DISABILITIES LAW PROGRAM

COMMUNITY LEGAL AID SOCIETY, INC.

100 W. 10th Street, Suite 801
Wilmington, Delaware 19801
(302) 575-0660 TTY (302) 575-0696 Fax (302) 575-0840
www.declasi.org

MEMORANDUM

To: SCPD Policy & Law Committee

From: Brian J. Hartman BJH

Re: Regulatory Initiatives

Date: September 3, 2014

I am providing my analysis of nine (9) regulatory initiatives. Given the low number of relevant proposed regulations in the September issue of the Register of Regulations, I understand that the SCPD Executive Committee may approve comments in lieu of convening the P&L Committee.

1. DMMA Final Telemedicine Regulation [18 DE Reg. 227 (9/1/14)]

The SCPD and GACEC commented on the proposed version of this regulation in July, 2014. A copy of the July 31 SCPD memorandum is attached for facilitated reference. The Councils endorsed the proposed regulation with no suggested amendments.

The Division of Medicaid & Medical Assistance (DMMA) has now acknowledged the endorsements and adopted a final regulation which conforms to the proposed version.

Since the regulation is final, and the Councils endorsed the proposed version with no suggested amendments, I recommend no further action.

2. DMMA Final Primary Care Services Payment Reg. [18 DE Reg. 229 (9/1/14)]

The SCPD and GACEC commented on the proposed version of this regulation in July, 2014. A copy of the July 31 SCPD memorandum is attached for facilitated reference. The Councils endorsed the proposed regulation since necessary to conform to CMS guidance issued in April, 2014.

The Division of Medicaid & Medical Assistance (DMMA) has now acknowledged the endorsements and adopted a final regulation with no further changes.

Since the regulation is final, and the Councils endorsed the proposed version with no suggested amendments, I recommend no further action.

3. DSS Final Child Care Subsidy Prioritizing Service Needs Reg. [18 DE Reg. 233 (9/1/14)]

The SCPD and GACEC commented on the proposed version of this regulation in July, 2014. A copy of the July 31 SCPD memorandum is attached for facilitated reference. The Division of Social Services has now adopted a final regulation incorporating amendments prompted by the Councils.

The Councils recommended two (2) amendments.

First, the Councils noted a recital that DSS was replacing the acronym "FS" (Food Stamp) with the acronym "FSP" (Food Supplement Program). However, the text of the regulation contained no reference to "FS". The Division of Social Services (DSS) responded that it had been inadvertently omitted and inserted a conforming reference.

Second, the Councils noted a recital that DSS was adding a priority for teen parents enrolled in middle school or high school or participating in a GED program. The Councils observed that the actual regulation omitted any reference to a GED program. The Councils also noted that the Department of Education had recently amended its references to "GED" program to include other "secondary credentials". The Councils provided a suggested sentence to address both issues. In response the DOE adopted a variation of the language suggested by the Councils.

Since the regulation is final, and the Division adopted edits consistent with the Councils' observations, I recommend no further action.

4. DSS Final Food Supp. Program Income Deductions Reg. [18 DE Reg. 231 (9/1/14)]

The SCPD and GACEC commented on the proposed version of this regulation in July, 2014. A copy of the July 31 SCPD memorandum is attached for facilitated reference. In a nutshell, the Councils endorsed the proposed regulation which was promulgated to conform to federal Food and Nutrition Service (FNS) guidance issued in April, 2014. The Division of Social Services has now acknowledged the endorsements and adopted a final regulation with no further changes.

Since the regulation is final, and the Councils endorsed the proposed version with no suggested amendments, I recommend no further action.

5. DOE Final Supportive Instruction (Homebound) Reg. [18 DE Reg. 215 (9/1/14)]

The SCPD and GACEC commented on the proposed version of this regulation in July, 2014. A copy of the July 31 SCPD letter is attached for facilitated reference. The Councils endorsed the initiative subject to a few amendments. The Department of Education has now adopted a final regulation incorporating some changes prompted by the commentary.

First, the Councils observed that the first sentence in §1.0 was "underinclusive" since it omitted "pregnancy, childbirth, and related medical conditions". The Councils proffered a proposed revised sentence. In response, the DOE adopted a variation of the proposed sentence.

Second, the Councils noted that §2.1 was also "underinclusive" and proffered alternative language accompanied by the renumbering of the balance of §2.0. The DOE adopted the Councils' version of §2.1 in its entirety and renumbered the remaining sections as suggested.

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

6. DOE Final Education Technology Standards Reg. [18 DE Reg. 224 (9/1/14)]

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 seven (7) comments resulting in multiple amendments in the final regulation. The comments are reproduced below followed by the result in italics.

First, although §1.2 reflects the DOE's intent that the standards apply to "all Delaware educators", the balance of the regulation only covers administrators (§2.0) and teachers §3.0). This is odd and incongruous. School library media specialists regulated by 14 DE Reg. 1580 are omitted. Paraprofessionals regulated by 14 DE Reg. 1517 are omitted. School psychologists regulated by 14 DE Reg. 1583 are omitted.

Result: The DOE added a sentence to §1.3 to clarify that the standards are applicable to all educators, including specialists and paraeducators.

Second, §1.3 recites that "(a) summary of the standards is set forth within". This is "odd" wording. Consider substituting "within this regulation".

Result: No change was made.

Third, §2.1 is not a sentence. It lacks a predicate. The Delaware Administrative Code Style Manual, §6.2.3, requires parallel form within regulations. Sections 2.2 - 2.6 have headings followed by sentences.

Result: No change was made.

Fourth, §§2.2.1.1, 2.2.1.2, and 2.1.1.3 lack a subject. Consider adding "Educational Administrators fulfill the following functions:" in §2.2.1 after the word and punctuation "organization." Punctuation should also be added to §§2.2.1.1, 2.2.1.2, and 2.1.1.3.

Result: The DOE adopted a different modification of §2.2.1.

Fifth, the heading to §2.0 refers to "leaders" while the text of the section refers to "school administrators" and "leaders". For consistency, the heading to §2.0 could be amended to read "...Leaders and Educational Administrators". Since "educational administrators" is not a term used in other DOE regulations, it would also benefit from a definition. Finally, the Delaware Administrative Code Style Manual, §6.2.2, encourages use of consistent references. Therefore, the term "school administrators" in §2.1 could be revised to read "educational administrators" for consistency with §§2.2, 2.3, 2.4, 2.5, and 2.6.

Result: No change was made.

Sixth, §3.1 recites that "(a)ll teachers should meet the following standards and performance indicators." Logically, the standards and performance measures should be subparts of §3.1, i.e. §§3.1.1, 3.1.2, 3.1.3, and 3.1.4. Instead, they are numbered 3.2 - 3.6.

Result: The DOE agreed and renumbered the subparts.

