

## Memo

**To: SCPD, GACEC and DDC**

**From: Disabilities Law Program**

**Date: 1/13/2023**

**Re: January 2023 Policy and Law Memo**

Please find below, per your request, analysis of pertinent proposed regulations identified by councils as being of interest.

### **Proposed DDOE Regulations on 275 Charter Schools, 26 Del. Register of Regulations 512 (January 1, 2023)**

The Delaware Department of Education (“DDOE”) proposes to amend 14 Del. Admin. C. § 275, which governs Delaware Charter Schools. Substantively, DDOE is proposing to amend this regulation to remove reference to Delaware Comprehensive Assessment System (“DCAS”), clarify language around debts of a charter school, and update the definition of a charter school to align with 14 Del. Admin. C. § 255, which defines the different types of Delaware schools.

Under proposed § 275.2.0, DDOE proposes to modify the definition of a Charter School. The current version defines a charter school as “a non-home based full time public school that is operated in an approved physical plant under a charter granted by, or transferred to, the Department with the approval of the State Board for the personal physical attendance of all students.” DDOE is proposing to change the definition to “a public school that is operated under a charter granted by, or transferred to, the Department or other authorizing body pursuant to 14 Del.C. Ch. 5.” This is consistent with how that term is now defined.<sup>1</sup>

In the same section, DDOE proposes to remove the mention of DCAS. Delaware is no longer using the DCAS as its statewide assessment tool. DCAS was replaced by the Delaware System of Student Assessment (“DeSSA”) beginning in the 2015-16 school year.

The major substantive change is in proposed § 275.8.0 concerning enrollment preferences, solicitations, and debts. Current § 8.3 states

Any person or entity offering a loan to a Charter School must be advised by the school that debts of the school are not debts of the State of Delaware and that neither the State nor any other agency or instrumentality of the State is liable for the repayment of any indebtedness.

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<sup>1</sup> 26 Del. Register of Regulations 47, DDOE Final Rule (In response to a comment received, DDOE stated the following “[DDOE] agrees that the definition of ‘Charter School’ needs to be clarified to remove the ‘personal physical attendance’ given that charter schools are able to operate virtually. Therefore, the definition [] will be updated to read ‘means a public school that is operated under a charter granted by, or transferred to, the Department of Education or other authorizing body pursuant to 14 Del.C. Ch. 5.’”

DDOE is proposing to add §§ 8.3.1-8.3.3. Proposed § 8.3.1 merely restates the current § 8.3. Proposed § 8.3.2 adds the same notification requirement to those entities entering a contract or legal settlement with the charter school. And proposed § 8.3.3 adds a requirement that a charter school must disclose any debts, liabilities, or legal settlements in excess of \$10,000 to DDOE in its annual report.

Current § 8.3 and proposed §§ 8.3.1-8.3.2, as written, are currently at odds with federal court precedent related to a State Educational Agency's ("SEA") responsibilities when a Charter School goes under. In *M.K. v. Prestige Acad. Charter Sch.*, the District Court of Delaware held that an SEA, with ultimate responsibility under the Individuals with Disabilities Education Act ("IDEA"), must "step into the shoes of the defunct charter school to honor its obligations." 470 F. Supp. 3d 417, 426 (D. Del. 2020) (citing *Charlene R. v. Solomon Charter Sch.*, 63 F. Supp. 3d 510, 519 (E.D. Pa. 2014)). Therefore, Councils may wish to request the DDOE amend the current and proposed language to ensure compliance with the District Court's ruling in both *M.K.* and *Charlene R.*

There are no additional substantive changes.<sup>2</sup>

### **Proposed DDOE Regulation on 14 DE Admin. Code 1203 Scholarship Incentive Program (ScIP), 26 DE 521 (1/1/23).**

The Secretary of Education intends to amend 14 **DE Admin. Code** 1203 Scholarship Incentive Program (ScIP). The regulation details the application process, the eligibility criteria, and the award process for the ScIP. The proposed amendments include revisions to Section 2.0, addressing the eligibility requirements for the program as well as other clarifying changes in the regulation. The changes were made pursuant to HB 480.<sup>3</sup>

The proposed amendment removes "scholarship and loan" language, replacing it with "student financial assistance" programs. The amendment eliminates "direct educational expenses," "expected family contribution," "graduate student," and "resident of the state," from Section 2.0.

