

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Chapter 49A
(16 Del.C. Ch. 49A)

PROPOSED

PUBLIC NOTICE

State of Delaware Medical Marijuana Code

Senate Bill 17, signed into law in May 2011, creates the Delaware Medical Marijuana Act. The Department of Health and Social Services is proposing regulations which establish the regulation of the Delaware Medical Marijuana Act to be hereby known as the State of Delaware Medical Marijuana Code. On April 1, 2012, the Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services, plans to publish as proposed regulations governing the State of Delaware Medical Marijuana Act and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the April 1, 2012 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Health Systems Protection Section at 302-744-4705.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by Monday, April 30, 2012 at:

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Rules and Regulations Governing the Delaware Medical Use of Marijuana

Preamble

The Secretary of Delaware Health and Social Services adopts these Regulations in response to the authority vested in the Secretary by 16 Delaware Code Chapter 49A, The Delaware Health and Social Services Medical Marijuana Act. These Regulations establish the standards for the procedures for issuing a certificate of registration to qualified patients and primary caregivers. These Regulations provide a system of permitting and inspection, as well as governing confidentiality, payments of fees, and enforcement of these rules.

Purpose

These Regulations shall be liberally construed and applied to promote their underlying purpose of protecting the public's health.

1.0 State of Delaware Medical Marijuana Code

These Regulations shall hereby be known as the "State of Delaware Medical Marijuana Code."

2.0 Definitions

The following words and terms, when used in these Regulations, should have the following meaning, unless the context clearly indicates otherwise:

"Adulterated" means made impure or inferior by adding extraneous ingredients. Goods that are prepared in food establishments that are licensed facilities in response to 16 Del.C. §122(3)(u) and 16 Del.C. §134, and that contain marijuana for medical use by a registered patient, are not considered to be adulterated.

"Advisory board" means a nine member committee established, chaired, and appointed by the General Assembly of Delaware to evaluate and make recommendations to the state legislature and the Department.

"Applicant" means any person applying to participate in the Delaware Office of Medical Marijuana Program, hereinafter OMMP.

"Cardholder" means a registered patient or a registered designated caregiver who has been issued and possesses a valid registry identification card.

“Debilitating medical condition” means a chronic or debilitating disease, medical condition or symptom listed in these rules and as defined in 16 **Del.C. §4902A(3)** that qualifies for the medical use of marijuana by a registered patient.

“Department” means the Delaware Department of Health and Social Services.

“Designated caregiver” means a person who:

- (a) is at least 21 years of age
- (b) has agreed to assist with a patient’s medical use of marijuana
- (c) has not been convicted of an excluded felony offense; and
- (d) assists no more than five qualifying patients with their medical use of marijuana

“Excluded felony offense” means:

- (a) a violent crime defined in 11 **Del.C. §4201(c)**, that was classified as a felony in the jurisdiction where the person was convicted; or
- (b) a violation of a state or federal controlled substance law that was classified as a felony in the jurisdiction where the person was convicted, not including:
 - (1) an offense for which the sentence, including any term of probation, incarceration, or supervised release, was completed 10 or more years earlier; or
 - (2) an offense that consisted of conduct for which this chapter would likely have prevented a conviction, but the conduct either occurred prior to the enactment of this chapter or was prosecuted by an authority other than the state of Delaware.

“Incidental amount of marijuana” means marijuana seeds, stalks and roots of the plant that are not included when calculating the allowable amounts of marijuana specified in these rules. This includes the weight of any non-marijuana ingredients combined with marijuana, such as ingredients added to prepare a topical ointment, food or drink.

“Marijuana” means the same as defined in 16 **Del.C. §4701 (23)**.

