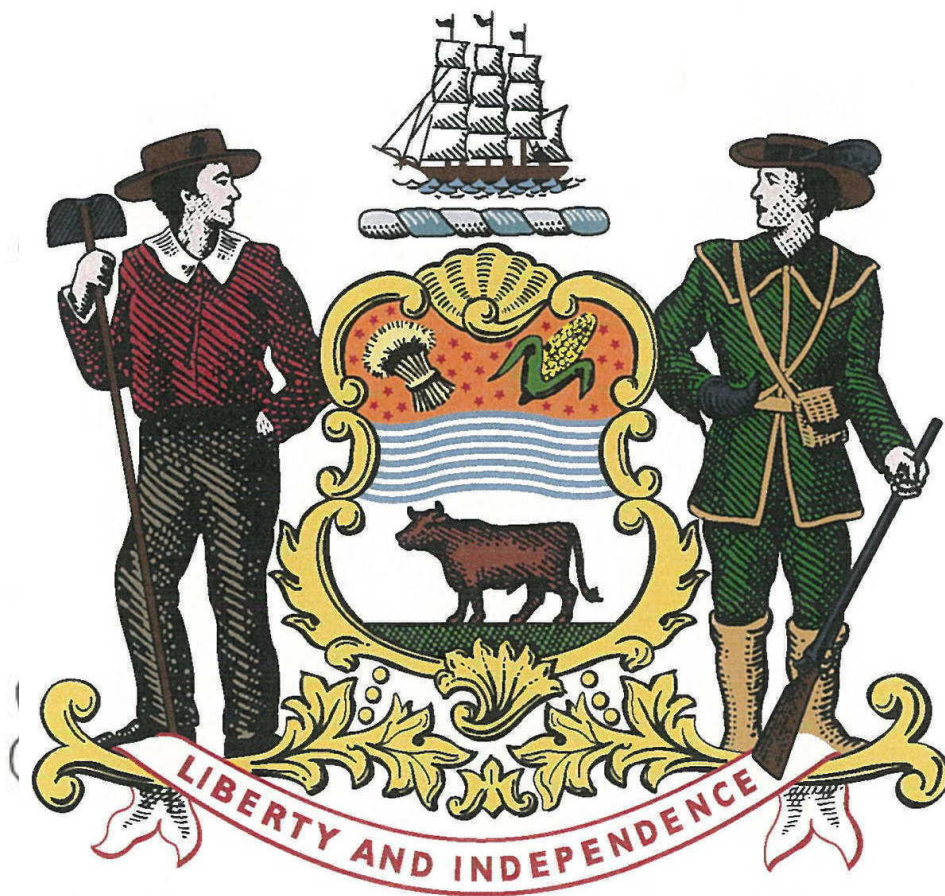

Joint Legislative Oversight and Sunset Committee 2018 Final Report



*A Report to the Governor and the
149th General Assembly of the State of Delaware*

June 2018

2018 Joint Legislative Oversight and Sunset Committee Members

Representative Stephanie T. Bolden,
Chair

Senator John J. Walsh,
Vice-Chair

Representative Andria L. Bennett

Representative Gerald L. Brady

Representative Timothy D. Dukes

Representative Jeffrey N. Spiegelman

Senator Anthony Delcollo

Senator Stephanie L. Hansen

Senator Brian G. Pettyjohn

Senator David P. Sokola

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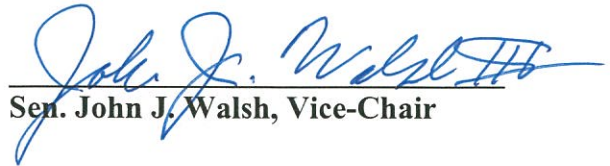
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The Joint Sunset Committee approves and submits the 2018 Final Report to the Governor and members of the 149th General Assembly.



Rep. Stephanie T. Bolden, Chair



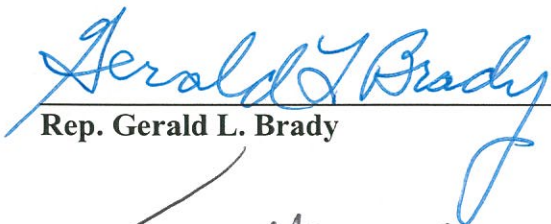
Sen. John J. Walsh, Vice-Chair



Rep. Andria L. Bennett



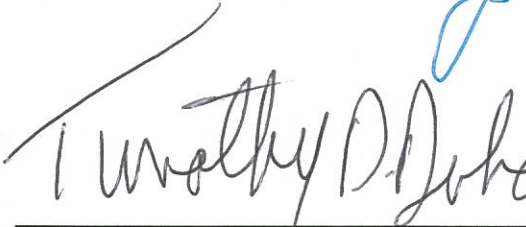
Sen. Anthony Delcollo



Rep. Gerald L. Brady



Sen. Stephanie L. Hansen



Rep. Timothy D. Dukes



Sen. Brian G. Pettyjohn



Rep. Jeffrey N. Spiegelman



Sen. David P. Sokola

Executive Summary

Background

Delaware's Legislative Oversight and Sunset Law, enacted in 1979 in Chapter 102 of Title 29, provides for the periodic legislative review of state agencies, boards, and commissions ("entity" or, collectively, "entities"). The purpose of review is to determine if there is a public need for an entity and, if so, to determine if it is effectively performing to meet that need. Generally, an entity is not reviewed more than once every six years.

The Joint Legislative Oversight and Sunset Committee ("JLOSC" or "Committee") is responsible for guiding the review process. The Committee is a bipartisan committee comprised of ten legislators. Five senators are appointed to serve on the Committee by the Senate President Pro Tempore and five representatives are appointed by the Speaker of the House.

Reviews are generally conducted over a ten to twelve month time period commencing in July. The Committee's Analyst compiles a comprehensive review of each entity, based on the responses each entity provides on a questionnaire designed to meet statutory criteria, and then prepares a preliminary report for the Committee members' use during public hearings held in February and March of each year. Public hearings serve as a critical component of the review process because they provide the best opportunity for JLOSC to determine if there is a genuine public need for the entity, and if the entity is beneficial to the public's health, safety, and welfare.

At the conclusion of a review, JLOSC may recommend the continuance, consolidation, reorganization, transfer, or termination (sunset) of an entity. Although the Committee has "sunset" a small number of entities since its first reviews in 1980, the more common approach has been for the Committee to work with an entity under review to formalize specific statutory and non-statutory recommendations with an end goal of improving the entity's overall performance and government accountability.

2018 Sunset Reviews

This report details the work of the Committee from July 2017 through June 2018. Specifically, it focuses on the following entities:

- Board of Occupational Therapy.
- Council on Correction.
- Child Protection Accountability Commission.
- Division of Waste and Hazardous Substance's management of the Hazardous Substance Control Act ("HSCA") Fund.
- Board of Clinical Social Work Examiners.
- State Board of Education.
- Diamond State Port Corporation.

Guide to this Report

The following pages detail the work of the Committee during the second session of the 149th General Assembly, including the Committee's Final Recommendations and the individual entity reports developed by the Committee's Analyst. The reports served as references for the Committee during public hearings and facilitated the development of the Final Recommendations.

Summary of 2018 Joint Legislative Oversight and Sunset Committee Actions

The Committee held public hearings regarding the Board of Occupational Therapy, Child Protection Accountability Commission, Council on Correction, and the Division of Waste and Hazardous Substance's management of the Hazardous Substance Cleanup Act Fund. As a result of the public hearings and subsequent Committee meetings and deliberations, the Committee recommended the continuation and release of two entities, and hold over of two entities.

Board of Occupational Therapy – Released Upon Enactment of Recommended Legislation.

The Committee recommended continuing the **Board of Occupational Therapy** and releasing it from review upon the enactment of recommended legislation. The Committee's recommendations included updates to the Board's governing statute such as adding duty to report language, update sanctions provision to remove "censure a practitioner," removal of references to temporary licenses, and miscellaneous clean-up of the statute. At the time of the Final Report's publication, HB 462 has not yet passed.

Council on Correction – Held Over to 2019

The Committee made several recommendations for the **Council on Correction**, an advisory Council to the Department of Correction. The Committee's recommendations include amending the Council's governing statute, including how the Council will advise the Department; providing an annual report to the Commissioner, Deputy Commissioners of the Department, the Governor and General Assembly; meeting rotation; and board training. The Committee recommended to hold over the Council, which must report back to the Committee in January 2019, when the Committee will consider whether to continue and release from review, continue as a sub-committee of the Criminal Justice Council, or terminate the Council. The Committee's Analyst will continue to monitor the Council.

Child Protection Accountability Commission – Released from Review.

The Committee recommended continuing the **Child Protection Accountability Commission** ("CPAC") and releasing it from review, with a letter of support to the Joint Finance Committee for funding for the support of CPAC and the agencies it supports.

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Division of Waste and Hazardous Substance's management of the Hazardous Substance Control Act Fund – Held Over to 2019

The Committee made several Recommendations for the **Division of Waste and Hazardous Substance's HSCA Fund ("HSCA")**, a fund which supports the Division's cleanup of facilities with a release, or imminent threat of release, of hazardous substances, as well as Delaware's Brownfield program. As of the writing of this report, legislation supporting the HSCA Fund, HB 451, has not yet been enacted. The Committee recommended to hold over the Division and the HSCA, which must report back to the Committee in January 2019. At that time, the Committee will consider whether to introduce legislation clarifying the HSCA Fund's 15% cap on administrative cost expenditures.

Board of Clinical Social Work Examiners – Released Upon Enactment of Recommended Legislation

The Committee and staff completed work with the **Board of Clinical Social Work Examiners ("Board")** and the Division of Professional Regulation to meet the 2015 recommendation that the Board revise its governing statute. HB 311 modernized the practice of social work throughout the State, and was signed by the Governor on June 11, 2018.

State Board of Education – Released Upon Enactment of Recommended Legislation.

In 2017, the Committee made several Recommendations for the **State Board of Education ("SBE")**, an advisory Board to the Department of Education. The Committee's Recommendations included amending the Board's governing statute, clarifying SBE's duties, revising the Executive Director's job description, modifying meeting time and locations, providing additional opportunity for public comment at meetings, and adding two non-voting Board members. The Committee recommended to hold over SBE, which reported back to the Committee in January 2018. In June 2018, the Committee approved legislation fulfilling the recommendations. As of the writing of this report, HB 455 has not yet been enacted.

Diamond State Port Corporation – Released with Reporting Requirements

The Committee previously released the **Diamond State Port Corporation ("DSPC")** with reporting requirements regarding the status of the hiring hall and cranes. In May 2018, the Committee received updates from DSPC and recommended additional monitoring of the hiring hall.

JLOSC Improvement – Legislation to Clarify the Committee's Governing Statute

The Committee voted to amend § 10214, Title 29, to codify the Committee's practice of recommending the continuation of an agency unless or until certain conditions are met or modifications are made. The Governor signed this legislation May 9, 2018.

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Entities Under Review in 2019

The Committee selected the following entities for review in 2019:

- **Delaware Advisory Council on Career and Technical Education.**
- **Delaware Health Information Network.**
- **Division for the Visually Impaired.**

The Committee voted to task Committee staff to work with the Governor's office to review boards and commissions for those that need simple statutory clean up or adjustments. Staff will report back to the Committee in January 2019 with a list of the identified boards and commissions and a proposed plan for achieving the clean-up.

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Joint Legislative Oversight & Sunset Committee 2018 Final Report



Board of Occupational Therapy

*A Report to the Governor and the
149th General Assembly of the State of Delaware.*

June 2018

Final Report was completed by:
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Final Report Prepared By:

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The Sunset Law in Delaware, Chapter 102 of Title 29, enacted in 1979, provides for the periodic legislative review of state agencies, boards, and commissions. The purpose of sunset review is to determine whether there is a public need for an agency, board, or commission and, if so, to determine whether it is effectively performing to meet that need. Agencies may be reviewed once every six years.

The Joint Legislative Oversight and Sunset Committee (“JLOSC”) is responsible for guiding the sunset review process. JLOSC is a bipartisan committee comprised of ten legislators. The Senate President Pro Tempore and the Speaker of the House of Representatives each appoint five members to serve on JLOSC.

Sunset reviews are generally conducted over a ten month period commencing in July. A comprehensive review of each agency, based on statutory criteria, is performed by the JLOSC Analyst, who subsequently prepares a preliminary report for use by JLOSC during the public hearings, which take place in February each year. Public hearings serve as a critical component of this process, as they provide an opportunity for JLOSC to best determine whether the agency is protecting the public’s health, safety, and welfare.

At the conclusion of a sunset review, JLOSC may recommend the continuance, consolidation, reorganization, transfer, or termination (sunset) of an agency, board, or commission. Although JLOSC has sunset several agencies since its first set of reviews in 1980, the more common approach has been for JLOSC to work with the entity under review to formalize specific statutory and non-statutory recommendations, with the goal of improving the entity’s overall performance and government accountability.

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2018 Final Recommendations: Board of Occupational Therapy

The Joint Legislative Oversight and Sunset Committee (“Committee”) recommends that the Board of Occupational Therapy (“Board”) be released from review upon the enactment of legislation.

1. The Board requested amending the statute to revise Chapter 20 of Title 24 to make it consistent with the laws of other Title 24 Boards and delete antiquated sections of the code which are no longer applicable.

RECOMMENDATION: The Board shall provide revisions to Chapter 20 of Title 24 to make it consistent with the laws of other Title 24 Boards and delete antiquated sections of the code which are no longer applicable.

- Add language pertaining to duty to report conduct that constitutes grounds for discipline or inability to practice.
- Update sanctions to remove “Censure a practitioner” from the available sanctions.
- Remove references to temporary licenses since the temporary license section of the statute was repealed.
- Remove § 2015(c). It is covered in the Administrative Procedures Act.
- Remove § 2017(c). It is covered by the Administrative Procedures Act.
- Miscellaneous clean up to remove unnecessary words and fix grammar errors.
- Revise the reciprocity language to address situations where the licensee holds a current license in a state that is not substantially similar to Delaware.

OUTCOME: The Board and Committee staff worked together to draft legislation. As of the writing of this report, legislation has been drafted and is provided in Appendix A.

A NOTE ABOUT THIS REPORT

Much of the information provided in this report is taken from the Joint Legislative Oversight and Sunset Committee (“Committee”) Performance Review Questionnaire, as it was completed by the agency under review. When appropriate, the Analyst who prepared this report made minor changes to grammar and the organization of information provided in the questionnaire, but no changes were made to the substance of what the agency reported. Any points of consideration which arose in analyzing the questionnaire and compiling this report are addressed in the section titled “Additional Comment from the Committee Analyst.” It is the intent of the Analyst to make any substantive changes which may be required, as the result of findings made through the Joint Legislative Oversight and Sunset review processes.

AGENCY HISTORY

The Occupational Therapy Practice Act, Chapter 20 of the Delaware Code, was passed as House Bill 164 in June 1985. In April 1986, the Governor appointed the first Board Members, and the Board held its first meeting in December 1986.

JOINT LEGISLATIVE OVERSIGHT AND SUNSET COMMITTEE REVIEW HISTORY

The Joint Sunset Committee reviewed the Board in 1988 and 1996.

In 1988, the Board had only begun to develop rules and regulations. The Committee made 3 recommendations:

Recommendation #1: The Committee recommends that Chapter 20 of Title 24 be changed to allow for the “grandfathering” of current registered Occupational Therapists and certified Occupational Therapist Assistants.

Recommendation #2: The Committee further recommends that Chapter 20 of Title 24 be amended to allow for the temporary licensure of occupational therapists while serving as visiting practitioners to the State.

Recommendation #3: The Committee recommends that Board members be reimbursed for mileage expenses incurred while traveling to meetings.

As a result of the 1988 review, HB 666 with HA 1 and 2 of the 134th General Assembly was passed. It was not until this point that the Board was able to effectively operate. The legislation included a temporary license provision and a grandfather provision which stated that: “All certified occupational therapy assistants and registered occupational therapists now practicing in this State as of the effective date of this Act will be licensed upon filing the application and paying the appropriate fees for such license.” The designations “certified” and “registered” are national association designations and were used to initially license practitioners.

In 1996, JLOSC made 18 Recommendations. Legislation enacted in June 1998 met all the Recommendations, which were as follows:

Recommendation #1: As a condition for continuation of the Board, that the entire Chapter 20, 24 Del. C., be amended to refer throughout to the feminine as well as the masculine gender.

Recommendation #2: As a condition for continuation of the Board, that § 2002, 24 Del. C., be amended to more clearly define the words “licensed occupational therapist” and “licensed occupational therapy assistant.”

Recommendation #3: As a condition for continuation of the Board, that the definition of “occupational therapy aide” contained in § 2002(5), 24 Del. C., be stricken, and all references to “aides” contained in the statute should likewise be stricken: e.g., § 2004(4), 24 Del. C.

Recommendation #4: As a condition for continuation of the Board, that the definition in § 2002(8), 24 Del. C., of “American Occupational Therapy Association” be stricken from the statute, if needed, the definition could be replaced by reference to the American Occupational Therapy Certifying Board, or its successor, which administers the professional examination.

Recommendation #5: As a condition for continuation of the Board, that § 2006, 24 Del. C., be amended to bring Board members under the Public Integrity Act, Chapter 58, 24 Del. C.

New legislation was enacted on June 17, 1998 that amended Chapter 20, Title 24, by adding § 2003(h) "The provisions of Chapter 58, Title 29 of the Delaware Code shall apply to all members of the Board."

Recommendation #6: As a condition for continuation of the Board, that § 2007, 24 Del. C., Powers and Duties of the Board, be updated to mandate compliance with the Administrative Procedures; to reference the American Occupational Therapy Association and the Division of Professional Regulation approval of examination; to add the power to administer examination; to reference the authority of the Division of Professional Regulation regarding complaints; and to reference the Division's clerical and administrative duties.

Recommendation #7: As a condition for continuation of the Board, that § 2007, 24 Del. C., be amended to grant the Board the power to require completion of continuing education credits as a condition for renewal of licensure.

Recommendation #8: As a condition for continuation of the Board, that § 2008, 24 Del. C., be rewritten and updated to refer to an applicant's successfully passing the national examination given by the American Occupational Therapy Certifying Board or its successor.

Recommendation #9: As a condition for continuation of the Board, that § 2008, 24 Del. C., be updated to refer to the applicant's responsibility to contact the National Practitioner Data Bank to verify with the Division of Professional Regulation the applicant's licensure status regarding complaints, etc. The applicant will be further responsible for contacting each state in which he or she has been or is licensed to request verification of his or her licensure status with the Board.

In addition to the 1998 legislation, Board Rule 2.2.3 specifies the applicants' responsibility for obtaining a letter of good standing from any state in which the applicant is or has been licensed. The decision was made not to require National Board Practitioner Data Bank (NPDB) reports for applicants because it is an artificial barrier to licensure for this profession. There is a fee for the applicant to request an NPDB report. The report contains the same disciplinary action information that is already provided to the Board on each State's licensure verification. In addition, similarly situated boards such as Physical Therapy, Optometry and Social Work, do not require NPDB reports.

Recommendation #10: As a condition for continuation of the Board, that §2008, 24 Del.C., be updated by reference to the applicant's not having engaged in any acts which would be grounds for disciplinary action under this Chapter, and by adding the usual language regarding information on applications, false information given, and appeal rights of applicants.

Recommendation #11: As a condition for continuation of the Board, that § 2009, 24 Del. C., be amended to refer to the American Occupational Therapy Certifying Board, or its successor, and approval by the Division of Professional Regulation, where appropriate in the Section.

Recommendation #12: As a condition for continuation of the Board., that § 2010, 24 Del. C., be amended to refer to the applicant's responsibility to provide for the submission of all materials

necessary for licensure; this includes contacting the National Practitioner Data Bank and any states where the applicant currently is or has been licensed.

In addition to the 1998 legislation, Board Rule 2.2.3 specifies the applicants' responsibility for obtaining a letter of good standing from any state in which the applicant is or has been licensed.

Recommendation #13: As a condition for continuation of the Board, that fee language contained in § 2012 and also in § 2011 (Examination fee), 24 Del. C., be combined, and include reference to the Division of Professional Regulation's authority to set all fees.

Recommendation #14: As a condition for continuation of the Board, that the language of § 2013, 24 Del. C., regarding non-disciplinary remedial actions available to the Board, be updated to conform to the American's with Disabilities Act. Reference should also be made to the practitioner's right to a hearing in accordance with the Administrative Procedures Act.

Recommendation #15: As a condition for continuation of the Board, that § 2013, 24 Del. C. be updated to include the standard wording regarding an applicant or practitioner's use or abuse of drugs.

Recommendation #16: As a condition for continuation of the Board, that language governing professional fees for service be stricken from § 2013(a)(6), 24 Del. C.

Recommendation #17: As a condition for continuation of the Board, that the complaint language of § 2015, 24 Del. C., be updated to reference the responsibility and authority of the Division of Professional Regulation.

Recommendation #18: As a condition for continuation of the Board, that a separate Section be added to the statute and contain updated hearing language which will reference the authority of the Division of Professional Regulation.

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MISSION AND PRIMARY OBJECTIVES

The Board's mission is to protect the public from unsafe practices and practices, which tend to reduce competition or fix prices for services. The Board must also maintain standards of professional competence and service delivery.

The primary objective of the Board of Occupational Therapy Practice, to which all other objectives and purposes are secondary, is to protect the general public, specifically those persons who are the direct recipients of services regulated by Chapter 20 of Title 24, from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered.

The secondary objectives of the Board are to maintain minimum standards of practitioner competency and to maintain certain standards in the delivery of services to the public. In meeting its objectives, the Board develops standards assuring professional competence; monitors complaints brought against practitioners regulated by the Board; adjudicates at formal hearings; promulgates rules and regulations; and imposes sanctions where necessary against practitioners.

COMPOSITION & STAFFING OF THE BOARD

Composition:

There are currently 5 members serving on the Board. The Governor appoints all Board members. The Office of Boards and Commissions administers the appointment process. The Board's governing statute provides for the makeup of the Board:¹

- 5 members, who are residents of this State.
 - o 3 professional members, 2 of whom shall be occupational therapists licensed under the governing statute, 1 may be a licensed occupational therapy assistant.
 - o 2 public members.
 - A public member shall not be, nor have ever:
 - Been occupational therapists or occupational therapy assistants.
 - Been members of the immediate family of an occupational therapist or occupational therapy assistant.
 - Been employed by an occupational therapist or occupational therapy assistant.
 - Had a material financial interest in the providing of goods and services to occupational therapists or occupational therapy assistants.
 - Been engaged in any activity directly related to occupational therapy.

Each member of the Board shall serve a term of 3 years, and may succeed himself or herself for 1 additional term; provided however, that where a member was initially appointed to fill a vacancy, such member may succeed himself or herself for only 1 additional full term. Any person appointed to fill a vacancy on the Board shall hold office for the remainder of the unexpired term of the former member. Each term of office shall expire on the date specified in the appointment; however, the Board member shall remain eligible to participate in Board proceedings unless and until replaced by the Governor.²

¹ See 24 Del. C. § 2003(b).

² See 24 Del. C. § 2003(c).

An individual may be appointed to the Board for 2 consecutive terms. To serve an additional term, at least 1 year must pass since the expiration of the member's term.³

Board members may be suspended or removed by the Governor for misfeasance, nonfeasance, malfeasance, misconduct, incompetency, or neglect of duty. A member subject to disciplinary hearing shall be disqualified from Board business until the charge is adjudicated or the matter is otherwise concluded. A Board member may appeal any suspension or removal to the Superior Court.⁴

Neglect of duty is defined as “any member who is absent without adequate reason for 3 consecutive meetings, or fails to attend at least 1/2 of all regular business meetings during any calendar year.”⁵ No member has been removed as described above.

The Division communicates with the Governor's Office on a regular basis concerning vacancies and reappointments for the 34 boards and commissions it oversees, including this Board. In addition, members receive attendance letters from the Director of the Division of Professional Regulation when attendance is a concern.

Current Board members are:

	NAME	TERM	COUNTY
1.	Mara Beth Schmittinger - Chair, Professional Member	8/2014-8/2017 (first term)	New Castle
2.	Evan Park - Vice-Chair, Public Member	2/2015-2/2018 (first term)	Kent
3.	Angelita Mosley – Secretary, Public Member	3/2015-3/2015 (first term)	Kent
4.	Kelly M. Richardson, Professional Member	2/2013-2/2019 (second term)	Sussex
5.	Karen M. Virion, Professional Member	3/2014-8/2020 (second term)	New Castle

Kevin Maloney is the Deputy Attorney General assigned to the Board. The Division's Director, David C. Mangler, advises the Board.

Compensation:

Each member is reimbursed for all expenses involved in each meeting, including travel expenses. In addition, members receive not more than \$50 for each meeting attended with a \$500 cap per calendar year.

A recent Constitutional amendment updated the new compensation maximum of \$1500 per year for board and commission members.

Member Training:

³ See 24 Del. C. § 2003(c)(d).

⁴ See 24 Del. C. § 2003(f).

⁵ See 24 Del. C. § 2003(i).

The Division is statutorily mandated to provide training to members appointed to the regulatory boards and commissions at least once every fiscal year. The trainings outline the legal responsibilities of members to protect the health, safety, and welfare of the general public.⁶

In January 2013, the Division purchased an annual subscription for Online Board Member training offered by the Council on Licensure Enforcement and Regulation (“CLEAR”) and has continued to renew this subscription annually. In addition to the CLEAR online training, the Division provides newly appointed members with an orientation and resource manual.

Conflict of Interest:

The Board’s Deputy Attorney General advises members of potential conflicts. The Division provides new members with copies of Public Integrity laws during orientation.

Staffing:

The Division is organized into service teams which each provide administrative support to a specified group of professions and trades. The service team responsible for the support of the Board also supports eleven other professional boards and commissions. Three state employees (two merit employees and one exempt employee) and two contractual employees provide credentialing, licensing, and board liaison services to all boards within the Service Team.

The Division has an investigative unit that handles complaints about all 34 professional boards and commissions. There are currently 14 investigators, three of which are contractual employees.

Currently, the Board is adequately staffed. In FY 2007, however, the Division took steps to address administrative staffing issues. The Division was authorized in FY 2007 to hire four new administrative positions in response to increased demand and reduction of the Division’s reliance on contractual employees.

Additionally, the Division expanded the use of its enterprise database application by significantly increasing services available through its website. Specifically, the public can view licensee information, related laws and rules online, and download complaint forms. Licensees can update their profiles and renew licenses using a credit card. Applicants can check the status of licensure applications online and complete fillable forms.

In November 2007, the Division implemented a new organizational structure to optimize administrative functions that support the boards and commissions, licensees and the public. The Board has benefited from the new structure, which provides a service team, a team leader and three staff members assigned to credentialing, licensing, and board liaison services. The new structure has resulted in greater responsiveness to customer inquiries.

In 2011, the Division hired two new hearing officers and a paralegal to implement a hearing process to expedite the adjudication of complaints made against professionals, including those under the Board’s purview.

Based on the Service Team structure, the below chart reflects the tasks for each Division staff member. Each profession within the service team is assigned an overall workload rating. The

⁶ See 29 Del. C. § 8735.

workload rating for the Board of Occupational Therapy represents 15-20% of each staff members' time that is spent providing certain administrative activities to the Board.

<i>Credentialing Services</i> Lisa Smith, Administrative Specialist II	<i>Board Liaison Services</i> Mary Melvin, Administrative Specialist II	<i>Licensee Services</i> Mary Melvin, Administrative Specialist II
Review applications and all credentialing documentation for completeness and authenticity Complete licensing system checklist, coordinates with board liaison Respond to customer inquiries- Level 2 Website updates Maintain licensing database.	Attend/schedule/notice meetings & hearings Prepare board agenda and minutes Process commission/board member payments Monitor formal complaints (from DAG) Manage all board/commission correspondence Website updates Conduct research/ legislative initiatives. Respond to customer inquiries – Level 2 Maintain licensing database.	Issue licenses and temporary permits Complete license verifications Review continuing education. Process online renewals and release renewal holds Respond to customer inquiries – Level 2 Update web site Maintain licensing database.

DUTIES, RESPONSIBILITIES, AND AUTHORITY

The Board's key duties and responsibilities are to implement the standards of occupational therapy through education, examination, and continuing education. In addition, the Board has a duty to enforce the law, rules, and regulations to ensure safe practice and undue harm to the public. Finally, the Board provides the public with a resource to confirm the status of any licensee and also administers consumers' complaints.

Typically, the Board of Occupational Therapy meets at least six times per year. Meetings are open to the public and held in the Cannon building in Dover.

The Board makes information or educational resources available to the public. The Board has a web presence on the Division's website, which provides laws, rules, and regulations; frequently asked questions; and licensure and renewal requirements.⁷ The public can search for licensees through the "Verify License Online" link to determine the licensure status and whether a licensee has any public disciplinary action.⁸ Board decisions are available online for the public.

The public has access to information about the complaint process and can complete and submit to the Division a complaint form online. Rule and regulation changes and public hearing notices are published in two newspapers, the News Journal and the Delaware State News, and through the Register of Regulations.

The following groups are served or affected by the Board's actions:

⁷ See <https://dpr.delaware.gov/boards/occupationaltherapy/>

⁸ See <https://dpronline.delaware.gov/mylicense%20weblookup/Search.aspx>

Interest Groups (Groups affected by Board actions or represent others served by or affected by Board actions)		
Group or Association Name/Contact Person	Address	Internet Address
Delaware Occupational Therapy Association, Inc. (DOTA)	3 Ross Court Wilmington, DE 19810	https://dotaonline.site-ym.com/

National Organizations or other Government Entities (that serve as an information clearinghouse or regularly interact with the Board)		
Group or Association Name/Contact Person	Address	Phone Number
National Board for Certification in Occupational Therapy (NBCOT)	12 South Summit Avenue Suite 100 Gaithersburg, MD 20877	(301) 990-7979
The American Occupational Therapy Association, Inc. (AOTA)	4720 Montgomery Lane Suite 200 Bethesda, MD 20814-3449	1-800-SAY-AOTA (301) 652-6611

Industry or Trade Publications		
Group or Association Name/Contact Person	Address	Internet Address
American Journal of Occupational Therapy (AJOT)	4720 Montgomery Lane Suite 200 Bethesda, MD 20814-3449	https://www.aota.org/

Licensing:

Currently licensed:

Occupational Therapists: 639 Individuals

Occupational Therapist Assistant: 340 Individuals

Renewals are biannual. The end of the renewal period for licenses under the statute is July 31 in even-numbered years. There are no reciprocity or endorsement agreements with any other state or jurisdiction.⁹

⁹ See 24 Del. C. § 2109.

This chart illustrates statistical data regarding licensure:

Name of License #1 issued by the Board: Occupational Therapist

	# of License Applications Received	# of License Applications Approved	# of Licenses Issued	# of Licenses Rejected	# of Licenses Revoked
Calendar Year 2015	72	69	69	0	0
Calendar Year 2016	66	54	54	0	0
Calendar Year 2017 (11/30/17)	69	55	55	0	0

Name of License #2 issued by the Board: Occupational Therapist Assistant

	# of License Applications Received	# of License Applications Approved	# of Licenses Issued	# of Licenses Rejected	# of Licenses Revoked
Calendar Year 2015	34	30	30	0	0
Calendar Year 2016	32	28	28	0	0
Calendar Year 2017 (11/30/17)	29	22	22	0	0

The examination for occupational therapists and occupational therapy assistants is a computer based exam sponsored by the National Board for Certification in Occupational Therapy (“NBCOT”). NBCOT administers the validated exam through Prometric testing centers in Delaware and throughout the United States. If a student fails an exam, they must wait 30 days to retest.

Delaware Exam Results

Name of Exam	# Tested 2014	# Passed 2014	# Tested 2015	# Passed 2015	# Tested 2016	# Passed 2016	# Tested 2017	# Passed 2017
Occupational Therapist *	50	43	32	29	29	24	55	47
Occupational Therapy Assistant	39	34	26	24	42	36	34	31

Complaint and Disciplinary Process:

Written complaints can be filed online with the Division’s Investigative Unit. The management of the complaints is defined by statute.¹⁰ The Division investigates complaints from the public against licensed professionals and those practicing without a license. If it is determined that a complaint has merit and the facts are able to be substantiated, the investigation is forwarded to the Attorney General’s Office with a prosecution recommendation. Complaints that are unable to be substantiated or do not rise to the level of a violation of law or rule are closed at the Division level. The Division Director or the Director’s designee has the authority to subpoena investigative material and witnesses. Investigations involve evidence gathering, witness interviews, and rare undercover operations.