Furthermore, the proposed amendment changes the eligibility criteria; rather than requiring that an applicant be a resident of the state, the applicant must meet the definition of

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<sup>2</sup> The other changes throughout the proposed regulations are stylistic to ensure compliance with the *Delaware Administrative Code Style Manual*.

<sup>3</sup>HB 480 amended the Delaware Code "relating to financial assistance for education in order to promote and support the state's high demand career fields and reduce student debt for Delaware residents. The Act clarifies the Delaware Higher Education Office's role in administering programs. Professional incentive scholarship loan programs will generally be replaced with the career-based scholarship program and the educator support scholarship and mental health services scholarship programs will be established. In addition, a loan repayment program is created for speech-language pathology and mental health professions to attract and retain these professionals in Delaware schools. Career-based and educator support scholarships will be made to Delaware students who intend to pursue careers in specific fields identified as areas of need in Delaware. Academic scholarships will be awarded to Delaware students in memory of elected officials and other distinguished citizens. Need-based scholarships will be awarded to Delaware students so that they will not be denied the opportunity of an education because of financial need." ( HB synopsis)

residency as defined in 14 Del. C. §3402(f).<sup>4</sup> The amended Section 4.0 also removes “regional” from its requirements, as well as language stipulating that a graduate student must “[be] in pursuit of a degree that is deemed in the best interest of the State,” as well as “[...]making Satisfactory Academic Progress.”

The proposed amendment adds that an applicant’s Expected Family Contribution will be considered in determining an applicant’s financial needs. Moreover, the amendment clarifies that a financial award will be used for “tuition, mandatory fees, room, board, books, and other direct and indirect educational expenses.” Finally, the amendment states that students must “maintain Satisfactory Academic Progress at their educational institution, and continue to meet the other eligibility requirements set forth in Section 4.0.”

This proposed amendment should be supported by Councils as it adds clarity to those seeking financial assistance in education.

**Proposed DOE Regulation on 14 DE Admin. Code 1204 High Needs Educator Student Loan Payment Program, 26 DE 524 (1/1/23).**

The Delaware Department of Education, through the Delaware Higher Education Office (DHEO), proposes amending 14 DE Admin. Code 1204 High Needs Educator Student Loan Payment Program. This is a student financial assistance program administered by DHEO. The changes were made pursuant to HB 480. The regulation details the application process, eligibility criteria, and the award process for the High Needs Educator Student Loan Payment Program. The proposed amendments clarify changes throughout the regulation and revise the requirements for the program in Section 3.0.

The proposed amendment clarifies the definitions in Section 2.0, removes the definition of “English Learner,” and adds language to the definition of “High Needs Area,” where high needs means: (1) percentage of low-income students or students within the statewide metric determined by the Department utilizing direct certification for Temporary Assistance for Needy Families (TANF) and Supplemental Nutrition Assistance Program (SNAP); (2) percentage of English Learners or students with limited English proficiency and who meet the definition of English Learner as defined by the Department’s regulations; (3) percentage of Students with Disabilities or students who are determined to be eligible for one or more of the educational classifications under the Department’s regulations and who, by reason thereof, need special education and related services; or (4) percentage of Minority Students or students who are members of a racial or ethnic group other than the racial or ethnic group that represents the

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<sup>4</sup> (f) Unless otherwise provided, no student is eligible for student assistance programs authorized in this chapter who has not been a resident of the State for at least 12 consecutive months immediately prior to the program application deadline. ...No student is deemed to satisfy for the first time the residence requirement of these programs while the student’s principal occupation is that of student in a postsecondary program. Evidence of legal residence in Delaware that is deemed satisfactory to the Office must be provided. Such evidence may include: prior year Delaware income tax return, a valid Delaware driver’s license, a valid Delaware vehicle registration card or other evidence of bona fide residence in Delaware. Delaware residence is considered terminated 12 months after a move from the State.

majority of the State's population. The proposed amendment for Section 2.0 also removes the definitions for "Low-Income Students," "Minority Students," and "Students with Disabilities."

Additionally, the proposed amendment for Section 3.0 removes language that the applicant must have received a rating of at least "effective" on the Delaware Performance Appraisal System, and instead states that "the applicant has not had an ineffective evaluation on the State's current evaluation system or the equivalent thereof on a State-approved alternative educator evaluation system. Moreover, the amendment eliminates the requirement in Section 3.0 that the applicant shall not be in default of any federal or state education loan.