“Marijuana paraphernalia” is limited to equipment, products and materials that are ordinarily used in planting, propagating, cultivating, growing, harvesting, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling or otherwise introducing marijuana into the human body. It includes:

- (a) Scales and balances used or intended for use in weighing or measuring marijuana;
- (b) Separation gins and sifters, used or intended for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
- (c) Envelopes and other containers used or intended for use in packaging small quantities of marijuana for medical use;
- (d) Containers and other objects used or intended for use in storing medical marijuana; and
- (e) Objects used or intended for use in ingesting, inhaling or otherwise introducing marijuana into the human body, including but not limited to:
 - (1) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;
 - (2) Water pipes;
 - (3) Carburetion tubes and devices;
 - (4) Smoking and carburetion masks;
 - (5) Roach clips, meaning objects used to hold burning marijuana cigarettes that have become too small or too short to be held in the hand;
 - (6) Chamber pipes;
 - (7) Carburetor pipes;
 - (8) Electric pipes;
 - (9) Air-driven pipes;
 - (10) Chillums;
 - (11) Bongs designed for marijuana and not for cocaine; or
 - (12) Ice pipes or chillers.

“Medical use” means the acquisition, possession, use, delivery, transfer or transportation of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a registered patient’s debilitating medical condition or symptoms associated with the registered patient’s debilitating medical condition.

“Onsite assessment” means a visit by an employee of the Department for the purpose of ensuring compliance with the requirements of these rules.

“Physician” means a properly licensed physician subject to 24 Del.C. Chs. 17 and 19, except as otherwise provided in this subsection. If the qualifying patient’s debilitating medical condition is post-traumatic stress disorder, the physician must also be a licensed psychiatrist. In relation to a visiting qualifying patient, “physician” means a person who is licensed with authority to prescribe drugs to humans and who may issue a written certification or its equivalent in the state of the patient’s residence.

“Qualifying patient” means a person who has been diagnosed by a physician as having a debilitating medical condition.

“Registry identification card” means a document issued by the Department that identifies a person as a registered patient or registered designated caregiver.

“Tincture” means a mixture created from a concentrated extract of marijuana.

“Topical treatment” means a mixture or extract of marijuana made into a balm, lotion, ointment or rubbing alcohol solution, that is applied transcutaneously.

“Usable amount of medical marijuana for medical use” means six ounces or less of usable marijuana as defined below.

“Usable marijuana” means the dried leaves and flowers of the marijuana plant, and any mixture or preparation of those dried leaves and flowers, including but not limited to tinctures, ointments, and other preparations. It does not include the weight of any non-marijuana ingredients combined with marijuana, such as ingredients added to prepare a topical administration, food, or drink.

“Verification system” means a phone or web-based system established and maintained by the Department that is available to law enforcement personnel and compassion center agents on a twenty-four-hour basis for verification of registry identification cards.

“Visiting qualifying patient” means a patient who:

- (a) has been diagnosed with a debilitating medical condition;
- (b) possesses a valid registry identification card, or its equivalent, that was issued pursuant to the laws of another state, district, territory, commonwealth, insular possession of the United States or country recognized by the United States that allows the person to use marijuana for medical purposes in the jurisdiction of issuance; and
- (c) is not a resident of Delaware or who has been a resident of Delaware for less than 30 days.

“Written certification” means a document dated and signed by a physician, stating that in the physician’s opinion the patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient’s debilitating medical condition or symptoms associated with the debilitating medical condition. A written certification shall be made only in the course of a bona fide physician-patient relationship where the qualifying patient is under the physician’s care for her or his primary care or for her or his debilitating condition after the physician has completed an assessment of the qualifying patient’s medical history and current medical condition. The bona fide physician-patient relationship may not be limited to authorization for the patient to use medical marijuana or consultation for that purpose. The written certification shall specify the qualifying patient’s debilitating medical condition.

3.0 Qualifying Patient Identification Card Application Requirements

3.1 The Department shall issue a registry identification card to an applicant for the purpose of participating in the medical marijuana program upon the written certification of the applicant’s Physician, supporting application documents and a non-refundable application fee with a personal check or a cashier’s check made out to “State of Delaware, Medical Marijuana Program.” The following information shall be provided in the participant enrollment form submitted to the Department in order for a registry identification card to be obtained and processed.