Seventh, §3.3 refers to "Experiences and Assessments-Teachers". This is not a term used in other DOE regulations. It would benefit from a definition.

Result: The DOE modified the reference.

Since the regulation is final, and the DOE adopted some amendments prompted by the commentary, I recommend no further action.

7. DOE Final Initial License Regulation [18 DE Reg. 218 (9/1/14)]

The SCPD and GACEC commented on the proposed version of this regulation. A copy of the SCPD's June 5, 2014 letter is attached for facilitated reference. The Councils shared six (6) comments resulting in multiple amendments in the final regulation. The comments are reproduced below followed by the result in italics.

First, in §2.0, definition of "immorality", SCPD recommends that "or otherwise" not be added. The current standard defines immorality as conduct which impairs an educator's effectiveness due to "unfitness". The addition of "or otherwise" would literally authorize a finding of immorality for conduct not related to "unfitness". The definition is already "circular" and somewhat vague and the addition of "or otherwise" exacerbates the lack of clarity.

Result: No change was made.

Second, in §2.0, definition of "mentoring", insert "in" between "Board" and "which".

Result: The recommended amendment was adopted.

Third, in §4.0, the reference to "instruct a particular category of students in which they wish to be employed" is "oddly" worded. A teacher cannot be employed in a category of students. The DOE could consider simply deleting "in which they wish to be employed," as surplusage.

Result: The recommended amendment was adopted.

Fourth, in §7.1, the DOE deletes a reference to the Praxis I as an approved examination of general knowledge. It then inserts the Praxis I in the table compiled at the end of the regulation. Since the statute [§1210(a)] explicitly recites that the Department "shall issue" an initial license if an applicant achieves a passing score on the Praxis I and meets other standards, the deletion of the reference to Praxis I in this section should be reconsidered. Based on the statute, the DOE does not have discretion to omit the Praxis I from counting as an acceptable examination of general knowledge.

Result: In the Summary of the Evidence and Information Submitted section of the regulation (p. 218), the DOE notes that it originally believed the PRAXIS I would be discontinued effective June 1, 2014. However, this has not occurred. However, the statutory reference to the Praxis has been deleted through recent legislation. This has resulted in multiple amendments in the regulation. The references to the Praxis in the table at the end of the regulation have been retained.

Fifth, in §9.0, first sentence, there is plural pronoun ("their") with a singular antecedent ("work"). Substitute "its" for "their".

Result: the recommended amendment was adopted.

Sixth, Title 14 Del.C. §1210(b) recites as follows:

> (b) Notwithstanding the requirements of subsection (a) of this section, an initial license may be issued to an applicant who meets all other requirements for initial licensure except for passage of the PRAXIS I exam, provided that the applicant must pass PRAXIS I within the period of time from the date of hire to the end of the next, consecutive fiscal year. If proof of passage of PRAXIS I has not been provided during the time period specified, the initial license will be suspended unless the superintendent of the school district submits to the Secretary of Education a written request for a 1-year extension. The request must also document the effectiveness of the applicant. Any applicant who is within 2 points of the passing score on the reading, writing, or mathematics section of PRAXIS I may use a composite score to meet the requirements of passage. An applicant teaching the secondary content area of Math or English/Language Arts must meet the passing score in that content area.

This subsection does not appear to be implemented in the proposed regulation. Indeed, the DOE proposes to delete some regulatory provisions which implemented the above statute. See, e.g., deleted §7.2.1.

Result: S.B. No. 247, signed by the Governor on July 1, amended the above statute to delete the references to the Praxis while adding other standards which have prompted some changes in the regulation.

In addition to the above changes, my comments to the proposed regulation included two (2) observations omitted from the SCPD letter as follows:

A. The numbering for new Section 7.0 merits review. It is numbered "§6.07.0."

Result: In the PDF version of the regulation, the numbering was corrected through deletion of "6.0".

B. The numbering for the final section merits review. It is numbered as §1819.0 I suspect it should be §19.0.

Result: The numbering was corrected by deletion of "18".

Since the regulation is final, and the DOE adopted several edits based on the commentary, I recommend no further action.

8. DMMA Prop. Delaware Healthy Children Program Premium Reg. [18 DE Reg. 183 (9/1/14)]

The Delaware Healthy Children Program is Delaware's version of the federal State Children's Health Insurance Program (SCHIP). The program is designed to provide health insurance to uninsured, low income children not eligible for Medicaid. Historically, Delaware has charged a monthly premium as a condition of eligibility. CMS guidance based on the Affordable Care Act has prompted the Division of Medicaid & Medical Insurance to modify its schedule of premiums effective January 1, 2014 as follows:

A. family income between 101%- 133% of the Federal Poverty Level - children transitioned to Medicaid with no premium;

B. family income between 134% - 166% of Federal Poverty Level - $15/month per family; and

C. family income between 167%-212% of Federal Poverty Level - $25/month per family.

These premium levels had already been implemented effective January 1, 2014. See Summary of Proposal at p. 184 and attached DMMA Administrative Notice 01-2014, last page. However, the Delaware Healthy Children State Plan had not been amended to conform to practice. The proposed regulation amends the Delaware Healthy Children Program plan to reflect the current premium structure.

DMMA is also amending the plan to incorporate a pre-payment premium discount which has been implemented since the inception of the Program but not specifically included in the plan. The discount is described as follows:

> Pay three (3) months get one (1) premium free month; pay six (6) months get two (2) premium free months; pay nine (9) months get three (3) premium free months.

At 185.

Since the proposed changes are being prompted by CMS guidance, and the changes benefit low-income families with children, I recommend endorsement.

9. DOE Prop. Charter School "Impact" Regulation [18 DE Reg. 177 (9/1/14)]

This regulation is promulgated to comply with S.B. No. 209 signed by the Governor on June 25, 2014. A copy of the engrossed legislation is attached for facilitated reference.

Background to the legislation is compiled in the attached set of Delaware News Journal articles. In a nutshell, many legislators were concerned with the "impact" of new charter schools and expansions of existing charter schools on school districts. A contrary view was adopted by former Mayor James Baker in the April 30 article and the April 9 News Journal editorial which questioned why policymakers were elevating the interests of institutions over the interests of children.

The DOE proposal generally conforms to the statute. However, I have a few observations.

First, in §2.1,the definition of "impact" includes consideration of the charter school's effect on "the education system of the state". Reasonable persons may differ on whether Title 14 Del.C. §511 authorizes consideration of the effect of the charter school on the entire education system in the state. Section 511(b)(3) authorizes consideration of the effect "on the schools and the community from which the charter school's new students will likely be drawn." Perhaps a specialized charter school (e.g. military; drama/dance) could draw students from across the state and outside the local community. The DOE and SBE may wish to consider whether the reference to "the education system of the state" conforms to the enabling statute.