Further amendments specify DHEO rather than "the Department."

This proposed amendment should be supported by Councils as it adds clarity to those seeking financial assistance in education under this program.

**Proposed DOE Regulation on 14 DE Admin. Code 1206 Speech Language Pathologist Incentive Loan Program, 26 DE 528 (1/1/23).**

The Delaware Department of Education, through the Delaware Higher Education Office (DHEO), proposes to amend 14 **DE Admin. Code** 1206 Speech Language Pathologist Incentive Loan Program. The Speech Language Pathologist Scholarship Program is a student financial assistance for higher education program administered by DHEO. The changes were made pursuant to HB 480. The regulation provides the eligibility criteria, the application process, and the award process for the Speech Language Pathologist Scholarship Program.

The proposed amendments include: (1) revising the title of the regulation; (2) revising the name of the program in Section 1.0; (3) adding and striking definitions in Section 2.0; (4) clarifying the application process in Section 3.0; (5) revising the eligibility requirements in Section 4.0; and (6) revising the awards process in Sections 5.0 and 6.0. Moreover, the Department proposes to renumber the regulation from 1203 to 1212.

The proposed amendments in Sections 2.0 and 3.0 are minor grammatical and clarifying changes.

Section 4.0 concerns the eligibility for an award; changes include an addition that the applicant shall meet the definition of residency as provided in 14 Del. C. §3402(f). However, the eligibility section maintains that the applicant shall be a "Full-Time Student enrolled in a graduate program in Delaware that will satisfy the educational requirements to become licensed by the Delaware Board of Speech Pathologists [...]." This is also true of the ScIP program. These are statutory requirements. ( see 14 Del Code 3411 and 3435).The restriction to full time students could present obstacles to students with disabilities who may not be able to attend a full-time program. The National Council on Disability reported that disability may prevent some students from accessing financial aid for college and graduate school; students with disabilities may have difficulty attending school full-time because of the impact of disability. It may be that the scholarship programs would have to make reasonable modifications under the ADA and

Section 504 to allow exceptions to this rule. It is worth considering asking for amendments to the statute to reflect this.<sup>5</sup>

The proposed amendments for Section 5.0 include adding language about renewing an Award via completing an application and maintaining the requirements of Section 4.0, as well as maintaining Satisfactory Academic Progress. Section 5.3.2, stating “an award may be renewed annually as long as students maintain satisfactory academic progress as defined by the institution,” is removed, along with Section 5.4, which states “an award may be pro-rated for Part-Time Students.” Again, part-time students should be considered eligible for this award; however, a statutory amendment is required to attain this.

Finally, the proposed amendments for Section 6.0 clarify that “all awards shall be disbursed directly to the eligible recipient’s college or university.

This proposed amendment should not be supported by councils in its entirety; however, councils may wish to advocate that part-time students be considered for eligibility of the Speech Language Pathologist Program.

**Proposed DDOE Amendment Regulations: Multi-Tiered Systems of Support, 26 Del. Register of Regulations 514 (January 1, 2023)**

The Department of Education (DDOE) has proposed amendments to existing regulations to reflect new legislation passed at the end of the previous legislative session in June 2022 and signed into law by the Governor in August 2022. The new law, codified at 14 Del. C. § 4116A, requires that social and emotional learning and mental health content be added to the curriculum for each grade in every public school district and charter school. These programs are to be effective beginning in the 2023-2024 school year developed in consultation with mental health experts.

The proposed amendments would update existing regulations relating to multi-tiered systems of support (MTSS), which is the framework used to respond to individual student needs beyond the core instruction and the non-academic supports available to all students; interventions of various levels (Tier 1 through Tier 3) may be implemented to help students make progress and keep up with identified benchmarks (see existing regulations at section 6.0). MTSS are available to all students, including students with disabilities and students without disabilities, however per the regulations if Tier 3 interventions are unsuccessful a referral for a special education evaluation may be necessary (see existing regulations at subsection 6.1.3.3).