3.2 An attached original written certification for patient eligibility form shall contain:

- 3.2.1 the name, address and telephone number of the applicant’s Physician;
- 3.2.2 the Physician’s clinical licensure;
- 3.2.3 the patient applicant’s name and date of birth;
- 3.2.4 the medical justification for the Physician’s certification of the patient’s debilitating medical condition;
- 3.2.5 the Physician’s signature and date;
- 3.2.6 the name, address and date of birth of the applicant;
- 3.2.7 the name, address and date of birth of the applicant’s primary caregiver(s), if any;

- 3.2.8 a reasonable xerographic copy of the applicant's Delaware driver's license or comparable State of Delaware or federal issued photo identification card verifying Delaware residence; State of Delaware issued identification card must be available for inspection/verification;
- 3.2.9 the length of time the applicant has been under the care of the Physician providing the medical provider certification for patient eligibility;
- 3.2.10 the applicant's signature and date; and
- 3.2.11 a signed consent for release of medical information related to the patient's debilitating medical condition, on a form provided by the medical marijuana program.

4.0 Designated Caregiver Registry Identification Card Application Requirements

- 4.1 The Department shall issue a registry identification card to a primary caregiver applicant for the purpose of managing the well-being of one to five qualified patients, including themselves if caregiver is a qualified patient, in response to the requirements of this rule upon the completion and approval of the primary caregiver application form, available from the medical marijuana program, and a non-refundable application fee, in the form of a personal check or a cashier's check made out to "State of Delaware, Medical Marijuana Program". In order for a registry identification card to be obtained and processed, the following information shall be submitted to the medical marijuana program:
 - 4.1.1 birth certificate verifying that the applicant is at least (21) years of age;
 - 4.1.2 a reasonable xerographic copy of the applicant's Delaware license or comparable State of Delaware or federal issued photo identification card verifying Delaware residence; State of Delaware issued identification card must be available for inspection/verification.
 - 4.1.3 written approval by the qualified patient(s) and the qualified patient(s)' Physician(s) authorizing responsibility for managing the well-being of a qualified patient(s) with respect to the use of marijuana;
 - 4.1.4 the name(s), address(es), telephone number(s) and date of birth of the qualified patient(s);
 - 4.1.5 the name, address and telephone number for each of the qualified patient's Physicians;
 - 4.1.6 the name, address, telephone number of the applicant; and
 - 4.1.7 the applicant's signature and date.
- 4.2 Designated caregiver application requirements:
 - 4.2.1 Criminal history screening requirements:
 - 4.2.1.1 All designated caregiver applicants are required to consent to a nationwide and statewide criminal history screening background check. All applicable application fees associated with the nationwide and statewide criminal history screening background check shall be paid by the primary caregiver applicant.
 - 4.2.1.2 Individuals convicted of an excluded felony offense, as described in the definitions Section 2.0, and 16 Del.C. §4902A(7) are prohibited from serving as a designated caregiver. The applicant and qualified patient shall be notified by registered mail of his or her disqualification from being a designated caregiver.

5.0 Registry Identification Cards

- 5.1 Department inquiry:
 - 5.1.1 The Department may verify information on each application and accompanying documentation by the following methods:
 - 5.1.1.1 contacting each applicant by telephone, mail, or if proof of identity is uncertain, the Department shall require a face-to-face meeting and the production of additional identification materials
 - 5.1.1.2 contacting the Delaware Division of Professional Regulation to verify that the Physician is licensed to practice medicine in Delaware and is in good standing; and
 - 5.1.1.3 contacting the Physician to obtain further documentation that the applicant's medical diagnosis and medical condition qualify the applicant for enrollment in the medical use marijuana program.
 - 5.1.2 Upon verification of the information contained in an application submitted in response to this subsection, the Department shall approve or deny an application within 45 calendar days of receipt.
- 5.2 Department registry identification card: The Department shall issue a registry identification card within 30 calendar days of approving an application. A registry identification card shall contain a 10-digit alphanumeric identification, maintained by the Department, which identifies the qualified patient or primary caregiver. Unless renewed at an earlier date, suspended or revoked, or if the physician stated in the written certification that the qualifying patient would benefit from marijuana until a specified earlier date, a registry identification card shall

be valid for a period of 1 year from the date of issuance and shall expire at midnight on the day indicated on the registry identification card as the expiration date.