Currently, the Division’s investigative unit has a staff of 15 Investigators who provide investigative support to 34 boards and commissions within the Division of Professional Regulation. The Investigative Unit has a goal of completing investigations within 120 days of receipt.

Complaints filed against the Board have been rare. One complaint was investigated in 2007. The complaint was filed as the result of a report received from another state board the practitioner received discipline in another state.

In 2008, 1 complaint was investigated. The complaint was filed by a member of the public for unprofessional conduct.

In 2013, 1 complaint was investigated. The complaint was filed by a healthcare agency for diversion of drugs.

There are currently no complaints filed or pending with the Attorney General’s Office. None of these cases resulted in disciplinary action; all were closed with no action.

Complaint Data 2015-2017

	Calendar Year 2015	Calendar Year 2016	Calendar Year 2017 (to date)
Total Number of Complaints Received by the Board	0	0	1 ¹¹
Total Number of Complaints Investigated	0	0	0
Total Number of Complaints found to be Valid	0	0	0
Total Number of Complaints Forwarded to the Attorney General	0	0	0
Total Number of Complaints Resulting in Disciplinary Action	0	0	0

¹⁰ See 29 *Del C.* § 8735(h).

¹¹ Analyst note: The Board received a complaint alleging that a licensee “illegally rented” a property and made obscene comments. The Board does not have authority to investigate either of these matters.

Disciplinary actions may be taken after the Board hears evidence presented by the State's prosecutor, licensee, and licensee's attorney and deliberates in a public hearing. The Board can impose sanctions pursuant to statute.¹²

Any practitioner that is in disagreement with the action of the Board may appeal the Board's decision to the Superior Court in accordance with Chapter 101 of Title 29.

ENACTED LEGISLATION IMPACTING THE BOARD

The following amendments have impacted the Board of Occupational Therapy statute since its 1996 review:

Re-write of Chapter 20

-HB 429 w/HA 1 passed the 139th General Assembly and was enacted on June 17, 1998. This Bill amended Title 24 of the Delaware Code by re-writing Chapter 20 in its entirety, to implement the 1996 recommendations.

Disqualifications for Licensure

-SB 229 w/ SA 1 & HA 1 passed the 142nd General Assembly and was enacted on June 22, 2004. This bill created a uniform approach throughout Title 24 regarding disqualifications for licensure. It requires that the refusal, revocation, or suspension of licenses for professions and occupations regulated under Title 24 be based upon conviction of crimes that are "substantially related" to the profession or occupation at issue, and not for crimes that are unrelated to the profession or occupation. The bill required the Board promulgate regulations that specifically identify the crimes that are "substantially related" to the profession. This authority was granted under 24 Del. C. §2008(a)(6). The Board promulgated Rule 7.0, crimes substantially related to the practice of occupational therapy.

Military Protection

-SB 206 passed the 143rd General Assembly and was enacted July 21, 2005, to give protection to active duty military, activated reservists, or members of the National Guard from having their professional licenses expire during active military deployments. This authority was granted under 29 Del. C. §8735(p).

Conviction Waiver

-SB 403 passed the 143rd General Assembly and was enacted on July 20, 2006, to allow Title 24 boards and commissions to waive convictions substantially related to the professions under certain conditions. These conditions included that after a hearing, the Board, by an affirmative vote of a majority of the quorum, may waive the requirement under § 2008(a)(6) of Title 24, which excludes those with a criminal record from obtaining a license, if it finds that certain specified qualifications have been met.

¹² See 24 Del C. § 2015-§ 2018

Addressing Unlicensed Practice

-HB 36 passed the 144th General Assembly and was enacted on June 19, 2008, which gave all boards and commissions the authority to address unlicensed practice and impose fines for those who violated cease and desist orders subject to hearing procedures. This authority was granted under 29 Del. C. §8735(q) and §10161(c), (d), (e), and (f).

Authority to Utilize Hearing Panels

-SB 159 passed the 145th General Assembly and was enacted on July 8, 2009, which gave boards and commissions authority to use hearing panels to conduct disciplinary hearings and complaints of unlicensed practice. This authority was granted under 29 Del. C. § 10161.

Conviction Waiver Process

-SB 164 passed the 145th General Assembly and was enacted on August 18, 2009, which allowed all boards and commissions under Title 24 to waive criminal convictions substantially related to the profession either by holding a hearing (which was previously practiced) or a review of the documentation to determine whether applicants met the specified criteria for a waiver. This authority was granted under 24 Del. C. §2008(a)(6).

License Revocation

-SB 232 passed the 145th General Assembly and was enacted on July 12, 2010, which gave boards and commissions the authority to suspend or revoke a license effective immediately after a hearing with a written order to be served 30 days after the hearing date. This authority was granted under 29 Del. C. §10128(f).

Waiver Authority

-SB 59 passed the 146th General Assembly and was enacted on June 8, 2011, that modified the waiver authority for boards, commissions, and councils to license individuals with substantially related felony crimes by changing the waiting period from 5 years after the discharge of sentences to 5 years from the date of conviction provided that all other restrictions related to incarceration, probation, work release, parole and suspended sentences have been met. The boards, commissions, and councils could continue to either have a hearing or review the record to decide upon granting a waiver and have the discretion to deny waivers if warranted by the facts of the case. The legislation also removed the 5-year limitation for misdemeanors entirely provided that the applicant had met all restrictions. This authority was granted under 24 Del. C. §2008(6).

Annual Compensation

-SB 18 passed the 146th General Assembly and was enacted on June 30, 2011, which amended the Constitution to increase the amount of annual compensation an officer must receive before Senate confirmation is required. The current amount of \$500 had existed since 1897. This was the second leg of a constitutional amendment after the passage of SB 267 during the 144th General Assembly.

Director Authority

-SB 122 passed the 146th General Assembly and was enacted July 5, 2011, that authorized boards and commissions to delegate to the Director of the Division, the administrative authority to issue permits and licenses to individuals and organizations in accordance with written criteria agreed upon by any and the Director. The Board of Occupational Therapy has granted authority for the

Division to issue licenses to individuals applying by exam or reciprocity. The Board still reviews all reinstatement applications.

Quorum

-SB 142 passed the 146th General Assembly and was enacted on July 13, 2011, which eliminated the need for a quorum of a board or commission to sign a decision previously approved by a quorum of its members and allow an order to be issued under the signature of the board or commission president or another officer. This authority was granted under 29 Del. C. §10128(g).

Simplification of Licensure Process

-HB 238 w/HA 1 passed the 146th General Assembly and was enacted on May 28, 2012, that simplified the licensure process to enable military spouses to obtain a professional license and expedite their ability to work in their profession. This authority was granted under 29 Del. C. §8735.

Citations and Fines

-SB 90 passed the 147th General Assembly and was enacted on August 6, 2013, giving the Division authority to issue citations and monetary fines when individuals and businesses are found engaging in unlicensed professional practices regulated by a board, commission, council, or committee. This authority was granted under 29 Del. C. §8735(a).

Chaperone Requirement

-SB 114 passed the 147th General Assembly and was enacted on August 6, 2013, adding chaperone requirements for the designated healthcare professionals of podiatry, chiropractic, dentistry and dental hygiene, nursing, occupational therapy, physical therapy/athletic training, social work, and massage and bodywork, who treat minors consistent with the provisions added to the Medical Practice Act with practice specific modifications where appropriate. This authority was granted under 24 Del. C. §2021.

Disparate Emergency Procedures

-SB 115 w/SA 1 and HA 1 passed the 147th General Assembly and was enacted on April 15, 2014, adopting the emergency suspension provision already included in the Medical Practice Act for other boards and commissions regulated under Titles 23 and 24 to enable a temporary suspension pending a hearing to be issued upon the written order of the Secretary of State or the Secretary's designee, with the concurrence of the Board chair or the Board chair's designee, if the activity of the licensee presents a clear and immediate danger to the public's health. This legislation makes the current disparate emergency procedures more uniform across all boards. This amends 24 Del. C. §2017.

Fingerprinting Requirement

-SB 98 w/HA 1 passed the 147th General Assembly and was enacted on June 30, 2014, removing the requirement that fingerprinting be repeated every 10 years for those licensed as occupational therapists or occupational therapy assistants, among other licensed professionals. This amends 24 Del. C. §2008.

Military Education

-HB 296 passed the 147th General Assembly and was enacted on July 21, 2014, allowing the boards and commissions to recognize military education, training, and experience when reviewing credentials and issuing licenses to assist service personnel and their spouses in obtaining or renewing professional licenses when transitioning from active duty. This legislation further allows boards and commissions to issue service personnel temporary licenses when the service personnel or spouse holds a valid license from another state. The previous law had allowed only for boards and commissions to do so for military spouses. This authority was granted under 29 *Del. C.* §8735.

Telehealth

-HB 69 w/ HA 1 passed the 148th General Assembly and was enacted on July 7, 2015, offering opportunities for improving the delivery and accessibility of health care across many professions responsible for the wellbeing of Delawareans. Geography, weather, availability of specialists, transportation, and other factors can create barriers to accessing appropriate health care and one way to provide, ensure, or enhance access to care given these barriers is through the appropriate use of technology to allow health care consumers access to qualified health care providers. This amends 24 *Del. C.* §2002. As a result of this Bill, the Board promulgated Rule 4.0 Telehealth.

Board Member Compensation

-SB 83 passed the 149th General Assembly and was enacted on July 21, 2017. This bill amends the provisions related to board member compensation under Titles 24 and 28 consistent with a recent amendment to the Delaware Constitution raising the maximum compensation per calendar year from five hundred dollars per year to \$1500 per year. The bill removes the need for further amendments to the compensation provisions by deleting the reference to the specific dollar amount of the maximum. This authority was granted under 24 *Del. C.* §2003(j).

Military Education

-HB 112 passed the 149th General Assembly and was enacted on September 29, 2017. This Bill allows professional licensing boards and commissions administered by the Division to recognize military education, training, and experience of all current and former military personnel when reviewing credentials and issuing licenses. This is a change from the current law, which only allows such boards and commissions to do so for active duty military, members of the National Guard, or military reserves assigned to a duty station in Delaware. This change recognizes the military education, training, and experience of individuals who are retired, a veteran, or are active duty individuals assigned to duty stations located outside this State. This authority was granted under 29 *Del. C.* §8735.

PENDING LEGISLATION

There is currently no legislation pending from the Board of Occupational Therapy.

ADMINISTRATIVE PROCEDURES ACT COMPLIANCE

The Board promulgates rules and regulations in accordance with the Administrative Procedures Act. Below are the rules and regulations and dates of adoption.

-Effective May 1, 1999, the Board of Occupational Therapy promulgated comprehensive Rules and Regulations that described the Board's organization, operations and rules of procedure, the process and requirements for licensure and certain standards of conduct applicable to the practice of occupational therapy.

-Effective April 1, 2003, the Board of Occupational Therapy promulgated revisions to Rules 2.0 and 5.0 to instituted continuing education as a refresher for applicants who delay licensure after passing the NBCOT exam and clarify the continuing education requirements for licensees.

-Effective April 1, 2005, the Board of Occupational Therapy promulgated Rule 7.0 to identify crimes substantially related to the practice of occupational therapy, as mandated by SB 229 enacted by the 142nd General Assembly.

-Effective October 1, 2005, the Board of Occupational Therapy deleted Rules 3.0 and 4.0 to conform to SB No. 179 of the 143rd General Assembly which struck the temporary licensure provisions in 24 *Del. C.* § 2012. The remaining provisions were renumbered according.

-Effective May 1, 2006, the Board of Occupational Therapy promulgated revisions to Rules 2.0 and 3.0 to allow for online renewal of licenses and online attestation of completion of continuing education (CE) and provide for a post-renewal audit. The changes clarified that CEs must be completed (not submitted) before May 31 of each renewal year. This change allowed licensees to renew their licenses online any time of day. Although licensees were no longer required to submit CE documentation to the Division prior to the license renewal, licensees were required to keep the records of their CE credits. The Board conducts random audits of licensees to ensure CE compliance.

-Effective January 1, 2008, the Board of Occupational Therapy promulgated revisions to Rules 2.0 and 3.0 to change the audit process for license renewal so that continuing education attestations are audited after the license renewal period is over, rather than before the expiration date. The changes also extended the period of time during which licensees may obtain required CE credits, from May 31st to July 31st of each renewal year, to correspond with the license renewal period.

-Effective March 1, 2009, the Board of Occupational Therapy promulgated revisions to Rule 1.3, which addresses supervision of occupational therapy assistants.

-Effective February 1, 2010, the Board of Occupational Therapy promulgated Rule 4.0 which addressed licensee competence to administer various treatment modalities. At the request of the Board or a member of the public, a licensee is required to provide documentation of training or education to demonstrate competence. In addition, Rule 1.3.3 is amended to clarify the parameters of an occupational therapist's supervision of an occupational therapy assistant. A new Rule 3.1.2.4 gives the Board authority to conduct hearings and impose sanctions regarding licensees' failure to comply with CE requirements.

-Effective June 1, 2015, the Board of Occupational Therapy promulgated revisions to Rule 3.0 to clarify the application of continuing education. Additionally, rules of an administrative nature were changed to reflect current practices Rules 1.0, 2.0 and 4.0.

-Effective April 1, 2016, the Board of Occupational Therapy promulgated revisions to Rule 2.0 pertaining to renewal of expired licenses. Rule 4.0 was promulgated addressing telehealth services.

The Board's Deputy Attorney General, Kevin Maloney, has been assisting the Board in their review of the Board's statute, rules, and regulations. There are no Delaware Attorney General's Opinions affecting the board. There are currently no proposed rule and regulation changes. There are no federal laws and regulations impacting the Board.

There are recent state judicial decisions that directly affect the functioning of the Board. The Delaware Supreme Court ruled in the case of *Richardson v. the Bd. of Cosmetology Barbering*¹³ that the Board had created an insufficient record for appellant review pursuant to 29 Del. C. § 10125 when the licensee's attorney filed an exception to the hearing officer's recommendation. This case demanded that the Board create a record from which a verbatim transcript can be prepared.

FREEDOM OF INFORMATION ACT ("FOIA") COMPLIANCE

The Board has not received any FOIA complaints. FOIA requests are handled by the Deputy Director of the Division in coordination with the Division's Deputy Attorney General and the Department of State's FOIA Coordinator.

Meeting agendas are posted online through the State of Delaware Government Information Center and in the Division's customer service area. Meeting agendas are posted seven days prior to the meeting date, in accordance with the Administrative Procedures Act. Agendas are available online at the Division's website.¹⁴

The Board's meeting minutes are transcribed and maintained electronically in the Board's office. Minutes are prepared for approval by the Board at their next regularly scheduled meeting. Final approved minutes are posted to the online meeting calendar five business days after the meeting, in accordance with the Freedom of Information Act. The public may download copies of the approved meeting minutes online or request a hard copy by contacting the Division.

In accordance with the Delaware Freedom of Information Act, minutes of executive sessions are not public information. Other than executive sessions, all meetings are open to the public. In the last three years, the Board has held no executive sessions.

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¹³ *Richardson v. Bd. of Cosmetology & Barbering*, 69 A.3d 353

¹⁴ See www.dpr.delaware.gov.

FISCAL INFORMATION

Revenue:

Fiscal Year	Source(s) of Funds	Amount \$\$
FY18 (budgeted)*	Special Funds	
		TOTAL \$ 10,700.00
FY17 (actual)	Special Funds	
		TOTAL \$126,349.00
FY16 (actual)	Special Funds	
		TOTAL \$ 20,457.00

*This amount is an estimate of applications the Division will receive in FY16. The Division is unable to determine how many licensees will request additional services from the Division.

Revenue was significantly higher in FY 2017 as a result of the biennial renewal of all licensees.

The Board does not receive federal funds.

Fines and Fees Collected by the Board:

Description of Fine or Fee	Current Fine or Fee \$\$	Number of Persons or Entities Paying Fine or Fee	Fine or Fee Revenue \$\$	Where is the Fine or Fee Revenue Deposited
Renewal Fee for Occupational Therapist	194.00	454	\$88,076.00	Special Fund
License Fee for Occupational Therapist	194.00	82	\$15,908.00	Special Fund
Renewal Fee for Occupational Therapy Assistant	68.00	253	\$17,204.00	Special Fund
License Fee for Occupational Therapy Assistant	68.00	42	\$2,856.00	Special Fund
License Fee Upgrade from Occupational Therapy Assistant to Occupational Therapist	55.00	34	\$1,870.00	Special Fund
Inactive Renewal	40.00	19	\$760.00	Special Fund
License Verification	35.00	75	\$2,625.00	Special Fund
Roster Fee	40.00	3	\$120.00	Special Fund
Duplicate License Request	25.00	9	\$225.00	Special Fund
Continuing Education Request	40.00	31	\$1,240.00	Special Fund
Fines	\$150	10	\$1500.00	General Fund

The Division conducts a fee setting analysis biennially for all professions. This analysis was completed in June 2016 for fees effective July 1, 2016, through June 30, 2018. The next analysis

will be done in May or June 2018. The Division has authority to establish and change fees as approved by the Secretary of State.¹⁵

Expenditures:

Fiscal Year	Source(s)	Amount \$\$
FY18 (budgeted)*		
		TOTAL
FY17 (actual)**	Special Fund	
		TOTAL \$46,007.14
FY16 (actual)	Special Fund	
		TOTAL \$35,006.31

*The Division is unable to provide expenditure information on a per board/commission basis. The budget for the Division encompasses all boards and commissions.

**This amount is the direct expenses and overhead costs for the Board. The overhead costs are apportioned by the percentage of licensees to the total number of licensees in the Division; this is done biennially during the fee setting analysis.

The Board has never been audited by the State Auditor or another external organization.

ACCOMPLISHMENTS

-In 2005, the Board promulgated rules and regulations to identify crimes substantially related to the practice of occupational therapy.

-In 2008, the Division began offering applicants the ability to track the progress of their applications for licensure online, by notifying applicants when their applications had been received.

-The Division streamlined the renewal process by offering online renewal with the use of payment by credit card and the ability of licensees to attest to their continuing education online subject to post renewal audit.

-The Board updated the Division's website to make it more user-friendly for the public to access licensee and disciplinary information and for applicants and licensees to access licensure requirements, laws, and rules and regulations.

-In 2011, the Division implemented the new hearing officer process as a result of legislation that implemented significant regulatory and law enforcement system reforms. This included additional investigative and legal resources dedicated to the Division to include hearing officers and a paralegal to expedite the adjudication of complaints made against professionals.

-In April, 2013 the Board agreed to join several other healthcare related professional boards in amending its statute to require all current licensees and future applicants to obtain fingerprinting and criminal background checks.

¹⁵ See 29 Del. C. § 8735(d).

-In 2014, the Division initiated SB 98 requiring a mandatory State of Delaware and Federal Bureau of Investigation criminal background checks for all practitioners under the Board of Examiners in occupational therapy.

-In 2015, the General Assembly passed HB 69 that promotes the use of telehealth and telemedicine delivered services for most health care professions in the state, including occupational therapy. This will require private health insurers to reimburse for services delivered using telemedicine technologies. In April 2016, the Board promulgated Rule 4.0 addressing delivery of services using telehealth.

-In 2017, HB 112 was passed that allows professional licensing boards and commissions administered by the Division of Professional Regulation, including occupational therapy, to recognize military education, training, and experience of all current and former military personnel when reviewing credentials and issuing licenses. This change would recognize the military education, training, and experience of individuals who are retired, a veteran, or are active duty individuals assigned to duty stations located outside this State.

CHALLENGES

1. As industry education requirements change, the Board will need to continue to ensure Delaware laws are consistent with national minimum licensure standards to foster licensure portability and reciprocity.
2. CE requirements in the Board's Rules and Regulations are overly complex.¹⁶

OPPORTUNITIES FOR IMPROVEMENT

1. Revise the statute to make it consistent with the laws of other Title 24 Boards and delete antiquated sections of the code which are no longer applicable. In particular:
 - a. Add language pertaining to duty to report conduct that constitutes grounds for discipline or inability to practice.
 - b. Update sanctions to remove "Censure a practitioner" from the available sanctions.
 - c. Remove references to temporary licenses since the temporary license section of the statute was repealed.
 - d. Remove § 2015(c). It is covered in the Administrative Procedures Act.
 - e. Remove § 2017(c). It is covered in the Administrative Procedures Act.
 - f. Miscellaneous clean up to remove unnecessary words and fix grammar errors.
2. Revise the reciprocity language to address situations where the licensee holds a current license in a state that is not substantially similar to Delaware.

¹⁶ Analyst note: The Board is currently working to update Regulations in regard to this challenge.

ADDITIONAL COMMENT FROM THE COMMITTEE ANALYST

In addition to the Division's notation to revise the governing statute, the Committee may recommend that the Board update their regulations relating to "crimes substantially related to the practice of occupational therapy." The Division has been working with boards to 1) update incorrect references to the Delaware Code; and 2) to modify the list of crimes in their regulations.

House Bill 462 was filed as a result of this review. The Board's requested revisions that have been addressed in this draft are as follows:

Add language pertaining to duty to report conduct that constitutes grounds for discipline or inability to practice.

Update sanctions to remove "Censure a practitioner" from the available sanctions.

Remove references to temporary licenses since the temporary license section of the statute was repealed.

Remove § 2015(c). It is covered in the Administrative Procedures Act.

Remove § 2017(c). It is covered by the Administrative Procedures Act.

Miscellaneous clean up to remove unnecessary words and fix grammar errors.

Revise the reciprocity language to address situations where the licensee holds a current license in a state that is not substantially similar to Delaware.

APPENDIX A

SPONSOR: Rep. Bolden & Sen. Walsh
 Reps. Bennett, Brady, Dukes, Spiegelman; Sens.
 Delcollo, Hansen, Pettyjohn, Sokola

HOUSE OF REPRESENTATIVES
 149th GENERAL ASSEMBLY

HOUSE BILL NO. 462

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO THE BOARD OF OCCUPATIONAL THERAPY PRACTICE.

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

1 Section 1. Amend § 2001, Title 24 of the Delaware Code by making deletions as shown by strike through and
 2 insertions as shown by underline as follows:

3 Subchapter I. Board ~~Of~~ of Occupational Therapy Practice.

4 § 2001. Objectives.

5 (a) The primary objective of the Board of Occupational Therapy Practice, to which all other objectives and
 6 purposes are secondary, is to protect the general public, specifically those persons who are the direct recipients of services
 7 regulated by this chapter, from unsafe practices and ~~from~~ occupational practices which tend to reduce competition or fix the
 8 price of services rendered.

9 (b) The secondary objectives of the Board are to maintain minimum standards of ~~practitioner-licensure~~ competency
 10 and ~~to maintain~~ certain standards in the delivery of services to the public. In meeting its objectives, the Board shall do all of
 11 the following:

12 (1) develop ~~Develop~~ standards assuring professional ~~competence; competence.~~

13 (2) shall monitor ~~Monitor~~ complaints brought against ~~practitioners-licensurees~~ regulated by the ~~Board~~ Board.

14 (3) shall adjudicate ~~Adjudicate~~ at formal ~~hearings; hearings.~~

15 (4) shall promulgate ~~Promulgate~~ rules and ~~regulations; and regulations.~~

16 (5) shall impose ~~Impose~~ sanctions where necessary against ~~practitioners-licensurees~~.

17 (c) Nothing in this chapter ~~shall be deemed is~~ a direct or indirect commitment by the General Assembly to a
 18 present or future requirement that insurers or other third parties must offer or provide coverage for the services of
 19 ~~practitioners licensed under this chapter~~ licensees.

20 Section 2. Amend § 2002, Title 24 of the Delaware Code by making deletions as shown by strike through and
 21 insertions as shown by underline as follows and by redesignating accordingly:

§ 2002. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them under this section, except where the context clearly indicates a different meaning. As used in this chapter:

(1) "Applicant" means an individual who applies to be licensed under this chapter.

(1) "Board" ~~shall mean means~~ the State Board of Occupational Therapy Practice established in this chapter.

(2) "Distant site" means a site at which a health-care provider legally allowed to practice in ~~the~~ this State is located while providing health-care services by means of telemedicine or telehealth.

(3) "Division" means the Division of Professional Regulation.

(3) "Excessive use or abuse of drugs or alcohol" or "excessively uses or abuses drugs or alcohol" ~~shall mean means~~ any use of narcotics, controlled ~~substances-substances~~, or illegal drugs without a prescription from a licensed physician, or the abuse of alcoholic beverage such that it impairs a person's ability to perform the work of an occupational therapist or occupational therapy assistant.

(4) "Licensee" means an individual licensed under this chapter to practice occupational therapy services.

(4) "Occupational therapist" ~~shall mean means~~ a person who is licensed to practice occupational therapy pursuant to under this chapter and who offers such services to the public under any title incorporating the words "occupational therapy," "occupational ~~therapist-therapist~~," or any similar title or description of occupational therapy services.

(5) "Occupational therapy assistant" ~~shall mean means~~ a person licensed to assist in the practice of occupational ~~therapy, therapy~~ under the supervision of an occupational therapist.

(6) a. "Occupational therapy services" ~~shall mean, but are not limited to includes~~ any of the following:

~~a.~~ 1. The assessment, ~~treatment-treatment~~, and education of or consultation with ~~the an~~ individual, ~~family-family~~, or other ~~persons; or persons~~.

~~b.~~ 2. Interventions directed toward developing, ~~improving-improving~~, or restoring daily living skills, work readiness or work performance, play ~~skills-skills~~, or leisure ~~capacities-capacities~~, or enhancing educational performance ~~skills; or skills~~.

~~c.~~ 3. Providing for the development, ~~improvement-improvement~~, or restoration of sensorimotor, oralmotor, perceptual or neuromuscular functioning, or emotional, motivational, ~~cognitive-cognitive~~, or psychosocial components of performance.

~~b. These services-~~ "Occupational therapy services" or "practice of occupational therapy" may require assessment of the need for use of interventions such as the design, development, adaptation, ~~application application~~, or training in the use of assistive technology devices; the design, ~~fabrication-fabrication~~, or application of rehabilitative technology such as selected orthotic devices; training in the use of assistive technology, orthotic

or prosthetic devices; the application of thermal agent modalities, ~~including, but not limited to, including~~ paraffin, hot and cold ~~packs-packs~~, and fluidotherapy, as an adjunct to, or in preparation for, purposeful activity; the use of ergonomic principles; the adaptation of environments and processes to enhance functional performance; or the promotion of health and wellness.

c. "Occupational therapy services" or "practice of occupational therapy" ~~Services may be provided through the use of telemedicine in a manner deemed appropriate by regulation. Services also regulation and may include participation in telehealth as further defined in regulation.~~

(7) "Originating site" means a site in Delaware at which a patient is located at the time health-care services are provided to ~~him or her the patient~~ by means of telemedicine or telehealth, unless the term is otherwise defined with respect to the provision in which it is used; ~~provided~~, however, notwithstanding any other provision of law, insurers and providers may agree to alternative siting arrangements deemed appropriate by the parties.

(8) "Person" ~~shall mean means~~ a corporation, company, ~~association association, and or~~ partnership, ~~as well as or~~ an individual.

(9) "Practice of occupational therapy" ~~shall mean means~~ the use of goal-directed activities with individuals who are limited by physical limitations due to injury or illness, psychiatric and emotional disorders, developmental or learning disabilities, poverty and cultural ~~differences differences~~, or the aging process, in order to maximize independence, prevent ~~disability disability~~, and maintain health.

(10) "Store and forward transfer" means the transmission of a patient's medical information either to or from an originating site or to or from the provider at the distant site, but does not require the patient being present ~~nor must it or that the transmission~~ be in real time.

(11) "Substantially related" means the nature of the criminal ~~conduct, conduct~~ for which ~~the a~~ person was ~~convicted, convicted~~ has a direct bearing on the fitness or ability to perform 1 or more of the duties or responsibilities necessarily related to the practice of occupational therapy.

(12) "Supervision" ~~shall mean means~~ the interactive process between ~~the a~~ licensed occupational therapist and ~~the an~~ occupational therapy ~~assistant. It shall be assistant, and requires~~ more than a paper review or cosignature. ~~The "Supervision" means that the supervising occupational therapist is responsible for insuring the extent, kind kind,~~ and quality of the services ~~rendered by the occupational therapy assistant that the occupational therapy assistant renders.~~

(13) "Telehealth" means the use of information and communications technologies consisting of telephones, remote patient monitoring ~~devices devices~~, or other electronic means which support clinical health care, provider consultation, patient and professional health-related education, public health, health administration, and other services as described in regulation.

(14) "Telemedicine" means a form of telehealth which is the delivery of clinical health-care services by means of real time 2-way audio, visual, or other telecommunications or electronic communications, including the application of secure video conferencing or store and forward transfer technology to provide or support health-care delivery, which facilitate the assessment, diagnosis, consultation, treatment, education, care ~~management-management~~, and self-management of a patient's health care by a licensee practicing within ~~his or her~~ the licensee's scope of practice as would be practiced in-person with a patient and with other restrictions as defined in regulation.

Section 3. Amend § 2003, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 2003. Board of Occupational Therapy Practice; appointments; qualifications; term; vacancies; suspension or removal; ~~unexcused absences~~; compensation.

(a) ~~There is created a State~~ The Board of Occupational Therapy Practice ~~which shall administer-administers and enforce-enforces~~ this chapter.

(b) The Board ~~shall consist-consists~~ of 5 members ~~appointed by the Governor~~, who are residents of this State ~~and appointed by the Governor as follows~~:

(1) ~~Three professional members, 2 of whom shall be occupational therapists licensed under this chapter, Two occupational therapists.~~

(2) ~~1 may be a licensed occupational therapy assistant, and One occupational therapy assistant.~~

(3) ~~2 public members. The public members shall Two public members, who must meet all of the following qualifications:~~

a. ~~not~~ Not be, nor ever have been, ~~an occupational therapists therapist or occupational therapy assistants, assistant.~~

b. ~~nor members~~ Not be, ~~nor ever have been~~, a member of the immediate family of an occupational therapist or occupational therapy ~~assistant; assistant.~~

c. ~~shall not have been~~ Not be, ~~nor ever have been~~ employed by an occupational therapist or occupational therapy ~~assistant; assistant.~~

d. ~~shall not~~ Not have a material interest in the providing of goods and services to ~~an occupational therapists therapist or occupational therapy assistants; assistant.~~

e. ~~nor~~ Not have been engaged in an activity directly related to occupational therapy.

The public members shall be accessible to inquiries, comments and suggestions from the general public.

(c) ~~Except as provided in subsection (d) of this section, each member shall serve a term of 3 years, and may succeed himself or herself for 1 additional term; provided however, that where a member was initially appointed to fill a vacancy, such member may succeed himself or herself for only 1 additional full term. Any person appointed to fill a~~

118 vacancy on the Board shall hold office for the remainder of the unexpired term of the former member. Each term of office
119 shall expire on the date specified in the appointment; however, the Board member shall remain eligible to participate in
120 Board proceedings unless and until replaced by the Governor. Persons who are members of the Board on June 17, 1998,
121 ~~shall complete their terms.~~ Each member is appointed for a term of 3 years. A member may succeed the member's term for
122 1 additional term, and may not be appointed again until a period of 3 years has expired.

123 (d) A person who has never served on the Board may be appointed to the Board for 2 consecutive terms; but no
124 such person shall thereafter be eligible for 2 consecutive appointments. No person, who has been twice appointed to the
125 Board or who has served on the Board for 6 years within any 9 year period, shall again be appointed to the Board until an
126 interim period of at least 1 year has expired since such person last served.

127 (e) Any act or vote by a ~~person~~ member appointed in violation of this section ~~shall be~~ is invalid. An amendment or
128 revision of this chapter is not sufficient cause for any appointment or attempted appointment in violation of subsection (d)
129 of this section, unless ~~such an~~ the amendment or revision amends this section to permit ~~such an~~ the appointment.

130 (f)(1) ~~A member of the Board shall be suspended or removed by the Governor for misfeasance, nonfeasance or~~
131 ~~malfeasance.~~ The Governor may remove a member for gross inefficiency, neglect of duty, malfeasance, misfeasance, or
132 nonfeasance in office. If a member is absent from 3 consecutive meetings or attends less than 50% of meetings in a 12
133 month period, the member is in neglect of duty and may be assumed to have resigned, and the Governor may accept the
134 member's resignation.

135 (2) A member subject to disciplinary hearing ~~shall be~~ is disqualified from Board business until the charge is
136 adjudicated or the matter is otherwise concluded. ~~A Board member may appeal any suspension or removal to the~~
137 ~~Superior Court.~~

138 (g) ~~No~~ A member of the Board, while serving on the Board, ~~shall~~ may not hold elective office in any professional
139 association of occupational therapists or occupational therapy assistants; ~~this includes a prohibition against assistants,~~
140 ~~including~~ serving as head of the professional association's Political Action Committee (PAC).