The primary substantive updates in the proposed amendments make clear that social and emotional learning and mental health will be part of the instructional curriculum and would be areas in which interventions of any tier may be needed and implemented. Additionally, the proposed amendments would add language specifying that for non-academic areas, interventions that are “evidence-informed,” as opposed to “evidence-based,” may also be utilized. As defined by the proposed amendments, “evidence-informed” practices would still need to be informed by

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<sup>5</sup> Rebecca Moore, Students with Disabilities Face Financial Aid Barriers, National Council on Disability (Sept. 15, 2003), <https://ncd.gov/publications/2003/09292003-2>.

research and data, but not necessarily proven through scientific research. The proposed amendments also include minor wording and stylistic changes, which do not affect the substance of the existing regulations.

While the proposed substantive amendments as written make sense and are likely necessary to implement the underlying statute, the Councils may wish to suggest that the regulations include further details, or that additional guidance be issued by the Department, about other referrals or interventions that may be necessary if a child is struggling or not meeting identified benchmarks in the specific areas of social and emotional learning and mental health. For example, referrals (with consent of the child’s parent or guardian) to outside counseling or to the Division of Prevention and Behavioral Health Services may be appropriate before other steps in Tiers 1 through 3 are otherwise exhausted. Additionally, a child’s demonstrated difficulties in these areas may be less likely to coincide with specific points or time periods in the academic calendar as they would for academic subjects.

**Proposed Office of Child Advocate Regulations: Driver Education, Driver’s License and Motor Vehicle Insurance Program for Individuals who have Experienced Foster Care, 26 Del. Register of Regulations 544 (January 1, 2023)**

The Office of Child Advocate (OCA) seeks to enact new regulations implementing new statutory provisions providing for funding to support youth in foster care who are learning to drive, seeking driver’s licenses, or needing car insurance coverage to safety drive. Substitute 1 to SB 151, which passed at the end of the previous legislative session in June 2022 and was signed into law by the Governor in October 2022, requires the creation of a program to disperse funds to youth in the custody of the Department of Services for Children Youth and Families (DSCYF) for these purposes. In passing this legislation, the General Assembly concluded that the costs associated with obtaining a driver’s license and vehicle insurance “serve as an additional barrier to gaining independence and engaging in normal, age-appropriate activities” and “limit opportunities for obtaining employment and completing educational goals” for youth who are in DSCYF custody. See 29 Del. C. § 9011A(a)(1).

The proposed regulations provide further details about the operations of the program. The regulations would establish that to be eligible for funding, youth would need generally need to be in DSCYF custody and between the ages of 15 and 18 years old. Youth who were in DSCYF custody when they turned 18 would be eligible for an additional year if not receiving independent living (IL) services from the Department, or for any period they were receiving IL services after their 18<sup>th</sup> birthday. Additionally, youth who had been in DSCYF custody and were at least 16 years old when they achieved permanency would be eligible for an additional year after achieving permanency, if not receiving IL services, or for as long as they were receiving IL services.

While the statute appears to contemplate the program covering “costs incidental to licensure,” the regulations do not appear to include most costs related to licensure as eligible expenses; the listed eligible expenses are costs related to driver education classes, costs related to driving lessons if necessary to meet required number of hours for licensure or if extra practice is

needed, costs for motor vehicle insurance, and at OCA's discretion, costs related to motor vehicle, and costs related to vehicle purchase, maintenance, and repair.

The proposed regulations do not provide further details about the application process other than that "[a]pplications must be submitted online via the Office's website" and "[a]pplications will be accepted on a continuous basis." It may be helpful for OCA to further clarify what type of information and documentation would be required in the application and under what circumstances the consent or input of any party other than the youth would be necessary. While there is no fixed funding amount available to an individual youth, the proposed regulations state that OCA may set a maximum funding amount per individual at its discretion. Funds may be issued to directly pay a qualifying expense or may be reimbursed. As indicated in the statute, the regulations also state that the program may only cover costs attributable to the youth; for example, if the youth is added to an existing insurance policy held by another person, the program can only cover the additional cost attributable to the addition of the youth.

In subsection 6.6 of the proposed regulations, there is language providing for the termination of an individual's participation in the program "if the individual demonstrates unsafe driving practices resulting in increased insurance premiums," and that the Office will maintain and distribute a policy which outlines "safe driving expectations and the consequences of a failure to meet these expectations." This provision requires further elaboration, either in the regulations or in the policy to be issued by OCA, to ensure that youth aren't being unfairly punished for unavoidable accidents or for incidents that occur while driving that may in some way be attributable to the youth's disability. Further, it would somewhat defeat the stated purpose of the program to allow youth no room for mistakes. OCA should allow for the consideration of all facts and individual circumstances in deciding to terminate a youth's participation in the program.