5.3 Supplemental requirement:

- 5.3.1** A registered qualifying patient or registered designated caregiver who possesses a registry identification card shall notify the Department of any change in the person's name, address, qualified patient's Physician status, qualified patient's designated caregiver status, or change in status of the qualified patient's debilitating medical condition, within 10 calendar days of the change. An extension shall be granted by the medical marijuana program upon the showing of good cause.
- 5.3.2** Before a registered qualifying patient changes his or her designated caregiver, the qualifying patient must notify the Department in writing.
- 5.3.3** If a cardholder loses his or her registry identification card, he or she shall notify the Department in writing within 10 days of becoming aware the card has been lost. Upon notification, the Department shall issue a new registry identification card. Unless documentation in the initial application has changed, the qualified patient or designated caregiver shall not be required to submit a new application.
- 5.3.4** When a cardholder notifies the Department of items listed in Section 5.3 but remains eligible, the Department shall issue the cardholder a new registry identification card with a new random 10-digit alphanumeric identification number within 10 days of receiving the updated information and the cardholder shall pay a \$20 fee. If the person notifying the Department is a registered qualifying patient, the Department shall also issue his or her registered designated caregiver, if any, a new registry identification card within 10 days of receiving the updated information.
- 5.3.5** If a registered qualifying patient ceases to be a registered qualifying patient or changes his or her registered designated caregiver, the Department shall promptly notify the designated caregiver by legal process server. The registered designated caregiver's protections under this chapter as to that qualifying patient shall expire 15 days after notification by the Department.
- 5.3.6** A cardholder who fails to make a notification to the Department that is required by Section 5.3 is subject to a civil infraction, punishable by a penalty of no more than \$150.00 shall result in the immediate revocation of the registry identification card and all lawful privileges provided under the act.
- 5.3.7** If the registered qualifying patient's certifying physician notifies the Department in writing that either the registered qualifying patient has ceased to suffer from a debilitating medical condition or that the physician no longer believes the patient would receive therapeutic or palliative benefit from the medical use of marijuana, the card shall become null and void. However, the registered qualifying patient shall have 15 days to dispose of his or her marijuana.

5.4 Registry identification card application denial: The DHSS Secretary or designee shall deny an application if the applicant fails to provide the information required, if the Department determines that the information provided is false, or if the patient does not have a debilitating medical condition eligible for enrollment in the program, as determined by the DHSS Secretary. A person whose application has been denied shall not reapply for 6 months from the date of the denial, unless otherwise authorized by the Department, and is prohibited from all lawful privileges provided by this rule and act.

5.4.1 The Department shall deny an application or renewal of a qualifying patient's registry identification card if the applicant:

- 5.4.1.1** did not provide the required information and materials;
- 5.4.1.2** previously had a registry identification card revoked; or
- 5.4.1.3** provided false or falsified information.

5.4.2 The Department shall deny an application or renewal for a designated caregiver chosen by a qualifying patient whose registry identification card was granted if:

- 5.4.2.1** the designated caregiver does not meet the requirements of Section 4.2;
- 5.4.2.2** the applicant did not provide the information required;
- 5.4.2.3** the designated caregiver previously had a registry identification card revoked; or
- 5.4.2.4** the applicant or the designated caregiver provides false or falsified information.

5.4.3 The Department shall notify the qualifying patient who has designated someone to serve as his or her designated caregiver if a registry identification card will not be issued to the designated caregiver.

5.4.4 Denial of an application or renewal is considered a final Department action, subject to judicial review. Jurisdiction and venue for judicial review are vested in the Superior Court.

5.5 Registry identification card renewal application: Each registry identification card issued by the Department is valid in accordance to Section 5.2. A qualified patient or primary caregiver shall apply for a registry identification card renewal no less than 45 calendar days prior to the expiration date of the existing registry

identification card in order to prevent interruption of possession of a valid (unexpired) registry identification card.

- 5.6 Non-transferable registration of registry identification card: A registry identification card shall not be transferred, by assignment or otherwise, to other persons or locations. Any attempt shall result in the immediate revocation of the registry identification card and all lawful privileges provided by this rule and act.
- 5.7 Automatic expiration of registry identification card by administrative withdrawal: Upon request the qualified patient or designated caregiver shall discontinue the medical marijuana program by an administrative withdrawal. A qualified patient or designated caregiver that intends to seek an administrative withdrawal shall notify the licensing authority in writing no less than 30 calendar days prior to withdrawal.