Second, in §3.10.1.1.2, the regulation allows consideration of "programmatic offerings" which, I assume, could include non-academic offerings (e.g. clubs; vocational co-op opportunities; specialized arts). To obviate ambiguity that non-academic offerings can be considered, I recommend adding a definition of "programmatic offerings" to §2.0 as follows:

> Programmatic offerings means academic, non-academic, and extracurricular components and options identified in the application.

Third, in §3.10.5, there is a plural pronoun (their) with a singular antecedent ("Board"). Consider substituting "its" for "their".

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

Attachments

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F:pub/bjh/2014p&l/914bils

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

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

MEMORANDUM

DATE: July 31, 2014

TO: Ms. Sharon L. Summers, DMMA
Planning & Policy Development Unit

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

RE: 18 DE Reg. 9 [DMMA Medicaid Telemedicine Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMAs) proposal to amend the Medicaid State Plan to clarify the scope of providers authorized to deliver services via telemedicine. The proposed regulation was published as 18 DE Reg. 9 in the July 1, 2014 issue of the Register of Regulations.

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."

SCPD endorses the proposed amendment. 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."

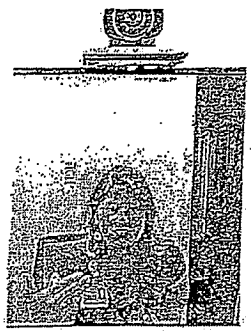
Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our position or observations on the proposed regulation.

cc: Mr. Stephen Groff
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

18reg9 dmma medicaid telemedicine 7-29-14

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.

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

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

MEMORANDUM

DATE: July 31, 2014

TO: Ms. Sharon L. Summers, DMMA
Planning & Policy Development Unit

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

RE: 18 DE Reg. 11 [DMMA Medicaid Primary Care Services Payment Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMAs) proposal to amend its Medicaid State Plan regarding additional codes eligible for primary care payments. The proposed regulation was published as 18 DE Reg. 11 in the July 1, 2014 issue of the Register of Regulations.

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.

SCPD endorses the proposed regulation since it is designed to conform to CMS guidance.

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

cc: Mr. Stephen Groff
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

MEMORANDUM

DATE: July 31, 2014

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

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

RE: 18 DE Reg. 19 [DSS Proposed Child Care Subsidy Prioritizing Service Needs 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 adopt some discrete amendments to its regulation listing priority individuals in the event DSS adopts a wait list for its Child Care Subsidy program. The proposed regulation was published as 18 DE Reg. 19 in the July 1, 2014 issue of the Register of Regulations. SCPD has 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.

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

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

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

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

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

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

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

MEMORANDUM

DATE: July 31, 2014

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

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

RE: 18 DE Reg. 14 [DSS Proposed Food Supplement Program Income Deductions 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 revise it Food Supplement Program standards to conform to changes in federal law. The proposed regulation was published as 18 DE Reg. 14 in the July 1, 2014 issue of the Register of Regulations.

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.

SCPD endorses the proposed regulation since the regulatory amendments are required to conform to federal law.

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

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

18reg14 dss-food supplement program income dedications 7-29-14

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.

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

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

July 31, 2014

Ms. Susan K. Haberstroh, Associate Secretary
Education Supports & Innovative Practices Branch
Department of Education
35 Commerce Way – Suite 1
Dover, DE 19904

RE: DOE Proposed Supportive Instruction (Homebound) Regulation [18 DE Reg. 7 (7/1/14)]

Dear Ms. Haberstroh:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposal to amend its supportive instruction (homebound) regulation. The proposed regulation was published as 18 DE Reg. 7 in the July 1, 2014 issue of the Register of Regulations.

The current regulation disallows homebound for "normal pregnancies unless there are complications" and limits homebound to "a postpartum period not to exceed six weeks". SCPD believes this violates Title IX because (1) there may be circumstances in which a student with a "normal" pregnancy or delivery, even without "complications," might have a medical need for homebound, supportive instruction; (2) the six-week limitation does not apply to other students qualifying for homebound, supportive instruction; and (3) the arbitrary six-week limitation runs counter to Title IX regulations, which specifically state that absences must be excused for as long as "medically necessary."

The proposed regulation does an "about face" on these restrictions and eliminates the problematic provisions. 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."

The SCPD endorses the proposed regulation 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. SCPD recommends 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." SCPD recommends 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.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our position and 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
Mr. Chris Kenton, Professional Standards Board
Dr. Teri Quinn Gray, State Board of Education
Ms. Mary Ann Mieczkowski, Department of Education
Ms. Tina Shockley, Department of Education
Ms. Paula Fontello, Esq., Department of Justice
Ms. Terry Hickey, Esq., Department of Justice
Ms. Ilona Kirshon, Esq., Department of Justice
Mr. Brian Hartman, Esq.
Developmental Disabilities Council
Governor's Advisory Council for Exceptional Citizens

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

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

May 29, 2014

Dr. Donna Lee Mitchell, Executive Director
Professional Standards Board
Townsend Building
401 Federal Street
Dover, DE 19901

RE: 17 DE Reg. 1032 [PSB Proposed Educational Technology Standards Regulation]

Dear Dr. Mitchell:

The State Council for Persons with Disabilities (SCPD) has reviewed the Professional Standards Board's [in collaboration with the Department of Education (DOE)] proposal to adopt a set of national technology standards for all Delaware educators. The National Educational Technology Standards (NETS) are incorporated by reference into the regulation. The proposed regulation was published as 17 DE Reg. 1032 in the May 1, 2014 issue of the Register of Regulations. SCPD has the following observations.

First, although §1.2 reflects the DOE's intent that the standards apply to "all Delaware educators", the balance of the regulation only covers administrators (§2.0) and teachers §3.0). This is odd and incongruous. School library media specialists regulated by 14 DE Reg. 1580 are omitted. Paraprofessionals regulated by 14 DE Reg. 1517 are omitted. School psychologists regulated by 14 DE Reg. 1583 are omitted.

Second, §1.3 recites that "(a) summary of the standards is set forth within". This is "odd" wording. Consider substituting "within this regulation".

Third, §2.1 is not a sentence. It lacks a predicate. The Delaware Administrative Code Style Manual, §6.2.3, requires parallel form within regulations. Sections 2.2 - 2.6 have headings followed by sentences.

Fourth, §§2.2.1.1, 2.2.1.2, and 2.1.1.3 lack a subject. Consider adding "Educational Administrators fulfill the following functions:" in §2.2.1 after the word and punctuation "organization." Punctuation should also be added to §§2.2.1.1, 2.2.1.2, and 2.1.1.3.

