consideration of the following amendments.

First, the entire regulation would benefit from addition of punctuation.

Second, the reference to GED program merits revision. Consistent with the attached 17 DE Reg. 724 (January 1, 2014), the Delaware Department of Education has recently expanded the scope of tests equivalent to the traditional GED. The DOE now uses the term "secondary credential assessment". Therefore, DSS may wish to adopt the following reference in Section 1.A.9: "Enrolled and participating in a General Education Diploma (GED) program or similar secondary credential assessment approved by the Delaware Department of Education."

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our position or observations on the proposed regulation.

cc: Ms. Elaine Archangelo
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

17reg1038 dss-child care subsidy eligibility 5-2914

IV. ORDER

It is hereby ordered that the proposed amendments to the Department's regulations are adopted; the text of the final regulation shall be in the form attached hereto as Exhibit A; and the effective date of this Order shall be ten (10) days from date this Order is published in the Delaware *Register of Regulations.*

***Please note that no changes were made to the regulation as originally proposed and published in the August 2013 issue of the *Register* at page 146 (17 DE Reg. 146). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

601 Delaware Pesticide Rules and Regulations

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 910

REGULATORY IMPLEMENTING ORDER

910 Delaware Requirements for Issuance of the GED® Test Credential

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** 910 Delaware Requirements for Issuance of the GED® Test Credential. The regulation name has been changed to 14 **DE Admin. Code** 910 Delaware Requirements for Issuance of the Secondary Credential. This regulation is being reviewed in order to provide greater access to a secondary credential assessment in Delaware.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on **November 2, 2013,** in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. The title of the regulation was changed in the proposed published version to expand the regulation beyond the GED® credential. The Department has reviewed the various Delaware Code sections related to the various references to "GED," "General Equivalency Diploma" or other language that infers a different secondary credential other than a high school diploma, and plans to address as appropriate.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 910 Delaware Requirements for Issuance of the GED® Test Credential to 14 **DE Admin. Code** 910 Delaware Requirements for Issuance of the Secondary Credential in order to provide greater access to a secondary credential assessment in Delaware.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 910 Delaware Requirements for Issuance of the GED® Test Credential. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** Delaware Requirements for Issuance of the Secondary Credential attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 910 Delaware Requirements for Issuance of the Secondary Credential 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** Delaware Requirements for Issuance of the Secondary Credential amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 DE **Admin. Code** Delaware Requirements for Issuance of the Secondary Credential in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on **December 19, 2013.** 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 19th day of December 2013.

Department of Education
Mark T. Murphy, Secretary of Education

Approved this 19th day of December 2013
State Board of Education
Teri Quinn Gray, Ph.D., President
Jorge L. Melendez, Vice President
G. Patrick Heffernan
Barbara B. Rutt
Gregory B. Coverdale, Jr.
Terry M. Whittaker, Ed.D.
Randall L. Hughes II

910 Delaware Requirements for Issuance of the ~~GED® Test~~ Secondary Credential

~~The~~ A Delaware ~~GED® test credential~~ secondary credential is given to persons who satisfactorily pass ~~the GED® Test~~ a recognized secondary credential assessment approved by the Delaware Department of Education.

1.0 Eligibility to take ~~the GED® test~~ a secondary credential assessment

1.1 For persons 18 years of age or older, an applicant shall:

1.1.2 Be a resident of Delaware or, if a resident of another state, be currently employed in Delaware and have been so employed for a minimum of six months prior to taking the test; and

1.1.2 Certify under his or her signature on the ~~GED®~~ secondary credential assessment application form that he or she is not enrolled in a public or non public school program~~; and~~.

~~1.1.3 Provide a verified copy of the Official GED Practice Test® indicating the applicant has passed the Official GED Practice Test™ with a score of 2450 or better and not less than 470 on each of the 5 sub test areas.~~

1.2 For a person 16 or 17 years of age an applicant shall:

1.2.1 Seek a waiver of the 18 years of age requirement by completing a written application to the Delaware Department of Education that includes showing good cause for taking the test early and designating where the test will be taken; and

1.2.2 Be a resident of the State of Delaware; and

1.2.3 Verify that they are at least 16 years of age at the time of the application for the waiver of the age requirement using a birth certificate, ~~drivers~~ driver's license, a State of Delaware Identification Card or other comparable and reliable documentation of age; and

1.2.4 Provide verification of withdrawal from the applicant's public or non public school program; and

1.2.5 Provide a transcript from the applicant's public or non public school program~~; and~~.

~~1.2.6 Provide a verified copy of the Official GED Practice Test™ indicating the applicant has passed the Official GED Practice Test™ with a score of 2450 or better and not less than 470 on each of the 5 sub test areas.~~

2.0 Scores Required for ~~the Delaware GED® test~~ a Delaware secondary Credential

An individual shall ~~have a standard score of not less than 410 on each of the five tests with an average standard score of not less than 450 for all five tests and a total standard score of not less than 2250 in order to be issued a GED® test credential~~ attain the minimum passing standard as approved by the Delaware Department of Education.