6.0 Registration and Operation of Compassion Centers

- 6.1 General Requirements for Operation of a Compassion Center. RESERVED
- 6.2 Security Requirements: RESERVED
- 6.3 Operations Manual. RESERVED
- 6.4 Required Training. RESERVED
- 6.5 Personnel Records. RESERVED
- 6.6 Application for Operation of Compassion Center. RESERVED
- 6.7 Complete Application Required. RESERVED
- 6.8 Compassion Center Application Review Criteria. RESERVED
- 6.9 Issuance of Registration Certificate Authorizing Operation of a Compassion Center. RESERVED
- 6.10 Registry Identification Cards for Principal Officers, Board Members, Agents, Volunteers or Employees of a Compassion Center. RESERVED
- 6.11 Expiration Date. RESERVED
- 6.12 Expiration, Termination or Renewal of a Registration Certificate Authorizing Operation of a Compassion Center. RESERVED
- 6.13 Non-transferable Registration Certificate Authorizing Operation of a Compassion Center. RESERVED
- 6.14 Maximum Amount of Usable Marijuana to be Dispensed. RESERVED
- 6.15 Inspection. RESERVED

7.0 Registration and Operation of Testing Facility Centers

- 7.1 General Requirements for Operation of a Testing Facility Center. RESERVED
- 7.2 Security Requirements: RESERVED
- 7.3 Operations Manual. RESERVED
- 7.4 Required Training. RESERVED
- 7.5 Personnel Records. RESERVED
- 7.6 Application for Operation of Testing Facility Center. RESERVED
- 7.7 Complete Application Required. RESERVED
- 7.8 Testing Facility Center Application Review Criteria. RESERVED
- 7.9 Issuance of Registration Certificate Authorizing Operation of a Testing Facility Center. RESERVED
- 7.10 Registry Identification Cards for Principal Officers, Board Members, Agents, Volunteers or Employees of a Testing Facility Center. RESERVED
- 7.11 Expiration Date. RESERVED
- 7.12 Expiration, Termination or Renewal of a Registration Certificate Authorizing Operation of a Testing Facility Center. RESERVED
- 7.13 Non-transferable Registration Certificate Authorizing Operation of a Testing Facility Center. RESERVED
- 7.14 Inspection. RESERVED

8.0 Monitoring and Corrective Actions

- 8.1 Monitoring:
 - 8.1.1 The Department or its designee may perform on-site assessments of a qualified patient or primary caregiver to determine compliance with these rules. The Department may enter the premises of a qualified patient or primary caregiver during business hours for purposes of monitoring and compliance. Twenty-four (24) hours' notice will be provided to the qualified patient or primary caregiver prior to an on-site

assessment except when the Department has a reasonable suspicion to believe that providing notice will result in the destruction of evidence or that providing such notice will impede the Department's ability to enforce these Regulations.

8.1.2 All qualified patients or primary caregivers shall provide the Department or the Department's designee immediate access to any material and information necessary for determining compliance with these requirements.

8.1.3 Failure by the qualified patient or primary caregiver to provide the Department access to the premises or information may result in action up to and including the revocation of the qualified patient or primary caregiver registry identification card and referral to state law enforcement.

8.1.4 Any failure to adhere to these rules, documented by the Department during monitoring, may result in sanction(s), including suspension, revocation, non-renewal or denial of licensure and referral to state or local law enforcement.

8.1.5 The Department shall refer credible criminal complaints against a qualified patient or primary a caregiver to the appropriate Delaware state or appropriate local authorities.

8.2 Corrective action:

8.2.1 If violations of these requirements are cited as a result of monitoring, the qualified patient or primary caregiver shall be provided with an official written report of the findings following the monitoring visit.

8.2.2 Unless otherwise specified by the Department, the qualified patient or primary caregiver shall correct the violation within 5 calendar days of receipt of the official written report citing the violation(s).

8.2.3 The violation shall not be deemed corrected until the Department verifies in writing after receiving notice of the corrective action that the corrective action is satisfactory.

8.2.4 If the violation has not been corrected, the Department may issue a notice of contemplated action to revoke the qualified patient's or designated caregiver's registry identification card.