Fifth, the heading to §2.0 refers to "leaders" while the text of the section refers to "school

administrators" and "leaders". For consistency, the heading to §2.0 could be amended to read "...Leaders and Educational Administrators". Since "educational administrators" is not a term used in other DOE regulations, it would also benefit from a definition. Finally, the Delaware Administrative Code Style Manual, §6.2.2, encourages use of consistent references. Therefore, the term "school administrators" in §2.1 could be revised to read "educational administrators" for consistency with §§2.2, 2.3, 2.4, 2.5, and 2.6.

Sixth, §3.1 recites that "(a)ll teachers should meet the following standards and performance indicators." Logically, the standards and performance measures should be subparts of §3.1, i.e. §§3.1.1, 3.1.2, 3.1.3, and 3.1.4. Instead, they are numbered 3.2 - 3.6.

Seventh, §3.3 refers to "Experiences and Assessments-Teachers". This is not a term used in other DOE regulations. It would benefit from a definition.

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 T. Murphy
Dr. Teri Quinn Gray
Ms. Mary Ann Mieczkowski
Ms. Paula Fontello, Esq.
Ms. Terry Hickey, Esq.
Mr. Ilona Kirshon, Esq.
Ms. Susan Haberstroh
Mr. Brian Hartman, Esq.
Developmental Disabilities Council
Governor's Advisory Council for Exceptional Citizens

17reg psb-educational technology standards 5-29-14

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

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

June 5, 2014

Mr. Chris Kenton, Executive Director
Professional Standards Board
Townsend Building
401 Federal Street – Suite 2
Dover, DE 19901

RE: 17 DE Reg. 1031 (DOE Proposed Initial License Regulation)

Dear Mr. Kenton:

The State Council for Persons with Disabilities (SCPD) has reviewed the Professional Standards Board's [in collaboration with the Department of Education (DOE)] proposal to amend its *Issuance of Initial License* regulation published as 17 DE Reg. 1031 in the May 1, 2014 issue of the Register of Regulations. SCPD has the following observations and recommendations.

First, in §2.0, definition of "immorality", SCPD recommends that "or otherwise" not be added. The current standard defines immorality as conduct which impairs an educator's effectiveness due to "unfitness". The addition of "or otherwise" would literally authorize a finding of immorality for conduct not related to "unfitness". The definition is already "circular" and somewhat vague and the addition of "or otherwise" exacerbates the lack of clarity.

Second, in §2.0, definition of "mentoring", insert "in" between "Board" and "which".

Third, in §4.0, the reference to "instruct a particular category of students in which they wish to be employed" is "oddly" worded. A teacher cannot be employed in a category of students. The DOE could consider simply deleting "in which they wish to be employed," as surplusage.

Fourth, in §7.1, the DOE deletes a reference to the Praxis I as an approved examination of general knowledge. It then inserts the Praxis I in the table compiled at the end of the regulation. Since the statute [§1210(a)] explicitly recites that the Department "shall issue" an initial license if an applicant achieves a passing score on the Praxis I and meets other standards, the deletion of the reference to Praxis I in this section should be

reconsidered. Based on the statute, the DOE does not have discretion to omit the Praxis I from counting as an acceptable examination of general knowledge.

Fifth, in §9.0, first sentence, there is plural pronoun ("their") with a singular antecedent ("work"). Substitute "its" for "their".

Sixth, Title 14 Del.C. §1210(b) recites as follows:

> (b) Notwithstanding the requirements of subsection (a) of this section, an initial license may be issued to an applicant who meets all other requirements for initial licensure except for passage of the PRAXIS I exam, provided that the applicant must pass PRAXIS I within the period of time from the date of hire to the end of the next, consecutive fiscal year. If proof of passage of PRAXIS I has not been provided during the time period specified, the initial license will be suspended unless the superintendent of the school district submits to the Secretary of Education a written request for a 1-year extension. The request must also document the effectiveness of the applicant. Any applicant who is within 2 points of the passing score on the reading, writing, or mathematics section of PRAXIS I may use a composite score to meet the requirements of passage. An applicant teaching the secondary content area of Math or English/Language Arts must meet the passing score in that content area.

This subsection does not appear to be implemented in the proposed regulation. Indeed, the DOE proposes to delete some regulatory provisions which implemented the above statute. See, e.g., deleted §7.2.1.

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.

Sincerely,

Daniese McMullin-Powell

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

cc: The Honorable Mark T. Murphy
Dr. Teri Quinn Gray
Ms. Mary Ann Mieczkowski
Ms. Paula Fontello, Esq.
Ms. Terry Hickey, Esq.
Mr. Ilona Kirshon, Esq.
Ms. Susan Haberstroh
Mr. Brian Hartman, Esq.
Developmental Disabilities Council
Governor's Advisory Council for Exceptional Citizens

17reg 1031 psb-initial license 6-5-14

STATE OF DELAWARE
DELAWARE HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID & MEDICAL ASSISTANCE
PLANNING AND POLICY DEVELOPMENT UNIT

MEMORANDUM

REPLY TO
ATTN. OF: Administrative Notice DMMA 01-2014

TO: All DMMA and DSS Staff

DATE:

SUBJECT: 2014 Federal Poverty Level and Medical Assistance Income Limits

BACKGROUND

The 2014 Federal Poverty Level guidelines were announced in the Federal Register on January 22, 2014. The Federal Poverty Level guidelines are used to compute income eligibility standards for:

- Parents/Caretaker Relatives
- Pregnant Women
- Infants
- Children
- Adults
- Delaware Healthy Children Program
- Qualified Medicare Beneficiary (QMB)
- Specified Low Income Medicare Beneficiary (SLMB)
- Qualifying Individual 1 (QI-1)
- Qualified Disabled Working Individual (QDWI)
- Delaware Prescription Assistance Program (DPAP)

DISCUSSION

The monthly countable income limits are effective January 1 for parents/caretaker relatives, pregnant women, infants, children, adults, Delaware Healthy Children Program, and QDWIs. The income limits are effective February 1 for the Delaware Prescription Assistance Program. The income limits are effective April 1 for QMBs, SLMBs, and QI-1s, who have title II income.

- Parents/Caretaker Relatives must have family income at or below 87% of poverty.

- Pregnant women and infants under age 1 must have family income at or below 212% of poverty. Pregnant women count as 2 (or more) family members.

- Children age 1 through age 5 (under age 6) must have family income at or below 142% of poverty.
- Children age 6 through age 18 (under age 19) must have family income at or below 133% of poverty.
- Adults must have family income at or below 133% of poverty.
- Children in the Delaware Healthy Children Program must have income at or below 212% of poverty.
- A QMB must have income at or below 100% of poverty.
- A SLMB must have income at or below 120% of poverty.
- A QI-1 must have income that is over 120% of poverty but does not exceed 135% of poverty.
- A QDWI must have income at or below 200% of poverty.
- For DPAP, an individual must have income at or below 200% of poverty
- For a family size greater than 10, add $4,060 to the annual income for each family member.