141 (h) ~~The law regulating the conduct of officers and employees of the State under Chapter 58 of Title 29 shall apply~~
142 ~~applies~~ to all members of the Board.

143 (i) ~~Any member who is absent without adequate reason for 3 consecutive meetings, or fails to attend at least 1/2 of~~
144 ~~all regular business meetings during any calendar year, shall be guilty of neglect of duty.~~

145 (j) Each member of the Board ~~shall~~ must be reimbursed for all expenses involved in each meeting, including
146 travel, and in addition ~~shall~~ must receive compensation per meeting attended in an amount determined by the Division in
147 accordance with Del. Const. art. III, § 9.

Section 4. Amend § 2004, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2004. Organization; meetings; officers; quorum.

(a) The Board shall hold regularly scheduled business meetings at least once in each quarter of a calendar year, ~~and at such times as the chair deems necessary, or necessary and~~ at the request of a majority of the Board members.

(b) The Board shall elect annually from its members a chair, ~~vice chair~~ vice-chair, and secretary. Each officer shall serve for 1 year, and ~~shall may not succeed himself or herself~~ the officer's term for more than 2 consecutive terms. In the event of a vacancy in 1 of the offices, the Board shall elect a replacement ~~shall be elected~~ at the next Board meeting.

(c) A majority of the members ~~shall constitute~~ constitutes a quorum for the purpose of transacting business. ~~No~~ The Board may not take disciplinary action ~~shall be taken~~ without the affirmative vote of at least 3 members of the Board.

(d) Minutes of all meetings ~~shall must~~ be recorded, and ~~copies shall be maintained by the Division of Professional Regulation~~ shall maintain copies of meeting minutes. At any hearing where evidence is presented, a record must be made from which a verbatim transcript can be prepared ~~shall be made~~. The person requesting the transcript must pay for the expense of preparing ~~any the transcript shall be incurred by the person requesting it~~.

Section 5. Amend § 2005, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2005. Records.

The Division of Professional Regulation ~~shall~~ keep a register of all approved applications for license as an occupational therapist and occupational therapy assistant, and complete records relating to meetings of the Board, examinations, rosters, ~~changes~~ changes, and additions to the Board's rules and regulations, complaints, ~~hearings~~ hearings, and ~~such any other matters as that the Board shall determine~~ determines. ~~Such~~ The records ~~shall be~~ are prima facie evidence of the Board's proceedings of the Board.

Section 6. Amend § 2006, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline and by redesignating accordingly as follows:

§ 2006. Powers and duties.

(a) The Board of Occupational Therapy Practice ~~shall have authority to~~ may do all of the following:

(1) Formulate rules and regulations, with appropriate notice to those ~~affected~~, ~~all rules~~ affected. Rules and regulations ~~shall must~~ be promulgated in accordance with the procedures specified in the Administrative Procedures Act [Chapter 101 of Title 29] of this State. Each rule or regulation ~~shall must~~ implement or clarify a specific section of this ~~chapter~~, chapter.

(2) Designate the application form to be used by all ~~applicants~~, applicants and ~~to process all applications~~, applications.

(3) Designate the written, standardized examination as approved by the National Board for Certification in Occupational Therapy, Inc., or its successor, ~~to be taken by all persons applying for licensure; applicants that an applicant must pass to qualify for licensure. An applicant who qualify-qualifies~~ for licensure by reciprocity ~~shall must~~ have achieved a passing score on the national ~~examination; examination~~.

(4) ~~The Board shall adopt the administration, grading procedures and passing score of the National Board for Certification in Occupational Therapy, Inc., or a comparable alternative national or regional examination, if a national examination is not available;~~

(5) Establish minimum education, ~~training—training~~, and experience requirements for ~~licensure—as occupational therapists and occupational therapy assistants; licensure~~.

(6) Evaluate ~~the an applicant's credentials of all persons applying for a license to practice occupational therapy and to practice as occupational therapy assistants in Delaware, in order to determine whether such persons meet the applicant meets~~ the qualifications for licensing ~~set forth in under~~ this chapter.

(7) Grant licenses to, and renew licenses of, ~~all persons who meet an applicant or licensee who meets~~ the qualifications for licensure ~~and/or or renewal of licenses; licenses~~.

(8) Establish by rule and regulation continuing education standards required for license ~~renewal; renewal~~.

(9) Evaluate certified records to determine whether an applicant ~~for licensure, who has been previously licensed, certified—certified~~, or registered in another jurisdiction to practice occupational therapy or to act as an occupational therapy ~~assistant, assistant~~ has engaged in any act or offense that would be grounds for disciplinary action under this ~~chapter—chapter~~, and whether ~~there are any~~ disciplinary proceedings or unresolved complaints ~~are~~ pending against ~~such applicants for such acts or offenses; the applicant for the act or offense~~.

(10) Refer all complaints from licensees and the public concerning ~~licensed occupational therapists and occupational therapy assistants, or concerning practices of the Board or of the profession; licensees, the Board's practices, or the profession~~ to the Division of Professional Regulation for investigation ~~pursuant to under § 8735 of Title 29, 29,~~ and assign a ~~member of the Board member~~ to assist the Division in an advisory capacity with the investigation of the technical aspects of the ~~complaint, complaint~~. A Board member who is assigned to assist the Division ~~under this paragraph may not participate in deliberations on the complaint~~.

(11) Conduct hearings and issue orders in accordance with procedures established ~~pursuant to under this chapter and chapter, Chapter 101 of Title 29, and § 8735 of Title 29. Where such provisions conflict with this chapter, this chapter shall govern.~~ The Board shall determine whether ~~or not an occupational therapist or occupational therapy assistant shall be a licensee~~ is subject to a disciplinary ~~hearing, hearing~~ and, if so, shall conduct ~~such the~~ hearing in accordance with this chapter and the Administrative Procedures Act [Chapter 101 of Title ~~29, 29~~].

(12) ~~Where it has been determined after a disciplinary hearing, If the Board determines after a disciplinary hearing that penalties or sanctions should be imposed, to designate and impose the appropriate sanction or penalty after time for appeal has lapsed.~~

(b) ~~The Board of Occupational Therapy shall promulgate regulations specifically identifying these crimes which are substantially related to the practice of occupational therapy.~~

(4) The Board shall adopt the administration, grading procedures, and passing score of the National Board for Certification in Occupational Therapy, Inc., or its successor, or a comparable alternative national or regional examination, if a national examination is not available.

Section 7. Amend § 2007, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter II. License.

§ 2007. License required.

(a) ~~No~~ A person ~~shall may not~~ engage in the practice of occupational therapy or hold ~~himself or herself the person~~ out to the public in this State as being qualified to practice as an occupational therapist or occupational therapy assistant; ~~assistant~~ or use in connection with the person's name, or otherwise assume or use, any title or description conveying or tending to convey the impression that ~~such the~~ person is qualified to practice occupational therapy, unless ~~such the~~ person has been ~~duly~~ licensed under this chapter.

(b) ~~Whenever~~ If a license to practice as an occupational therapist or occupational therapy assistant in this ~~state~~ State has expired or been suspended or revoked, it ~~shall be is~~ unlawful for the person holding the expired, suspended, or revoked license to practice occupational therapy in this State.

(c) It ~~shall be is~~ unlawful for ~~any person, or for any a person or~~ business entity, ~~its or~~ a person's or business entity's employees, ~~agents agents~~, or representatives to use in connection with ~~his, her or it's the person's or business~~ entity's name or business activity the words occupational therapist, occupational therapist registered, licensed occupational therapist, occupational therapy assistant, licensed occupational therapy ~~assistant assistant~~; the letters of OT, OT/L, OTR, OTR/L, OTA, COTA, ~~COTAL COTAL~~, or any other words, letters, ~~abbreviations abbreviations~~, or insignia indicating or implying directly or indirectly that occupational therapy services are ~~rendered rendered~~, unless ~~such the~~ person or business entity is licensed under this chapter.

Section 8. Amend § 2008, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2008. Qualifications of applicant; report to Attorney General; judicial review.

(a) An applicant who is applying for licensure as an occupational therapist or occupational therapy assistant under this chapter shall submit evidence, verified by oath and satisfactory to the Board, that ~~such person~~ the applicant meets all of the following qualifications:

(1) Has successfully completed the academic requirements of an educational program in occupational therapy ~~recognized by the Board; and that the Board recognizes. The occupational therapy education program and occupational therapist assistant educational program must be accredited by the Accreditation Council for Occupational Therapy Education.~~

a. ~~The occupational therapy educational program shall be accredited by the Accreditation Council for Occupational Therapy Education (ACOTE);~~

b. ~~The occupational therapy assistant educational program shall be accredited by the Accreditation Council for Occupational Therapy Education (ACOTE);~~

(2) Has successfully completed a period of supervised field work experience arranged by the recognized educational institution where the ~~person~~ applicant has met the academic requirements, or by the nationally recognized professional ~~association; association.~~

(3) Has achieved the passing score on the written standardized examination developed by the National Board for Certification in Occupational Therapy, Inc., or its ~~successor; successor.~~

(4) ~~a. Shall not have~~ Has not been the recipient of any administrative penalties regarding ~~that person's the applicant's~~ practice of occupational therapy, including ~~but not limited to fines, fines, formal reprimands, reprimands;~~ license suspensions or ~~revocation (except revocation, except~~ for license revocations for nonpayment of license renewal ~~fees); fees; or probationary limitations and/or limitations.~~

b. ~~has~~ Has not entered into any "consent agreements" which contain conditions placed by a Board on that ~~person's applicant's~~ professional conduct and practice, including any voluntary surrender of a license.

c. The Board may determine, after a hearing, whether ~~such an~~ administrative penalty included in paragraph (4)a. and (4)b. of this section is grounds to deny licensure; licensure.

(5) ~~Shall not have any~~ Has no impairment related to drugs, ~~alcohol alcohol,~~ or a finding of mental incompetence by a physician that would limit the applicant's ability to undertake the practice of occupational therapy in a manner consistent with the safety of the ~~public; public.~~

(6) ~~Shall Does~~ not have a criminal conviction ~~record, nor record or~~ pending criminal charge relating to an offense, the circumstances of which substantially relate to the practice of occupational therapy. Applicants who have criminal conviction records or pending criminal charges shall ~~require request that the~~ appropriate authorities ~~to~~ provide information about the record or charge directly to the Board in sufficient specificity to enable the Board to make a

determination whether the record or charge is substantially related to the practice of occupational therapy. ~~However,~~
The Board may waive this paragraph (a)(6) of this section if, after a hearing or review of documentation demonstrating
that the applicant meets the specified criteria for a waiver, the Board, by an affirmative vote of a majority of the
~~quorum, may waive this paragraph (a)(6), if quorum, it finds all of the following:~~

a. For waiver of a felony conviction, more than 5 years have elapsed since the date of the conviction. At
the time of the application the applicant may not be incarcerated, on work release, on probation, on ~~parole-parole,~~
or serving any part of a suspended ~~sentence-sentence,~~ and must be in substantial compliance with all court orders
pertaining to fines, ~~restitution-restitution,~~ and community service.

b. For waiver of a misdemeanor conviction or violation, at the time of the application the applicant ~~may~~
~~must~~ not be incarcerated, on work release, on probation, on ~~parole-parole,~~ or serving any part of a suspended
~~sentence-sentence,~~ and must be in substantial compliance with all court orders pertaining to fines, ~~restitution~~
~~restitution,~~ and community service.

c. The applicant is capable of practicing occupational therapy in a competent and professional manner.

d. ~~The granting of~~ Granting the waiver will not endanger the public health, ~~safety or welfare; safety, or~~
~~welfare.~~

(7) ~~Shall not have~~ Has not been convicted of a felony sexual ~~offense; offense.~~

(8)a. Has submitted, at the applicant's expense, fingerprints and other necessary information in order to obtain
all of the following:

~~a.~~ 1. A report of the applicant's entire criminal history record from the State Bureau of Identification
or a statement from the State Bureau of Identification that the State Central Repository contains no ~~such~~
~~information-criminal history record~~ relating to that ~~person; applicant.~~

~~b.~~ 2. A report of the applicant's entire federal criminal history record ~~pursuant to under~~ the Federal
Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. § 534). The State Bureau of
Identification ~~shall be is~~ the intermediary for purposes of this section and the Board of Occupational Therapy
~~Practice shall be is~~ the screening point for the receipt of ~~said the~~ federal criminal history ~~records; records.~~

~~a.~~ b. An applicant may not be licensed to practice occupational therapy until the applicant's criminal
history reports have been produced. ~~An-The Board may not license an~~ applicant whose record shows a prior
criminal conviction ~~may not be licensed by the Board unless a waiver is granted pursuant to under~~ paragraph (a)(6)
of this section.

(b) ~~Where-If~~ the Board ~~has found-finds~~ to its satisfaction that an ~~application-applicant~~ has been intentionally
~~fraudulent, or that false information has been intentionally supplied; fraudulent or intentionally supplied false information.~~
it shall report its findings to the Attorney General for further action.

(c) ~~Where the application of a person has been refused or rejected and such~~ If the Board refuses or rejects an application and the applicant ~~feels believes~~ that the Board has acted without ~~justification; justification,~~ has imposed higher or different standards for that applicant than for other applicants or ~~licensees; licensees,~~ or has in some other manner contributed to or caused the failure of ~~such the~~ application, the applicant may appeal to the Superior Court.

(d) ~~All individuals licensed to practice occupational therapy in this State shall be required to~~ Licensees must be fingerprinted by the State Bureau of Identification, at the licensee's expense, for the purposes of performing subsequent criminal background checks. ~~Licensees shall submit by January 1, 2016, at the applicant's expense, fingerprints and other necessary information in order to obtain a criminal background check.~~

Section 9. Amend § 2009, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2009. Applicability of chapter.

Nothing in this chapter ~~shall may~~ be construed as preventing or restricting the practice, ~~services services,~~ or activities of any of the following:

(1) ~~Any A~~ person registered or licensed in this State by any other law from engaging in the profession or occupation for which that person is ~~licensed; licensed.~~

(2) ~~Any A~~ person pursuing a course of study leading to a degree or certificate in occupational therapy at an accredited or approved educational program if such activities and services constitute a part of a supervised course of study and if ~~such a the~~ person is designated by a title which clearly indicates that person's status as a student or ~~trainee;~~ trainee.

(3) ~~Any A~~ person fulfilling the supervised field work experience requirements of this chapter, if such activities and services constitute the requirements for ~~licensure; or licensure.~~

(4) ~~Any A~~ visiting occupational therapist who teaches temporarily at an accredited or approved educational program, or who lectures or instructs participants at seminars sanctioned by the Delaware Occupational Therapy Association.

Section 10. Amend § 2010, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2010. Foreign-trained Applicants.

In addition to the ~~requirement requirements~~ of § 2008 of this title, a foreign-trained applicant ~~shall be is~~ eligible for licensure as an occupational therapist or as an occupational therapy assistant after submitting to the Board satisfactory evidence of graduation from a school offering a program in occupational therapy or occupational therapy assistant which has been approved for the educational preparation of occupational therapists or occupational therapy assistants by the

appropriate accrediting agency recognized by the National Board for Certification in Occupational Therapy, Inc., or its successor.

Section 11. Amend § 2011, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2011. Reciprocity.

Upon payment of the appropriate fee and submission and acceptance of a written application on forms provided by the Board, the Board shall grant a license to each applicant who ~~shall present~~ presents proof of current licensure in good standing in another state, the District of Columbia, or territory of the United States, ~~whose standards for licensure are substantially similar to those of this State, States,~~ and who meets all of the following criteria:

(1) ~~The applicant's~~ Has a license ~~is~~ in good standing as defined in § 2008(a)(4)-(6) of this ~~title; and title.~~

(2) Has achieved the passing score on all parts of the written, standardized examination administered by the National Board for Certification in Occupational Therapy, Inc., or its successor.

Section 12. Amend § 2012, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2012. ~~Temporary license. [Repealed.]~~ Duty to report unprofessional conduct; inability to practice.

(a) A licensee has a duty to report to the Division information that the licensee reasonably believes indicates that the licensee or another licensee has engaged in or is engaging in conduct that constitute grounds for disciplinary action under this chapter. A licensee shall report to the Board within 30 days of the occurrence of any of the following:

(1) A partial or full removal of the licensee's or another licensee's hospital privileges based on adverse events, unprofessional conduct, or competency issues.

(2) A disciplinary action taken by any regulatory agency against against the licensee or another licensee.

(3) A reasonably-substantiated incident involving violence, threat of violence, abuse, or neglect by the licensee or another licensee toward another person.

(b)(1) A licensee is subject to temporary or permanent license restriction, suspension, or revocation if the licensee is unable to practice the occupation with reasonable skill or safety to patients due to any of the following circumstances:

a. Mental illness or mental incompetence.

b. Physical illness, including deterioration due to aging or loss of motor skills.

c. Excessive use or abuse of drugs or alcohol.

(2) A license may be permanently restricted, suspended, or revoked after a hearing under § 2006(a)(11) of this title.

365 (3) A license may be temporarily restricted, suspended, or revoked after a hearing under § 2006(a)(11) of this
366 title or, if circumstances present an immediate danger to the public health, safety, or welfare, without a hearing and
367 under the process established in § 2017(c) of this title.

368 Section 13. Amend § 2013, Title 24 of the Delaware Code by making deletions as shown by strike through and
369 insertions as shown by underline as follows:

370 § 2013. Fees.

371 (a) The amount to be charged for each fee imposed under this chapter shall must approximate and reasonably
372 reflect all costs necessary to defray the Board's expenses of the Board, as well as and the Division's proportional expenses
373 incurred by the Division of Professional Regulation in its service on behalf of the Board.

374 (b) There shall be a A separate fee may be charged for each service or activity, activity, but no fee shall may be
375 charged for a purpose not specified in this chapter.

376 (c) The application fee shall must not be combined with any other fee or charge.

377 (d) At the beginning of each licensure biennium, the Division of Professional Regulation, or any other state agency
378 acting in its behalf, on the Division's behalf shall compute, for each separate service or activity, the appropriate Board fees
379 for the coming licensure biennium.

380 Section 14. Amend § 2014, Title 24 of the Delaware Code by making deletions as shown by strike through and
381 insertions as shown by underline as follows:

382 § 2014. Issuance and renewal of licenses.

383 (a) The Board shall issue a license to each applicant, applicant who meets the requirements of and pays the fee
384 under this chapter for licensure as an occupational therapist or occupational therapy assistant and who pays the fee
385 established under § 2013 of this title.

386 (b) Each license shall must be renewed biennially, in such a manner as is determined by the Division of
387 Professional Regulation, and Division, upon payment of the appropriate fee and submission of a renewal form provided by
388 the Division of Professional Regulation, Division, and proof that the licensee has met the continuing education
389 requirements established by the Board.

390 (c) The Board, in its rules and regulations, shall determine the period of time within which a licensed occupational
391 therapist or occupational therapy assistant licensee may still renew the occupational therapist's or occupational therapy
392 assistant's license, notwithstanding the fact that such a license if the licensee has failed to renew on or before the renewal
393 date.

394 (d) A licensee, upon written request, may be placed place the licensee's license on inactive status. The renewal fee
395 of the licensee shall to renew an inactive license must be prorated in accordance with the amount of time the licensee

license was inactive. The licensee may reenter practice upon written notification to the Board of the intent to do so and completion of continuing education as required ~~in by~~ the Board's rules and regulations.

Section 15. Amend § 2015, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2015. Grounds for discipline.

(a) A ~~practitioner licensed under this chapter shall be~~ licensee is subject to disciplinary actions set forth in ~~under § 2017 of this title, title~~ if, after a hearing, the Board finds that the ~~occupational therapist or occupational therapy assistant licensee has done any of the following:~~

(1) ~~Has employed~~ Employed or knowingly cooperated in fraud or material deception in order to acquire a license as an occupational therapist or occupational therapy ~~assistant; has assistant,~~ impersonated another person holding a license or registration, ~~or~~ allowed another person to use the ~~practitioner's~~ licensee's license, or aided or abetted a person not licensed ~~as an occupational therapist or occupational therapy assistant under this chapter to~~ represent ~~himself or herself~~ the person as an occupational therapist or occupational therapy ~~assistant; assistant.~~

(2) ~~Has been~~ Been convicted of a crime that is substantially related to the practice of occupational ~~therapy; a~~ therapy. A copy of the record of conviction certified by the clerk of the court entering the conviction ~~shall be~~ is conclusive evidence ~~thereof, of the conviction.~~

(3) ~~Has excessively used or abused drugs either in the past 2 years or currently; excessive use or abuse of drugs shall mean any use of narcotics, controlled substances or illegal drugs without a prescription from a licensed physician, or the abuse of alcoholic beverage such that it impairs the practitioner's ability to perform the work of an occupational therapist or occupational therapy assistant; Excessively used or abused drugs or alcohol in the previous 2 years.~~

(4) ~~Has engaged~~ Engaged in an act of consumer fraud or ~~deception; deception,~~ engaged in the restraint of ~~competition; competition,~~ or participated in price-fixing ~~activities; activities.~~

(5) ~~Has violated~~ Violated a lawful provision of this chapter, ~~or any lawful chapter or a regulation established thereunder; under this chapter.~~

(6) ~~Has had that practitioner's~~ Had the licensee's license, ~~certification~~ certification, or registration as an occupational therapist or occupational therapy assistant suspended or revoked, or other disciplinary action taken by the appropriate licensing authority in another ~~jurisdiction; provided however, that jurisdiction.~~

a. For paragraph (a)(6) of this section to apply, the underlying grounds for ~~such the~~ action in another jurisdiction ~~have been~~ must be presented to the Board by certified record, and the Board ~~has determined~~ must determine that the facts found ~~by the appropriate authority~~ in the other jurisdiction constitute 1 or more of the acts defined in this chapter.

428 ~~b. Every person licensed as an occupational therapist or occupational therapy assistant in this State shall~~
 429 ~~be. A licensee is deemed to have given consent~~ consented to the release of ~~this the~~ information under paragraph
 430 (a)(6)a. of this section by the Board of Occupational Therapy Practice or other comparable agencies ~~agency~~ in
 431 another jurisdiction and ~~to waive~~ waived all objections to the admissibility of previously adjudicated evidence ~~of~~
 432 ~~such the acts or offenses, on the record of the other jurisdiction.~~

433 (7) ~~Has failed~~ Failed to notify the Board that the ~~practitioner's licensee's~~ license, ~~certification~~ certification, or
 434 registration as an occupational therapist or occupational therapy assistant in another ~~state~~ jurisdiction has been subject
 435 to discipline, ~~or has been surrendered, suspended~~ suspended, or revoked. A certified copy of the record of disciplinary
 436 action, surrender, ~~suspension~~ suspension, or revocation ~~shall be~~ is conclusive evidence ~~thereof, thereof~~.

437 (8) While acting as a supervising occupational therapist, has failed to supervise and take reasonable steps to
 438 see that an occupational therapy assistants assistant and temporary licensees perform performs services responsibly,
 439 ~~competently~~ competently, and ethically, in accordance with rules and regulations ~~established by that~~ the Board
 440 ~~established. Supervising. A supervising occupational therapists shall be~~ therapist is subject to disciplinary action for ~~any~~
 441 ~~acts or offenses which are an act or offense which is grounds for such disciplinary action when such acts or offenses~~
 442 ~~are the act or offense is~~ undertaken by the occupational therapy assistant or temporary licensee acting under the
 443 supervising occupational therapist's direction or control.

444 (b) ~~Where a practitioner~~ If a licensee fails to comply with the Board's request that the ~~practitioner~~ licensee attend a
 445 hearing, the Board may petition the Superior Court to order ~~such the licensee's attendance, and the said attendance. The~~
 446 Court ~~or any judge assigned thereto shall have~~ has the jurisdiction to issue ~~such an order requiring the licensee to attend the~~
 447 hearing.

448 (c) Subject to this chapter and subchapter IV of Chapter 101 of Title 29, no license shall be restricted, suspended
 449 ~~or revoked by the Board, and no practitioner's right to practice occupational therapy or to act as an occupational therapy~~
 450 ~~assistant shall be limited by the Board until such practitioner has been given notice, and an opportunity to be heard, in~~
 451 ~~accordance with the Administrative Procedures Act [Chapter 101 of Title 29].~~

452 Section 16. Amend § 2016, Title 24 of the Delaware Code by making deletions as shown by strike through and
 453 insertions as shown by underline as follows:

454 § 2016. Complaints.

455 (a) ~~All complaints shall be received and investigated by the Division of Professional Regulation. The Division shall~~
 456 receive and investigate a complaint in accordance with § 8735 of Title 29, and the Division shall ~~be responsible for issuing~~
 457 issue a final written report at the conclusion of its investigation.

458 (b) ~~When it is determined~~ If the Board determines that an individual is engaging in the practice of occupational
 459 therapy or ~~is using the title occupational therapist or occupational therapy assistant and is not licensed under the laws of this~~

~~State this chapter, the Board shall issue a formal warning to the individual under this chapter. If the formal warning does not resolve the matter, the Board may apply to the Office of the Attorney General to issue a cease and desist order after formally warning the unlicensed practitioner in accordance with this chapter.~~

~~(c) Any complaints—The Division shall investigate a complaint against a licensee involving allegations of unprofessional conduct or incompetence shall be investigated by the Division of Professional Regulation.~~

Section 17. Amend § 2017, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 2017. Disciplinary sanctions.

(a) The Board may impose any of the following sanctions, singly or in combination, when it finds that 1 or more of the conditions or violations ~~set forth in under~~ § 2015 of this title applies to a ~~practitioner regulated by this chapter~~ licensee:

(1) Issue a letter of reprimand.

~~(2) Censure a practitioner.~~

(3) Place ~~a practitioner~~ the licensee on probationary ~~status, status~~ and require the ~~practitioner~~ licensee to do any of the following:

a. Report regularly to the Board upon the matters which are the basis of the ~~probation; probation.~~

b. Limit all practice and professional activities to those areas ~~prescribed by that~~ the Board prescribes.

(4) Suspend ~~any practitioner's~~ the licensee's license.

(5) Revoke ~~any practitioner's~~ the licensee's license.

(6) Impose a monetary penalty not to exceed \$500 for each violation.

(b) The Board may withdraw or reduce conditions of probation ~~when if~~ it finds that the deficiencies which required ~~such action have been~~ the probation are remedied.

(c) ~~In the event of~~ If a formal or informal complaint concerning the activity of a licensee ~~that~~ presents a clear and immediate danger to the public health, ~~safety~~ safety, or welfare, the Board may temporarily suspend the ~~person's~~ licensee's license, pending a hearing, upon the written order of the Secretary of State or the Secretary's designee, with the concurrence of the Board chair or the Board chair's designee.

(1) An order temporarily suspending a license ~~may~~ must not be issued unless the ~~person~~ licensee or the ~~person's~~ licensee's attorney ~~received~~ receives at least 24 hours' written or oral notice before the temporary ~~suspension~~ suspension, so that the ~~person~~ licensee or the ~~person's~~ licensee's attorney may file a written response to the proposed suspension.

(2) The decision as to whether to issue the temporary order of suspension ~~will~~ must be decided on the written submissions.

492 (3) ~~An order of temporary suspension pending a hearing may remain in effect for no longer than 60 days from~~
493 ~~the date of the issuance of the order-order, unless the temporarily suspended person-licensee requests a continuance of~~
494 ~~the hearing date. If the temporarily suspended person requests a continuance, hearing, in which case the order of~~
495 ~~temporary suspension remains in effect until the hearing is convened and the Board renders a decision is rendered by~~
496 ~~the Board.~~

497 (4) ~~A person-licensee whose license has been temporarily suspended pursuant to under this section may~~
498 ~~request an expedited hearing. The-Upon the licensee's timely request, the Board shall schedule the hearing on an~~
499 ~~expedited basis, provided that the Board receives the request within 5 calendar days from the date on which the person~~
500 ~~received notification of the decision to temporarily suspend the person's license-A request is timely if the licensee~~
501 ~~provides it to the Board within 5 calendar days from the date that the licensee received notice of the temporary~~
502 ~~suspension..~~

503 (d) ~~As a condition to reinstatement of a suspended license-license or removal from probationary status, the Board~~
504 ~~may impose such disciplinary or corrective measures as are authorized under this chapter.~~

505 (e) ~~The Board shall permanently revoke the license to practice occupational therapy of a person-licensee who is~~
506 ~~convicted of a felony sexual offense.~~

507 Section 18. Amend § 2018, Title 24 of the Delaware Code by making deletions as shown by strike through and
508 insertions as shown by underline as follows:

509 § 2018. Hearing procedures.

510 (a) ~~If a complaint alleging violation of § 2015 of this title is filed with the Board pursuant to under § 8735 of Title~~
511 ~~29, alleging violation of § 2015 of this title, the Board shall set a time and place to conduct a hearing on the complaint.~~
512 ~~Notice of the hearing shall-must be given and the hearing must be conducted in accordance with the Administrative~~
513 ~~Procedures Act, Chapter 101 of Title 29.~~

514 (b) ~~All hearings shall be are informal without use of rules of evidence. If the Board finds, by a majority vote of all~~
515 ~~members, that the complaint has merit, the Board shall take such action permitted under this chapter as it deems necessary.~~
516 ~~The Board's decision shall-must be in writing and shall include it's the Board's reasons for such-the decision. The Board's~~
517 ~~decision shall-must be mailed immediately to the practitioner-licensee.~~

518 (c) ~~Where the practitioner-If the licensee is in disagreement with the Board's action of the Board, the practitioner~~
519 ~~licensee may appeal the Board's decision to the Superior Court within 30 days of service, or of service of the Board's~~
520 ~~decision or the postmarked date of the copy of the decision mailed to the practitioner-licensee. Upon such appeal an appeal,~~
521 ~~the Court shall hear the evidence on the record. Stays shall be granted-The Court may grant a stay in accordance with §~~
522 ~~10144 of Title 29.~~

Section 19. Amend § 2019, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2019. Reinstatement of a suspended license; removal from probationary status; replacement of license.

(a) As a condition to reinstatement of a suspended ~~license, license~~ or removal from probationary status, the Board may reinstate ~~such a~~ license if, after a hearing, the Board is satisfied that the licensee has taken the prescribed corrective actions and otherwise satisfied all of the conditions of the suspension ~~and/or the~~ or probation.

(b) ~~Applicants~~ An applicant for reinstatement shall pay the appropriate fees and submit documentation required by the Board as evidence that all the conditions of a suspension ~~and/or or~~ probation have been met. ~~Proof~~ The Board may also require that the applicant ~~has met~~ meet the continuing education requirements of this chapter ~~may also be required, as appropriate.~~

(c) A new license to replace ~~any a~~ license lost, ~~destroyed~~ destroyed, or mutilated may be issued subject to the rules of the ~~Board. A charge shall be made for such issuance. Board, and upon payment of a fee to issue a replacement license.~~

Section 20. Amend § 2020, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2020. ~~Penalty~~ Penalties.

(a) ~~A person not currently licensed under this chapter as an occupational therapist or occupational therapy assistant when guilty of engaging in the practice of occupational therapy, or using in connection with that person's name, or otherwise assuming or using any title or description conveying, or tending to convey the impression that the person is qualified to practice occupational therapy, such offender shall be guilty of a misdemeanor. It is unlawful for a person who is not licensed under this chapter to to any of the following:~~

(1) Engage in the practice of occupational therapy.

(2) Use in connection with that person's name or otherwise assume or use any title or description that conveys or tends to convey the impression that the person is qualified to practice occupational therapy.

(b) ~~Upon the first offense, that person shall be fined not less than \$500 nor more than \$1,000 for each offense. For a second or subsequent conviction, the fine shall be not less than \$1,000 nor more than \$2,000 for each offense. A person who violates subsection (a) of this section is guilty of a misdemeanor and subject to the following penalties:~~

(1) For the first offense, a fine of not less than \$500 nor more than \$1,000 for each offense.

(2) For each subsequent offense, a fine of not less than \$1,000 nor more than \$2,000 for each offense.

(c) ~~Superior Court shall have~~ has jurisdiction over all violations of this chapter.

Section 21. Amend § 2021, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

555 § 2021. Treatment or examination of minors.

556 (a) As used in this section:

557 (1) "Adult staff member" means an individual who is 18 years or older and is acting under the direction of the
558 licensee, the licensee's employer, or is otherwise licensed under this chapter.

559 (2) "Evaluation or treatment" includes dressing, bathing, or toileting that exposes a minor patient's breast,
560 genitalia, or rectum.