While the program would provide a value and needed benefit to youth in the child welfare system, the Councils should encourage OCA to reconsider what is included in eligible expenses and to take a broader view of expenses "incidental to licensure." While the cost of a driver's license currently appears to be \$40.00, which is a small expense compared to what driver education courses and motor vehicle insurance cost, it may still be difficult for a youth in DSCYF custody to pay that amount, especially when not having a license may otherwise prevent them from seeking employment. Additionally, to apply for a driver's license an individual needs to produce proof of identity, such as a birth certificate, Social Security card, or passport (see [https://www.dmv.de.gov/DriverServices/drivers\\_license/index.shtml?dc=dr\\_lic\\_gen\\_req](https://www.dmv.de.gov/DriverServices/drivers_license/index.shtml?dc=dr_lic_gen_req)). Youth in DSCYF custody may not always have immediate access to these documents for a variety of reasons, and there may be cost associated with obtaining duplicates. Finally, there may be additional costs associated with obtaining a driver's license for individuals with disabilities, such as adaptive driving assessments or instruction. The Division of Motor Vehicles also has discretion to require additional medical examination or testing if a mental or physical impairment is identified that may affect an individual's ability to safely operate a vehicle and there may be costs associated with this testing that are not covered by insurance. OCA should consider covering these costs to ensure equal access for youth with disabilities. Additionally, as

noted above, the Councils should encourage OCA to provide further clarification as to when an individual's participation in the program may be terminated due to "unsafe driving" to ensure this is an individualized decision to the extent possible.

**DHSS DMMA Public Notice Regarding Medicaid And Chip Coverage Of Covid-19 Treatment, Vaccines, And Testing, 26 Del. Register of Regulations 535 (January 1, 2023)**

With this notice (which is then referred to as a regulation), the Department of Health and Social Services (DHSS), Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan and the Title XXI CHIP State Plan to provide for comprehensive coverage of COVID-19 treatment, vaccinations, and testing. Written comments, suggestions, compilations of data, testimony, briefs, or other materials are due by the close of business on January 31, 2023.

During the COVID-19 pandemic, the Secretary of the United States Department of Health and Human Services waived and modified certain requirements of titles XVIII, XIX, and XXI of the Social Security Act as determined by the Centers for Medicare and Medicaid Services (CMS) to provide to individuals in the respective programs health care items and services and to ensure that health care providers be reimbursed for supplying such items and services, absent fraud or abuse.

Later, the CMS "required states to assure coverage of COVID-19 testing, vaccines, vaccine administration, and vaccine counseling without cost sharing."<sup>6</sup> CMS also "required states to assure coverage of COVID-19 treatment, including specialized equipment and therapies (including preventive therapies)."<sup>7</sup>

While Delaware has been compliant during the pandemic, this regulation attests to the assurance of coverage and makes the coverage permanent. The regulation consists of a series of attachments to the Medicaid State Plan and CHIP State Plan.

Specifically, effective March 11, 2021, Delaware's State Plan will be amended by modifying language on Attachment 7.7-A Pages 1-3 regarding COVID-19 vaccines, vaccine administration, and vaccine counseling (Vaccine and Vaccine Administration at Section 1905(a)(4)(E) of the Social Security Act); Attachment 7.7-B Pages 1-3 regarding COVID-19 testing (COVID-19 testing at Section 1905(a)(4)(F) of the Social Security Act); and Attachment 7.7-C Pages 1-3 regarding COVID-19 treatment (COVID-19 treatment at Section 1905(a)(4)(F) of the Social Security Act). The Delaware Health Children's Program State Plan will be amended by modifying language in Sections 1.4 and 6.2.27 regarding COVID-19 testing, vaccines, and treatment for CHIP plans (in compliance with the American Rescue Plan Act). Effective on and

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<sup>6</sup> Statement contained in the SUMMARY OF PROPOSAL, Background section of the public notice announcing the change in the Delaware Register of Regulations. <https://regulations.delaware.gov/documents/January2023c.pdf>

<sup>7</sup> *Id.*



after April 1, 2021, Delaware's State Plan will be amended by modifying language in Section 7.7- A Page 3, regarding rates for any medically necessary stand-alone COVID-19 vaccine counseling.<sup>8</sup>

The above provisions are subject to approval by the CMS and may require further revisions. Further, the requisite policy manuals and the Medical Assistance Portal will be updated.