8.2.5 Suspension of registry identification card without prior hearing: In accordance with the 16 Delaware Code Chapter 49A, if immediate action is required to protect the health and safety of the general public, the Department may suspend the qualified patient or designated caregiver registry identification card without notice.

8.2.5.1 A qualified patient or primary caregiver whose registry identification card has been summarily suspended is entitled to a record review not later than 30 calendar days after the registry identification card was summarily suspended.

8.2.5.2 The record review requested subsequent to a summary suspension shall be conducted by the Department.

8.2.5.3 The Department shall conduct the record review on the summary suspension by reviewing all documents submitted by both card holder and the Department.

8.2.5.4 The sole issue at a record review on a summary suspension is whether the card holder's registry identification card shall remain suspended pending a final adjudicatory hearing and ruling.

8.2.5.5 A card holder given notice of summary suspension by the division may submit a written request for a record review. To be effective, the written request shall:

8.2.5.5.1 be made within 30 calendar days, as determined by the postmark, from the date of the notice issued by the Department;

8.2.5.5.2 be properly addressed to the medical marijuana program;

8.2.5.5.3 state the applicant's name, address, and telephone number(s);

8.2.5.5.4 provide a brief narrative rebutting the circumstances of the suspension, and

8.2.5.5.5 additional documentation must be included with the request for a record review.

8.3 Summary Suspension, Revocation and Appeal Process:

8.3.1 Participation in the medical marijuana program by a qualified patient or primary caregiver does not relieve the qualified patient or primary caregiver from:

8.3.1.1 criminal prosecution or civil penalties for activities not authorized in this rule and act;

8.3.1.2 liability for damages or criminal prosecution arising out of the operation of a vehicle while under the influence of marijuana; or

8.3.1.3 criminal prosecution or civil penalty for possession, distribution or transfers of marijuana or use of marijuana:

8.3.1.3.1 in a school bus or public vehicle;

8.3.1.3.2 on school grounds or property;

8.3.1.3.3 in the workplace of the qualified patient's or primary caregiver's employment;

- 8.3.1.3.4 at a public park, recreation center, youth center or other public place;
 - 8.3.1.3.5 to a person not approved by the Department pursuant to this rule;
 - 8.3.1.3.6 outside Delaware or attempts to obtain or transport marijuana from outside Delaware; or
 - 8.3.1.3.7 that exceeds the allotted amount of usable medical use marijuana.
- 8.3.2 Revocation of registry identification card: Violation of any provision of this rule may result in either the summary suspension of the qualified patient's or primary caregiver's registry identification card, or a notice of contemplated action to suspend or revoke the qualified patient's or primary caregiver's registry identification card, and all lawful privileges under the act.
- 8.3.3 Grounds for revocation or suspension of registry identification card, denial of renewal application for registry identification card. A registry identification card may be revoked or suspended, and a renewal application may be denied for:
 - 8.3.3.1 failure to comply with any provisions of these requirements;
 - 8.3.3.2 failure to allow a monitoring visit by authorized representatives of the Department;
 - 8.3.3.3 the discovery of repeated violations of these requirements during monitoring visits.
- 8.4 Request for hearing: A qualified patient or primary caregiver whose registry identification card has been summarily suspended, or who has received a notice of contemplated action to suspend or revoke, may request a hearing, in addition to a request for a record review, for the purpose of review of such action. The appellant shall file the request for hearing within 30 calendar days of the date the action is taken or the notice of contemplated action is received. The request shall include the following:
 - 8.4.1 a statement of the facts relevant to the review of the action;
 - 8.4.2 a statement of the provision of the act and the rules promulgated under the act that are relevant to the review of the action;
 - 8.4.3 a statement of the arguments that the appellant considers relevant to the review of the action; and
 - 8.4.4 any other evidence considered relevant.
- 8.5 Hearing process:
 - 8.5.1 All formal adjudicatory hearings held in response to these Regulations shall be conducted by a hearing officer duly appointed by the DHSS Secretary.
 - 8.5.2 Except for telephonic hearings, hearings shall be conducted in Dover or, upon written request by an aggrieved person, in the place or area affected.
 - 8.5.3 All hearings held pursuant to this section shall be open to the public.
 - 8.5.4 The hearing shall be recorded on audiotape or other means of sound reproduction, or by a certified court reporter. The decision as to the type of recording shall be at the discretion of the Department.
 - 8.5.5 Any hearing provided for in this rule may be held telephonically, in the interest of a speedy resolution.
 - 8.5.6 The Department shall schedule and hold the hearing as soon as practicable, however; in any event no later than 60 calendar days from the date the Department receives the appellant's request for hearing. The hearing officer shall extend the 60 day time period upon motion for good cause shown or the parties shall extend the 60 day time period by mutual agreement. The Department shall issue notice of hearing, not less than 20 days prior to the hearing, which shall include:
 - 8.5.6.1 a statement of the time, place and nature of the hearing;
 - 8.5.6.2 a statement of the legal authority and jurisdiction under which the hearing is to be held;
 - 8.5.6.3 a short and plain statement of the matters of fact and law asserted;
 - 8.5.6.4 notice to any other parties to give prompt notice of issues controverted in fact or law; and
 - 8.5.6.5 all necessary telephone numbers if a telephonic hearing shall be conducted.
- 8.6 All parties shall be given the opportunity to respond and present evidence and argument on all relevant issues.
- 8.7 Record of proceeding: The record of the proceeding shall include the following:
 - 8.7.1 all pleadings, motions and intermediate rulings;
 - 8.7.2 evidence received or considered;
 - 8.7.3 a statement of matters officially noticed;
 - 8.7.4 questions and offers of proof, objections and rulings thereon;
 - 8.7.5 proposed findings and conclusions; and
 - 8.7.6 any action recommended by the hearing officer.
- 8.8 A party may request a transcription of the proceedings. The party requesting the transcript shall endure the cost of transcription.
- 8.9 Procedures and evidence:

- 8.9.1 Any party shall be represented by a person licensed to practice law in Delaware or an individual appellant may represent him or herself.
- 8.9.2 The rules of evidence as applied in the courts do not apply in these proceedings. Any relevant evidence shall be admitted and such evidence shall be sufficient in itself to support a finding if the evidence is reliable, regardless of the existence of any statutory or common law rule that shall make admission of such evidence improper in a civil action. Irrelevant, immaterial or unduly repetitious evidence shall be excluded at a party's request or on the hearing officer's own initiative.
- 8.9.3 Documentary evidence shall be received in evidence in the form of true copies of the original.
- 8.9.4 Documentary and other physical evidence shall be authenticated or identified by any reasonable means that shows that the matter in question is what the proponent claims it to be.
- 8.9.5 The experience, technical competence and specialized knowledge of the hearing officer, the Department or the Department's staff shall be used in the evaluation of evidence.
- 8.9.6 Evidence on which the hearing officer shall base his or her decision is limited to the following:
 - 8.9.6.1 all evidence, including any records, investigation reports and documents in the Department's possession of which the Department desires to avail itself as evidence in making a decision that is offered and made a part of the record of the proceeding; and
 - 8.9.6.2 testimony and exhibits introduced by the parties.
- 8.9.7 The record shall include all briefs, proposed findings and exceptions and shall show the ruling on each finding, exception or conclusion presented.
- 8.9.8 A party to a hearing shall submit to the hearing officer, and to all other parties to the hearing, all documents to be introduced at the hearing no later than five business days from the scheduled hearing date to insure the hearing officer and other parties receive the documents prior to the hearing.
- 8.9.9 The Department may choose to:
 - 8.9.9.1 issue subpoenas for witnesses and other sources of evidence, either on the agency's initiative or at the request of any party; and
 - 8.9.9.2 administer oaths to witnesses; limit unduly repetitive proof, rebuttal and cross-examination.
- 8.10 Conduct of proceeding: Unless the hearing officer reasonably determines a different procedure is appropriate, the hearing shall be conducted in accordance with the procedures set forth in this rule. The following procedures shall apply:
 - 8.10.1 the appellant shall present an opening statement on the merits and the appellee shall make a statement of the defense or reserve the statement until presentation of that party's case;
 - 8.10.2 after the opening statements, if made, the appellant shall present its case in chief in support of the appellant's petition;
 - 8.10.3 upon the conclusion of the appellant's case, the appellee shall present its case in defense;
 - 8.10.4 upon conclusion of the appellee's case, the appellant shall present rebuttal evidence;
 - 8.10.5 after presentation of the evidence by the parties, the appellant shall present a closing argument; the appellee then shall present its closing argument and the appellant shall present a rebuttal argument; and
 - 8.10.6 thereafter, the matter shall be submitted for recommendation by the hearing officer.
- 8.11 Burden of proof: The appellant bears the burden of showing by a preponderance of the evidence that the decision made by the Department or an agent of the Department shall be reversed or modified.
- 8.12 Continuances: The hearing officer shall not grant a continuance except for good cause shown. A motion to continue a hearing shall be made at least 10 calendar days before the hearing date.
- 8.13 Telephonic hearings:
 - 8.13.1 Any party requesting a telephonic hearing shall do so within 10 business days of the date of the notice. Immediately after the parties agree to conduct the hearing by telephone, notice of the telephonic hearing shall be made to all parties and shall include all necessary telephone numbers.
 - 8.13.2 Any party that has agreed to a telephonic hearing, but subsequently requests an in-person hearing shall do so in writing to the hearing officer no later than 10 calendar days before the scheduled date of the hearing. The decision to grant or deny the request for an in-person hearing shall be at the discretion of the hearing officer for good cause shown. The hearing officer's decision to grant or deny the hearing shall be issued in writing and shall include the specific reasons for granting or denying the request. Should the hearing officer grant the request, the hearing shall be rescheduled to a time convenient for all parties. Should the hearing officer deny the request, the telephonic hearing shall proceed as scheduled.
 - 8.13.3 The location or locations of the parties during the hearing shall have a speaker telephone and facsimile machine available so that all shall hear the proceedings and documents shall be transmitted between witnesses and the hearing officer.