561 (3) "Minor" means an individual who is 15 years or younger.

562 (4) "Services" includes inpatient, outpatient, home, or school treatment.

563 (b) A minor patient's parent, guardian-guardian, or other caretaker, or an adult staff member, shall must be present
564 when a person licensed to practice occupational therapy under this chapter-licensee provides services, including inpatient,
565 outpatient, home or school treatment, services to a minor patient who is disrobed or partially disrobed during evaluation or
566 treatment involving, but not limited to, dressing, bathing, or toileting, that exposes the breasts, genitalia or rectum.

567 (c) When using, If an adult staff member to observe-observes the evaluation or treatment, the adult staff member
568 shall must be of the same gender as the patient when practicable.

569 (d) The minor patient may decline the presence of a third person only with consent of a parent, guardian or other
570 caretaker. The minor patient may request private consultation with the person licensed to practice occupational therapy
571 without the presence of a third person-individual providing consent to the minor patient's treatment and only after the initial
572 evaluation.

573 (b) When a minor patient's evaluation or treatment involves the female breasts, or female or male genitalia or
574 rectum, a person licensed to practice occupational therapy under this chapter-licensee shall provide notice to the person the
575 individual providing consent to the minor patient's treatment with notice of the rights under this section. The notice shall
576 must be provided in written form or be conspicuously posted in a manner in which a minor patients and their patient and the
577 parent, guardian or other caretaker-individual providing consent to the minor patient's treatment are made aware of the
578 notice. In circumstances in which the posting or the provision of the written notice would may not convey the right to have
579 a chaperone-third person present, the person licensed to practice occupational therapy-licensee shall use another means to
580 ensure that the person understands the right minor patient and the individual providing consent to the minor patient's
581 treatment understand the rights under this section.

582 (e) For the purposes of this section, "minor" is defined as a person 15 years of age or younger, "adult staff
583 member" is defined as a person 18 years of age or older who is acting under the direction of the licensed person or the
584 employer of the licensed person or who is otherwise licensed under this chapter.

585 (d) ~~The person licensed under this chapter~~ A licensee that provides treatment to a minor patient pursuant to under
 586 this section shall, contemporaneously with ~~such the~~ treatment, note in the ~~child's minor patient's~~ record the name of each
 587 person present when ~~such the~~ treatment is being provided.

SYNOPSIS

This Act fulfills recommendations made by the Joint Legislative Overview and Sunset Committee by making amendments to the statute governing the Board of Occupational Therapy Practice to make Chapter 20 of Title 24 consistent with other Title 24 boards and delete antiquated sections that are no longer applicable, including:

- Adding the duty to report conduct that constitutes grounds for discipline or inability to practice.
- Removing "censure a practitioner" as an available sanction.
- Removing references to temporary licenses, because the temporary license section of the statute was repealed in 2005.
- Removing § 2015(c) and § 2017(c) because they are covered under the Administrative Procedures Act.
- Revising the reciprocity language to address situations where a licensee holds a current license in a state that is no substantially similar to Delaware.

In addition, this Act includes several amendments to conform existing law to the standards of the Delaware Legislative Drafting Manual, including deleting unnecessary words, correcting grammatical errors, and improving consistency and clarity.

Joint Legislative Oversight & Sunset Committee 2018 Final Report



Council on Correction

*A Report to the Governor and the
149th General Assembly of the State of Delaware.*

June 2018

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The Sunset Law in Delaware, Chapter 102 of Title 29, enacted in 1979, provides for the periodic legislative review of state agencies, boards, and commissions. The purpose of sunset review is to determine whether there is a public need for an agency, board, or commission and, if so, to determine whether it is effectively performing to meet that need. Agencies may be reviewed once every six years.

The Joint Legislative Oversight and Sunset Committee (“JLOSC”) is responsible for guiding the sunset review process. JLOSC is a bipartisan committee comprised of ten legislators. The Senate President Pro Tempore and the Speaker of the House of Representatives each appoint five members to serve on JLOSC.

Sunset reviews are generally conducted over a ten month period commencing in July. A comprehensive review of each agency, based on statutory criteria, is performed by the JLOSC Analyst, who subsequently prepares a preliminary report for use by JLOSC during the public hearings, which take place in February each year. Public hearings serve as a critical component of this process, as they provide an opportunity for JLOSC to best determine whether the agency is protecting the public’s health, safety, and welfare.

At the conclusion of a sunset review, JLOSC may recommend the continuance, consolidation, reorganization, transfer, or termination (sunset) of an agency, board, or commission. Although JLOSC has sunset several agencies since its first set of reviews in 1980, the more common approach has been for JLOSC to work with the entity under review to formalize specific statutory and non-statutory recommendations, with the goal of improving the entity’s overall performance and government accountability.

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2018 Final Recommendations

Council on Correction

The Joint Legislative Oversight and Sunset Committee (“Committee”) recommends that the Council on Correction (“Council”) be held over, and report before the Committee in January 2019.

RECOMMENDATION 1: The Council shall be terminated and applicable sections of the Code shall be amended to remove the Council.

Status: Tabled.

RECOMMENDATION 2: The Council will clarify its duties under Title 29, § 8905. Consider adding specifics about how the Council will advise the Department.

RECOMMENDATION 3: The Council will provide an annual report to the Commissioner and Deputy Commissioners of the Department of Correction, as well as the Governor, and General Assembly.

Status of Recommendations 2 and 3: Combined and modified to read that the Council will clarify its duties, under Title 29, §8905 and provide a semi-annual report to the Commissioner and Deputy Commissioners of the Department of Correction, Governor, and General Assembly.

RECOMMENDATION 4: The Council shall draft and submit to the Committee amendments to Title 29, §8905 - to remove a Council member for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office.

Status: Passed

RECOMMENDATION 5: To avoid lack of clarity, and mission vagueness, the Department of Correction should provide guidance to the Council to craft a clearly defined mission and goals. The mission and goals may include how the Council, as a citizen advisory council can contribute to the achievement of common goals.

Status: Tabled at the 3/20 meeting. The Council did, however, create a mission as part of their work on their by-laws.

RECOMMENDATION 6: To allow members of the public opportunities to attend Council meetings, the Council shall rotate meeting locations in all three counties.

Status: Passed

RECOMMENDATION 7: Finalize Council by-laws.

Status: Passed. The Council has since created and adopted by-laws.

RECOMMENDATION 8: The Council shall undergo training to support development and leadership as a unit.

Status: Passed. The Committee also requested that the Committee Analyst communicate with the Governor's office to fill expired Council member terms.

Committee staff contacted the Director of Boards and Commissions to request that the Governor fill expired terms so that the Council can continue work as prescribed by the Committee. The Director noted that, under Art. XV, § 5 of the Delaware Constitution, members shall hold office until successors qualify. The Director indicated that the Governor wishes to hold the members who have served since before the Sunset Review until the review is complete because, in the view of the Governor's office, appointing an entirely new Council would not be beneficial during the review process.

RECOMMENDATION 9: The Council on Correction is held over and shall report to the Committee in January 2019.

Status: No further Committee action is required until January 2019.

RECOMMENDATION 10 (new as of May 10): Remove the Council on Correction from Title 29, Chapter 89. Duties of the Council will be assumed by the Criminal Justice Council, who will add a sub-committee to advise the Department of Correction. Legislation will be drafted by the Criminal Justice Council to include these duties under Title 11, Chapter 87.

Status: Tabled.

A NOTE ABOUT THIS FINAL REPORT

The information provided in this report is taken from the Joint Legislative Oversight and Sunset Committee (“Committee”) Performance Review Questionnaire, as it was completed by the agency under review. When appropriate, the Analyst who prepared this report made minor changes to grammar and the organization of information provided in the questionnaire, but no changes were made to the substance of what the agency reported. Any points of consideration which arose in analyzing the questionnaire and compiling this report are addressed in the section titled Additional Research from the Analyst. It is the intent of the Analyst to make any substantive changes which may be required, as the result of findings made through the review processes, in the final version of this report.

AGENCY HISTORY

In 1975, through Senate Bill 487, the legislature removed the Division of Corrections from the Department of Health and Social Services and established it as an independent agency named the Department of Correction (“Department”). At that time, an 11 member advisory Council on Corrections (“Council”) was created. The Council was charged with serving in an advisory capacity to the Commissioner of the Department of Correction and to consider matters relating to the development and progress of the correctional system of Delaware.

In 2014, the Council was re-established with Senate Bill 256.¹ Modifications were made including a reduction in members from 11 to 7, and a requirement to meet no less than 6 times per year.²

JOINT LEGISLATIVE OVERSIGHT AND SUNSET COMMITTEE REVIEW HISTORY

The Joint Legislative Oversight and Sunset Committee (“JLOSC”) has never reviewed the Council.

COMPOSITION & STAFFING OF THE COUNCIL

Composition:

The Council is composed of 7 members appointed by the Governor for terms up to 3 years to allow that no more than 3 members’ terms expire in any year. The Council members elect a Chair and Vice Chair of the Council on an annual basis. Three new members were appointed in October 2017, and 4 members are serving on expired terms.³

Compensation:

The members are not compensated for the services they provide to the Council, but they may be reimbursed for reasonable and necessary expenses incident to their duties as members of the Council.

Member Training:

Council members do not receive training.

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¹ The record does not indicate any of the circumstances that led to re-establishing the Council.

² There has been acknowledgement that the Council has not been acting in the advisory role that was intended. The Governor’s office made new appointments to the Council, which has resulted in a renewed commitment to the Council.

³ See Appendix B for the Council’s member roster.

Staffing:

Delaware Code does not require the Department to provide staff. In practice, the Department provides the Council with 1 merit employee. The Deputy Commissioner of Corrections also works with the Council.

Name & Title	Responsibilities	Percentage of Time Devoted to Responsibility
Jayme Gravell, Chief of Media Relations	To serve as the primary liaison, assist in scheduling meetings and taking minutes, contact Council members when needed, post agenda and minutes to the State's Public website.	5%
Alan Grinstead, Deputy Commissioner	Represents the Department at Council meetings, and responds on the Department's behalf.	5%

MISSION & RESPONSIBILITIES

Under Title 29, the statutory mission of the Council is to serve in an advisory capacity to the Commissioner of Correction. Section 8905(b) of 29 Del. C. states:

The Council on Correction shall serve in an advisory capacity to the Commissioner of Correction and shall consider matters relating to the development and progress of the correctional system of this State. The Council shall consider such other matters as may be referred to it by the Governor, the Commissioner, and the Chief of the Bureau of Adult Correction. The Council may study, research, plan, and advise the several chiefs, the Commissioner, and the Governor on matters it deems appropriate to enable the Department to function in the best manner. The Council shall consider matters relating to the development and progress of the adult correctional system of this State, including correctional facilities and services provided to adult offenders.⁴

Complaints

The Council receives complaints from members of the public regarding inmate medical issues, inmate treatment, delay of inmate release, and inmate grievance process. No specific data, such as a number of complaints reviewed, investigated, or forwarded to the Department's Deputy Attorney General are available. No formal process exists for determining disciplinary actions.

National Organizations or other Government Entities (that serve as an information clearinghouse or regularly interact with the Board)		
Group or Association Name/Contact Person	Address	Phone Number Fax Number Internet Address
Department of Correction	245 McKee Road Dover, DE 19904	Phone: 302.739.5601 http://www.doc.delaware.gov

⁴ See Appendix A for governing statute 29 Del. C. §8901-§8914

ENACTED LEGISLATION IMPACTING THE COUNCIL

On July 31, 2014, Senate Bill 256 re-established the Council on Correction. This Bill modified the size of the council in an attempt to ensure a quorum and allowed the Council to elect a Chair.

PENDING LEGISLATION

There is no pending legislation that would impact the Council at this time.

ADMINISTRATIVE PROCEDURES ACT COMPLIANCE

The Council does not promulgate rules or regulations and there are no plans to develop any rules or regulations specific to Corrections.

FREEDOM OF INFORMATION ACT (“FOIA”) COMPLIANCE

The Council has not had any complaints alleging that they have violated FOIA.

The Department, in coordination with the Department’s Deputy Attorney General, and FOIA Coordinator, handle all FOIA requests made of the Council.

Meeting agendas are posted on the Delaware Public Meeting Calendar. Minutes are prepared for the Council’s approval at their next regularly scheduled meeting. The Council conducted one executive session, in January 2015.

FISCAL INFORMATION

The Council does not collect fees or fines. No fiscal information is provided, due to no revenue or expenditures. Council members are reimbursed through the Department’s budget.

ACCOMPLISHMENTS

The Council encouraged the Department to expand the culinary arts program and supported the I-ADAPT Re-entry Initiative. The Council researched a dog training program and made a recommendation to the Department to institute a dog training program.⁵ The Department continued with its own research, and for a brief time instituted a dog training program at two of its institutions. For various reasons, neither of those dog training programs have continued, but, the Department has developed a relationship with the SPCA and provides a work crew from Hazel Plant Women’s treatment center. Hazel Plant Women’s treatment facility, and Plummer Community Correctional Center both have foster dogs.

CHALLENGES

The Council has had problems achieving quorum. Recent changes to membership have addressed this issue, and the Council has made quorum at their most recent meetings. The Council is not assigned a Deputy Attorney General. Until recently, no administrative support was assigned to the Council. The Council does not receive any training.

⁵ According to minutes from early 2014, the Council discussed the topic of service dogs. No details were provided in minutes regarding the amount of research, or how the Council advised the Department on this topic.

OPPORTUNITIES FOR IMPROVEMENT

- Development and online posting of Council by-laws.
- Establish clear mission, objectives, and goals of the Council.

ADDITIONAL COMMENT FROM THE JOINT SUNSET ANALYST

Although there are a number of matters addressed in this section, it should be noted that recent appointments to the Council have reinvigorated the Council, which intends to correct many of the matters addressed here.

1. Clarification of the Department's role with the Council. The Council did not provide evidence of studies, research, plans, or advice to chiefs, the Commissioner, or the Governor on matters related to Delaware's correctional system, despite their statutory requirement to perform these. If the Commissioner is to have an active role in the Council, consider amending the statute to include the Commissioner as a Secretary of the Council.⁶

2. Documentation of Council activity through minutes. It is unclear if inactivity prompted re-establishment of the Council through SB 256 in 2014, which also reduced the size of the Council from 11 to 7. In fact, there is very little information available regarding the Council from 1975 to 2014. Compiling information for the Committee to review the Council proved to be a challenge.

Minutes were provided as follows:

2013	2014	2015	2016	2017
November	March	January	April	May
	May	May	Informal June mtg.	June
	July	July	Informal July mtg.	July (JLOSC staff handwritten notes were used as minutes)
	November	December	August	August
			October	

Of the minutes that were provided, meetings were often without a quorum. The Council has not maintained minutes in a manner consistent with FOIA.

There was a discussion as early as 2013 regarding the need for by-laws. According to November 2014 minutes, the Council developed and approved by-laws as evidenced in the November 2014 meeting minutes. At the October and November 2017 meetings, there was no consensus whether previous draft by-laws were ever adopted. The Council developed and adopted new by-laws in February 2018.⁷

The Council has faced challenges, many of which are noted in several recent news articles. The articles note the Department's lack of participation in Council meetings, as well as lack of overall guidance. There appears to be no documented recommendations from the Council to the Department. Minutes

⁶ In Illinois, statute names the Director of Corrections as Secretary of the Advisory Board. See 730 ILCS 5/3-2-6.

⁷ See Appendix A for current by-laws

from the January 2015 meeting recommend the Council’s “annual report” be sent to the Correctional Committees; however, there is no evidence of annual reports.⁸

3. The Committee may wish to address the Council’s role with the public. Members of the public view the Council as a connection to the Department and take the Council meetings as an opportunity to air concerns that they believe will be communicated to the Department in order to improve issues within the correctional system in Delaware. The Council may wish to make it clear to the public, through stated objectives, how it will treat public input. Members of the public are often told to “send a letter to the Council, and we will forward it to the Department.” It is not clear how this is beneficial versus sending a letter to the Department themselves.

4. Council training: The Council would benefit from administrative support, an assigned Deputy Attorney General, and focused training opportunities. Recommended training topics are:

- Council Organization.
- Council Responsibilities.
- Council Engagement with the Department and Public.
- FOIA.
- Goal Development.
- By-laws Development.

Please note that, as of the writing of this draft report, three new council members have been appointed, however, there are four serving on expired terms.⁹ By-laws were finalized by the Council in February 2018.

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⁸ The Council’s governing statute does not require the Council to create an annual report. It is unclear why Council minutes reference an annual report or what it should address.

⁹ See Appendix B for Council’s member roster.

APPENDIX A

Operating By-laws Delaware Council on Corrections

ARTICLE I MISSION

Section 1.1 Mission:

The Delaware Council on Corrections (hereinafter “Council”) is dedicated to furthering the goal of the Delaware Department of Correction: to protect the public in its supervision of adult offenders through the provision of safe, humane services, programs, and facilities.

More specifically and in furtherance of that mission, the Council shall collect and evaluate the best available data and rely upon that when making its recommendations to the Department of Correction. At the forefront of the Council’s goals are: (1) enhancing the safe and orderly operation of the Department of Correction’s facilities to include both offender and employee alike, (2) enhancing the effectiveness of corrections policies, (3) ensuring system and offender accountability and (4) fostering a constructive and respectful relationship between the Department of Correction and the public it serves.

ARTICLE II DUTIES

Section 2.1 Duties of the Council: The Duties of the Council are prescribed in Title 29, DE Code, §8905:

- A. The Council shall serve in an advisory capacity to the Commissioner of Correction and shall consider matters relating to the development and progress of the correctional system of this State.
- B. The Council shall consider such other matters as may be referred to it by the Governor, the Commissioner and the Chief of the Bureau of Adult Correction.
- C. The Council may study, research, plan and advise the several chiefs, the Commissioner and the Governor on matters it deems appropriate to enable the Department to function in the best manner.
- D. The Council shall consider matters relating to the development and progress of the adult correctional system of this State, including correctional facilities and services provided to adult offenders.

ARTICLE III MEMBERSHIP

Section 3.1 Council Voting Members:

- A. The Council shall be composed of 7 members.
- B. There shall be a Chair and a Vice Chair.
- C. Members of the Council shall serve without compensation, except that they may be reimbursed for reasonable and necessary expenses incident to their duties as members of the Council.

Section 3.2 Appointments, Term, Vacancy, Removal:

A. Appointments and Term:

- a. Members shall be appointed by the Governor for terms up to three years to allow that no more than three members' terms expire in any year.
- b. The Council members shall elect a Chair and Vice Chair of the Council annually.

B. Vacancies:

- a. Vacancies shall be filled by appointment and at the pleasure of the Governor
- b. As vacancies occur for any reason, the Council Chair shall inform the Office of the Governor
- c. As vacancies occur:
 - i. the Council may recruit qualified candidates for the Governor's consideration and;
 - ii. the Council may vote to recommend qualified applicants to the Governor for his/her consideration of appointment, and;
 - iii. the Council Chair shall submit the recommendation, application, and explanation as to why this applicant is a qualified candidate for the vacancy and;
 - iv. the Governor will review the recommendation along with all other applicants

C. All applicants must submit a State of Delaware Governor's application form to the Office of the Governor prior to any Governor appointment

D. Removal:

- a. The failure by a member to attend 2 consecutive or 3 regular meetings of the Council per year without cause shall be construed as a request by that member to resign from the Council. In order to have just cause considered, the member:
 - i. must contact the Chair or Vice-Chair prior to the day of the second scheduled meeting to be missed and;
 - ii. must inform the Chair or Vice-Chair that they are unable to attend the second scheduled meeting and;
 - iii. ask for consideration to be excused
- b. The Chair or Vice-Chair shall inform the Governor when a member has resigned for lack of attendance. They may also request that the Governor accept the resignation, and appoint a new member.
- c. Active participation in Council meetings, sub-committees and Commission activities is a requirement for continued membership and, in implementation of this standard, each member must serve on at least one sub-committee with full participation

- d. All Governor appointments are at the pleasure of the Governor and at any time can be removed or replaced.

ARTICLE IV OFFICERS

Section 4.1 Council Officers, Powers and Duties:

A. Council officers shall consist of the following:

- a. Council Chair
- b. Council Vice-Chair
- c. Secretary

B. The Council Chair:

- a. shall have general charge of the business of the Council;
- b. may delegate any of his/ her powers to the Vice-Chair or, in their absence, a Council member;
- c. shall designate the Vice-Chair to preside over a meeting in the event of his/ her absence;
- d. shall be an ex-officio member of all other assigned sub-committees
- e. shall designate a Council member to Chair each active sub-committee

C. In the event of a vacancy in the Chair position, the Governor shall designate the Vice-Chair to become Acting Chair. The Acting Chair shall have all of the powers of and be subject to all of the restrictions upon the Chairperson until the Council elects a replacement Chair.

D. The Council Vice-Chair:

- a. shall be a member of the Executive Committee
- b. shall, upon designation by the Chair, perform the duties of the Chair and when so acting, he/ she shall have all of the powers of and be subject to all the restrictions of the Chairperson;
- c. shall upon designation by the Governor, become the Acting Chair and when so acting, shall have all of the powers of and be subject to all the restrictions upon the chairperson;
- d. when a Vice-Chair vacancy occurs, the Council shall elect a replacement;

E. The Secretary:

- a. shall ensure that all scheduled Council or sub-committee meetings are posted in advance and approved minutes are recorded and posted in accordance with legal requirements as described in 20 Del. C. §10001-10006;
- b. shall ensure that all Council meetings have documentation for minutes;

c. shall perform such other duties as the Council may from time to time prescribe

Section 4.2 Officer Terms:

A. The Chair and Vice-Chair shall be elected annually by the Council members and shall serve at the pleasure of the Governor

B. The Secretary shall be elected annually by the Council. If a vacancy occurs in the position of Secretary prior to the election, the Council shall elect a new Secretary at the next scheduled full Council meeting

ARTICLE V COUNCIL BUSINESS

Section 5.1 Meetings:

A. The business of the Council shall be conducted by Council members at regularly scheduled meetings.

B. The Council shall meet a minimum of six times per year.

C. Sub-Committee meetings shall be scheduled by the designated Chair of each sub-committee, as often as needed in order to accomplish deadlines for completion of assigned projects or to continue all work in progress.

Section 5.2 Quorum:

A. A quorum shall consist of a majority of current members.

B. A video conference appearance is acceptable for a quorum, when there is a meeting place posted and available for the public.

C. A member may participate in a meeting by phone, but may not vote via phone nor be counted as a quorum member.

D. For quorum purposes all public meeting will be noticed and conducted in accordance with 29 Del. C. §10001-10006, except that the subcommittees may conduct interim telephonic meetings to determine agendas, strategies, or conduct other business in preparation for a public meeting.

ARTICLE VI COMMITTEES

Section 5.1 Executive Committee:

A. The Executive Committee shall be a continuing Committee and:

a. shall consist of all Council officers;

b. shall have general supervision of the affairs of the Council between meetings;

c. may as emergencies arise and immediate action is required, act on behalf of the Council, and shall report any such interim actions at the next scheduled Council meeting, such action may be ratified by the full Council;

d. shall be subject to the orders of the Council and none of its acts shall conflict with action taken by the Council;

e. may recommend to the Council additions and deletions to the Council roster, and monitor Council members' performance and attendance at meetings;

f. may recommend to the Council changes for policies and procedures;

B. The Council Chair shall preside over the Executive Committee

Section 5.2 Sub-Committees:

A. The Council &/or the Executive Committee may establish sub-committees as necessary to carry out business, responsibilities or assigned projects.

B. The Council &/or Executive Committee shall review and decide when a sub-committee is essential and vote to establish such sub-committee.

C. The Council Chair shall designate a Council member to Chair the assigned sub-committee.

D. The sub-committee Chair shall:

a. assign all sub-committee meeting dates;

b. ensure the meetings are posted, followed by posted minutes, according to statutory requirements;

c. ensure that the progress of all sub-committee is presented to the Council members, at each scheduled Council meeting through the duration of a project

E. Non-Council members may participate in sub-committee meetings and work. The sub-committee members may reach out for assistance as needed to accomplish the assigned project.

F. All established sub-committee members shall be responsible for accomplishing assigned projects in a timely manner.

G. Sub-committee critical decisions should be addressed at scheduled Council meetings for a vote, prior to the sub-committee taking action. If the sub-committee is working with a deadline and needs sudden action and there is not a scheduled Council meeting to address the need in a timely manner, the Chair of the sub-committee shall address the Executive Committee for a decision.

ARTICLE VI AMENDMENTS

Section 6.1 By-Law Amendments:

These by-laws may be amended at any public meeting that has been posted 14 days in advance with the agenda and has 2/3 of all active members as described in Section 5.2A.

ARTICLE VII CONFLICT OF INTEREST

Section 7.1 Conflict of Interest

No member of the Council may cast a vote on any matter that is likely to provide a direct benefit to that member, or to an organization or business in which that member has an interest, or with which that member has a relationship. No member shall otherwise give the appearance of a conflict of interest as defined more specifically under 29 Delaware Code Chapter 58, the "State Employees', Officers' and Officials' Code of Conduct," which is incorporated herein by reference thereto.

APPENDIX B

Council on Correction Members

**Darryl Chambers, Chair
Researcher**

The Center for Drug and Health Studies
University of Delaware

dchamber@udel.edu

(302) 831.6488

Appointed 9/29/2017

**Muhammad Salaam, Vice Chair
Director**

Neighborhood Intervention Team
New Castle County

Salaam849@gmail.com

(302) 563.5777

Appointed 9/29/17

Jennifer Powell Esq.

Jfpowell303@gmail.com

Polytech High School

(302) 668.6343

Appointed 9/29/2017

Jane Hovington, Director

Shechinah Empowerment Center

Jehovahrohi@aol.com

(302) 258.7182 -cell

Appointment EXPIRED 12/23/2016

Joseph Paesani

Retired DOC

Adjunct Wilmington University

IRB Member for University of Delaware

Joseph.p.paesani@wilmu.edu

(302) 824.2408

Appointment EXPIRED 12/23/2016

Edwin C. Perez

Program Development/Outreach Specialist

Independent Resources Inc.

senoredwin2@gmail.com

(302) 284.2541

Appointment EXPIRED 12/23/2016

Richard D. Senato

Retired DOC

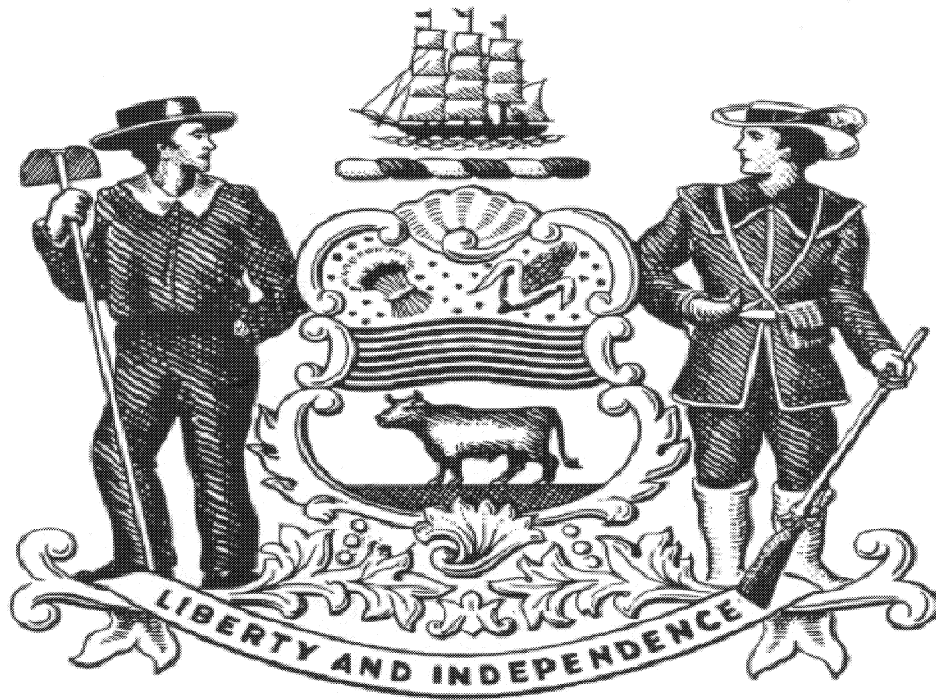
rdshrc@aol.com

(302) 359.5304- cell

Appointment EXPIRED 05/28/2017

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Joint Legislative Oversight & Sunset Committee 2018 Final Report



Child Protection Accountability Commission

*A Report to the Governor and the
149th General Assembly of the State of Delaware.*

June 2018

Final Report was completed by:
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2018 Joint Legislative Oversight and Sunset Committee Members

Representative Stephanie T. Bolden,
Chair

Senator John J. Walsh,
Vice-Chair

Representative Andria L. Bennett

Representative Gerald L. Brady

Representative Timothy D. Dukes

Representative Jeffrey N. Spiegelman

Senator Anthony Delcollo

Senator Stephanie L. Hansen

Senator Brian G. Pettyjohn

Senator David P. Sokola

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The Sunset Law in Delaware, Chapter 102 of Title 29, enacted in 1979, provides for the periodic legislative review of state agencies, boards, and commissions. The purpose of sunset review is to determine whether there is a public need for an agency, board, or commission and, if so, to determine whether it is effectively performing to meet that need. Agencies may be reviewed once every six years.

The Joint Legislative Oversight and Sunset Committee (“JLOSC”) is responsible for guiding the sunset review process. JLOSC is a bipartisan committee comprised of ten legislators. The Senate President Pro Tempore and the Speaker of the House of Representatives each appoint five members to serve on JLOSC.

Sunset reviews are generally conducted over a ten month period commencing in July. A comprehensive review of each agency, based on statutory criteria, is performed by the JLOSC Analyst, who subsequently prepares a preliminary report for use by JLOSC during the public hearings, which take place in February each year. Public hearings serve as a critical component of this process, as they provide an opportunity for JLOSC to best determine whether the agency is protecting the public’s health, safety, and welfare.

At the conclusion of a sunset review, JLOSC may recommend the continuance, consolidation, reorganization, transfer, or termination (sunset) of an agency, board, or commission. Although JLOSC has sunset several agencies since its first set of reviews in 1980, the more common approach has been for JLOSC to work with the entity under review to formalize specific statutory and non-statutory recommendations, with the goal of improving the entity’s overall performance and government accountability.

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2018 Final Recommendations: Child Protection Accountability Commission

The Joint Legislative Oversight and Sunset Committee (“Committee”) recommends that the Child Protection Accountability Commission (“Commission”) be continued.

1. CPAC monitors and supports the Division of Family Services, Children’s Advocacy Center of Delaware, and the Department of Justice’s Special Victims Unit.

RECOMMENDATION: The Committee will provide a letter to the Joint Finance Committee for the support of CPAC, and the agencies it supports.

OUTCOME: The Committee provided a letter of support for funding to the Joint Finance Committee.¹

2. Championed by CPAC, House Bill 140, Aiden’s Law, is a non-punitive, public-health oriented bill that seeks to codify certain sections of the federal law known as the Child Abuse Prevention and Treatment Act, as amended by the Comprehensive Addiction and Recovery Act, that requires states to have policies and procedures in place to address the needs of infants born with and identified as being affected by substance abuse, withdrawal symptoms, or Fetal Alcohol Spectrum Disorder, including a requirement that healthcare providers involved in the delivery or care of such infant notify the child protection services system.

RECOMMENDATION: The Committee will provide support for HB 140 by co-sponsoring the legislation.

OUTCOME: Committee members were added as co-sponsors to HB 140. HB 140 was signed by the Governor on June 7, 2018.

3. Since 1999, staff for CPAC has housed within the Office of the Child Advocate. The Executive Director of Office of the Child Advocate has begun development of a plan for leadership transition.

RECOMMENDATION: The Committee, in support of the Office of the Child Advocate, would like for them to finalize a transition plan in order to provide CPAC with trained staff to carry out CPAC’s mission in the future.

¹ Letter attached in Appendix A.

A NOTE ABOUT THIS REPORT

The information provided in this report is taken from the Joint Legislative Oversight and Sunset Committee (“Committee”) Performance Review Questionnaire, as it was completed by the agency under review. When appropriate, the Analyst who prepared this report made minor changes to grammar and the organization of information provided in the questionnaire, but no changes were made to the substance of what the agency reported. Any points of consideration which arose in analyzing the questionnaire and compiling this report are addressed in the section titled Additional Comment from the Committee Analyst. It is the intent of the Analyst to make any substantive changes which may be required, as the result of findings made through the review processes, in the final version of this report.