This regulation makes what DHSS DMMA has been covering through the Medicaid and CHIP programs regarding COVID-19 treatment, vaccines, and testing permanent. This is important in that persons that are covered by these programs can receive the services and supplies they want and need to deal with COVID-19. Councils can and should support this regulation.

### **Amendments To Department Of Insurance Regulation 1404 Long-Term Care Insurance, 26 Del. Register of Regulations 537 (January 1, 2023)**

This is a re-proposal of amendments to Regulation 1404. Regulation 1404 implements 18 Del. C. §7101 *et seq.*, Long-Term Care Insurance. Both the original amendments and republished amendments to regulation 1404 apply to all long-term care policies issued in Delaware. It moves and re-numbers several sections which then changes when certain required disclosures have to be given to policyholders. Based upon the written comments received by the Department of Insurance from the American Council of Life Insurance and America's Health Insurance Plans, the Department has adopted the changes suggested by the commentators. Comments to the re-proposed regulation are due by the close of business on January 31, 2023.

By way of background, this reviewer also analyzed the original amendments. The following two (2) paragraphs was the analysis this reviewer provided to Councils:

Under the existing regulation, insurers must provide certain information regarding premiums and premium increases to an applicant the earlier of the time of application or of the delivery of the policy. This information included "The current daily benefit amount under the policy" (§8.2.5.1.4); "A comprehensive list of available reduced daily benefit options, and the associated premium for each listed reduced benefit option" (§8.2.5.1.5); and "The contingent non forfeiture benefit available on lapse" (§8.2.5.1.6).

The proposed amendments would only require insurers to provide these disclosures when there is a premium rate schedule increase. Further, the amendments would require additional information to be provided to policyholders. Specifically, in addition to "[t]he current daily or monthly benefit amount under the policy," the policyholder must be provided with "customer service contact information where the policyholder can obtain additional information

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<sup>8</sup>*Id.* at Summary of Proposed changes.

regarding these benefits.” (§8.5.1). In addition to “[a] reasonable list consisting of no less than 3 available reduced daily benefit options, and the associated premium for each listed reduced benefit option,” the policyholder must be provided with “customer contact information where the policyholder can obtain additional information regarding these benefit options.” (§8.5.2). If the policyholder so requests, the insurer shall provide a “comprehensive list of available reduced daily benefits options and the associated premium of each listed reduced benefit option.” (§8.5.2). Finally, in addition to providing the policyholder with “[t]he contingent non-forfeiture benefit available on lapse,” the insurer shall provide “customer service contact information where the policyholder can obtain additional information regarding this benefit.” (§8.5.3).

The above analysis and commentary is applicable to the re-proposed amendments along with the following: One comment was that some policies have payout periods other than daily or monthly. As a result, the regulation states that insurers must provide “[t]he current daily, monthly, or other periodic benefit amount under the policy or certificate” to the policyholder. This is a minor but important change to make sure that all policyholders are notified.

Another comment was that the word “daily” in Section 8.5.2 be deleted because there are other options available with traditional long term care policies to reduce premiums. The Synopsis of Subject Matter of Regulation states: “For example, a policyholder could reduce their daily benefit, their benefit period, their inflation protection, lengthen their elimination period, or drop riders on the policy, any one or more of which might help mitigate a rate increase.” As a result, “daily” and “associated premium” are deleted from the lines one (1) and two (2) of section 8.5.2. The “associated premiums,” language is replaced by “the impact on the current premium.” In addition, the following language is added: “Upon request of a policyholder or certificate holder, and insurer shall provide a comprehensive list of available reduced daily benefits options and the impact on the current premium for each listed reduced benefit option or a statement similar in substance to the following: ‘You have the right to reduce your periodic benefit amount to [any amount down to \$XX/period in \$YY increments].’”<sup>9</sup> These changes are aimed at providing complete and thorough information to policyholders about their options to lessen the impact of a rate increase.