The attached charts show the income limits for the various medical assistance programs and the premium amounts for the Delaware Healthy Children Program.

ACTION REQUIRED

The new income limits will be updated in DCIS with the appropriate effective dates.

DCIS will identify any cases that were denied or closed due to income between 12/20/13 and the date the new income limits are put into production. Staff will receive a report of these cases and will need to run eligibility for these cases.

DIRECT INQUIRIES TO

Jill Williams
(302) 255-9609

January 28, 2014
Date

Dave Michalik
Dave Michalik
Chief Planning and Policy Development Unit
Division of Medicaid &
Medical Assistance

DM:jw

2014 Countable Income Limits for Federal Poverty Level Related Medical Assistance Programs

Family Size	Annual Income 100% FPL	Monthly Income 87% FPL Parents/Caretaker Relatives	Monthly Income 133% FPL Age 6 through 18 Adults	Monthly Income 142% FPL Age 1 through 5	Monthly Income 200% FPL DPAP	Monthly Income 212% FPL Pregnant Women Infants
1	11,670	847	1,294	1,381	1,945	2,062
2	15,730	1,141	1,744	1,862	2,622	2,779
3	19,790	1,435	2,194	2,342	3,299	3,497
4	23,850	1,730	2,644	2,823	3,975	4,214
5	27,910	2,024	3,094	3,303	4,652	4,931
6	31,970	2,318	3,544	3,784	5,329	5,649
7	36,030	2,613	3,994	4,264	6,005	6,366
8	40,090	2,907	4,444	4,744	6,682	7,083
9	44,150	3,201	4,894	5,225	7,359	7,800
10	48,210	3,496	5,344	5,705	8,035	8,518

Family Size	Monthly Income 100% FPL QMB	Monthly Income 120% FPL SLMB	Monthly Income 135% FPL QI-1	Monthly Income 200% FPL QDWI
1	973	1,167	1,313	1,945
2	1,311	1,573	1,770	2,622

Delaware Healthy Children Program
2014 Countable Income Limits
212% FPL

Family Size	Monthly Income
1	2,062
2	2,779
3	3,497
4	4,214
5	4,931
6	5,649
7	6,366
8	7,083
9	7,800
10	8,518

Delaware Healthy Children Program
Monthly Premium Based on Countable Family Income
% of FPL

Family Size	Monthly Income 134% – 176% Premium $15	Monthly Income 177% – 212% Premium $25
1	1,295 — 1,712	1,713 — 2,062
2	1,745 — 2,308	2,309 — 2,779
3	2,195 — 2,903	2,904 — 3,497
4	2,645 — 3,498	3,499 — 4,214
5	3,095 — 4,094	4,095 — 4,931
6	3,545 — 4,689	4,690 — 5,649
7	3,995 — 5,285	5,286 — 6,366
8	4,445 — 5,880	5,881 — 7,083
9	4,895 — 6,476	6,477 — 7,800
10	5,345 — 7,071	7,072 — 8,518

SPONSOR: Sen. Townsend & Sen. Sokola, & Rep. K. Williams, & Rep. Scott
Sens. Blevins, Marshall, McDowell, Peterson, Venables; Reps. Barbieri, Baumbach, Bennett, Bolden, Brady, Carson, J. Johnson, Q. Johnson, Keeley, Kowalko, Longhurst, Mitchell, Mulrooney, Osienski, Potter, Schwartzkopf, Viola

DELAWARE STATE SENATE

147th GENERAL ASSEMBLY

SENATE BILL NO. 209
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO CHARTER SCHOOLS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 511, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 511. Approval Procedure.

(b)(4) Information regarding impact, as defined by regulations established by the Department with the approval of the State Board no later than October 31, 2014, shall be considered in conjunction with the factors in § 512 of this title but shall not alone provide the basis for disapproval of an application for a new charter application or an expansion. The information regarding impact may, however, be among the bases for disapproval of an application or expansion if at least 1 criteria in § 512 of this title is also deemed not satisfied by the authorizer. The information regarding impact may, by itself or in combination with other factors, form the basis for conditions being placed on the approval. Those conditions may include but shall not be limited to restrictions or prohibitions on geographic location, programmatic offerings, academic focus or emphasis, and grade levels served. In no event shall the placement of conditions on approval, based solely or in part on considerations of impact, be considered disapproval of an application.

(l) Subject to any limitations imposed by the approving authority pursuant to subsection (h) of this section, if the application is found by the approving authority to meet the criteria set forth in § 512 and complying with the approval process in § 511 of this title, it ~~shall~~ may approve the application. ~~The approving authority may approve an application~~

SD : TGW : MMS:3081470331
LC : HVW : RAY:5081470015

subject to such conditions as the approving authority, in its sole discretion, may deem appropriate to ensure the applicant's continuing compliance with the approval criteria. Whenever approval of a charter school requires the assent of the State Board, as set forth in subsection (c) of this section, the State Board may, in addition to approving or disapproving the decision of the Secretary, place or modify conditions on the approval to address considerations of impact, consistent with the requirements of subsection (b)(4) of this section.

Section 2. The effective date of this Act shall be July 1, 2014.

SD : TGW : MMS:3081470331
LC : HVW : RAY:5081470015

Lawmakers concerned about charter school applications

Matthew Albright, The News Journal 11:07 p.m. EDT April 4, 2014

(Photo: Daniel Sato/The News Journal)

A group of New Castle County lawmakers has written a letter to top state education officials expressing "deep concerns" about proposed new charter schools, fearing the "significant hardship" they could place on traditional school districts.

Red Clay School District alone stands to lose as many as 800 students and $2.6 million if all the charter applications currently under consideration are approved, the lawmakers write in the letter.

There are five charter schools seeking approval from the state. Four would begin in the 2015-2016 school year and all of them would be in New Castle County.

The letter, sent Thursday night and addressed to Secretary of Education Mark Murphy and the State Board of Education, is signed by three state senators and 17 of the state's 41 representatives. All but one of the legislators who signed it are from New Castle County.

"As members of the General Assembly and representatives of the families and students who will be impacted by these potential new charters, we too have deep concerns about their effects on the Red Clay School District, the other school districts of New Castle County and the community at large," it says.

The letter emphasizes that state law requires charter school authorizers – almost always the State Department of Education – to consider the impact the charter would have on the local schools and community.

"The charters that the state approves must, at the very least, provide our students with a wholly unique and high-quality education," it says. "It is not clear that these five charters, especially those that will impact the public school districts of New Castle County, will meet those expectations."

Kendall Massett, executive director of the Delaware Charter School Network, said the charters looked forward to working out what's best for students.

"Our mission is to promote autonomy and choice in public education as a whole. Growth in itself is not the goal of the charter movement, nor is it to adversely affect district schools," Massett said in a statement. "Last year's legislation struck the right balance, inviting robust public comment like this while also taking the entire picture into account, including the positive impact that it could have on children."