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AGENCY HISTORY

Delaware's Child Protection Accountability Commission ("CPAC" or "Commission") was statutorily created in 1997 as part of a comprehensive strategy, entitled the Child Abuse Prevention Act of 1997, to improve Delaware's child protection system following the tragic death of a four-year-old boy named Bryan Martin. This act made significant changes regarding how Delaware investigates child abuse and neglect and how it fosters a child protection community of cooperation, accountability, and multi-disciplinary collaboration. CPAC's overall statutory mission is to monitor Delaware's child protection system to ensure the health, safety, and well-being of Delaware's abused, neglected, and dependent children.²

When the Commission began its work in 1997, its primary focus was on the caseloads of child protection workers and the resulting turnover and inexperience of workers that compromised child safety. The Commission lobbied hard to establish the caseload standards and career ladders for workers. A partnership with the Department of Services for Children, Youth and Their Families ("DSCYF" or "The Children's Department") resulted in the creation of an overhire pool. The Commission also focused on building partnerships among law enforcement, prosecutors, and the Division of Family Services ("DFS") to improve outcomes for Delaware's children. In February 2000, after the creation of the Office of the Child Advocate ("OCA"), staffing for the Commission was put in place. In 2001, the Commission's membership and statutory duties were expanded to include a focus on the well-being of children in the child protection system.

JOINT LEGISLATIVE OVERSIGHT AND SUNSET COMMITTEE REVIEW HISTORY

The Joint Legislative Oversight and Sunset Committee ("JLOSC") has never reviewed the Commission.

MISSION, GOALS & OBJECTIVES, AUTHORITY

CPAC's overall statutory mission is to monitor Delaware's child protection system to ensure the health, safety, and well-being of Delaware's abused, neglected, and dependent children.³

CPAC's goals and objectives are as follows:⁴

- (1) Examine and evaluate the policies, procedures, and effectiveness of the child protection system and make recommendations for changes therein, focusing specifically on the respective roles in the child protection system of the Division of Family Services, the Division of Prevention and Behavioral Health Services, the Office of the Attorney General, the Family Court, the medical community, and law-enforcement agencies.
- (2) Recommend changes in the policies and procedures for investigating and overseeing the welfare of abused, neglected, and dependent children.
- (3) Advocate for legislation and make legislative recommendations to the Governor and General Assembly.
- (4) Access, develop, and provide quality training to the Division of Family Services, Deputy Attorneys General, Family Court, law-enforcement officers, the medical community, educators, day-care providers, and others on child protection issues.
- (5) Review and make recommendations concerning the well-being of Delaware's abused, neglected, and dependent children including issues relating to foster care, adoption,

² 16 Del. C. § 931(b).

³ 16 Del. C. § 931(b).

⁴ 16 Del. C. § 931(b).

mental health services, victim services, education, rehabilitation, substance abuse, and independent living.

(6) Provide the following reports to the Governor:

- a. An annual summary of the Commission's work and recommendations, including work of the Office of the Child Advocate, with copies thereof, sent to the General Assembly.
- b. A quarterly written report of the Commission's activities and findings, in the form of minutes, made available also to the General Assembly and the public.

(7) Investigate and review deaths or near deaths of abused or neglected children.

(8) Coordinate with the Child Death Review Commission to provide statistics and other necessary information to the Child Death Review Commission related to the Commission's investigation and review of deaths of abused or neglected children.

(9) Meet annually with the Child Death Review Commission to jointly discuss the public recommendations generated from reviews conducted under §932 of this title. This meeting shall be open to the public.

(10) Adopt rules or regulations for the administration of its duties or this subchapter, as it deems necessary.

With CPAC's assistance, Delaware has continued to refine and improve its interdisciplinary approach to the protection of Delaware's children. The approach, often referred to as the multidisciplinary team ("MDT"), relies on the collaborative intervention of multiple agencies.⁵ An essential participant in the MDT approach has been DSCYF, which is comprised of three service divisions - the Division of Prevention and Behavioral Health Services ("DPBHS"), the Division of Youth Rehabilitative Services ("DYRS"), and DFS. Collectively these divisions are responsible for the provision of services to children who have suffered abuse, neglect, abandonment, delinquency, mental illness, or substance abuse. As the child welfare agency, DFS is responsible for receiving and investigating reports alleging child abuse, neglect, or dependency. These cases are often initiated when a child victim of abuse or neglect is first identified by a professional who interacts routinely with children, including members of the education, medical, or law enforcement communities.

Multidisciplinary collaboration is frequently necessary. For reports that may involve a crime against a child, DFS and law enforcement will investigate jointly. Whenever appropriate, cases will be referred to the Children's Advocacy Center of Delaware ("CAC"), where the MDT often formally convenes to conduct a forensic interview, medical examination, or mental health screening. Death and near death cases are also referred to CPAC for investigation and review. In an effort to ensure system-wide coordination, all cases involving serious physical injury and death or allegations of sexual abuse are also monitored by Delaware's Investigation Coordinator - a function for which CPAC advocated in the wake of the tragic events brought to light in the Bradley case. As a vital member of the MDT, the Criminal Division of the Department of Justice ("DOJ") determines whether there is sufficient evidence to prosecute those responsible for inflicting harm on children. In July 2013, at the recommendation of a joint committee of CPAC and CDRC, the DOJ established the Child Victims Unit. In 2016, the Unit was renamed the Special Victims Unit ("SVU") and expanded to handle all felony level, criminal child abuse cases involving the death or serious physical injury of a child, as well as all sexual abuse cases. The SVU combines expertise from both the Criminal and Family Divisions of the DOJ. The Family Division

⁵ 16 Del. C. §902 provides specific definitions for multidisciplinary investigations. The questionnaire called the multiple agencies "various system partners."

also provides legal representation to DSCYF in Family Court, and DOJ has designated several attorneys across its Divisions to pursue civil remedies against perpetrators of child abuse, including civil substantiations and licensure proceedings, thereby increasing the chances of protecting children where criminal remedies are either insufficient or unavailable.

Through frequent hearings; Family Court judges are responsible for monitoring the children in the legal custody of DSCYF. These same children are entitled to representation in all judicial proceedings, which OCA is responsible for providing. OCA accomplishes its charge to represent children through the employment of four full-time Deputy Child Advocates (“DCAs”), contract Child Attorneys, a substantial and dedicated pool of volunteer Child Attorneys supervised by a Managing Attorney, and a robust and committed pool of community volunteers that serve as Court Appointed Special Advocates (“CASA”) that are supervised by CASA Coordinators. Children in DSCYF custody also receive extensive care and support from Delaware education, foster care, adoption, and medical communities. Thus, Delaware relies on the collective resources of the Family Court, DOJ, OCA, and CASA, as well as the Children’s Department, the service providers, and the community, to provide safety, well-being, and permanency for its most vulnerable children.

The Commission has the power and authority to do the following:

- (1) Administer oaths and affirmations to any person related to the death or near death under review.
 - (2) Issue subpoenas to compel the attendance of witnesses whose testimony is related to the death or near death under review.
 - (3) Issue subpoenas to compel the production of records related to the death or near death under review.
- (b) The Commission may delegate its power and authority in subsection (a) of this section to the Child Advocate, who may further delegate the power and authority to any attorney employed by, contracting with, or volunteering for the Office of the Child Advocate.
- (c) A subpoena issued under subsection (a) of this section may be enforced or challenged only in the Family Court.
- (1) All proceedings before the Family Court and all records of such proceedings conducted under this subsection are private.
 - (2) In a proceeding under this subsection (c), the Family Court may impose reasonable restrictions, conditions, or limitations on the access to proceedings and records of proceedings to preserve the confidentiality set forth in § 934 of this title.

COMPOSITION & STAFFING OF THE BOARD

Composition:

The Commission is composed of 24 members.⁶ There is no formal procedure for removal of a member. CPAC has never removed a member; however, there have been changes over the years generated by the appointees.

Compensation:

The members are not compensated for related expenses or the services they provide to the Commission.

⁶ See Appendix B for Commission member roster.

Member Trainings:

Each year, Commission members have access to both local and national child welfare training opportunities sponsored by CPAC, which are all voluntary. The Commissioners receive an email at least annually about these opportunities. Local training opportunities include the Protecting Delaware’s Children conference for all child welfare professionals and forensic interview training for multidisciplinary team (“MDT”) members. MDT members may also apply for partial scholarships to national child welfare conferences. All of these training opportunities are funded by the Children’s Justice Act grant and, as such, only one local event can be sponsored each year. CPAC also benefits from regular presentations at its CPAC meetings, which further educate members regarding topics on which CPAC is focused.

Staffing:

The Child Advocate serves as Executive Director of the Commission as one of her statutory duties.⁷ She is hired and fired by the CPAC Executive Committee. Two OCA staff members, OCA Chief Policy Advisor and the OCA Office Manager provide support to CPAC, but also have multiple job duties at OCA. The Child Abuse and Neglect (“CAN”) Review Specialist’s primary duties are to staff the CAN Panel, and as such, most of her work relates to CPAC. These positions are not Merit, but instead are judicial branch positions.

In addition, OCA utilizes federal funding to contract with a Training Coordinator and Data Analyst to assist with the multiple needs of CPAC and the larger child welfare system monitored by CPAC. OCA utilizes the Casey Family Programs grant to employ two contractors to improve educational outcomes for children involved in the child welfare system.

All positions that assist in staffing CPAC are posted through the judicial branch personnel system and interviewed and hired according to the requirements of the job. There is a judicial branch orientation, but staff are trained for CPAC by other OCA employees.

In addition to the aforementioned opportunities available to Commissioners, the Executive Director and Chief Policy Advisor have the opportunity to attend the national meetings related to the federal Children’s Justice Act (“CJA”) Grant and Citizen Review Panel. Each meeting is held annually, and attendance at the CJA meeting is a requirement for receiving the grant.

⁷ 16 Del. C. § 931(c).

Staff Member Name & Title	Responsibilities	Percentage of Time Devoted to Responsibility
Tania Culley, Esq., Executive Director	Oversees CPAC staff and all legislative matters.	25%
Rosalie Morales, Chief Policy Advisor	Shepherds staff and committees to ensure accomplishment of tasks and compliance with the charge assigned by CPAC.	65%
Stephanie Scollo, Office Manager	Provides administrative support to CPAC.	7%
Angela Birney, Child Abuse and Neglect Review Specialist	Prepares cases for review by the Child Abuse and Neglect (“CAN”) Panel.	65%
Brittany Willard, Data Analyst	Gathers, analyzes and produces reports on the various measurable aspects of the child welfare system.	78%
Jessica Begley, Training Coordinator	Develops and provide a variety of trainings to the MDT and other professionals.	67%

Complaints

CPAC did regularly hold public meetings at the DSCYF Office at Faulkland Road, which has children on its premises. In January 2017, DSCYF determined that a registered sex offender could not attend any public meetings held on its campus. A complaint from a citizen who is a registered sex offender was made. He then showed up to the OCA office and law enforcement had to intervene.

Thereafter, although FOIA does not require public meetings be held in places where sex offenders can attend, staff moved meeting locations to accommodate such attendance. Other than an initial question about access to the new location and prompt resolution of that inquiry, no other complaints have been made.

National Organizations or other Government Entities (that serve as an information clearinghouse or regularly interact with the Board)		
Group or Association Name/Contact Person	Address	Phone Number Fax Number Internet Address
Casey Family Programs	2001 Eighth Avenue, Suite 2700 Seattle, WA 98121	Phone: 206-282-7300 Fax: https://www.casey.org/
Criminal Justice Council	820 N French St # 10, Wilmington, DE 19801	Phone: 302-577-5030 Fax: http://cjc.delaware.gov/

ENACTED LEGISLATION IMPACTING THE COMMISSION

State Legislation

July 2001 – 141st GA – HB 287: Increased the numbers of seats, expanded the responsibilities to include a focus on the well-being of children and provided staffing through OCA.

July 2007 – 144th GA – HB 90: Added the Chair of the Domestic Violence Coordinating Council to CPAC.

July 2010 – 145th GA – SB 304: Allowed the law enforcement at-large members to designate proxies and amend to whom the annual report should be distributed.

July 2014 – 147th GA – SB 230: Updated how Commissioners are appointed and required that one of the law enforcement seats be for the Delaware State Police. It also added several commissioner seats to include the Chair of the Child Death Review Commission, the Investigation Coordinator, a youth who experienced foster care, and a public defender.

September 2015 – 148th GA – HB 136: Transferred responsibility for the reviews of child abuse and neglect deaths and near deaths from the Child Death Review Commission to the Child Protection Accountability Commission.

August 2017 – 149th GA – HB 182: Strengthened confidentiality and protections for those persons appointed by CPAC to conduct the child abuse and neglect death and near death reviews.

August 2017 – 149th GA – SB 102: Requires CPAC, with DFS, to identify and maintain educational programming to be used by each school district and charter school for informing school district and charter school employees, students, and parents, about personal body safety, child abuse, and how to detect and report child abuse.

Federal Legislation

The Commission is designated as Delaware's "citizen review panel" as required under the federal Child Abuse Prevention and Treatment Act ("CAPTA"),⁸ and the "State Task Force" as required under the federal Children's Justice Act ("CJA").⁹

In Fiscal Year 2005, DSCYF, in its Child and Family Services Plan – Annual Progress and Services Report ("APSR"),¹⁰ first designated CPAC to serve as Delaware's citizen review panel ("CRP"). Every year since, CPAC has been designated as the CRP. Federal law requires CPAC to evaluate the extent to which the State is effectively discharging its child protection responsibilities. CPAC does that in a variety of ways, including evaluating policies and procedures and reviewing child fatalities and near fatalities due to abuse or neglect.

⁸ 42 U.S.C. § 5106a(c).

⁹ 42 U.S.C. § 5106c(c).

¹⁰ The 2017 APSR is available at: http://kids.delaware.gov/pdfs_archive/fs/fs-cfsp-apsr-2017.pdf.

In Fiscal Year 2008, CPAC became the CJA State Task Force. CJA provides grants to States to improve the investigation, prosecution and judicial handling of cases of child abuse and neglect, particularly child sexual abuse and exploitation, in a manner that limits additional trauma to the child victim. This also includes the handling of child fatality cases in which child abuse or neglect is suspected, along with some cases of children with disabilities and serious health problems who also are victims of abuse and neglect. To be eligible for CJA funds, states must establish and maintain a multidisciplinary task force (“the State Task Force”). The State Task Force is responsible for making policy and training recommendations to carry out the objectives of the grant, for conducting a comprehensive evaluation every three years of the state's child welfare system, and for making recommendations for improvement of those systems.

PENDING LEGISLATION

At this time, there is no pending legislation that would impact the Commission.

ADMINISTRATIVE PROCEDURES ACT COMPLIANCE

The Commission does not promulgate rules or regulations and has no plans to develop any for CPAC at this time.

FREEDOM OF INFORMATION ACT (“FOIA”) COMPLIANCE

To date, there have been no FOIA requests to the Commission.

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FISCAL INFORMATION

Actual Revenue:

Fiscal Year	Source(s) of Funds	Amount \$\$
FY18 (budgeted)*	Federal Funds (CJA)	\$88,978
	Federal Funds (CIP)	\$62,400
	Grant (Casey)	\$65,000
	Special Funds (PDC)	\$13,319
		TOTAL \$229,697
FY17 (actual)	Federal Funds (CJA)	\$88,789
	Federal Funds (CIP)	\$70,080
	Grant (Casey)	\$65,000
	Special Funds (PDC)	\$20,228
		TOTAL \$244,097
FY16 (actual)	Federal Funds (CJA)	\$89,091
	Federal Funds (CIP)	\$62,400
	Grant (Casey)	\$65,000
	Special Funds (PDC)	\$17,056
		TOTAL \$233,547

- Children’s Justice Act Fund – Grant, \$88,978, no state match, (federal fiscal year).
- Court Improvement Program – Grant, Awarded to Family Court, \$62,400, no state match (federal fiscal year).
- Casey Family Program – Grant, \$65,000, no state match (calendar year).

Actual Expenditures:

Fiscal Year	Source(s)	Amount \$\$
FY18 (budgeted)*	Federal Funds (CJA)	\$88,978
	Federal Funds (CIP)	\$62,400
	Federal Funds (Casey)	\$65,000
	Special Funds (PDC)	\$12,000
		TOTAL \$228,378
FY17 (actual)	Federal Funds (CJA)	\$88,789
	Federal Funds (CIP)	\$70,080
	Federal Funds (Casey)	\$65,000
	Special Funds (PDC)	\$10,465
		TOTAL \$234,334
FY16 (actual)	Federal Funds (CJA)	\$89,091
	Federal Funds (CIP)	\$62,400
	Federal Funds (Casey)	\$65,000
	Special Funds (PDC)	\$5,000
		TOTAL \$221,491

Breakdown of budgeted expenses:

Line Item	Source(s)	Amount of Expenditures
Contractor Fees	Federal Funds (CJA)	\$48,378
MDT Training	Federal Funds (CJA)	\$40,600
Contractor Fees	Federal Funds (CIP)	\$62,400
Subcontractor Services	Federal Funds (Casey)	\$60,000
Project Expenses	Federal Funds (Casey)	\$5,000
Media Campaign	Special Funds (PDC)	\$12,000
		TOTAL \$228,378

ACCOMPLISHMENTS

CPAC's most significant accomplishments are as follows:

- Championed legislation in the General Assembly in FY04 and FY07 to lower caseload standards for Division of Family Services ("DFS") case workers and advocated to the Joint Finance Committee to emphasize the urgent need for statutory compliance with DFS caseload standards in FY16.
- Expanded reviews to child abuse or neglect near deaths in FY04 through legislation championed by CPAC.
- Legislated protections for children in foster care under the McKinney-Vento Homeless Education Assistance Act in FY05.
- Endorsed a sixteen-bed group care facility in New Castle County for teens and other difficult to place youth who are not successful in foster home settings (FY06-FY07).
- Advocated for standardized definitions of child abuse, neglect and dependency throughout the Delaware Code in FY07.
- Drafted and lobbied for statutory changes regarding the mixing of delinquent and dependent populations in FY07.
- Brought to fruition basic child abuse and neglect training for Delaware's citizens in FY07 with Child Abuse and Neglect 101.
- Recommended that Family Court adopt an Adoption and Safe Families Act ("ASFA") timelines tracking system to ensure compliance with the federal statute, which was implemented in FY08.
- Established the bi-annual Protecting Delaware's Children Conference in FY08 to provide training to professionals involved in the investigation, prosecution, treatment, and prevention of child abuse.
- Championed HB 104 in the 145th GA in FY08, which created user-friendly chapters in Title 13 of the Delaware Code pertaining to custody and visitation matters between parents and third parties, including the DSCYF.
- Updated and implemented the Memorandum of Understanding between the Department of Education, Local Education Agencies and DSCYF in FY09 and FY14.
- Launched mandatory reporting training for medical professionals in FY09 and other professional audiences in FY10.
- Trained thousands of educators, healthcare providers and members of the public on their statutory child abuse mandatory reporting obligations through onsite and online training since FY09.

- Revised and finalized the MOU for the Multidisciplinary Response to Child Abuse and Neglect in FY09 and completely rewrote it in FY17.
- Championed for SB 113 in the 145th GA in FY10, which extended jurisdiction of the Family Court for children in foster care from age 18 to 21.
- Developed the mandatory reporting media campaign during Child Abuse Prevention and Awareness Month in FY10.
- Established the Protecting Delaware's Children Fund to support statewide child abuse prevention and awareness activities and created a logo, Stop Child Abuse: See the Signs, Make the Call (FY11).
- Created a contractual Training Coordinator in FY11 to provide administrative support for all training activities related to the investigation and prosecution of suspected child abuse and neglect cases.
- Recommended that DSCYF adopt the Structured Decision Making Model of assessment tools developed by the Children's Research Center in FY11.
- Started to examine the educational success of children in foster by conducting a data comparison between youth in foster care and the general population by exploring graduation rates, attendance, special education enrollment, state test scores, number of school and foster home placements, and age of placement (FY11).
- Released recommendations from the CPAC Mental and Behavioral Health Services to Children in and Adopted out of Foster Care Committee, which was responsible for improving outcomes for children in foster care (FY11).
- Created the CPAC Permanency for Adolescents Committee to improve outcomes for adolescents in foster care in FY12.
- Created the CPAC Data Dashboard to measure Delaware's child protection system and use the dashboards to inform system improvement and CPAC initiatives (FY12).
- Authorized a change in grant management for the Children's Justice Act from DFS to OCA on behalf of CPAC in FY12.
- Developed Guidelines for Responding to Teen Dating and Sexual Violence in Delaware Schools in FY12.
- Supported House Substitute 1 for HB 371, which established an Investigation Coordinator position initially within DSCYF, and then at OCA, to monitor, coordinate, and track these cases to ensure a multidisciplinary civil and criminal response system (FY12).
- Championed HB 125, which allows for the reinstatement of parental rights under certain limited conditions where a child remains in DSCYF custody, despite reasonable efforts to secure a permanent plan of adoption (FY13).
- Provided scholarships to national conferences to give multidisciplinary team members access to quality training (FY13).
- Released the Final Report of the Joint Committee on the Investigation and Prosecution of Child Abuse, which included nine recommendations to better protect children from abuse (FY13).
- Advocated for the educational success of children in foster care by recommending revisions to Regulation 505 - High School Graduation Requirements and Diplomas to provide exceptions to graduation requirements for students in DSCYF custody (FY14).
- Developed a Student Information Sheet to support schools in making education decisions for children in foster care and a Frequently Asked Questions sheet on education issues for students in DSCYF custody in (FY14-FY15).
- In the 147th GA, championed SB 99, which involves DSCYF assessments of dependent children placed with non-relatives; HB 251, which clarifies the circumstances under which guardianship may be rescinded; SB 181, which makes several changes to the Child Protection Registry; HB

253, which created the Stop Child Abuse license plate with proceeds going to the Protecting Delaware's Children Fund; and SB 182, which established a check off box for donations to the Protecting Delaware's Children Fund on Delaware's individual income tax returns (FY14).

- Developed a Permanency Options Checklist to help foster parents and other caregivers with understanding the different permanency options (FY14).
- Worked to develop a state plan for younger youth with a permanency plan of APPLA and hosted training programs on permanency options and extended jurisdiction (FY15).
- Transferred the Child Abuse and Neglect Panel from the Child Death Review Commission to CPAC in FY15.
- Collaborated with the Child Death Review Commission to create a Joint Action Plan for the prioritized system recommendations stemming from the reviews of child death and near death cases due to abuse and neglect (FY15-FY16).
- Created the Child Abuse and Neglect Steering Committee to provide oversight for the investigation and review of deaths and near deaths of abused and neglected children in FY16.
- Finalized the Common Elements of Child Torture checklist to help professionals identify potential child torture cases (FY16).
- Developed a strategic plan in collaboration with Casey Family Programs to improve the educational outcomes of children in foster care in FY16 and managed a grant from Casey Family Programs to assist with same.
- In the 148th GA, championed SB 216, which made several procedural changes to how Extended Jurisdiction cases are handled in Family Court; SB 247, which codified federal law requiring normalcy for children experiencing foster care; and HB 248, which relocated the Office of the Investigation Coordinator from the Children's Department to the Office of the Child Advocate.
- Developed the Delaware Multidisciplinary Team Guidelines for Child Abuse Medical Response, a statewide protocol for determining the need for medical evaluations in child abuse cases, in FY17.
- Awarded an application for In-Depth Technical Assistance for Substance Exposed Infants (SEI-IDTA) to the National Center on Substance Abuse and Child Welfare in FY17.
- Created a mobile application to help professionals easily access the MOU for the Multidisciplinary Response to Child Abuse and Neglect (FY17).

CHALLENGES

DFS Caseloads - Caseloads for fully functioning investigation caseworkers have been consistently above the standard of 11 for the last several years. DFS treatment caseloads also need to continue to be closely monitored, as 18 cases per worker translates to 50-60 children and their families. Since 2008, CPAC has proposed that treatment caseloads be reduced to 15 and then 12. Currently, the average statewide caseload for fully functioning treatment caseworkers is at 18. CPAC requests that compliance with statutory caseload mandates continue to occur, as required by 29 *Del. C.* § 9015. Solutions to problems such as entry level pay, mobile workforce, hazard pay, skill sets, and qualifications are complicated. CPAC remains a steadfast partner with DSCYF to achieve long-term sustainable solutions.

Children's Advocacy Center of Delaware - The CAC has been a long-standing quasi-governmental agency providing a critical service to our abused and neglected children. By providing forensic exams and interviews, children are not re-traumatized and prosecutions of perpetrators are stronger. Each year, this agency is required to spend significant time, energy, and money to advocate for restoration of its funds to carry out governmental functions. Once again in FY17, the CAC budget was cut by \$99,100 or 10% of its budget. Core services to abused and neglected children cannot be delivered with this cut. In

the last 7 years, the CAC has seen a spike in its forensic interviews – from 1,159 children to 1,536 in 2016. With implementation of the new MOU for the Multidisciplinary Response to Child Abuse and Neglect and the concurrent training of law enforcement and DFS, an increase in forensic interviews is anticipated.

Department of Justice - In last few years, the Attorney General has established the SVU with the long-term goal to have all child abuse cases statewide handled by this unit. CPAC recommended SVU in May 2013 after it undertook a yearlong review of criminal prosecutions and outcomes in child abuse cases. While SVU has now been established, it is functioning only in New Castle County and is severely understaffed. In the last year, CPAC has seen three cases where previous prosecutions with minimal punishment or no prosecution have resulted in subsequent serious harm to children. DOJ has requested an additional Deputy for SVU, and CPAC requests funding of that position.

Prevent Child Abuse Delaware – In 2016, SB 213 passed and was signed into law despite reservations about CPAC’s ability to financially provide personal body safety programming to 60,000 children in pre-kindergarten through 6th grade. In 2017, SB 102 was introduced; it allows for the programming for children to be delayed 2 years to secure funding. CPAC, together with DFS, is responsible for identifying and maintaining evidence-based (whenever available) personal body safety instruction for these children. Currently, this service is provided to about 10,000 students per year through Prevent Child Abuse Delaware (“PCAD”). PCAD has requested an increase of its grant in aid funding from \$48,580 to \$90,930 to enable it to hire a second staff person to reach another 10,000 students. This is still a far cry from the 60,000 students but it would greatly assist CPAC, DFS, and the schools in exploring a variety of options to eventually meet the statutory mandate.

OPPORTUNITIES FOR IMPROVEMENT

CPAC does not have need for changes to their statute or structure. CPAC will continue its effort to seek financial support for the initiatives noted above: DFS caseloads, Children’s Advocacy Center, Special Victims Unit, and Prevent Child Abuse Delaware.

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ADDITIONAL COMMENT FROM THE COMMITTEE ANALYST

CPAC's efforts have highlighted the need for continued improvement of Delaware's child protection system. As noted in the Challenges section, on page 17 of this report, budget cuts have negatively affected the multidisciplinary approach.¹¹ The Children's Advocacy Center, whose child interviews are so important in cases such as Earl Bradley and Daniel Santucci, will continue to be delayed. It is unclear if CPAC can assist the CAC through grant opportunities.

CPAC continues to update information by utilizing data analytics to provide up to date information for the child welfare dashboard. An area that has recently gained additional attention is substance-exposed infants. Data provided from the Office of the Investigation Coordinator within OCA highlights increased need for intervention in this area. House Bill 140 was introduced In addition to a Regional Partnership Grant to assist in the development of Plans of Safe Care for infants and their families through the Healthy Outcomes for Parent Engagement ("HOPE") Model, the Comprehensive Addiction and Recovery Act ("CARA") made federal funding available to support programs that improve addiction treatment for pregnant and postpartum women. While CPAC has not applied for any CARA grants, it may be another way for CPAC to support its MDT approach in providing care for infants affected by addiction.

Championed by CPAC, House Bill 140, Aiden's Law, is a non-punitive, public-health oriented bill that seeks to codify certain sections of the federal law known as the Child Abuse Prevention and Treatment Act, as amended by the Comprehensive Addiction and Recovery Act, that requires states to have policies and procedures in place to address the needs of infants born with and identified as being affected by substance abuse, withdrawal symptoms, or Fetal Alcohol Spectrum Disorder, including a requirement that healthcare providers involved in the delivery or care of such infant notify the child protection services system. This bill formalizes a uniform, collaborative response protocol for the development of a Plan of Safe Care for infants with prenatal substance exposure and their affected family or caregivers. HB 140 was reported out of the House Judiciary Committee on May 10, 2017, and assigned to the House Appropriations Committee.

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¹¹ See Appendix C for CPAC's letter to Governor Carney regarding funding priorities.

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APPENDIX A

Rep. Stephanie T. Bolden, Chair
Rep. Gerald L. Brady
Rep. Andria L. Bennett
Rep. Timothy D. Dukes
Rep. Jeffrey N. Spiegelman



STATE OF DELAWARE
**JOINT LEGISLATIVE OVERSIGHT AND
SUNSET COMMITTEE**

Sen. John J. Walsh, Vice-Chair
Sen. Anthony Delcollo
Sen. Stephanie L. Hansen
Sen. Brian G. Pettyjohn
Sen. David P. Sokola

March 28, 2018

The Honorable Melanie George Smith
The Honorable Harris B. McDowell
The Honorable Members of the Joint Finance Committee
Legislative Hall
411 Legislative Avenue
Dover, Delaware 19901

Re: Support for Child Protection Accountability Commission

This year, the Joint Legislative Oversight and Sunset Committee (“JLOSC”) conducted a comprehensive review of the Child Protection Accountability Commission (“CPAC”). After a public hearing and a recommendation meeting held earlier this session, the JLOSC adopted four recommendations relating to CPAC.

One of the adopted recommendations relates to funds appropriated to CPAC through the operating budget. JLOSC unanimously adopted the following recommendation:

Recommendation 2: The Committee will provide a letter to the Joint Finance Committee, for the support of CPAC and the agencies it supports.

CPAC supports Delaware’s child monitoring system through data analysis and multi-agency coordination in the following ways:

- CPAC supports the **Division of Family Services** effort for compliance with caseload standards, and case worker entry level pay.
- CPAC supports the efforts of **Children’s Advocacy Center of Delaware**, which provides forensic exams and interviews.
- CPAC supported the **Department of Justice’s Special Victims Unit** in New Castle County, and is advocating for the same in Kent and Sussex Counties.
- CPAC strives to complete personal body safety instruction which SB 213 established. CPAC is currently working to provide the program to the over 60,000 children in pre-kindergarten through 6th grade. This training is currently provided through grant funding from **Prevent**

Child Abuse Delaware. Prevent Child Abuse Delaware has requested increased grant in aid funding in order to continue to fund this necessary program.

JLOSC heard testimony from CPAC staff regarding ongoing challenges in keeping Delaware children safe from abuse and addiction. The role of CPAC is to serve as a monitoring system for Delaware's child protection system.

JLOSC respectfully requests your review of CPAC's current appropriation and consideration for additional appropriations to ensure that support can be provided for agencies that CPAC supports, such as Division of Family Services, Children's Advocacy Center of Delaware, Department of Justice, and Prevent Child Abuse Delaware. JLOSC understands the current state of the budget, but believes that CPAC and their work is a high priority, and consideration should be made to provide additional, necessary funding.

Sincerely,



Representative Stephanie T. Bolden

Chair, JLOSC



Senator John J. Walsh

Vice-Chair, JLOSC

cc: JLOSC Members (via email)

Tania Culley, Esq.