3.0 ~~Retesting~~ Assessment Approval Process

~~Forty five days shall lapse prior to retesting and instruction is recommended before retesting.~~

3.1 The assessment provider must complete a DOE approved application. The application must include at minimum the following:

3.1.1 provider's qualification and experience;
3.1.2 assessment content and form;
3.1.3 validation and norming processes;
3.1.4 assessment delivery;
3.1.5 technology processes;
3.1.6 security provisions;
3.1.7 accommodations processes;
3.1.8 assessment scoring and reporting processes;
3.1.9 assessment data access requirements;
3.1.10 practice test and supplementary instructional materials;
3.1.11 staff training;
3.1.12 alignment with college and career readiness standards and Delaware accountability system; and
3.1.13 cost and timeframe for implementation.

4.0 Currently Recognized Assessments and Publication

4.1 The GED® Test has been previously approved and is a Department of Education recognized secondary credential assessment.

4.2 DOE will publish annually a list of approved assessments.

PROFESSIONAL STANDARDS BOARD
Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 DE **Admin. Code** 1503

REGULATORY IMPLEMENTING ORDER

1503 Educator Mentoring

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 DE **Admin. Code** 1503 Educator Mentoring. The regulation applies to the comprehensive induction program, including mentoring and professional development required of educators, pursuant to 14 **Del.C.** §1210. It is necessary to amend this regulation in order

USDA
United States Department of Agriculture

Food and
Nutrition
Service

3101 Park
Center Drive
Alexandria, VA
22302-1500

APR 07 2014

SUBJECT: Supplemental Nutrition Assistance Program – Section 4006 of the Agricultural Act of 2014 – Questions and Answers

TO: All Regional Directors
Supplemental Nutrition Assistance Program

The attached questions and answers are intended to address State agency concerns regarding the Food and Nutrition Service's (FNS) March 5, 2014, Implementing Memorandum for Section 4006, "Standard Utility Allowances Based on the Receipt of Energy Assistance," of The Agricultural Act of 2014 (P.L. 113-79). These questions and answers serve as formal guidance for use by FNS Regional Offices and State agencies as they implement the provisions of Section 4006.

If further questions arise related to the implementation of these provisions, please contact Mary Rose Conroy at MaryRose.Conroy@fns.usda.gov.

Lizbeth Silbermann
Director
Program Development Division

Attachment

Part I. Certification Policy LIHEAP Implementation Questions Answers

1. What is the timeframe for implementation?

State agencies are required to apply Section 4006 of the Agricultural Act of 2014 ("the Act") immediately to *new* SNAP households whose initial certification periods begin on or after March 10, 2014.

However, State agencies have some flexibility on when they apply the provision to *ongoing* SNAP households scheduled for recertification on or after March 10, 2014. For these households, State agencies have the option to begin applying the provision on the date of recertification, or at any point within a five month window following the date of recertification. The State options for these ongoing households are discussed in more detail below.

- *Implement at Recertification:* The State agency applies the provision to all households at their recertification date.

- *Use Full Implementation Delay:* The State agency applies the provision to all households five months from each household's recertification date. For example, a household recertifying in June, 2014 would have the provision applied in November, 2014 and a household recertifying in October, 2014 would have it applied in March, 2015.

- *Use Partial Implementation Delay:* States choosing to delay for only part of the five-month window could do so in one of two ways. First, the State agency could delay implementation of the provision for all ongoing households for **a certain number of months** (1, 2, 3, or 4 months) from their respective recertification dates. For example, if the State agency opted for a three-month delay, a household recertifying in June 2014 would have the provision applied in September 2014 and a household recertifying in October 2014 would have it applied in January 2015.