The lawmakers stopped short of explicitly asking Murphy and the board to reject the applications.

Rep. Kim Williams, D-Newport, organized the letter. A former Red Clay Board Member, she said the legislators want to add weight to concerns raised by district administrators about the impact of the new schools.

"I don't want to speak for the other legislators, but we shared the letter with them and asked them to sign on if they agreed with it, and I think the letter speaks for itself," Williams said. "We're trying to make sure that the department and the board know how serious these issues are."

Donna Johnson, executive director of the State Board of Education, said the letter will be added to the public record that is part of the charter school approval process.

Johnson said it would be inappropriate for board members to comment on the issue until they reviewed the entire record for the applications. Murphy and the board will decide at the April 17 board meeting whether to approve the schools.

"It's important that [the lawmakers] concerns are considered as part of a thorough process to determine whether the schools meet the rigorous legal requirements for approval, and, most importantly, if they would have a positive impact on our students," Department of Education spokeswoman Alison May said in a statement.

State law says if a school meets all the requirements for approval, the state must do so. If Murphy or the board were to reject an application, they would need to cite specific reasons to do so.

The letter specifically points to Friere Charter School, an established Philadelphia charter seeking to open a school in Delaware. The school's application says it will take a strict no-violence policy, immediately expelling any student who uses physical intimidation or force without any second chances.

While acknowledging traditional schools can choose to expel violent students, the letter says most schools can't be that demanding.

"Friere looks to put the burden back on the districts by employing mechanisms that are not available to the rest of traditional public schools," it says.

The other three proposed charters include: Delaware STEM Academy, which would focus on students interested in science, technology, engineering and math; Great Oaks Charter School, which would specialize in "high-dosage tutoring" using recent college graduates; and Pike Creek Charter Middle School, which would focus on students' health and fitness.

Massett referred to a law passed last year aimed at updating how the state monitors charters, adding things like a prescreening process, more applicant interviews and more opportunities for public input before such schools are improved.

State officials said the bill "raised the bar" for starting charter schools. But some lawmakers worried parts of the bill would lead to more resources flowing away from traditional schools to charters.

Merv Daugherty, Red Clay's superintendent, said he was glad to see strong support from so many legislators.

"We do think there has been an oversaturation of charters in our particular area," Daugherty said. "The question we're asking is, are these charters really needed?"

Daugherty says schools, like the Delaware Military Academy chartered in his district, fit a niche traditional schools can't fill. But he said many of the proposals in charters are things that could be implemented within regular public schools.

"My view of it is, why not come to the districts and see if this is something we can work together on, instead of trying to separate everybody," Daugherty said. "If you come to us and we say no, or don't think it's feasible, then put that application in."

In 2003, there were 13 charter schools serving 6,260 students in Delaware. This year, there are 21 charters serving 11,078 kids. By 2019, even if no other charters are approved and there is no growth in the schools, there could be as many as 31 charter schools serving more than 14,000 students.

Contact Matthew Albright at malbright@delawareonline.com or at (302) 324-2428. Follow him on Twitter @TNJ_malbright.

The lawmakers

The lawmakers who signed the letter include: Rep. Kim Williams, Helene Keeley, Deborah Hudson, Michael Barbieri, John Kowalko, Paul Baumbach, Joseph Miro, Andria Bennett, John Mitchell, Stephanie Bolden, Michael Mulrooney, Gerald Brady, Ed Osienski, Earl Jacques, James Johnson, Charles Potter, Dennis E. Williams; and Sen. Patricia Blevins, Karen Peterson and Bryan Townsend.

By the Numbers

4

Number of charter schools seeking to open in the fall of 2015 in New Castle County.

800

Number of students the Red Clay School District stands to lose if all four open.

$2.6 M

State aid Red Clay could potentially lose.

31

Potential number of charter schools by 2016.

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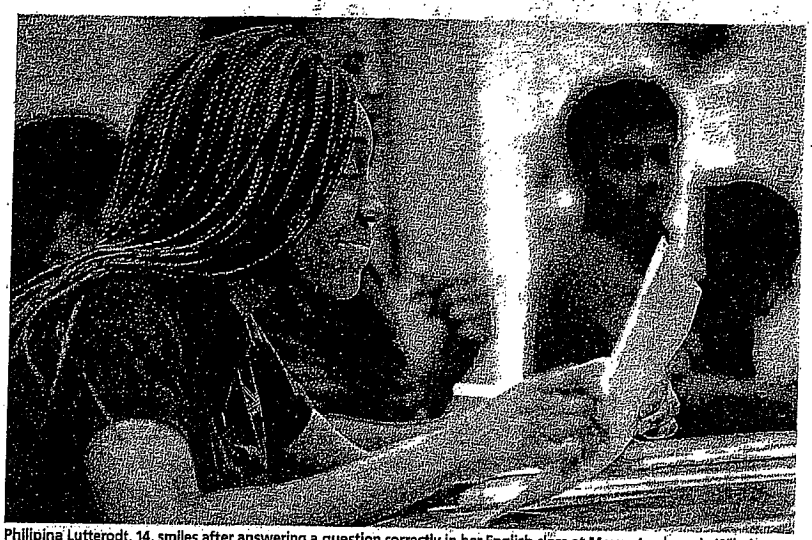
DELAWARE



Philipina Lutterodt, 14, smiles after answering a question correctly in her English class at Moyer Academy in Wilmington on Thursday. SUCHAT PEDERSON/THE NEWS JOURNAL

4-18-14

State approves four charters, rejects one

Two other charters placed under scrutiny; Moyer change approved

By Matthew Albright
The News Journal

State officials approved four new charter schools Thursday, rejected one application, placed two charters set to open this fall under tight scrutiny over enrollment concerns and allowed an existing school to shrink its enrollment targets.

The four charter school proposals approved by Secretary of Education Mark Murphy and the State Board of Education are: Freire Charter School, Delaware STEM Academy, Great Oaks Charter School and the Mapleton Charter School at Whitehall.

All of them are set to open in Fall 2015 except for Whitehall, which would open in 2016, and all are in New Castle County.

"The charters that we are recommending for approval today represent a geographic diversity of locations – two schools in Wilmington, one in southern New Castle County and one in [Appoquinimink]," Murphy said. "They are providing unique instructional models that are not currently available to students."

Murphy rejected an application from Pike Creek Charter School, saying he agreed with the state's Charter School Accountability Committee that the school was not on solid financial footing.

The approvals mean a major expansion of the charter footprint in Delaware. If all four schools meet their enrollment targets, they would add about 2,360 charter seats.

There are currently 11,078 students in charters statewide, a number that was already expected to grow as existing schools expanded.