APPENDIX B

Name	Professional or Public Member	Position Held	Profession or Occupation
The Honorable Josette Manning	Professional	Secretary of the Department of Services for Children, Youth and Their Families	Secretary
Trenee Parker	Professional	Director of the Division of Family Services	Director
James Kriner, Esq.	Professional	Two representatives from the Attorney's General Office	Deputy Attorney General
Abigail Layton, Esq.	Professional	Two representatives from the Attorney's General Office	Deputy Attorney General
The Honorable Judge Michael Newell	Professional	Two members of the Family Court	Chief Judge
The Honorable Joelle Hitch	Professional	Two members of the Family Court	Judge
The Honorable Valerie Longhurst	Professional	One member of the House of Representatives	Delaware State Representative
The Honorable Margaret Rose Henry	Professional	One member of the Senate	Delaware Senator
Neal Tash	Public	Chair of the Child Placement Review Board	Chair
Designee: Susan Haberstroh	Professional	Secretary of the Department of Education	Education
Bob Dunleavy	Professional	Director of the Division of Prevention and Behavioral Health Services	Director
Maureen Monagle	Professional	Chair of the Domestic Violence Coordinating Council	Chair
Colonel Nathaniel McQueen	Professional	Superintendent of the Delaware State Police	Superintendent

Name	Professional or Public Member	Position Held	Profession or Occupation
Garrett Colmorgen, M.D.	Professional	Chair of the Child Death Review Commission	Chair
Jennifer Donahue, Esq.	Professional	Investigation Coordinator	Investigation Coordinator
Nicole Magnusson	Public	One youth or young adult who has experienced foster care in Delaware	Communications Assistant
Kathryn Lunger, Esq.	Professional	One representative from the Office of Defense Services	Statewide Director
Meg Garey	Public	At-large Member - Interagency Committee on Adoption	
Major Robert McLucas	Public	At-large Members - Law Enforcement	Law Enforcement
Randall Williams	Public	At-large Members - Child Protection Community	Chief Executive Officer
Janice Mink	Public	At-large Members - Child Protection Community	CAN Panel Chairperson
Ellen Levin	Public	At-large Members - Child Protection Community	CASA
Allan De Jong, M.D.	Public	At-large Members - Child Protection Community	Medical Director
Ginger Ward	Public	At-large Members - Child Protection Community	CPAC Chairperson

APPENDIX C



STATE OF DELAWARE
CHILD PROTECTION ACCOUNTABILITY COMMISSION
c/o OFFICE OF THE CHILD ADVOCATE
900 KING STREET, SUITE 210
WILMINGTON, DELAWARE 19801
TELEPHONE: (302) 253-1730
FAX: (302) 577-6831

GINGER WARD

CHAIR

TANIA M. CULLEY, ESQUIRE

EXECUTIVE DIRECTOR

January 12, 2018

Submitted via email

The Honorable John Carney
Governor
820 N. French Street
Wilmington, DE 19801

RE: CPAC Funding Priorities

Governor Carney:

We are writing on behalf of the Child Protection Accountability Commission ("CPAC") to express the Commission's funding priorities for Fiscal Year 2019.

Since its inception in 1997, CPAC has monitored the child welfare system to ensure the protection of children and the critical and necessary funding for the multidisciplinary team responsible for investigating child abuse. Of significant focus have been the average caseloads of DFS investigation and treatment caseworkers. CPAC is beyond grateful to this body for recognizing the statutory caseload requirements and ensuring that positions were allocated last year such that DFS could eventually achieve compliance with the law that serves to provide safety for our most at-risk children. With that said, much work in this area remains to be done to assure the safety of children which will be discussed below.

CPAC understands that you have a most difficult task in front of you to balance competing priorities with limited resources. CPAC's funding priorities, in order of immediate need, are as follows:

1. Infants with Prenatal Substance Exposure (HB140)

CPAC and the Child Death Review Commission have worked tirelessly over the last several years to improve child mortality outcomes for infants exposed to substances prenatally. Aiden's Law, HB140, named in honor of an infant who was prenatally exposed to heroin and subsequently killed by one or both of his addicted parents, codifies protections for this most at-risk population. This bill will require Delaware's birth hospitals to notify DFS in the event of such an infant, and to implement and monitor plans of safe care for every infant who is prenatally exposed to substances to assure service referrals for the affected caregiver(s). DFS anticipates the fiscal impact of the bill will require \$285,000 in contractual dollars. These contractual dollars would provide support for 4 contractual workers statewide (2 NCC/1 K/1 S) to develop and monitor plans of safe care for the lower risk families. It also includes funds for a part-time supervisor and startup training to ensure proper implementation of the contracted program. DFS anticipates this funding will serve 130-150 families per year. While funding was provided in epilogue language in the FY18 budget, CPAC is requesting that this funding be permanently placed in the DSCYF budget. In calendar year 2017, 450 infants were born with prenatal substance exposure. Contractual services will serve a portion of those infants and their families.

2. Division of Family Services – Caseloads/Agency Cuts

As the core of the child welfare system, and the regulator of child safety in our community, the work that frontline DFS caseworkers do cannot be undervalued. The decisions they make and the tools they need to do their jobs – of keeping children safe and alive – must rise to the top of any funding priority list. Likewise, DFS is already beyond lean fiscally. It cannot sustain any further funding cuts. CPAC requests that no cuts to the DFS budget be made. CPAC further requests that compliance with statutory caseload mandates continue to occur as required by 29 Del. C. § 9015. Attached please find the DFS caseloads through September 30th which show the average statewide caseload for fully functioning investigation caseworkers still consistently above standard at 19.3 – with 80% of staff over standard. Since last fall, the number of cases has increased by 25%. In August 2017, two of

the four regional offices were reporting caseload averages of 21.5 and 27.5 – double the statutory standard.

Without the 27 positions last fiscal year, the circumstances would be exponentially more dangerous. Even with new positions, DFS still has approximately 14 frontline worker vacancies with many in the process of being filled. Even once filled, it takes approximately 6 months to be a fully functional worker. With a starting salary of \$30,912, and a special skill set required, filling vacancies has been no easy task – although the hiring freeze has helped immensely in the last month. Under normal circumstances, these positions cannot compete with other entry level jobs and they do not receive a hazard pay differential – for a job that is extremely hazardous. The “overhire” pool continues to be nearly empty despite ongoing recruitment efforts harkening Delaware back to the child abuse fatalities of the late 1990s when the lack of a trained workforce to step into vacancies resulted in a cascade of unfortunate events.

DFS treatment caseloads also need to continue to be closely monitored as 18 cases per worker translates to 50-60 children and their families. Since 2008, CPAC has proposed that treatment caseloads be reduced to 15 and then 12. Currently, the average statewide caseload for fully functioning treatment caseworkers is at 18. However, a closer look at the numbers demonstrates that 48% of the workers are over standard, and that in one region the caseload average is 22.7 with 83% of workers over standard.

CPAC continues to be concerned that the treatment caseloads as presented fail to demonstrate the workloads of caseworkers. For instance, the caseloads due do not take into consideration the following: the number of children on each case; children in DSCYF custody versus children in intact families; children with significant mental and behavioral health needs; and high-risk families, particularly victims of serious physical injury, death and sexual abuse. In addition, eight years after CPAC originally recommended lowering the treatment caseload standard to 12, DFS has seen significant systemic changes as a result of the implementation of the Outcomes Matter Initiative in 2011, which has impacted its policy, procedures and training programs. CPAC has convened a committee to once again study this issue.

In FY17, DFS received over 21,000 reports of child abuse, neglect or dependency, which was a 3% increase over the prior fiscal year and the largest number of reports ever received in a fiscal year by DFS. Resources at the Report Line are needed to handle this call volume. CPAC supports the DSCYF budgetary request of 8 positions for its Report Line.

Caseworkers are overwhelmed and cannot maintain child safety with this increasing volume. In calendar year 2017, we have had more child deaths (13) due to abuse or neglect than the prior two calendar years. Of the children that have died, 5 were infants exposed prenatally to substances and 4 were the result of unsafe sleep practices. Two of those children had an active DFS investigation at the time of death.

CPAC urges that the caseload analysis required under 29 Del. C. § 9015 occur this fiscal year, and that it occur on at least a quarterly basis this next fiscal year to ensure that caseloads do not exceed the statutory standards. CPAC also requests no funding cuts to the Division of Family Services and that this body consider both the starting salaries and lack of hazard pay for these most difficult positions that are directly linked to child safety.

3. Children's Advocacy Center

The CAC of Delaware has been a long-standing quasi-governmental agency providing a critical service to our abused and neglected children. By providing forensic exams and interviews, children are not re-traumatized and prosecutions of perpetrators are stronger. Each year this agency is required to spend significant time, energy and money to advocate for restoration of its funds to carry out governmental functions. Once again last year, the CAC budget was cut by \$99,100 or 10% of its budget. Core services to abused and neglected children cannot be delivered with this cut. In the last 7 years, the CAC has seen a spike in its forensic interviews – from 1,159 children to 1,536 in 2016. With implementation of the new Memorandum of Understanding between all multidisciplinary partners, and the concurrent training of law enforcement and DFS, an increase in forensic interviews is anticipated.

In addition, CPAC would request that the CAC funding be placed in the operating budget, funding eliminated last year be restored and that the

Governor and the Joint Finance Committee explore alternative public/private partnership options for this agency so that it may carry out its governmental work free of these worries. The CAC and its Board have provided OMB with documentation on its services and the impact of the FY18 budget cuts. CPAC urges the restoration of funding for the CAC and consideration of how to long term handle funding for this agency.

4. Department of Justice

In last few years, the Attorney General has established a Special Victims Unit with the long term goal to have all child abuse cases statewide handled by this unit. This Unit was recommended by CPAC in May 2013 after it undertook a yearlong review of criminal prosecutions and outcomes in child abuse cases. While this unit has now been established, it is only functioning in New Castle County and is severely understaffed. In the last few years, CPAC has reviewed three cases where previous prosecutions with minimal punishment or no prosecution have resulted in subsequent serious harm to children. DOJ needs additional Deputies to make this a functional statewide unit where all cases are coordinated and receive the same level of support and oversight, regardless of which county the crime occurs.

5. Prevent Child Abuse Delaware

Last year, Senate Bill 102 passed and was signed into law despite reservations about our ability to financially provide personal body safety programming to 60,000 children in pre-kindergarten through 6th grade. Due to those concerns, a 2-year delay was placed on this portion of the bill to enable CPAC and its partners to figure out how to best deliver this programming to our children. CPAC together with DFS is responsible for identifying and maintaining evidence-based (whenever available) personal body safety instruction for these children. Currently, this service has been provided to about 10,000 students per year through Prevent Child Abuse Delaware (PCAD) at a grant in aid cost of \$48,580. CPAC requests additional funding to enable this programming to be provided to all children. An additional \$42,000 would enable PCAD to hire a second staff person to reach another 10,000 students. This is still a far cry from the 60,000 students but it would greatly assist CPAC, DFS and the

schools in exploring a variety of options to eventually meet the statutory mandate.

On the Commission's behalf, we urge support in fulfilling these funding requests.

Respectfully,



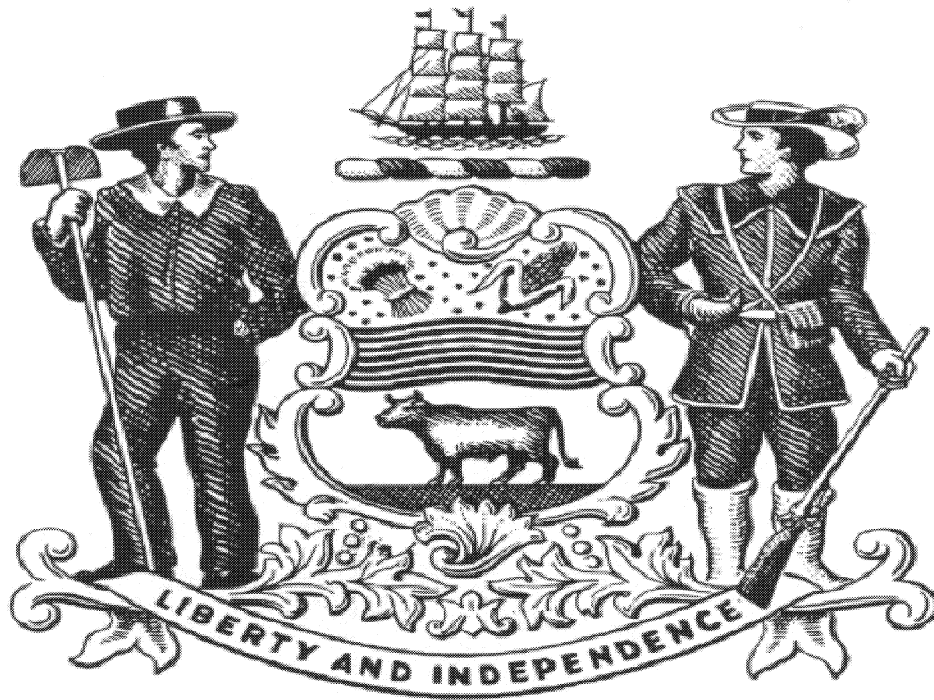
Ginger Ward
CPAC Chair



Tania M. Culley, Esquire
CPAC Executive Director

cc: CPAC Commissioners
General Assembly
Michael Jackson, OMB Director
Michael Morton, Controller General

Joint Legislative Oversight & Sunset Committee 2018 Final Report



Division of Waste and Hazardous Substances Hazardous Substance Cleanup Act Fund

*A Report to the Governor and the
149th General Assembly of the State of Delaware.*

June 2018

Final Report was completed by:
Julie Fedele, Research Analyst
Legislative Council • Division of Research
411 Legislative Hall
Dover, DE 19901
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302-744-4307

2018 Joint Legislative Oversight and Sunset Committee Members

Representative Stephanie T. Bolden,
Chair

Senator John J. Walsh,
Vice-Chair

Representative Andria L. Bennett

Representative Gerald L. Brady

Representative Timothy D. Dukes

Representative Jeffrey N. Spiegelman

Senator Anthony Delcollo

Senator Stephanie L. Hansen

Senator Brian G. Pettyjohn

Senator David P. Sokola

Final Report Prepared By:

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The Sunset Law in Delaware, Chapter 102 of Title 29, enacted in 1979, provides for the periodic legislative review of state agencies, boards, and commissions. The purpose of sunset review is to determine whether there is a public need for an agency, board, or commission and, if so, to determine whether it is effectively performing to meet that need. Agencies may be reviewed once every six years.

The Joint Legislative Oversight and Sunset Committee (“JLOSC”) is responsible for guiding the sunset review process. JLOSC is a bipartisan committee comprised of ten legislators. The Senate President Pro Tempore and the Speaker of the House of Representatives each appoint five members to serve on JLOSC.

Sunset reviews are generally conducted over a ten month period commencing in July. A comprehensive review of each agency, based on statutory criteria, is performed by the JLOSC Analyst, who subsequently prepares a preliminary report for use by JLOSC during the public hearings, which take place in February each year. Public hearings serve as a critical component of this process, as they provide an opportunity for JLOSC to best determine whether the agency is protecting the public’s health, safety, and welfare.

At the conclusion of a sunset review, JLOSC may recommend the continuance, consolidation, reorganization, transfer, or termination (sunset) of an agency, board, or commission. Although JLOSC has sunset several agencies since its first set of reviews in 1980, the more common approach has been for JLOSC to work with the entity under review to formalize specific statutory and non-statutory recommendations, with the goal of improving the entity’s overall performance and government accountability.

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2018 Final Recommendations

Division of Waste and Hazardous Substance

HSCA Fund

The Joint Legislative Oversight and Sunset Committee (“Committee”) recommends that the Division of Waste and Hazardous Substance, HSCA Fund be held over, and report before the Committee in January 2019.

RECOMMENDATION 1:

Option 1: The Committee will sponsor a bill drafted by the Committee’s Legislative Attorney to amend 7 Del. C. § 9113(d) to clarify that the HSCA Fund’s 15% cap on administrative costs expenditures is based on the amount deposited into the Fund on a cumulative basis, as follows (including 2 changes to conform existing law with the standards of the Delaware Legislative Drafting Manual):

(d) No greater than 15 percent % of the moneys deposited into the Fund on a cumulative basis over the life of the Fund shall may be used for administering this chapter without approval of the Joint Finance Committee.

Option 2: The Committee will sponsor a bill drafted by the Committee’s Legislative Attorney to amend 7 Del. C. § 9113(d) to clarify that the HSCA Fund’s 15% cap on administrative costs expenditures is based on the amount deposited into the Fund in the current fiscal year, as follows:

(d) No greater than 15 percent % of the moneys deposited into the Fund in the current fiscal year shall may be used for administering this chapter without approval of the Joint Finance Committee.

Status: Tabled at the 6/5/18 meeting. The Committee will revisit this recommendation in January 2019.

RECOMMENDATION 2: The Committee will sponsor a bill drafted by the Committee of 100 to amend 7 *Del. C.* §9113-§9114 to stabilize revenues for the HSCA Fund and Brownfield Program.

Status: This recommendation passed on 4/17/18. House Bill 451 was released on 6/12/18.¹

RECOMMENDATION 3: In order to demonstrate the achievements of the Division of Waste and Hazardous Substances, and the success of the Brownfields Development Program, update

¹ See Appendix D for HB 451.

the Delaware Brownfields Marketplace website with a complete list of market-ready brownfield sites for redevelopment.

Status: This recommendation passed on 4/17/18. The Committee will receive a report from the Division in January 2019.

RECOMMENDATION 4:

Option 1: The Division of Waste and Hazardous Substance, and HSCA Fund are released from review upon enactment of recommended legislation.

Option 2: The Division of Waste and Hazardous Substance and HSCA Fund are held over and shall report to the Committee in January 2019.

Status: Option 2 passed.

A NOTE ABOUT THIS DRAFT REPORT

The information provided in this report is taken from the Joint Legislative Oversight and Sunset Committee (“Committee”) Performance Review Questionnaire, as it was completed by the agency under review. When appropriate, the Analyst who prepared this report made minor changes to grammar and the organization of information provided in the questionnaire, but no changes were made to the substance of what the agency reported. Any points of consideration which arose in analyzing the questionnaire and compiling this report are addressed in the section titled Additional Comment from the Committee Analyst. It is the intent of the Analyst to make any substantive changes which may be required, as the result of findings made through the review processes, in the final version of this report.

AGENCY HISTORY

The Delaware Hazardous Substance Cleanup Act (“HSCA”), 7 *Del.C.* Chapter 91 was passed by the Delaware General Assembly in July 1990. Amendments have been added over the years to support the addition of the Voluntary Cleanup and Brownfields Development Programs.

The HSCA statute gives the Department of Natural Resources and Environmental Control (“DNREC”) the ability to ensure cleanup of facilities with a release, or imminent threat of release, of hazardous substances. The main objective of HSCA is to enable DNREC to address those sites not remediated under the federal Superfund program. Since 1991, DNREC has identified over 1,997 sites in Delaware as potential hazardous substances release sites, between Tank Management Systems (“TMS”), Emergency Prevention and Response Section (“EPRS”), and Site Investigation and Restoration Section (“SIRS”).

JUSTIFICATION AND NEED FOR EXISTENCE

Before the creation of the HSCA fund, there were many vacant, abandoned, or under-utilized sites that lay contaminated and posed a risk to human health or the environment. Some conditions were naturally occurring and others were caused by historic industrial and commercial activities within the State. The EPA investigated and remediated the worst of the hazardous substances sites under the Federal Superfund Program before the creation of the HSCA Program. Prior to the creation of HSCA, there was no framework for the proper management of containment or disposal of hazardous substances to prevent contamination. Contaminated sites include dry cleaning facilities, salvage yards, closed gas stations, historically filled lands, and debris pits. Contamination from these sites entering groundwater, streams, and soils, poses a risk to public health and safety.

Under the Federal Superfund Program, the State is required to provide a cost share for federally funded remedial actions, such as the Standard Chlorine Metachem facility in Delaware City. At the Standard Chlorine facility, HSCA will start funding the groundwater pump and treat system for \$500,000 each year into perpetuity. Prior to HSCA, there was no state financial mechanism to provide this cost share.

The program is funded by levying a 0.9% tax on all taxable gross receipts from the sale of petroleum or petroleum products, with the exception of crude oil. The State HSCA Program, except for the Brownfield Development Program, requires potentially responsible parties to pay for the costs associated with investigating, and if necessary, cleaning up a site. If a potentially responsible party cannot be identified or is unable to pay for the cleanup, monies from the HSCA Fund (“the Fund”) are utilized to perform the cleanup at the site.

HSCA applies to all of the programs that are managed through DNREC’s SIRS, including the Brownfields Development Program, Voluntary Cleanup Program (“VCP”), state-led projects, and enforcement matters. The Brownfields Program follows the HSCA statute and regulations; the Brownfields grants are financed by the Fund for approved sites. The VCP follows the HSCA statute and regulations; however, the responsible party pays for the cleanup as well as oversight costs. State led projects follow the HSCA statute and regulations; the cleanup is financed by the Fund until the

responsible party can be identified. Enforcement occurs when the responsible party fails to comply with the HSCA statute and regulations and either DNREC Secretary's or judicial order is obtained to enforce compliance.

To date, the Division has remediated and is overseeing long-term monitoring on over 1,450 sites. Many of these sites have been brought back into productive use to the State, creating economic growth and a safer environment for our citizens. There have also been large groundwater contamination issues affecting thousands of people on public or private well water systems who have benefited from the use of the Fund to clean up the contamination. This has been particularly true in rural and suburban areas that have been contaminated by dry cleaning, salvage yard, or mining operations.

The State has also become the lead on sites where the responsible party either went bankrupt or does not have the financial means to fund the remedial action, such as the Wilmington Riverfront development, the NVF site in Yorklyn, the Georgetown Cleaners site in Georgetown, the Seaboard Lumber site in Bridgeville, and North Street Plume site in Dover. For the Wilmington Riverfront, HSCA has funded in the sum of \$15,890,872.41 to address the environmental conditions along the Christiana River putting the once industrial contaminated lands back into productive residential/commercial uses. At the Seaboard Lumber facility, HSCA has expended \$1,681,540.25 in funds to address contamination left behind from a former creosote operation. At NVF Yorklyn, the State is still responsible for operating the zinc removal system and undertaking other cleanup activities at the bankrupt site. The Division has spent \$5,615,774.34 from HSCA to date. Large HSCA cleanup operations, which account for millions of dollars in investigation and remediation activities, have put a financial strain on the Division. Due to financial constraints on the Division, it was necessary to take out a \$3 million dollar loan from the Delaware Clean Water and Drinking Water State Revolving Loan Fund in 2016 in order to continue funding the remediation at NVF Yorklyn.

In addition to the Division utilizing HSCA to take the financial and technical lead on facilities, it has also been instrumental in supporting private entities putting contaminated properties back into a productive use by means of the Brownfield Development Program ("BDP"). Three reports completed by the University of Delaware illustrate the economic and social benefits of the BDP.² To date, 269 sites have been certified as Brownfields. Sites like the Cutis Paper Mill where HSCA provided the City of Newark with \$946,423.62 for the investigation and cleanup, which transformed this old industrial Site into a City park; to the Former Kirkwood Highway Gulf station where HSCA provided \$132,605.77 to a private developer to transform a closed gas station into a bank; or the Former Bancroft Mills in Wilmington where HSCA funded \$225,000.00 to evaluate the environmental condition of the historical property. Without the support of the Fund, these properties would most likely not have been redeveloped.

² Analyst note: Reports available upon request.

JOINT LEGISLATIVE OVERSIGHT AND SUNSET COMMITTEE REVIEW HISTORY

The Joint Legislative Oversight and Sunset Committee (“JLOSC”) has never reviewed the Division of Waste and Hazardous Substances oversight of the HSCA fund.

MISSION, GOALS, OBJECTIVES, & AUTHORITY

Mission Statement of the Division of Waste and Hazardous Substances

The mission of the Division of Waste and Hazardous Substances (“Division”) is to protect the environment and the health and safety of the people in Delaware. We do this by ensuring compliance with and enforcing, Delaware’s waste and hazardous substances management laws, promoting waste reduction and recycling, remediating contaminated sites, and by conducting emergency planning, prevention, and response.

Vision Statement of the Division of Waste and Hazardous Substances

The Department envisions a Delaware that offers a healthy environment where people embrace a commitment to the protection, enhancement, and enjoyment of the environment in their daily lives; where Delawareans’ stewardship of natural resources ensures the sustainability of these resources for the appreciation and enjoyment of future generations; and where people recognize that a healthy environment and a strong economy support one another.

The HSCA legislation was enacted to require prompt containment and removal of hazardous substances, to eliminate or minimize the risk to public health or welfare or the environment, and to provide a fund for the cleanup of the facilities affected by the release of hazardous substances. Therefore, HSCA accurately reflects the mission of the Division.

The following represents the program-related goals and objectives for FY2018:

- Support the Delaware Downtown Development District Program.
- Finalize sections of the HSCA Guidance document.
- Continue to work on the National Priorities List Sites with the federal government and toward a record of decision.
- Continue to improve the Site Status Database for SIRS.
- Continue improvements in Brownfield/Voluntary Cleanup Program (“VCP”).
- Provide technical assistance and coordination to address contamination issues associated with other programs.
- Promote innovative technologies in Site investigation and remediation.
- Conduct background and bioavailability studies supporting cleanup standards.
- Conduct baseline assessments and other activities to support a Natural Resource Damage Assessment (“NRDA”) Program.
- Implement Groundwater NRDA Program.
- Conduct assessments and other activities to support the Watershed Assessment Program.
- Initiate basin-wide implementation of sediment remedy through Watershed Approach to Toxics Assessment and Restoration (“WATAR”).
- Work with Division of Small Business, Development and Tourism, formerly known as the Delaware Economic Development Office (“DEDO”), to fully utilize the Brownfield Program in promoting the reuse of properties throughout the State.
- Continue to address the 447+ backlogged HSCA sites to determine what further actions are necessary.

- Fully utilize EQUIS for storing all environmental data within SIRS and assist in Department-wide implementation.
- Continue working with the consulting firm Brightfields, Inc. to complete a study on dry cleaners.
- Address regulatory authority over releases from golf courses and orchards. Working with the University of Delaware on a study of the issue.
- Publish the HSCA Expenditure Plan for FY2019.

The main objective of HSCA is to enable DNREC to address those sites not remediated under the Federal Superfund Program. DNREC also administers several programs under the TMS relating to preventing and cleaning up releases of hazardous substances from underground and aboveground storage tank systems. These include using HSCA funds for state-led projects where a responsible party cannot be found, or when the responsible party is not following regulatory requirements or does not have the ability to pay. HSCA funds have also been used to support financial assistance programs that have reimbursed tank owners for costs associated with removing underground storage tanks and cleaning up releases that have occurred. HSCA funds continue to support the closure of underground storage tanks containing heating fuel that have exceeded their expected service lives. HSCA funds also support the DNREC's Emergency Response Program which mitigates and stabilizes hundreds of releases of hazardous substances that are reported each year through DNREC's spill response hot-line.

In addition, DNREC funds some of the Emergency Prevention and Response Section's ("EPRS") Environmental Response Program activities with monies from HSCA.

COMPOSITION & STAFFING OF THE ADVISORY COMMITTEE

Composition:

There are currently about 25 active participants that attend the quarterly meetings.³ This includes 10 to 11 Division staff and the Deputy Attorney General. The additional members are made up of the public, environmental consultants, and attorneys. The HSCA Advisory Committee ("HAC") was established by the Division to be advisory to the Division on matters relating to HSCA. As such, the HAC is not in the Delaware Code or governed by any statute or regulation. All meetings are publicly noticed and anyone who attends is considered a member for purposes of the meeting. The Division seeks the HAC's advice on potential changes to the HSCA statute and regulations, as well as any Division policies or standards.

Compensation:

The members are not compensated for related expenses or the services they provide to the HAC.

Member Trainings:

The HAC members are not provided training opportunities.

Staffing:

The Division has a current authorized staff of 85 merit FTEs; there are no appointed employees. However, only the following sections within the Division work on HSCA Programs: SIRS, TMS, and the EPRS.

There are currently 30 authorized merit positions in SIRS. Of these, 4 are vacant, 11 are funded by EPA grants, and the remaining 15 are funded through the Hazardous Substance Cleanup Act Fund and reimbursements by responsible parties for oversight of cleanup of their sites. There are 2.76 positions

³ See Appendix A for a list of current HAC participants.

within the TMS funded by the HSCA Fund to clean up leaking underground storage tank sites. Also, 1.5 positions within the ERPS are paid by the Fund. All of these positions are merit. Additionally, the Fund pays for the services of 2 Deputy Attorney General positions in the State of Delaware Department of Justice.

DNREC does not utilize contractual workers for the HSCA Fund. However, conservation district employees assist DNREC with conservation-related activities and are shown in the table below.

Year	SIRS Employees utilized	TMS Employees utilized
2016	4	1
2017	3	2
2018	3	2

The Division has been able to adjust workloads to make resources available, while still ensuring the protection of public health. With the recent reduction in HSCA revenue and Federal grants, the Division reduced staff through attrition and reset its priorities to focus on sites that are impacting drinking water, have a potential to impact drinking water, have vapor intrusion into buildings, or have contaminated residential soils, and emergency response to releases of hazardous substances. Consequently, the Division has put remediation of several sites on hold and has reduced the funding for Brownfields and the Underground Storage Tank Home Heating Oil Assistance Program.

Staff is hired in accordance with all state merit employee regulations as administered by the Office of Management and Budget and the Department of Human Resources. Staff is hired through the State of Delaware Employment Website. In-house announcements are made when a position is posted to the website, which gives current staff the opportunity to apply for positions within the Department.

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Staff Member Name & Title	Responsibilities	Percentage of Time Devoted to Responsibility
Employees under the Site Investigation and Restoration Section		
Robert Asreen	Project Manager (Hydrologist IV)	100% Manages sites under the different programs HSCA, VCP, Brownfields, etc.
Gertrude Barone	Administrative Specialist I	100% Scans and files all documents
Patrick Boettcher	Project Manager (Hydrologist)	100% Manages sites under the different programs HSCA, VCP, Brownfields, etc.
Keith Brady	Deputy Attorney General	100% legal services for Brownfield Program
Eileen Capitoli	Project Manager (Environmental Scientist I)	100% Manages sites under the different programs HSCA, VCP, Brownfields, etc.
John Cargill	Project Manager	10% Manages sites under HSCA
Meghan Crystall	Project Manager (Environmental Scientist II)	100% Manages sites under the different programs HSCA, VCP, Brownfields, etc. Also completes O&M Inspections
Kate Durant	Project Manager (Environmental Scientist II)	100% Manages sites under the different programs HSCA, VCP, Brownfields, etc.
Rick Galloway	Project Manager (Hydrologist IV)	100% Manages sites under the different programs HSCA, VCP, Brownfields, etc.
Stephanie Gordon	Project Manager (Environmental Scientist II)	100% Manages sites under the different programs HSCA, VCP, Brownfields, etc.
Lindsay Hall	Project Manager (Engineer III)	100% Manages sites under the different programs HSCA, VCP, Brownfields, etc.
Vanessa Hamm	Management Analyst I	100% manages Equis database
Karissa Hendershot	Project Manager (Environmental Scientist III)	100% Manages sites under the different programs HSCA, VCP, Brownfields, etc. Enters all GIS information
Todd Keyser	Project Manager (Hydrologist II)	10% Manages sites under the different programs HSCA, VCP, Brownfields, etc.
Sandy Kimbel	Management Analyst I	50% manages Federal Grants and 50% works on financial transactions under HSCA & VCP program.
Liz Lasorte	Paralegal	100% supports the Departments Deputy Attorney Generals

Melissa Leckie	Management Analyst II	95% work on Brownfield program managing grants and loans 5% working on HSCA program loans and budget.
Pam Livingston	Administrative Specialist I	95% manages the front desk and 5% completes travel request for Department
Wendy March	Project Manager (Environmental Scientist IV)	100% Manages sites under the different programs HSCA, VCP, Brownfields, etc. Also completes O&M Inspections
Morgan McGee-Solomon	Project Manager (Environmental Scientist II)	100% Manages sites under the different programs HSCA, VCP, Brownfields, etc.
Bob Phillips	Deputy Attorney General	100% legal services for HSCA and VCP Program
Jim Poling	Planner IV	100% works on Certifying Brownfield Sites and legislative bills for the Brownfield Program.
Morgan Price	Project Manager (Environmental Scientist IV)	100% Manages sites under the different programs HSCA, VCP, Brownfields, etc. Manages all environmental Contracts
Timothy Ratsep	Program Administrator	100% Oversees all programs under SIRS
Qazi Salahuddin	Program Manager II	100% Oversees 9 employees that work under SIRS
Bob Schulte	Analytical Chemist III	95% manager Department Laboratory and oversees 3 employees. 5% manages sites under Brownfield Program and HSCA
Krystal Stanley	Project Manager (Environmental Scientist II)	100% Manages sites under the different programs HSCA, VCP, Brownfields, etc.
Kristen Thornton	Project Manager (Environmental Scientist III)	100% Manages sites under the different programs HSCA, VCP, Brownfields, etc.
Christina Wirtz	Ombudsman	50% Acts as Division Ombudsman and 50% project management of HSCA & VCP sites.
Paul Will	Program Manager II	100% Oversees 8 employees that work under SIRS
Randal Wolfe	Analytical Chemist III	100% works in the SIRS Lab
Employees under the Tank Management Section		
Barbara Fawcett	Program Manager II	76% to HSCA Admin as Leaking Underground Storage Tanks (“LUST”) Prevention Match

Jill Hall	Planner IV	100% to HSCA Admin
David Lerner	Hydrologist III	100% LUST Cleanup Grant Match project management
Employees of the Emergency Response and Prevention Section		
Matthew Higgins	Environmental Scientist IV	100% Emergency Response Incidents
Eric Schuller	Environmental Scientist III	50% Emergency Response Incidents

Keith Brady is the Deputy Attorney General assigned to the Division.