  Alternatively, a State agency could choose to implement the provision at **a date certain** within the five-month window for all ongoing households that had been recertified since the effective date (i.e., apply the provision to households recertifying in April, May, June, and July, on July 1, 2014). The provision would apply to remaining households at their recertification thereafter.

If the State chooses to use the option to delay implementation for ongoing SNAP households, FNS expects that the State will collect utility information at the household's next recertification on or after May 5, 2014. For example, should the household no longer be eligible for the heating or cooling standard utility allowance (HCSUA) based on the LIHEAP link, the State may need information on whether or not the household pays out-of-pocket heating or cooling costs. This information

should be collected at that recertification period, even though the provision will not be implemented until a later date.

Consistent with the 60-day time period normally provided to States for initiating and completing system changes, FNS will begin holding States accountable for implementing the changes associated with the provision 60 days from the issuance of FNS' March 5, 2014 LIHEAP Implementation Memorandum (May 5, 2014).

2. **Does the Secretary have discretion in increasing the amount of the LIHEAP payment that is required to be received in order to confer eligibility for the heating or cooling SUA?**

No, the language of the Act does not provide the Secretary with this authority.

3. **How will this provision affect States that were not issuing nominal LIHEAP payments?**

This provision applies to all States. All States, including those that had nominal LIHEAP policies and those that did not, must only use LIHEAP payments or other similar energy assistance payments **that have been received** in the current month or previous 12 months in order for a household to qualify for the HCSUA based on a LIHEAP payment. Applying the HCSUA to a household's case based on anticipated receipt of LIHEAP is no longer permissible. Coming into compliance will likely involve updating State manuals, retraining of staff, and making changes to State eligibility systems so that both the receipt of the greater than $20 payment and the payment date can be documented in the case file.

4. **If a household has not received a LIHEAP payment in the current month or preceding 12 months, but has applied for or intends to apply for LIHEAP, can the State agency reasonably anticipate receipt of the LIHEAP payment?**

No, the language of the Act does not allow for anticipating receipt of LIHEAP. The household must have received a payment (or had a payment made on its behalf) greater than $20 in the previous 12 months or the current month in order to qualify for the HCSUA based on LIHEAP participation. If a LIHEAP payment greater than $20 (or payment which would bring the household's total LIHEAP payments for the year to a total greater than $20) is scheduled for the current month, the payment may be considered to have been received for the purposes of conferring eligibility for the HCSUA. However, if the payment is not actually made within that month, benefits received by the household would be considered an overissuance and a claim would need to be established against the household for any benefits issued in error.

5. **Who has responsibility for determining whether the household received a LIHEAP payment or similar energy assistance payment greater than $20 annually? How should receipt be verified?**

Responsibility for determining receipt of a greater than $20 LIHEAP payment or similar energy assistance payment rests with the State agency. States should modify their data sharing agreements with their respective LIHEAP agencies as appropriate to ensure transmission of timely and accurate information needed for SNAP eligibility and benefit determination. Receipt of more than $20 in LIHEAP or similar energy assistance payment does not require verification for SNAP purposes, unless questionable. In States with mandatory SUAs, utility costs do not require verification for SNAP purposes, unless questionable. In States that do not mandate use of the SUA, verification is mandatory if the household wishes to claim utility costs in excess of the State agency's utility standard and the expense would actually result in a deduction. State agencies should consider program access, integrity, and the potential for Quality Control errors in determining their verification procedures.

6. **What if a household is not entitled to a heating or cooling SUA at certification but later receives a LIHEAP payment or similar energy assistance payment greater than $20 during its certification period?**

If, at the time of certification, a household does not have out-of-pocket heating or cooling expenses and has not received a greater than $20 LIHEAP payment or similar energy assistance payment in the current month or previous 12 months, the household is not entitled to the HCSUA. If the household subsequently receives a LIHEAP payment greater than $20 or such a LIHEAP payment is made on its behalf during the certification period, the household will become eligible for the HCSUA during the certification period or at its next recertification, depending on the household's circumstances.

For households that were not receiving the HCSUA but still qualified for the excess shelter deduction, the State agency may recalculate the deduction and make any changes in benefits at the time the LIHEAP or similar energy assistance payment is received. Alternatively, in accordance with 7 CFR 273.12(c)(4), the State agency may at its option disregard the change and continue to provide the household the deduction amount that was established at certification until the household's next recertification or after the sixth month for households certified for 12 months. For households that were not receiving the HCSUA and did not qualify for the shelter deduction, the State agency must apply the HCSUA to the household's case and make any necessary benefit adjustments in accordance with SNAP regulations at 7 CFR 273.12(c)(1). State agencies should follow procedures outlined in Question #5 for determining receipt of a LIHEAP or similar energy assistance payment during the certification period.