The approvals come despite worries about the impact they might have on traditional school districts. A group of 20 state lawmakers wrote to Murphy and the board earlier this month expressing "deep concerns," saying Red Clay School District alone stands to lose 800 students and $2.6 million if the charters were all approved.

Several state board members raised those questions.

"At what point do we start looking on the cumulative impact all these schools will have on a district?" asked Randall Hughes. "Does that become something we think about? Can it?"

Department officials said state law does not allow them to reject an application based solely on its impact on other schools. That stirred a heated discussion between several of the board members.

"If next year we were to have 20 charter schools come before this board, and they all use this format, they will all be approved," said Pat Heffernan. "I just want to make that very clear to the public."

Heffernan questioned whether it made sense for the state to approve any charter as long as it met the state's standards. He pointed out that Mapleton is designed to complement the Town of Whitehall, a planned private development.

"Maybe somebody wants to open a clown school, and because they filled out a form right we would have to approve it," Heffernan said. "I think we need to think about whether this process allows us to make productive decisions about public policy."

At the same time as it opened the door to new charters, the state put two schools already approved to open this fall on notice for low enrollment numbers.

Academia Antonia Alonso had only 107 students fully signed up by Thursday, or only 36 percent of its planned enrollment. Delaware MET had only 93 students fully signed up, or about 34 percent of planned enrollment.

That puts them on shaky financial ground.

Murphy and the board placed both schools on formal review, which will spur the accountability committee to scrutinize them. Formal review could lead to a revocation of a school's charter or corrective actions, but Thursday's vote was only a first step in the process.

"We are aware of the many effects this could have on a lot of people," said Jennifer Nagourney, head of the state's charter school office. "We are trying to takes steps as far in advance as possible."

Design Lab Charter High School, another charter set to open in the fall, was also scheduled to face possible review, but the department took it off the board's agenda. Design Lab officials have asked the state to allow it to open a year later.

Delaware MET could also choose to ask for a delay, but Academia has already received one and cannot request another.

Also Thursday, state officials approved New Moyer Academy's request to shrink its enrollment targets by about half, from 455 students to 265 next school year.

Contact Matthew Albright at malbright@delawareonline.com or at (302) 324-2428. Follow him on Twitter @TNJ_malbright.

OPINION

Susan D. Leath President and Publisher
David F. Ledford Executive Editor
John Sweeney Editorial Page Editor

Online Wednesday: Are we smart to stop drinking diet sodas? delawareonline.com/opinion.

OUR VIEW

WHY DO PARENTS PICK CHARTER SCHOOLS?

Twenty legislators have asked the state Board of Education to consider the possible harm five new charter school applications pose to the Red Clay Consolidated School District.

The legislators are worried that too many charter schools will take money and students from Red Clay schools. They argue this would be a detriment to the district and to public school education.

They have a point. Looked at from the institution's point of view, these charter schools do pose a threat. However, what does it look like from the point of view of the parents who would send their children to these schools? What do they see? What is the need they are trying to fill?

The charter school debate generally has ignored questions like these. Most of the arguments from the legislators and others focus on the concerns of the institutions and those who run them. The viewpoint of the typical parent is missing.

Public schools have been, are and will be the backbone of the American education system. However, for generations, people with money could sidestep any faults they saw in the system by sending their children to private schools. However, since the advent of laws allowing charter schools, middle- and low-income parents have had the ability to leave the public school system as well. Most likely, these parents do not see themselves as leaving the system. They are just trying to get a better education for their children. The parents, in other words, are voting with their feet.

Instead of complaining, the public school establishment and their legislative supporters should be asking why.

People who run private businesses study their customers. When the customers stop coming back, the business operators find out why and do something about it. They do not blame the competition. As one businessman recently put it, Pepsi does not try to shut down Coke when the customers stop drinking Pepsi. Pepsi fights back.

Do the leaders of Red Clay or any other public school district know why parents want to take their children out of the district public schools? The districts cannot blame the growth of charter schools on the flight of middle-class white parents. Many of the charter schools are extremely attractive to lower-income minority parents.

Why? What prompts them to leave? What attracts them to the charter schools? If the school leaders know what the reason is, why isn't it on the table for discussion? Suppose the problem were discipline in the classroom or curriculum. Shouldn't that problem be the topic for discussion? Shouldn't the legislators be trying to assist the school administration to find a solution for the problem, rather than complaining about alleged unfairness?

We applaud the legislators for their concern, but they would have a better argument if they could speak to the parents' concerns as well.

EDUCATION

4-29-14
NJ

Lawmakers want more consideration of charters' impact

By Matthew Albright
The News Journal

As Delaware's charter school footprint grows, some lawmakers want state officials to be able to reject new charters based solely on the impacts they would have on existing schools.

"Right now we just have this process where charter after charter after charter is opening, but we're not really looking at what this means for the larger system," said Sen. Bryan Townsend, D-Newark. "This is not about being anti-charter at all. It's just that we've got to have some coordination of our resources, and we've got to make sure we're being as efficient as possible."

State Sen. Bryan Townsend

Townsend said he is circulating a bill with colleagues in the General Assembly and plans to file it this week. A draft copy of the bill included Rep. Kim Williams, D-Newport, and Sen. Patricia Blevins, D-Elsmere, as sponsors.

A law passed last year allows state officials to consider the impact on existing schools when approving new charters, but explicitly prevents them from rejecting one based solely on that impact.

Two weeks ago, the board and Secretary of Education Mark Murphy approved four new charter

See CHARTER, Page A6

Charter: Four new schools approved for New Castle County

Continued from Page A1

schools to open in New Castle County over the next few years, potentially adding 2,360 charter seats in the county. Townsend, Williams and Blevins were among 20 state lawmakers who wrote to the board before that decision voicing "deep concerns" about the amount of money and number of students traditional districts could lose.

As they voted to approve the schools, several state board members voiced frustration that applications had to be approved as long as they met the right criteria, no matter what impact they had on surrounding district schools.

"If next year we were to have 20 charter schools come before this board, and they all use this format, they will all be approved," said member Pat Heffernan. "I just want to make that very clear to the public."

The board rejected one charter school at that meeting, and two others did not make it into the full application process.

Townsend said his proposal is a direct result of board members' concerns. He argues the board should be able to make strategic decisions about what schools will fit the existing system and serve currently unmet needs, rather than simply approving any school that meets a regulatory bar.

"We just approved a [science, technology, engineering and math] high school in Wilmington. But what if a school nearby had just invested tens of thousands of taxpayer dollars into a STEM program?" Townsend said. "We need to be asking ourselves, is this an effective coordination of resources?"

Charter advocates believe the proposal would deny students and parents the option to enroll in schools they think could better serve their kids.

"It's about giving parents the choice to do what's best for their children, not having somebody tell them what they have to do and where they have to go," said Chuck Taylor, president of the Delaware Charter School Network and former charter school head.