ENACTED LEGISLATION IMPACTING THE COMMISSION

State Legislation

Public Notice of Contaminated Sites

HB 200 with HS-140th General Assembly (“GA”), enacted on 6/20/2000.

Updated the DE Code regarding notices of contaminated sites, by deleting the requirement that the notice of a contaminated site be posted in at least four public places in the community in which the hazardous substance is found and replaced it with notice to elected state officials, local governments, and civic associations.

Reauthorization

SB 356-140th GA, enacted on 7/6/2001.

This Act reauthorized the Hazardous Substance Cleanup Act through December 31, 2011.

Notification of Environmental Releases

SB 33 with SS 1-141st GA, enacted on 07/06/2001.

This Act amended the notification of environmental releases and facility performance, established the Community Involvement Advisory Council, and made technical corrections.

Brownfield

SB 183-141st GA, enacted on 7/13/2001.

This Act amended Chapter 91 of Title 7 of the Delaware Code to define “Brownfield,” and to authorize the Delaware Economic Development Office (DEDO) to make grants from the Delaware Strategic Fund to defray a part of the costs for the environmental assessment and remediation of Brownfields.

Strengthened Environmental Enforcement

SB 60-142nd GA, enacted on 7/16/2003.

This Act amended the Delaware Code to further deter individuals from engaging in activity that will pollute Delaware’s environment.

Created Independent Brownfields Program

SB 328-142nd GA, enacted on 8/3/2004.

This Act created the Brownfields Development Program to encourage the redevelopment of Brownfields. This Act also changed DEDO’s matching grant program to assist in the cost of environmental assessment and remediation of certified Brownfields that is part of the Delaware Strategic Fund program.

Update Above Ground Storage Tank Signage Requirement

SB 344 with SS 1-142nd GA, enacted 7/22/2004.

This Act removed the signage requirement for all aboveground storage tanks exempted from registration and regulation requirements. Exempted tanks include heating fuel, diesel, and kerosene tanks less than 20,000 gallons, and hazardous substance tanks less than 250 gallons.

Environmental Covenants

SB 112-143rd GA, enacted on 7/21/2005.

This Act streamlined the process of developing Brownfield sites by establishing a state statutory basis for environmental covenants that is consistent with the Uniform Environmental Covenant Act. This legislation provided authority for establishing durable and enforceable environmental covenants. It also established a process to amend or eliminate the environmental covenant if the conditions that gave rise to the need for the covenants no longer exist (e.g., residual buried hazardous waste contamination).

Expense Recovery

SB 89-143rd GA, enacted on 7/6/2006.

This Act assisted and allowed DNREC to recover expenses incurred including: investigations, legal fees, materials, equipment, human resources, contractual assistance, appropriate salary, and overtime associated with abating a pollution violation. The process is broadened, allowing civil action in any court within the State of Delaware, rather than Superior Court only.

Strengthened Penalty Section

SB90-143rd GA, enacted on 6/7/2006.

This Act strengthened the penalty section for violations of Chapter 60 of Title 7 of the Delaware Code.

HSCA Fund Tax

HB 234-144th GA, enacted on 7/21/2007.

This Act ensured that the tax surcharge imposed for the Fund is paid only once, regardless of how many times petroleum products are resold.

Transfer of an Establishment

SB168 with SS 1-144th GA, enacted on 5/15/2008.

This Act clarified the legal definition of the transfer of an establishment, and brings consistency to other exemptions in change of ownership.

Crude Oil Lightering Business License

HB 287-145th GA, enacted on 7/01/2009.

This Act established the annual business license fee for crude oil lightering operations. It exempted crude oil lightering operations from the gross receipts tax and revised out-of-date references. It also directed that all license fees generated are deposited into the Hazardous Substance Cleanup Fund.

Increase of Gross Receipts Tax Rates

HB 289-145th GA, enacted on 7/01/2009.

This Act increased certain General Fund business and occupational gross receipts tax rates. Sections 21 and 22 of this Act directed that the first \$1 million collected each year under the gross receipts tax surcharge on petroleum be deposited in the General Fund.

DNREC Division Reorganization

HB 480-145th GA, enacted on 7/23/2010.

This Act separated the Division of Air and Waste Management into the Division of Waste Management and Division of Air Quality and authorized the DNREC Secretary to create an Office of Environmental Protection to include the Divisions of Waste Management, Air Quality, and Water.

Gross Receipts Tax Exemption

HB 10-146th GA, enacted on 1/28/2011.

Exempted from the Wholesale Merchants' Gross Receipts Tax the gross receipts from

- (i) sales of crude oil by a crude oil wholesaler to a petroleum product refiner,
- (ii) sales of intermediate petroleum products that have been partially refined by a petroleum product refiner to an intermediate petroleum products wholesaler and from an intermediate petroleum products wholesaler back to a petroleum product refiner,
- (iii) sales of finished petroleum products by a petroleum product refiner to a finished petroleum products wholesaler, and
- (iv) sales of finished petroleum products by a finished petroleum products wholesaler to a wholesaler, if the finished petroleum products wholesaler and the wholesaler stand in a control relationship, i.e., one owns, directly or indirectly, 100% of the other or a third party owns, directly or indirectly, 100% of both the finished petroleum products wholesaler and the wholesaler.

Proceeds from sales of a petroleum product refiner to an intermediate petroleum products wholesaler are similarly exempted from the Manufacturers' Gross Receipts Tax. These changes did not cause a decrease in the Wholesale Merchants' Gross Receipts Tax or the Manufacturers' Gross Receipts Tax.

Revisions to DNREC's Chronic Violator Program

SB 92-146th GA, enacted on 8/16/2011.

This Act revised DNREC's chronic violator program, made consistent several definitions, clarified and expanded the standard and criteria for chronic violator status, added categories of factors and types of violations, updated DNREC's authority to promulgate regulations and enhanced administrative penalties.

DNREC Division Changes

SB 102-146th GA, enacted on 7/13/2011.

This Act changed the name of DNREC's Division of Waste Management to Division of Waste and Hazardous Substances ("the Division"), and enumerates the programs organized under the newly-named division. The Act re-designated the Division of Boiler Safety as a program within the newly-named Division of Waste and Hazardous Substances, eliminated the position of Director of Boiler Safety, and moved the Boiler Safety enabling legislation from Chapter 80 of Title 29 to a new Chapter 74B of Title 7. It also authorized fees from DNREC's Aboveground Storage Tank Program to partially fund administration costs of DNREC's Underground Storage Tank Program and the Boiler Safety Program.

HSCA Funding

HB 127-146th GA, enacted on 7/01/2011.

Restored full funding for the Hazardous Substance Clean-up program in FY 2012 instead of FY 2014.

HSCA Sunset Provisions

HB 163-146th GA, enacted on 7/7/2011.

This Act eliminated the sunset provisions of the Delaware Hazardous Substance Cleanup Act. The Hazardous Substance Cleanup Act was enacted by the General Assembly in 1990 and re-authorized in 2000. The ten-year sunset provisions for the financing of the Hazardous Substance Cleanup Fund were retained with a new sunset date in 2022. In addition, the exemption for transactions among petroleum wholesalers enacted in 2007, which was scheduled to expire on January 1, 2015, was extended indefinitely.

Eliminated Crude Oil Lightering Business License Fee

HB 251-146th GA, enacted on 3/29/2012.

This Act eliminated the \$100,000 business license fee for firms engaged in crude oil lightering. It consequently eliminated the designation of proceeds from the lightering license fee to the Hazardous Substance Cleanup Fund.

HSCA Fiscal and Due Process Updates

SB 198-147th GA, enacted on 10/16/2014.

This Act updated lender liability under HSCA, by amending and adding definitions and detailing the responsibilities of lenders. It also permitted reimbursements and direct payments to any person who enters into a settlement agreement with DNREC. Finally, the legislation aligned due process provisions of HSCA with other state environmental statutes by allowing orders to be issued by the DNREC Secretary without a prior public hearing but allowing an appeal to the Environmental Appeals Board.

Definition Update and Inspection Mandate

SB 199-147th GA, enacted on 9/11/2014.

This Act amended the definition of “extremely hazardous substance” in 7 Del. C., Chapter 77, the Extremely Hazardous Substances Risk Management Act, to be consistent with the wording in the Federal Clean Air Act Amendments and the federal Risk Management Program. This Act also replaced the 3 year inspection mandate for the DNREC to inspect facilities regulated by Chapter 77 with an inspection program based on risk and compliance and established requirements for inspection notice and inspector identification.

DNREC Violation Fines

SB 258-147th GA, enacted on 9/2/2014.

This Act declassified a number of minor violations associated with wildlife, hunting, fishing, and boating by changing them from environmental misdemeanors to environmental violations. The legislation modernized penalties. Finally, the jurisdiction for a number of violations was changed from Superior Court to Magistrate Court.

Modifications to Storage Tank Program

HB 367-147th GA, enacted on 10/06/14.

This Act made a number of revisions, additions, and technical clarification to Chapter 91 of Title 7 relating to Delaware’s petroleum and hazardous substances underground storage tank program in order to ensure the protection of public health and the environment, including drinking water.

Redirection of HSCA Funds

HB 425-147th GA, enacted on 7/01/2014.

This Act was the Bond and Capital Improvement Act of the State for the Fiscal Year ending June 30, 2015. Section 6, Line 25 directed the State Treasurer to reauthorize \$3,000,000.35 from the HSCA fund to various other purposes.

Declassification of Minor Violations

SB 114-148th GA, enacted on 8/14/2015.

This Act declassified a number of minor violations associated with state parks by changing some violations from an unclassified misdemeanor to class D environmental violations. As a result, the first offense of a class D environmental violation will not be reported on criminal history records provided by the State Bureau of Identification for employment purposes under § 8513(c) of Title 11. However, subsequent offenses will be reported for employment purposes.

Violation Corrections

SB 115-148th GA, enacted on 4/20/2016.

This Act made housekeeping amendments to § 1304(i) of Title 7 to clarify the process by which a first offense class C or D environmental violation in Chapter 13, Title 7, relating to fish and game violations, will not be reported on criminal history records provided by the State Bureau of Identification for employment purposes. This Act also clarified that subsequent convictions will be reported for employment purposes.

Clarifies Storage Tank Definitions and HSCA Responsibility

SB 233-148th GA, enacted on 07/13/16.

This Act clarified the definitions pertinent to the Hazardous Substance Cleanup Act, authorized the Department to intervene when the owner or operator has failed to address situations, and clarified the authority for the Department to recover costs associated with these activities. Lastly, the Act authorized the use of HSCA Funds to prevent releases of petroleum and other hazardous substances from aboveground storage tanks, and to investigate and clean up such releases when they occur.

Brownfield Definition and Loan Issuance

SB 236-148th GA, enacted on 8/03/2016.

The Act amended the definition of “Brownfield” so that the designation of the property as a Brownfield is focused on the remediation of environmental contamination and not the status of the property’s use.

Federal Legislation

The Hazardous Substance Cleanup Act, when drafted was intended to mirror the Federal Comprehensive Environmental Response Compensation & Liability Act (“CERCLA”). HSCA funds are used to perform cleanup actions under the underground storage program when responsible parties liable for cleanup activities are recalcitrant and not performing required cleanup actions, do not exist, or do not have the ability to pay for the required work.

PENDING LEGISLATION

At this time, there is no pending legislation that would affect the HSCA fund or HAC.

ADMINISTRATIVE PROCEDURES ACT COMPLIANCE

The Regulations Governing Hazardous Substance Cleanup are promulgated in accordance with 7 *Del.C.* Ch. 91, Delaware Hazardous Substance Cleanup Act, 7 *Del.C.* Ch. 60, Environmental Control, and 7 *Del.C.* Ch. 63, Hazardous Waste Management. The goal of these regulations is to implement the purposes declared in 7 *Del.C.* §9102. The regulations were adopted initially in September of 1996. They were amended in February 2002, August 2012, and July 2015.

Below is a list of the rules and regulations under HSCA.

Section 1.0: General Provisions

Subsection 1.1: Statement of Authority and Purpose

Subsection 1.2: Applicability

Subsection 1.3: Applicability of Other Laws and Regulations; Variances

Subsection 1.4: Severability

Subsection 1.5: Oversight

Section 2.0: Definitions and Usage

Subsection 2.1: Definitions

Subsection 2.2: Usage

Section 3.0: Facility Identification & Prioritization

Subsection 3.1: Notification Requirements

Subsection 3.2: Inventory of Hazardous Substance Release Facilities

Subsection 3.3: Priority List

Subsection 3.4: Brownfields Certification and Funding

Subsection 3.5: Facility Tracking

Subsection 3.6: Record Keeping

Section 4.0: Potentially Responsible Parties

Subsection 4.1: Identification

Subsection 4.2: Potentially Responsible Party Notification

Subsection 4.3: Notice of Potential Liability

Subsection 4.4: Information Request

Section 5.0: Settlement Agreements & Brownfields Development Agreements

Subsection 5.1: Required Information for Settlement Agreements

Subsection 5.2: Cost Recovery

Section 6.0: Consultant Certification

Subsection 6.1: Remedies That Must be Performed by Certified Consultants

Subsection 6.2: Non-Technical Activities and Certified Consultants

Subsection 6.3: Disapproval of Remedies Not Performed by a Certified Consultant

Subsection 6.4: Name or Address Changes

- Subsection 6.5: Litigation or Enforcement Actions
- Subsection 6.6: Qualification Requirements for Certification
- Subsection 6.7: Requirements for First Time Applicant
- Subsection 6.8: Standards of Performance for Certified Consultants
- Subsection 6.9: Requirements for Recertification
- Subsection 6.10: Denial of Certification
- Subsection 6.11: Suspension or Revocation of Certification or Denial of Recertification
- Subsection 6.12: Public Hearings

- Section 7.0: Analytical Procedures
 - Subsection 7.1: SOPCAP
 - Subsection 7.2: Analytical Methods

- Section 8.0: Public Notification & Participation Related To HSCA Remedies
 - Subsection 8.1: Public Notice – Land Records
 - Subsection 8.2: Public Notice –Newspapers

- Section 9.0: Investigation
 - Subsection 9.1: Initial Investigation
 - Subsection 9.2: Facility Evaluation
 - Subsection 9.3: Initial Screening
 - Subsection 9.4: Remedial Investigation
 - Subsection 9.5: Brownfield Investigation
 - Subsection 9.6: Sampling and Analysis Plan

- Section 10.0: Risk Assessment
 - Subsection 10.1: Methods Apply to Results of Remedial Investigation
 - Subsection 10.2: Purpose
 - Subsection 10.3: Methods Conform to Guidance
 - Subsection 10.4: Conservative Exposure Assessment
 - Subsection 10.5: Toxicological Data

- Section 11.0: Remedial Action Objectives and Cleanup Levels
 - Subsection 11.1: Remedial Action Objectives
 - Subsection 11.2: Cleanup Level

- Section 12.0: Remedial Actions
 - Subsection 12.1: Purpose
 - Subsection 12.2: Department Oversight of Remedial Actions
 - Subsection 12.3: Interim Actions
 - Subsection 12.4: Remedial Alternative Selection
 - Subsection 12.5: Proposed Plan of Remedial Action
 - Subsection 12.6: Final Plan of Remedial Action
 - Subsection 12.7: Remedial Action
 - Subsection 12.8: Interference with Remedy

Section 13.0: Remedy Completion and Site Closure

Subsection 13.1: Remedy Completion

Subsection 13.2: Facility Closure 36

Subsection 13.3: Archiving Sites

Section 14.0: Natural Resource Damage Assessment and Restoration

Subsection 14.1: Purpose and Applicability

Subsection 14.2: Restoration, Replacement, and Compensation

Subsection 14.3: Agreements with Other Persons

Subsection 14.4: Pre-Assessment Phase

Subsection 14.5: Assessment Phase

Subsection 14.6: Post-Assessment Phase

FREEDOM OF INFORMATION ACT (“FOIA”) COMPLIANCE

To date, there have been no FOIA requests to the HSCA Advisory Committee.

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FISCAL INFORMATION

Actual Revenue:

Fiscal Year	Source(s) of Funds	Amount \$
FY18 (budgeted)*	Tax Assessments	\$7,000,000.00
	Cost Recovery	\$200,000.00
	Interest	\$160,000.00
	Other HSCA Loan Interest	\$700.00
	Other HSCA Loan Principle	\$79,800.00
	TOTAL	\$7,440,500.00
FY17 (actual)	Tax Assessments	\$7,904,736.29
	Cost Recovery	\$150,000.00
	Interest	\$202,995.71
	Other HSCA Loan Interest	\$1,080.00
	Other HSCA Loan Principle	\$63,900.00
	TOTAL	\$8,322,712.00
FY16 (actual)	Tax Assessments	\$7,345,782.00
	Cost Recovery	\$197,345.99
	Interest	\$167,070.00
	Other HSCA Loan Interest	\$450.00
	Other HSCA Loan Principle	\$169,377.00
	TOTAL	\$7,880,024.99

The Fund does not receive federal grants. However, DNREC receives grants (see table below) through the U.S. Environmental Protection Agency that are used toward the same projects as the Fund.⁴

	10/01/15-09/30/16	10/01/16-9/30/17	10/01/17-09/30/18	Match
Grant	FY15	FY16	FY17*	
Army Creek OU2	\$ -	\$ -	\$ -	
Brownfield Subtitle C	\$ 431,675.00	\$ 465,504.00	\$ 458,673.00	
ChemSolv	\$ -	\$ -	\$ -	
Core	\$ 460,000.00	\$ 91,806.00	\$ 262,625.00	16.79%
Core Match	\$ 92,818.00	\$ 58,880.00	\$ 52,922.00	
DE City PVC OU2		\$		

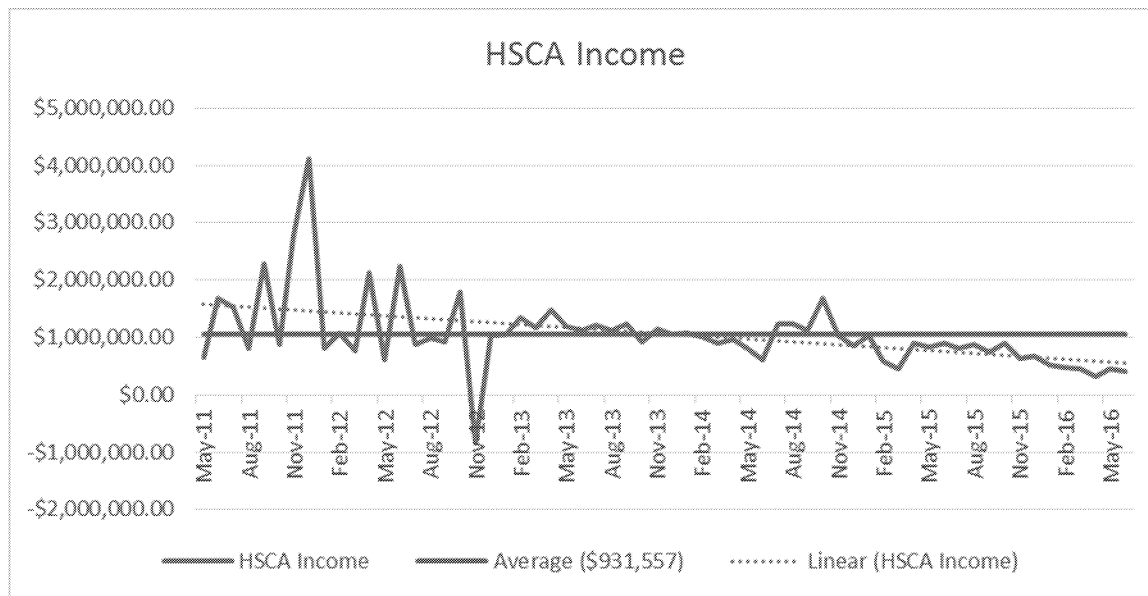
⁴ Analyst's Note: Federal Funds are used for HSCA projects, however, those funds are not deposited into HSCA. The EPA funds are in separate accounts that are disbursed through DNREC.

RIFS		10,000.00		
DE City PVC OU2 LTRA		\$ 5,000.00		
DE Sand & Gravel	\$ -	\$ -	\$ -	
DSMOA	\$ 23,550.00	\$ 23,550.00		
DSMOA			\$ 22,500.00	
Dupont Newport	\$ 2,000.00	\$ -	\$ -	
Halby RA OU2			\$ 4,000.00	
Koppers RD		\$ 7,000.00		
Millsboro AOC#1	\$ 7,200.00	\$ -	\$ -	
Millsboro AOC#2	\$ 3,000.00			
Millsboro AOC#3			\$ 22,000.00	
NCR Millsboro	\$ -	\$ -	\$ -	
Pre-Remedial	\$ 382,500.00	\$ 258,236.00	No Data to date.	
Standard Chlorine OU1 RA	\$ -	\$ 1,000.00	\$ -	
Standard Chlorine OU2 RD	\$ 6,000.00			
Standard Chlorine OU4 RIFS	\$ -	\$ -	\$ -	
Standard Chlorine OU3 RA	\$ 5,000.00	\$ 7,000.00		
LUST Prevention	\$ 370,154.00	\$ 378,557.00	\$ 366,067.00	25%
LUST Cleanup	\$ 707,778.00	\$ 707,555.00	\$ 707,555.00	10%
* Please note that funding for FY17 Subtitle C grant was submitted in the amount of \$458, 673. Of that amount, \$277,033 has been awarded. The remainder will be awarded in increments as funding becomes available.				
* Please note that funding for FY17 Core grant application was submitted for \$262,625, EPA has no time frame for award.				

The Division requires responsible parties to pay for cleanups. Below is what was collected through cost recovery efforts within the Division.

Description of Fine or Fee	Current Fine or Fee \$\$	Number of Persons or Entities Paying Fine or Fee	Fine or Fee Revenue \$\$	Where is the Fine or Fee Revenue Deposited (i.e., general fund, special fund)
HSCA Tax	0.9% tax on wholesale petroleum	(450-500) entities	\$7,904,736.29	HSCA Fund
Cost Recovery Fee	Recovery of funds varies	33 entities	\$132,775.78	HSCA Fund
HSCA Consultant Certification Fee	\$500	8 entities	\$4,000.00	HSCA Fund
HSCA Loan	Varies	3 entities	\$66,219.93	HSCA Fund

The Fund is in need of revenue increases to accomplish the HSCA program objectives. HSCA is funded by a .09% tax on the wholesale of petroleum products in the State. Due to the decrease in the price of oil, the Fund has seen a reduction in revenues since 2015. Any changes in fees would be proposed by the Governor's office for legislative approval. The table below further demonstrates the decrease in monthly HSCA revenues from May 2011 through May 2016.⁵

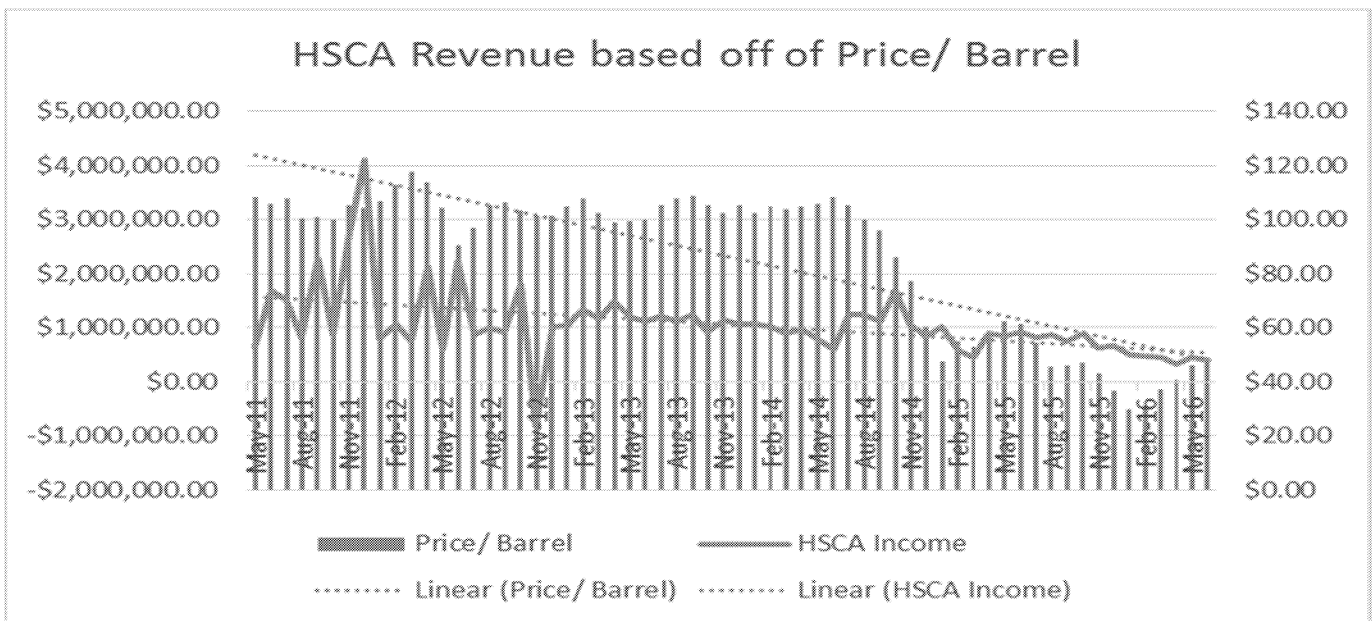


⁵ The dip in HSCA income in November 2012 is due to a return of funds to the oil refinery for overpayment.

Actual Expenditures:⁶

Fiscal Year	Source(s)	Amount \$\$
FY18 (budgeted)*		
		TOTAL \$13,996,300.00
FY17 (actual)**	Special Fund	
		TOTAL \$12,795,014.20
FY16 (actual)	Special Fund	
		TOTAL \$17,261,607.00

The price per barrel of oil has dropped significantly over the past 2 years. Due to the price drop, the Division has seen an almost 50% decrease in revenue. The Division has taken drastic measures to cover basic operating costs, including the delay of clean-up projects until future years when funding becomes available.



⁶ Detailed expenditure plans and annual reports are available upon request for FY18, FY17, and FY16.

ACCOMPLISHMENTS

Some of the most significant accomplishments of the Fund involve the remediation and redevelopment of Brownfield sites. The redevelopment of these contaminated sites have made and will continue to make economic and social gains throughout the State and our local communities. Below is a table that illustrates how many sites have completed the remedial process. These sites no longer pose a risk to human health, or the environment, and are back in productive use.

Type	Active	Certification of Completion of Remedy (“COCR”) or No Further Action (“NFA”)	Long-Term Stewardship	Total
Brownfield Development Program Sites	109	49	111	269
State lead HSCA Sites	268	167	46	481
VCP Sites	64	67	76	207
TMS Sites	58	151	N/A	209
Tank management Section Home Heating Oil Program	48	558	N/A	606
Emergency Response Cleanups	0	225	N/A	225
Total	547	1217	233	1,997

To date, HSCA has provided \$200,907,751.62 in funding for investigations and remedial actions. Without the Fund, sites throughout the State, along with the potential for additional releases of hazardous substances, could pose a direct health risk to citizens of the State.

Without the Fund, contaminated sites that are vacant, with no known responsible party or that have responsible parties that are not financially solvent, pose a threat to human health and the environment. Securing funding for the cleanup of these sites would be virtually impossible.

CHALLENGES

1) Decrease in revenue of the Fund. Due to the price of taxable petroleum products and new exceptions to taxable petroleum products, the revenues in FY16 and FY17 were approximately 40% below revenues collected in previous years.⁷ Revenue decreases cause programs funded by HSCA, such as the successful State Brownfield Program, to become limited and therefore not able to meet their mission of putting blighted properties back into productive use.

2) Uncertainty in the amount of revenue deposited into the Fund. Del C. §9104 (c) states that the Secretary must submit a budget to the Governor and the General Assembly providing a 5-year projection of costs and revenue associated with the Fund. The Division utilizes the revenue for future years based

⁷ HB 10, 146th General Assembly

on the previous year's income to allocate financial resources needed for remedial Sites. Based on the revenue, it is difficult to properly budget the amount of funds to be expended each year, including the 15% administrative costs, due to the fluctuation of the Fund's revenue.

3) Future Liability of the State past the expiration of the Fund. 7 Del C. § 9113 (c) gives a thorough description of what activities the money in the fund can support. One specific item is the State's cost share required under CERCLA. In FY18, the Division estimates that amount will be \$2.59 million, up from \$452 thousand in FY12. As identified Superfund Sites move through completion, these funds will continue to increase and last into perpetuity while the Fund expires December 31, 2021.

4) Additional financial burdens placed on the Fund. Over the last few years, the State's General Fund has seen substantial financial constraints. Therefore, personnel and other operating costs once supported by general funds have been placed onto HSCA. At this time SIRS, which primarily supports HSCA, does not receive any general funds. SIRS does receive an annual Federal Cooperative Agreement (Core Grant) to help defray some of the Sections administrative expenses. The EPA Core Grant does require a match of 16.79%, which is supported by HSCA. Unfortunately, due to reductions in the Federal Budget, the Core Grant has decreased dramatically over the last five years. Since FY12, the Core Grant allocations have decreased by 23.84%. This reduction in federal funds and lack of state General Fund support requires SIRS to place more of a reliance on HSCA to fund administrative costs.

OPPORTUNITIES FOR IMPROVEMENT

Opportunities for improved operational efficiency include:

Use of EQuIS data system within the LUST Program would allow for the consistent application of cleanup approaches and cleanup levels for petroleum compounds for projects being addressed by the SIRS, TMS, and SHWMS cleanup programs.

Closer coordination between EPRS and TMS regarding conducting interim responses and limited hydrology investigations to quickly assess contamination and close out sites.

Development of a policy, such as adopting a first screening, to evaluate a party's inability to pay remedial costs based on the party's income when compared to the federally-defined poverty levels.

Improvement of cost recovery efforts when a responsible party can be found. Such improvements could include increased use of liens placed against properties, coordination with the Division of Revenue in collecting any outstanding recoverable costs, and the additional use of low-interest loans rather than grants from the Fund.

On-going efforts for improvements already underway include:

Continual sharing and reallocation of staff resources between SIRS, the LUST Program and the Corrective Action Program. Each program acts under separate state and/or federal codes and separate remedial standards; however, the groups follow similar processes in remediating releases into the environment. Allowing the trained remedial staff to collaborate across programs ensures the best use of time and faster program responses.

Various LEAN management and process improvement practices began in 2006 and have been sustained in the following areas:

SIRS/Brownfield Program continues to use visual performance tracking at Lukens to ensure that the program continue to meet these targets. In addition, SIRS, in collaboration with the Department of Information and Technology (DTI) is about to roll out a new database (Site Specific Database [SSD]) that will have a dashboard for each project leader. This dashboard will have built-in time frames, specifically relating to those identified in the Value Stream mapping process, to ensure that both staff and management meet or beat those deadlines or communicate why they were not able to be achieved. SIRS has made this technology investment and believes that it will take the already successful Value Stream mapping to the next level.

Improvements in LUST corrective actions continue to improve. Program staff continue to maintain the 2005 value stream mapping improvements. In 2005, DNREC had 100 LUST sites that were open for more than 10 years. Today, there are 57. In addition, in 2015, DNREC developed and implemented a project tracking system that identifies where every project is within the regulatory timeframe and a daily report on deliverables due from both our staff and the regulated entity. The technology enhancement uses a dashboard and visual reminders as set by targeted timeframes.

ADDITIONAL COMMENT FROM THE COMMITTEE ANALYST

The Committee is concerned with a finding in the independent review of Zelenkofske Alexrod, LLC.⁸ A finding in the review showed that the HSCA fund exceeded the 15% administrative cap, without required Joint Finance Committee approval. The Legislative Attorney for the Committee has reviewed the auditor's report as well as the response to the report by DNREC's Deputy Attorney General.⁹ The Legislative Attorney is in agreement with the Deputy Attorney General's Memorandum dated September 10, 2017.

According to the Division's website,

The Department of Natural Resources and Environmental Control formed the Brownfields Advisory Committee ("BAC") in 2005 to provide advice to the Division of Waste and Hazardous Substances on Brownfields rules, policies, and procedures. In March 2013, the BAC decided to change the name of the committee to the HSCA Advisory Committee ("HAC") to better reflect the broader scope of the advisory committee.