The last comment was about the contingent non-forfeiture benefit. As a result, language was added requiring insurers to make available “[a] description of the contingent non-forfeiture benefit available” along with customer service contact information where the policyholder can obtain more information. This again is a minor but important change to make sure that all policyholders are notified of what benefits they may have and an explanation of the benefit.

The closing comments that this reviewer made about the original amendments are still applicable to the re-proposed or re-published amendments. The re-proposed amendments are a recognition by the Insurance Department that the disclosures would be more valuable and useful to policyholders when they are facing a rate increase rather than at the inception of the policy.

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<sup>9</sup> This reviewer notes that while “daily” was removed from line one (1) of section 8.5.2, it remains in line five (5). Councils could suggest that daily be deleted in line five (5).

Clearly, providing customer service contact information is helpful to policyholders who want to explore their options. They can find out their benefits under their policy and they can explore reducing their benefit with the commensurate savings in premium. The contingent non-forfeiture benefit provision in long term care policies becomes operative due to non-payment of the premium and allows the policyholder to receive a portion of the benefits based on the premiums paid before the policy lapsed. Practically, this information would be more valuable if received during the life of the policy rather than when the policy begins. This regulation benefits all individuals with a long-term care policy. Councils can and should support this regulation (with the notation in footnote 8).

### **HB 33: AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO FUNDING FOR PREKINDERGARTEN SPECIAL EDUCATION.<sup>10</sup>**

House Bill 33 (“HB 33”) seeks to amend Chapter 17, Title 14 of the Delaware Code relating to state appropriations for Delaware’s public school system. The bill would increase funding for preschool children with disabilities by lowering the student to teacher unit ratio as well as creating a new “preschool 2” unit. The bill was introduced in the Delaware House of Representatives on December 15, 2022, sponsored by Reps. K. Williams and Heffernan and Sen. Sturgeon.<sup>11</sup>

The bill was subsequently assigned to the House Education Committee which is next scheduled to meet on January 18, 2023. The current meeting notice does not include HB 33 on its list of items to be discussed.<sup>12</sup> HB 33 does the following:

1. Adds an additional Preschool 2 Basic Special Education unit at 7:1 (7 students to 1 teacher), which is consistent with the Office of Child Care Licensing requirements.<sup>13</sup>
2. Removes the tiered reduction in Preschool 3+ ratio and instead requires an immediate reduction to 8.4:1.
3. Adds a requirement that the School District receiving funds for these specific units must use the funds to support services for these students. However, funds may be used for services other than employing teachers, such as hiring paraprofessionals, related services personnel, and contractual services.

HB 33 is identical to HS 1 for HB 144<sup>14</sup> which was introduced in the 151<sup>st</sup> General Assembly. There was overwhelming support for HS 1 for HB 144 by both legislators and stakeholders. The following agencies and organizations offered comments in support of the bill: DDOE, Delaware State Educators Association, Delaware Association of School Administrators,

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<sup>10</sup> <https://legis.delaware.gov/BillDetail?LegislationId=129900>.

<sup>11</sup> HB 33 is co-sponsored by Reps. Baumbach, Bush, Griffith, Hensley, Lynn, Morrison, and Osienski and Sens. Gay, Hoffner, S. McBride, Poore, Sokola, and Walsh.

<sup>12</sup> <https://legis.delaware.gov/MeetingNotice/32925>.

<sup>13</sup> 14 Del. Admin. C. § 933.27.

<sup>14</sup> <https://legis.delaware.gov/BillDetail?LegislationId=79101>

Delaware School Boards Association, Delaware PTA, and Delaware Association of Special Education Professionals.<sup>15</sup>

HS 1 for HB 144 passed through the House Education Committee with no resistance; however, it failed to be brought before the House Appropriations Committee (“AC”), which caused the bill to die in committee. Because Council previously provided support to HS 1 for HB 144, Councils may wish to again provide its support for the bill in its entirety. Furthermore, because of the fate of HS 1 for HB 144, Councils may wish to make this a priority and contact the bill’s sponsors to ensure the same does not happen to HB 33.

## **FINAL REGULATIONS**

GACEC and SCPD were mentioned for making comments in the final regulations for DDOE 1520 (Early Teacher); DDOE 1519 (Measures for Demonstrating Content Knowledge); DHSS Reasonable Compatibility; and DSCYF 701 ( Juvenile Mental Health Screeners).

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<sup>15</sup> Four individual stakeholders offered additional support for the bill.