8.13.4 The appellee shall initiate the telephone call. The appellant is responsible for ensuring the telephone number to the appellant's location for the telephonic hearing is accurate and the appellant is available at said telephone number at the time the hearing is to commence. Failure to provide the correct telephone number or failure to be available at the commencement of the hearing shall be treated as a failure to appear and shall subject the petitioner to a default judgment.

8.13.5 The in-person presence of some parties or witnesses at the hearing does not prevent the participation of other parties or witnesses by telephone with prior approval of the hearing officer.

8.14 Recommended action and final decision:

8.14.1 At the request of the hearing officer or upon motion by either party granted by the hearing officer, and before the hearing officer recommends action by the secretary, the parties shall submit briefs including findings of fact and conclusions of law for consideration by the hearing officer. The hearing officer holds the discretion to request briefs or grant a motion to submit briefs on any point of law deemed appropriate by the hearing officer. Briefs submitted shall include supporting reasons for any findings or legal conclusions and citations to the record and to relevant law. Should the hearing officer request briefs or grant a party's motion to submit briefs, the hearing shall be continued until the hearing officer has given the briefs sufficient consideration and brings the hearing to a close. The hearing, however, shall be completed no later than 45 calendar days from the date of continuance.

8.14.2 No more than 30 calendar days after completion of the hearing, the hearing officer shall prepare a written decision containing recommendation of action to be taken by the secretary. The recommendation shall propose to sustain, modify or reverse the initial decision of the Department or the Department's agent.

8.14.3 The secretary shall accept, reject or modify the hearing officer's recommendation no later than 10 calendar days after receipt of the hearing officer's recommendation. The final decision or order shall be issued in writing and shall include:

8.14.3.1 a brief summary of the evidence.

8.14.3.2 a statement of findings of fact based upon the evidence.

8.14.3.3 conclusions and the reasons thereof, on all material issues of fact, law or discretion involved.

8.14.3.4 any other conclusions required by law of the Department, and

8.14.3.5 a concise statement of the Department's specific determination or action taken to sustain, modify or reverse the initial decision of the Department or the Department's agent.

8.14.3.6 Service shall be made by registered or certified mail.

8.14.4 The final decision or order shall be public information and shall become a part of the record.

9.0 Severability

In the event any particular clause or section of these Regulations should be declared invalid or unconstitutional by any court of competent jurisdiction, the remaining portions shall remain in full effect.

15 DE Reg. 1424 (04/01/12) (Prop.)