Taylor said this discussion already took place when lawmakers changed the charter law last year, saying he was "disappointed" that it was coming back up again after the law had changed.

"The argument you hear being made isn't about what's good for kids, it's what's good for these districts. It's about politics," he said. "Make your schools competitive and you shouldn't have anything to worry about."

Townsend said he agrees that competition and dynamism in the school system are important, and pointed to charters like Kuumba Academy and Gateway Lab school as places where "great things are happening."

"The problem is that we haven't sat down and had a broader conversation about what we can learn from Kuumba or a school like it and apply it across all our schools," he said. "Instead, we're just opening more and more charters. That's not a sustainable solution."

Department of Education Chief of Staff Mary Kate McLaughlin said in a statement that the department was comfortable with the current law.

"Last year's update to our charter law was developed with extensive input from teachers, school districts and the charter school community. It set higher expectations for starting and running charter schools while increasing support for the most effective schools," she said. "For the first time, it ensures impact on public schools is considered in the application review. The bill struck an appropriate balance to ensure the best opportunities for all students, and our mission is to implement the law well."

Donna Johnson, the state board's executive director, said it would be "inappropriate" for state board members to comment on the proposal until a bill had been filed. She said the board did not ask lawmakers to file a bill, but acknowledged that it "speaks directly to a concern that was voiced by multiple board members."

"There must be a definition of impact. We would like to see a formalized rubric that we would use going forward," Johnson said. "It should not be something that's used based purely on emotion. Impact should be considered in some kind of research-based manner."

Contact Matthew Albright at malbright@delawareonline.com or at (302) 324-2428. Follow him on Twitter @TNJ_malbright.

COMMENT

As our schools fail, so do we fail our children

DELAWARE VOICE
JAMES M. BAKER

I had the pleasure of serving as mayor of the city of Wilmington from 2001 to 2013. I am also an African-American who lived through the 1960s as a young man in my 20s. Both experiences vere a continual lesson for me in the narriage between poor education and ırban plight.

In February, the White House in-roduced the "My Brother's Keeper" nitiative. The fact sheet revealed so-ıering statistics. Data shows that boys nd young men of color, regardless of ocioeconomic background, continue to e disproportionately at risk.

Large disparities remain in reading roficiency, with 86 percent of African-ımerican male students and 82 percent of Hispanic male students reading below proficiency levels by the fourth grade compared to 58 percent of white males reading below proficiency levels. The only future for these young people is frustration and hopelessness – if not a life of unemployment or poverty, then a life of crime.

The impact of a failing public school system has taken its toll on the city and state, and our at-risk children continue to pay the price. The city has seen a 60 percent dropout rate for city students for years with very little improvement.

Fourth-graders at Warner Elementary School on 801 W. 18th St. in Wilmington have proficiency rates of 41 percent in reading and 35 percent in math, compared to state averages of 72 percent and 70 percent respectively. Warner is 93.5 percent low income.

Fourth-graders at Shortlidge Elementary School on 100 W. 18th St. are 43 percent proficient in reading and 40 percent in math. Shortlidge is 93.3 percent low income.

In contrast, fourth-graders at Kuumba Academy Charter School on 519 N. Market St. in Wilmington are 92 percent proficient in reading and 76 percent in math. Kuumba is 85.2 percent low income. Eighth-graders at Prestige Academy on 1121 Thatcher St. in Wilmington are 77 percent proficient in reading and 76 percent in math. Prestige is 81.5 percent low income.

Unbelievable and nonsensical

So why are some lawmakers proposing legislation that will make it nearly impossible for new charter schools to open and well-performing charter schools to expand? This is both unbelievable and nonsensical. Considering the numbers cited above, would you deliberately work to impede the progress of charter schools?

I support any method that gives our children the best education and best chance for a successful life. I genuinely believe that charter schools offer that opportunity.

Legislators should be focusing on creating more high-quality education options, not limiting the growth of charter schools.

The numbers tell the story – charter schools are making a difference for at-risk students in the city and district schools are not.

This proposed legislation is detrimental to students and to poor, urban African-American children in particular. As a citizen and former public servant, I refuse to say and do nothing while low-performing schools are allowed to continue to exist in our state and in the city of Wilmington.

James M. Baker was mayor of Wilmington from 2001 to 2013.

EDUCATION

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NS

Bill gives state more power to study charters

Senate-bound legislation tries to clarify impact guidelines

By Jon Offredo
The News Journal

The Delaware State Board of Education can study more closely the impact charter schools have on surrounding districts and impose conditions on them under legislation sent to the full Senate on Wednesday.

The legislation, embraced by lawmakers and education groups as it cleared the Senate Education Committee, replaced a more controversial bill that allowed board officials to reject new charters based on the impact they would have on existing schools. The original bill was crafted in response to frustrations from several board members that charter school applications had to be approved as long as they met the right criteria, no matter how they affected surrounding district schools in terms of student loss, overlapping of programs or focus.

Charter school advocates argued that the original proposal would have denied students and parents the option to enroll in schools they think could better serve their kids.

The bill's sponsor, Sen. Bryan Townsend, D-Newark, said the legislation gives board members the latitude to understand how proposed charters and charter expansions would affect the overall education system.

"The bill in my mind gets at the issue of the state board of education being able to take a holistic view of the education system," he said.

The state Department of Education would define the meaning and process for considering impacts of charter schools on districts in the application review process under the new legislation. The State Board

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Charter: Bill allows state board to place conditions

Continued from Page A1

would consider and approve those definitions and meanings no later than its October meeting. The bill allows the board to place conditions on schools relating to geographic location, grades served and the academic focuses or emphasis.

Those conditions would allow board members to make more informed decisions about which schools fit the existing system and serve currently unmet needs, rather than approving a school that would specialize in say, STEM education, when the nearby school district just invested money in STEM education, Townsend said.

The legislation clarifies a law passed last year that allows state officials to consider the impact on existing schools when approving new charters, but explicitly prevents them from rejecting one based solely on that impact.

The vagueness of the term "impact" came into play last month after the board and Secretary of Education Mark Murphy approved four new charter schools to open in New Castle County over the next few years. Townsend was among 20 state lawmakers who wrote to the board before that decision voicing "deep concerns" about the amount of money and number of students traditional districts could lose.

Representatives from public and charter school associations, as well as the governor's office, all supported the bill, saying it added much-needed clarity.

Lindsay O'Mara, Gov. Jack Markell's education policy adviser, said the bill adds a lot of value to the approval process by defining impact, which in the last bill wasn't very well defined.

"I think one of the most valuable things this bill does is ask the Department of Education to look across the country, examine best practices and really come up with some factors and rubrics and some structure around how impact would be considered as part of the process," she said.

Contact Jon Offredo at (302) 678-4271 or at joffredo@delawareonline.com or on Twitter @jonoffredo.