7. **When does the State need to determine if the household has actual utility expenses?**

FNS expects that States will collect utility information at the household's next recertification on or after May 5, 2014. This information collected at recertification can be used at the time the State agency elects to implement the provision for the household, whether implemented at recertification or delayed.

8. **Can households that previously qualified for the heating or cooling SUA due to receipt of nominal LIHEAP still qualify for the HCSUA or for other standard utility allowances if they have utility expenses?**

Yes, SNAP households that are billed out-of-pocket for utility costs are entitled to a SUA as appropriate for the types of utility expenses they have. (In States that do not have mandatory SUA policies, the household is entitled to use its actual costs, rather than the standard.) First, the State must determine if a household previously entitled to the HCSUA due to LIHEAP pays out-of-pocket for utilities. Households with expenses that include heating or cooling are entitled to the HCSUA. Households with expenses that do not include heating or cooling may be entitled to other standard utility allowances – including the limited utility allowance and single utility allowances (depending on the type of utility they are billed for) -- or to the use of actual expenses, depending on the State's standard utility policy. FNS encourages all State agencies to review their available utility allowances to ensure that all households with actual expenses are able to claim an allowance that best represents that types of utility expenses they have.

Part II. Quality Control (QC) LIHEAP Implementation Questions & Answers

1. **The March 5, 2014 LIHEAP Implementation Memorandum ("LIHEAP Implementation Memo") states that in accordance with 7 CFR 275.12(d)(2)(vii), States will be held harmless for 120 days from March 10, 2014 for QC variances occurring as a result of the implementation of this provision. The variance exclusion will end on July 8, 2014. Does this mean that States will be held harmless for variances occurring as a result of the implementation of this provision in all QC sample months through and including July 2014?**

Variances occurring as a result of an action taken on a case directly related to the implementation of this provision, consistent with the Act and the LIHEAP Implementation Memo, in the period from March 10, 2014 through July 7, 2014 (120 day period) will be excluded by Quality Control until such time as the case is required to be recertified or acted upon for some other reason. The variance exclusion period will expire on July 8, 2014 and, as of that date, will no longer be available to States.

2. **How does the QC variance exclusion period apply to new certifications that occur on or after the March 10, 2014 effective date?**

The QC variance exclusion period will apply to variances that result from new certification actions that occur in the period from March 10, 2014 through July 7, 2014 and that are directly related to the implementation of this provision, implemented in accordance with the Act and the LIHEAP Implementation Memo. For all new certification cases, the QC variance exclusion period expires on July 8, 2014; therefore, any action taken on or after July 8, 2014, which results in a variance, would not be excluded.

3. **How does the QC variance exclusion period apply to recertifications that occur on or after the March 10, 2014 effective date?**

The QC variance exclusion period will apply to variances that result from recertification actions that occur in the period from March 10, 2014 through July 7, 2014 and that are directly related to the implementation of this provision, implemented in accordance with the Act and the LIHEAP Implementation Memo. For all recertification cases, the QC variance exclusion period expires on July 8, 2014; therefore, any action taken on or after July 8, 2014, which results in a variance, would not be excluded.

For States that choose to delay implementation of this provision for ongoing SNAP households in accordance with the Act and the LIHEAP Implementation Memo, Quality Control will review the case without taking into account this provision until such time as the sample month falls outside of the implementation date for that particular case. For example, for an ongoing SNAP household that is recertified on June 1, 2014 for a 6-month recertification period:

- If the State has chosen to implement this provision upon recertification, Quality Control will take into account this provision on June 1, 2014 and variances that are directly related to the implementation of this provision and that occur on or before July 7, 2014 will be excluded.
- If the State has chosen to apply this provision five months from each household's recertification date, Quality Control will not take into account this provision until November 1, 2014. Because there will be no variances that are directly related to the implementation of this provision and that occur on or before July 7, 2104, this case would not be subject to the 120-day QC variance exclusion period.
- If the State has chosen to apply the provision one month from each household's recertification date, Quality Control will take into account this provision on July 1, 2014 and variances that are directly related to the implementation of this provision that occur in the period from July 1, 2014 through July 7, 2014 will be excluded.