With the assistance of the HAC, the Division's objective is to promote the cleanup and development of Brownfield sites in the state by ensuring timely and effective cleanups with protective, equitable and sustainable remedies. In addition, the HAC will address long-term stewardship for properties that have a remedy in place, as well as other HSCA issues. The HAC will also help integrate DNREC's objectives with other state and local goals for conservation and economic development. The Division will rely on the HAC to represent broad public interest and community perspectives for Delaware's Brownfields Development Program.

⁸ See Appendix B for Zelenkofske Alexrod, LLC. Independent Auditors' Report finding 2016-001.

⁹ See Appendix C for DNREC's Deputy Attorney General Memorandum, dated 9/15/17.

Although responsibilities vary, New Jersey, California, Washington, and Pennsylvania all have varying forms of HSCA Advisory Committees mandated in Code.¹⁰ The Committee may wish to discuss the possibility of adding the HAC in Delaware Code to better define the HAC's functions.

The Committee may wish to address ways to protect the HSCA fund from continued fiscal demands. The HSCA fund is primarily funded by a .9% tax on all taxable gross receipts from the sale of petroleum or petroleum products, with the exception of crude oil. There has only been one increase since the original 1991 rate of .6%. Since the increase to .9% in July 1993, there have been legislative demands, such as HB 10 in 2011 and HB 251 in 2012, that have in fact decreased the .9%. HB 425 which was enacted in July 2014 directed the State Treasurer to reauthorize \$3,000,000.35 from the HSCA Fund to various other purposes. In the FY18 Budget Bill, \$125,000.00 from HSCA was directed to be used to support operational costs for the for the Polly Drummond Hill Yard Waste Demonstration site.

¹⁰ For examples of State Advisory Committees found in code, see the following:

New Jersey: <https://law.justia.com/codes/new-jersey/2013/title-58/section-58-10b-23/>

California: <http://codes.findlaw.com/ca/health-and-safety-code/hsc-sect-25135-1.html>

Washington: Under their Model Toxics Control Act-Cleanup: <http://apps.leg.wa.gov/WAC/default.aspx?cite=173-340-610>

Pennsylvania: <http://www.legis.state.pa.us/WU01/LI/LI/US/HTM/1988/0/0108..HTM>

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APPENDIX A

Name	Professional Or Public Member	Position Held	Profession or Occupaion
Marjorie Crofts	Professional	Director of Waste and Hazardous Substance Division	Government
Timothy Ratsep	Professional	Administrator of Site Investigation and Restoration Section	Government
Alex Rittberg	Professional	Administrator of Tank Management Section	Government
Qazi Salahuddin	Professional	Program Manager II Site Investigation Restoration Section	Government
Paul Will	Professional	Program Manager II Site Investigation Restoration Section	Government
Jim Poling	Professional	Planner IV Site Investigation and Restoration Section	Government
Lori Spagnolo	Professional	Program Manager II Tank Management Section	Government
Christina Wirtz	Professional	Ombudsman & Project Manager Site Investigation Restoration Section	Government
Kate Durant	Professional	Project Manager Site Investigation Restoration Section	Government
Melissa Leckie	Professional	Management Analyst II Site Investigation and Restoration Section	Government
Keith Brady	Professional	Deputy Attorney General	Government
Walt Bryan	Professional	Del Mar Consulting Services LLC-President	Commercial Land Agent
Patricia Cannon	Professional	DEDO	Government

Marianne Cinaglia	Public	CCOBH Representative	Citizen
Kathy Fox	Professional	Project Manager	Environmental Consultant EA Engineering
Jeff Gernand	Professional	Project Manager	Environmental Consultant KCI
Ken/Joanne Haynes	Public	Citizen	Citizen
Robert Hillard	Professional	Project Manager	Environmental Consultant Lewis Environmental
Clay Greer	Professional	Senior Engineer	Environmental Consultant Ten Bears Environmental
Cheryl Mathes	Public	Citizen	Citizen
George Mathes	Public	Citizen	Citizen
Doug Seavey	Professional	Environmental Engineer	Environmental Consultant Landmark Science Engineering
Bill Smith	Professional	President	Environmental Consultant Environmental Alliance
Mike Vanderslice	Professional	Vice President Sales and Marketing	Environmental Consultant Environmental Alliance
Bill Stephens	Professional	President	Environmental Consultant Stephens Environmental Consulting Inc.
Kathy Stiller	Professional	Senior Program Manager	Environmental Consultant Brightfields
Mark Lannon	Professional	Professional Geologist/Principle	Environmental Consultant Brightfields
Marian Young	Professional	President	Environmental Consultant Brightfields
Chris Whallon	Professional	Professional Geologist/Senior Program Manager	Environmental Consultant Duffield Associates
Todd Coomes	Professional	Lawyer	Richards Layton Finger

Neeraj Batta	Professional	Professional Engineer/Vice President	Environmental Consultant Batta Environmental
Jess Anderson	Professional	Project Manager	Environmental Consultant Michael Baker International
Angelo Fatiga	Professional	Senior Engineer	Environmental Consultant Pennoni Associates
Bill Baldwin	Professional	President	Environmental Consultant Action Env. Services
Nora Lober	Professional	Project Manager	Environmental Consultant Pennoni Associates
David Kane	Professional	Hydrogeologist/Project Manager	Environmental Consultant TetraTech NUS
Debra Heffernan	Professional	Representative	State Representative
Pat Todd	Professional	Activist	League of Women Voters
Derek Thomlinson	Professional	Senior Engineer and Hydrogeologist	Environmental Consultant Geosyntec
Lorraine Sheldon	Professional	Realtor	NAI Emory Hill Real Estate

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APPENDIX B***Zelenkofske Axelrod LLC*****INDEPENDENT AUDITORS' REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS**

To the Management of the State of Delaware Hazardous Substance Cleanup Fund
Dover, Delaware

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the modified cash basis financial statements of the Department of Natural Resources and Environmental Control Hazardous Substance Cleanup Fund of the State of Delaware (the "Fund"), as of and for the year ended June 30, 2016, and the related notes to the financial statements, which collectively comprise the Fund's basic financial statements – modified cash basis, and have issued our report thereon dated December 13, 2016.

Internal Control over Financial Reporting

In planning and performing our audit of the financial statements – modified cash basis, we considered the Fund's internal control over financial reporting (internal control) to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements – modified cash basis, but not for the purpose of expressing an opinion on the effectiveness of the Fund's internal control. Accordingly, we do not express an opinion on the effectiveness of the Fund's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the Fund's financial statements – modified cash basis will not be prevented, or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies and therefore, material weaknesses or significant deficiencies may exist that were not identified. We did identify a certain deficiency in internal control, described as finding 2016-001 in the accompanying schedule of findings and responses that we consider to be a material weakness.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Fund's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed an instance of noncompliance or other matters that is required to be reported under *Government Auditing Standards* and which is described as Finding 2016-001 in the accompanying schedule of findings and responses.

<i>Harrisburg</i>	<i>Philadelphia</i>	<i>Pittsburgh</i>	<i>Greensburg</i>
830 St Thomas Court, Suite 100 Harrisburg, PA 17109 717.561.9200 Fax 717.561.9202	2370 York Road, Suite A-5 Jenkintown, PA 19029 215.918.2277 Fax 215.918.2302	3800 McKnight E. Drive, Suite 3805 Pittsburgh, PA 15237 412.367.7102 Fax 412.367.7103	210 Tollpass Hill Road Greensburg, PA 15601 724.834.2151 Fax 724.834.5969

Zelenkofske Axelrod LLC

The Fund's Response to Findings

The Fund's response to the finding identified in our audit is described in the accompanying schedule of findings and responses. The Fund's response was not subjected to the auditing procedures applied in the audit of the financial statements and, accordingly, we express no opinion on it.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the Fund's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Fund's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

Zelenkofske Axelrod LLC

ZELENKOFSCHE AXELROD LLC

Harrisburg, Pennsylvania
December 13, 2016

State of Delaware
 Department of Natural Resources and Environmental Control
 Hazardous Substance Cleanup Fund
 Schedule of Findings and Responses
 June 30, 2016

- 15 -

<u>Finding 2016-001</u>	<u>15% Administrative Cost Cap</u>
Criteria:	Title 7 Subsection 9113(d) of the State of Delaware code states, "No greater than 15% of the moneys deposited into the Fund shall be used for administering this chapter without approval of the Joint Finance Committee".
Condition:	Costs charged to the Administrative Account for the year under audit amounted to 23% of the monies deposited into the Hazardous Substance Cleanup Fund, which exceeded the 15% cap by \$630,460. No approval was given from the Joint Finance Committee.
Cause:	The Delaware Department of Natural Resources and Environmental Control looks at the monies deposited and administrative costs on a cumulative basis over the life of the fund instead of on an annual basis when considering the 15% cap.
Effect:	Costs charged to the Administrative Account for the year under audit that exceeded the 15% cap by \$630,460 were potentially unallowed costs. The internal controls did not prevent the Fund from exceeding the administrative cap for a fiscal year.
Recommendation:	The Delaware Department of Natural Resources and Environmental Control should review the 15% cap on administrative costs on an annual basis, seeking approval from the Joint Finance Committee for amounts over the 15% cap, or seek revision to current legislation clarifying the 15% cap can be calculated on a cumulative basis over the life of the fund.
Management's Response:	We have looked at the 15% cap on administrative costs to be cumulative over the life of the fund. Our records show that at the end of June 2016, the cumulative total for the administrative cap on total deposits was \$35,144,674 and the cumulative total spent for administrative costs to date was \$29,314,578. This leaves a total available for administrative costs of \$5,830,096.

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APPENDIX C

MEMORANDUM

To: Timothy T. Ratsep
Program Administrator

From: Keith R. Brady
Deputy Attorney General

Re: 7 Del. C. § 9113(d)

Date: September 15, 2017

QUESTION PRESENTED

You have asked whether 7 Del. C. § 9113(d), which imposes a 15% limitation (“15% cap”) on administrative costs expenditures from the Hazardous Substance Cleanup Fund (“the Fund”), requires that the 15% cap be determined based upon the cumulative amount deposited into the Fund since its creation, or is to be determined based upon the amount deposited into the Fund each fiscal year.

FACTUAL BACKGROUND

Your inquiry arises from the statutory requirement that the Department of Natural Resources and Environmental Control (“DNREC”) prepare an annual budget for the proposed use of the Fund and have an annual audit of the Fund performed and reported to the Governor and General Assembly as part of DNREC’s budget submittal. 7 Del. C. § 9104(c)(2). An Independent Auditor’s Report was issued January 3, 2017. Included in the report was *Finding 2016-001* (“the Finding”) which noted that administrative expenses for Fiscal Year 2016 (“FY 16”) which ended June 30, 2016 exceeded 15% when applied to deposits into the Fund **solely in FY 16**. The Finding noted that DNREC determined the amount of the 15% cap on a cumulative basis over the life of the Fund and that as a result, the costs were well under the 15% cap. The Finding concluded that, under the auditors’ interpretation of the law, expenditures above 15% of the amount deposited into the Fund in FY 16 “were potentially unallowed costs.”

You have also advised that you spoke with the auditor who performed the FY 16 audit and prepared the report. He stated that he did not seek legal advice regarding the meaning of the language contained in 7 Del. C. § 9113(d). Rather, he determined the 15% cap on a fiscal year basis because the audit pertained only to FY 16, so he thought it appropriate to apply the cap solely to deposits made into the Fund in FY 16.

LEGAL DISCUSSION

Considering the factual background and applying well established Delaware law as set forth below, the 15% cap should be determined each year based upon the cumulative amount of moneys deposited into the Fund since its inception.

The Delaware Hazardous Substance Cleanup Act (“HSCA”), 7 *Del. C. Ch. 91*, was enacted on July 10, 1990. The reason for the legislation is set forth as follows:

The General Assembly intends by the passage of this Act to exercise the powers of the State to require prompt containment and removal of such hazardous substances, to eliminate or minimize the risk to public health or welfare or the environment, and to provide a fund for the cleanup of the facilities affected by the release of hazardous substances. 7 *Del. C. § 9102(a)*.

The Fund referenced in the above cited subsection, was established in 7 *Del. C. § 9113* of HSCA, the focus of your inquiry. It provides:

(d) No greater than fifteen percent of the moneys deposited into the Fund shall be used for administering this Act without approval of the Joint Finance Committee. 7 *Del. C. § 9113(d)*.

Both the General Assembly and the Delaware courts have provided clear legal principles to assist in determining the meaning of statutory provisions including § 9113(d). Initially, the Delaware Code mandates that:

Words and phrases [used in a statute] shall be read with their context and shall be construed according to the common and approved usage of the English language. See 1 *Del. C. § 303*.

Similarly, in *New Castle County v. Chrysler Corporation*, 681 A.2d 1077, 1081-1082 (Del. Super. 1995), *aff’d* 676 A.2d 905 (Del. 1996), the Court stated:

In construing a statutory or regulatory provision, it is fundamental that the Court ascertain and give effect to the intent of the legislative or administrative body as clearly expressed in the language of the statute or regulation. *In re Adoption of Swanson*, Del.Supr., 623 A.2d 1095, 1096–97 (1993); *Giuricich v. Emtrol Corp.*, Del.Supr., 449 A.2d 232, 238 (1982). In seeking to ascertain this intent, the courts of Delaware employ the plain meaning rule. *Alfieri v. Martelli*, Del.Supr., 647 A.2d 52, 54 (1994). In other words, a court is required to give words of a statute or regulation their ordinary

meaning. *Arbern-Wilmington, Inc. v. Director of Revenue*, Del.Sup., 596 A.2d 1385, 1388 (1991). In particular, **“the courts may not engraft upon a statute ... language which has been clearly excluded therefrom by the Legislature.”** *Alfieri*, 647 A.2d at 54 (quoting *Giuricich*, 449 A.2d at 238). (Emphasis added).

The language of § 9113(d) is clearly expressed. Moreover, it furthers the legislative intent behind the creation of the HSCA Fund, namely to provide funding “to carry out the purposes of [the Act].” 7 Del. C. § 9113(c). Thus, applying the “plain meaning rule” as required by the Delaware courts to the statutory language of § 9113(d), the words of the statute must be given their ordinary meaning. See *New Castle County v. Chrysler* at 1082.

Moreover, as further mandated by the Delaware courts, in considering the meaning of a statutory provision one **“may not engraft upon a statute . . . language which has been clearly excluded therefrom by the Legislature.”** *Id.*

Therefore, applying the plain meaning rule, it is impermissible to read into the provisions of § 9113(d) a substantive, limiting requirement that the 15% cap be determined based solely upon the moneys deposited into the Fund each fiscal year. Clearly, had the General Assembly intended such a significant limitation to be placed upon the use of the Fund it would have expressly included it in the law. Neither DNREC nor the Delaware courts have the authority to alter the clear language of the provision in question. To do so would effectively usurp the General Assembly’s constitutional authority to enact the laws of Delaware as it sees fit.

There are additional considerations that bolster the conclusion that the General Assembly clearly intended that the 15% cap to be calculated by DNREC based upon the cumulative total of deposits in the Fund from its inception when it prepares its annual budget and has the Fund audited.

First, there is a clear instance within § 9113, the section at issue, wherein the General Assembly placed specific limitations and conditions pertaining to the calculation of interest to be credited to the Fund. Specifically, § 9113(b)(5) provides that the State Treasurer shall credit the Fund with interest on or before the last day of each month based on the average balance in the Fund for the preceding month. Further, the General Assembly directed that:

“[t]he interest to be paid to the Fund shall be that proportionate share, during such preceding month, of interest to the State as the Fund’s and the State’s average balance is to the total State’s average balance. The Fund’s average balance shall be determined by averaging, in each instance, the balances at the beginning of each month and the balances at the end of that month[.]”

Based upon the statutory language, it is clear that the General Assembly carefully considered and provided a detailed means by which interest would be credited to the Fund in the very same

section of the law in which it created the 15% cap. It is highly implausible that the General Assembly would have inadvertently failed to include language that would limit the moneys subject to the cap to those sums deposited each fiscal year while at the same time addressing, in detail, the process by which interest is credited to the Fund. The obvious conclusion is that the General Assembly intended that the amount of the 15% cap on administrative costs is to be determined by the cumulative amount in the Fund since its inception.

Second, as both a legal and practical matter, interpreting § 9113(d) to limit the 15% cap calculation to the amount deposited each fiscal year would lead to an unreasonable result as described below. This further supports the conclusion that such an interpretation was never intended by the General Assembly.

A requirement that DNREC based the determination of the 15% cap on administrative costs on the deposits into the Fund each fiscal year would make preparing the annual budget subject to great uncertainty and even speculation because the amounts of money deposited into the Fund are subject to great fluctuations over which DNREC has no control. The primary revenue source of the Fund is a 0.9% tax on gross receipts from the sale of petroleum and petroleum products excluding crude oil. *See 7 Del. C. § 9114*. As is common throughout the country, the price of oil is subject to great fluctuations due to many varied causes such as embargoes, political strife, natural disasters, and the vagaries of the petroleum market itself.

A real-life example clearly reveals the challenges inherent in trying to calculate the 15% cap on a fixed amount of each fiscal year's deposits into the Fund. In July 2016, deposits into the Fund amounted to \$660,812. In July 2017 however, refinery shut downs in Texas, as a result of Hurricane Harvey, increased the price of petroleum products, resulting in almost \$1 million dollars of deposits into the Fund.

These significant fluctuations are not just the result of major events and often occur monthly without any clear explanation. For example, in January 2017 \$739,465 was deposited into the Fund while in February 2017 only \$473,385 was deposited.

Therefore, if DNREC were statutorily required to calculate the 15% cap based upon the deposits to the Fund each fiscal year, it would subject its budgeting process for such costs to great uncertainty and even speculation. Such an uncertain process would be made even more challenging when considering that DNREC's budget requests have to be formulated just months into the fiscal year. Under such a system, DNREC would be faced with the uncertainty of making requests pertaining to administrative costs with no assurance that sufficient funds necessary to meet those requests would be available at the end of the fiscal year. This could lead to various unfortunate and unproductive situations such as leaving a vacant position unfilled for fear that the money necessary to pay the salary costs associated with that position will not be available at the end of the fiscal year.

To interpret § 9113(d) so as to restrict the application of the 15% cap calculation solely to deposits each fiscal year would not only conflict with the plain language of the statute, it would also result in an unreasonable interpretation lacking any legislative support. As the Delaware Supreme Court has observed:

The golden rule of statutory interpretation to which we refer is that unreasonableness of the result produced by one among alternative possible interpretations of a statute is reason for rejecting that interpretation in favor of another which would produce a reasonable result. *Coastal Barge Corp. v. Coastal Zone Indus. Control Bd.*, 492 A.2d 1242, 1247 (Del. 1985).

The General Assembly, which enacted HSCA “to eliminate or minimize the risk to public health or welfare or the environment, and to provide a fund for the cleanup of the facilities affected by the release of hazardous substances,” clearly did not intend to subject DNREC to such uncertainty and difficulty in trying to carry out its critical statutory obligations. To read language into 7 *Del. C.* § 9113(d) that the General Assembly did not include would impede the very authority provided to DNREC by the Legislature and would significantly hinder DNREC’s ability to carry out its statutory mission.

CONCLUSION

The plain wording of the statute clearly evidences the intent of the General Assembly that the 15% cap on administrative costs of DNREC is to be calculated based on the cumulative total of the deposits into the Fund since its creation. Conversely, the complete lack of any legal support for the alternative interpretation as well as the practical challenges that such an interpretation would create compel its rejection.

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APPENDIX D



SPONSOR: Rep. Bolden & Sen. Walsh
Reps. Bennett, Brady, Dukes, Spiegelman; Sens.
Delcollo, Hansen, Pettyjohn, Sokola

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 451

AN ACT TO AMEND TITLE 7 RELATING TO THE HAZARDOUS SUBSTANCE CLEANUP ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

1 Section 1. Amend § 9113, Title 7 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 9113. Hazardous Substance Cleanup Fund.

4 (c) Money in the Fund may be used by the Secretary only to carry out the purposes of this chapter, including, ~~but~~
5 ~~not limited to~~, the following activities:

6 (8) Provide for a remedy, or for reimbursement of allowable costs, for certified brownfields.

7 (9) Provide a minimum of \$5,000,000 annually to the Brownfields Grant Program.

8 Section 2. Amend § 9114, Title 7 of the Delaware Code by making deletions as shown by strike through and
9 insertions as shown by underline as follows:

10 § 9114. Tax assessment.

11 (a)(1) With regard to gross receipts received after December 31, 1990, and before July 1, 1993, there shall be
12 added to the tax provided in §§ 2902(c)(3) and 2905(b)(1) of Title 30 an additional tax of .6% on all taxable gross receipts
13 determined under §§ 2902 and 2905 of Title 30 derived from the sale of petroleum or petroleum products.

14 (2) With regard to gross receipts received after June 30, 1993, and before January 1, ~~2022~~ 2019, the rate of
15 additional tax under this subsection shall be increased to 0.9%.

16 (3) With regard to gross receipts received after December 31, 2018, and before January 1, 2022, the rate of
17 additional tax under this subsection is subject to annual adjustment based upon the total of moneys deposited into the
18 Fund during the lookback period, as that term is defined in § 2122 of Title 30. The Division of Finance shall calculate
19 the annual adjustment under this paragraph (a)(3) of this section in conjunction with the determination of gross receipts
20 tax filing frequencies.

21 (4) For taxable periods beginning after December 31, 2018, the rate of tax imposed under this section is
22 determined by multiplying .9% by a fraction, the numerator of which is \$15,000,000 and the denominator of which is

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23 the total of moneys deposited into the Fund during the lookback period, as that term is defined in § 2122 of Title 30,
24 but the tax rate calculated under this section may not be less than .0675% or greater than 1.675%.

25 (5) The Department of Finance shall publish the annual adjustments made under this section and engage in
26 public outreach to notify businesses, employers, payroll processors, tax professionals, and the general public of the
27 adjustments, subject to the deadline provide under § 515(d) of Title 30.

28 (6) For purposes of the additional tax imposed by this section, gross receipts, as defined in Chapter 29 of Title
29 30, that are received after June 30, 2007, shall not include gross receipts from a sale of petroleum or petroleum
30 products by a wholesaler, as defined in Chapter 29 of Title 30, if all of the following apply:

31 (1) a. The petroleum or petroleum products were sold to the wholesaler by a person who is licensed
32 under Chapter 29 of Title 30, and 30.

33 (2) b. The gross receipts from the sale described in paragraph (a)(1) (a)(6)a. of this section were gross
34 receipts defined in Chapter 29 of Title 30 with respect to the seller.

35 (7) For purposes of this section and Chapter 29 of Title 30, exclusions from the gross receipts tax shall first be
36 computed by including in said exclusions, to the extent possible, receipts deriving from sales not subject to the tax
37 provided in this section.

SYNOPSIS

This Act stabilizes revenue for the Hazardous Substances Cleanup Act ("HSCA") Fund ("the Fund") by minimizing the wide swings in revenue due to oil prices changes. Under this Act, the Department of Natural Resources and Environmental Control ("the Department") is prevented from receiving a revenue windfall when oil prices rise, while minimum funding for the Brownfields Grant Program is protected when oil prices are low. The legislation ties HSCA funding to a median benchmark and authorizes the Division of Revenue to adjust the tax rate up or down for the following year to smooth the revenue stream and avoid the roller coaster effect of oil price changes.

This Act caps the HSCA tax rate at 1.675% and allows the lowest rate to drop to .675%, versus the current HSCA rate of .9%. This Act sets aside a minimum of \$5,000,000 annually in HSCA funds for the Brownfields Grant Program, which has leveraged private investment of 16 times the public funds expended in cleaning up polluted sites and returning them to productive use, generating jobs and tax revenue.



SPONSOR: Rep. Bolden & Sen. Walsh
Reps. Bennett, Brady, Dukes, Spiegelman; Sens.
Delcollo, Hansen, Lopez, Pettyjohn, Sokola

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 311
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO THE BOARD OF CLINICAL SOCIAL WORK EXAMINERS.

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

Section 1. Amend Chapter 39, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 39. Board of ~~Clinical~~ Social Work Examiners.

Section 2. Amend § 3901, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3901. Objectives of the Board.

The ~~primary objective of the Board of Clinical Social Work Examiners~~ Examiners' primary objective, to which all other objectives and purposes are secondary, is to protect the general ~~public (specifically public, specifically those persons who are direct recipients of services regulated by this chapter)~~ that this chapter regulates, from unsafe practices and occupational practices which tend to reduce competition or fix the price of services rendered. The Board achieves this objective through the effective control and regulation of the practice of clinical social work; work and the licensure, control control, and regulation of persons individuals who practice clinical social work within Delaware, ~~from unsafe practices, and from occupational practices which tend to reduce competition or fix the price of services rendered. Delaware.~~ The ~~secondary objectives of the Board~~ Board's secondary objectives are to maintain minimum standards of practitioner competency, ~~and to maintain licensee competency and~~ certain standards in the delivery of services to the public. In meeting its objectives, the Board shall develop standards assuring professional ~~competency; shall competency~~, monitor complaints brought against practitioners ~~regulated by licensees, the Board, shall~~ adjudicate at formal complaint ~~hearings; shall~~ hearings, promulgate rules and ~~regulations; and shall regulations~~, and impose sanctions against licensees where necessary against practitioners.

Section 3. Amend § 3902, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 3902. Definitions.

~~The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning: As used in this chapter:~~

(1) “Advanced practice” means the specialized professional application of social work theory, knowledge, methods, principles, values, and ethics, and the professional use of self to community and organizational systems, meaning systemic and macrocosm issues, and other indirect, nonclinical services. “Advanced practice” includes activities such as community organization and development; social planning and policy development; administration of social work policies, programs, and activities; outcome evaluation; client education; research; nonclinical supervision of employees; nonclinical consultation; nonclinical assessment and referral; mediation; expert testimony; and advocacy.

(2) “Another jurisdiction” means another state of the United States, the District of Columbia, a territory of the United States, or a country outside of the United States or its territories.

(3) “Applicant” means an individual seeking licensure under this chapter.

(4) “Baccalaureate social work” is the entry level of social work and means the application of social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations, and communities. “Baccalaureate social work” is generalist practice.

(5) “Baccalaureate social worker” means an individual licensed to practice baccalaureate social work.

(4) (6) ~~“Board” shall mean~~ means the Board of Clinical Social Work Examiners.

(7) “Case management” means a method to plan, provide, evaluate, and monitor services from a variety of resources on behalf of and in collaboration with a client.

~~(2) “Clinical social work” shall mean the application of social work theory and methods, which may include the person-in-environment perspective, to the assessment, diagnosis, prevention and treatment of biopsychosocial dysfunction, disability and impairment, including mental and emotional disorders, developmental disabilities and substance abuse. The application of social work method and theory includes, but is not restricted to, assessment (excluding administration of the psychological tests which are reserved exclusively for use by licensed psychologists pursuant to Chapter 35 of this title), diagnosis, treatment planning and psychotherapy with individuals, couples, families and groups, case management, advocacy, crisis intervention and supervision of and consultation about clinical~~

~~social work practice. Such application and services may be provided through the use of telemedicine in a manner deemed appropriate by regulation. Services also may include participation in telehealth as further defined in regulation.~~

~~(8) "Client" means an individual, couple, family, group, organization, or community that seeks or receives social work services from a social worker or an organization whether those services are free or for a fee.~~

~~(9) "Clinical supervisor" means a licensed clinical social worker who has met the qualifications as determined by the Board.~~

~~(10) "Consultation" means an advisory professional relationship between a social worker and other professionals, with the social worker ethically maintaining responsibility for all judgments and decisions regarding service to a client.~~

~~(11) "Counseling" means a method, in addition to psychotherapy, advocacy, research, and consultation, used by social workers to assist individuals, couples, families, and groups in learning how to solve problems and make decisions about personal, health, social, educational, vocational, financial, and other interpersonal concerns.~~

~~(3) (12) "Distant site" means a site at which a health-care provider legally allowed to practice in the State is located while providing health-care services by means of telemedicine or telehealth.~~

~~(13) "Division" means the Division of Professional Regulation.~~

~~(14) "Excessive use or abuse of drugs" means the use of narcotics, controlled substances, or illegal drugs without a prescription from a licensed physician or other professional licensed to prescribe, or the abuse of alcoholic beverages such that it impairs an individual's ability to perform social work.~~

~~(15) "Generalist practice" means a professional problem process that includes engagement, assessment, treatment planning, intervention, and evaluation. Methods of generalist practice include case management, information and referral, counseling, consultation, education, advocacy, community organization, research, and the development, implementation, and administrations of policies, programs, or activities.~~

~~(16) "Good standing" means meeting the standards of § 3907(a) of this title.~~

~~(4) "Independent practice" means the practice of clinical social work services by a clinical social work practitioner who assumes responsibility for the nature and quality of the services provided to the client in exchange for direct payment or third-party payment.~~

~~(17) "Licensed clinical social work" means the specialty within the practice of master's social work, that requires the application of specialized clinical knowledge and advanced clinical skills of social work theory, knowledge, methods, and ethics, as applied to a clinical, therapeutic relationship which may include the person-in-environment perspective, to the assessment, diagnosis, prevention, and treatment of biopsychosocial dysfunction.~~

disability, and impairment, including mental and emotional disorders, developmental disabilities, and substance abuse. "Licensed clinical social work" includes the provision of individual, marital, couple, family and group counseling, and psychotherapy, as they are related to clinical, therapeutic relationship. "Licensed clinical social work" also includes private practice and supervision. "Licensed clinical social work" does not include the administration of psychological tests, which are reserved exclusively for use by licensed psychologists under Chapter 35 of this title.

(5) (18) "Licensed clinical social worker" shall mean any individual duly licensed under this chapter means an individual licensed to practice licensed clinical social work.

(19) "Licensee" means an individual licensed under this chapter.

(20) "Master's social work" means the application of social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations, and communities. "Master's social work" is the application of generalist practice, specialized knowledge, and advanced practice skills, and includes supervision.

(21) "Master's social worker" means an individual licensed to practice master's social work.

(6) (22) "Originating site" means a site in Delaware at which a patient client is located at the time health-care services are provided to him or her the client by means of telemedicine or telehealth, unless the term is otherwise defined with respect to the provision in which it is used; provided, however, notwithstanding any other provision of law, insurers and providers may agree to alternative siting arrangements deemed appropriate by the parties.

(7) "Practitioner," as used in this chapter, shall mean any individual engaged in the practice of clinical social work.

(23) "Person-in-environment perspective" means observing human behavior, development, and function in the context of the environment, social functioning, mental health, physical health, or any combination thereof.

(24) "Social work" means baccalaureate social work, master's social work, and licensed clinical social work, collectively or, if context demands, individually.

(25) "Social worker" means baccalaureate social worker, master's social worker, and licensed clinical social worker, collectively or, if context demands, individually.

(8) (26) "Store and forward transfer" means the transmission of a patient's client's medical information either to or from an originating site or to or from the provider at the distant site, but does not require the patient client being present nor must it present or the transmission to be in real time.

(9) ~~(27)~~ "Substantially related" means the nature of the criminal ~~conduct~~, conduct for which the person ~~individual~~ was ~~convicted~~, convicted has a direct bearing on the fitness or ability to perform 1 or more of the duties or responsibilities necessarily related to ~~clinical~~ social work.

(28) "Supervision" means the professional relationship between a clinical supervisor and a social worker that provides evaluation and direction over the services that the social worker provides and promotes continued development of the social worker's knowledge, skills, and abilities to provide social work services in an ethical and competent manner.

(40) ~~(29)~~ "Telehealth" means the use of information and communications technologies consisting of telephones, remote ~~patient~~ client monitoring ~~devices~~ devices, or other electronic means which support clinical health care, provider consultation, ~~patient~~ client and professional health-related education, public health, health administration, and other services as described in regulation.

(11) ~~(30)~~ "Telemedicine" means a form of telehealth which is the delivery of clinical health-care services by means of real time 2-way audio, visual, or other telecommunications or electronic communications, including the application of secure video conferencing or store and forward transfer technology to provide or support health-care delivery, which facilitate the assessment, diagnosis, consultation, treatment, education, care ~~management~~ management, and self-management of a ~~patient's~~ client's health care by a licensee practicing within ~~his or her~~ the licensee's scope of practice as would be practiced in-person with a ~~patient~~ client and with other restrictions as defined in regulation.

Section 4. Amend § 3903, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 3903. License required.

(a) ~~No person shall engage in the independent practice of clinical social work or hold himself or herself out to the public in this State as being qualified to practice the same, or use in connection with that person's name, or otherwise assume or use, any title or description conveying or tending to convey the impression that the person is qualified to practice clinical social work, unless such person has been duly licensed under this chapter. A person who provides the Board with proof, to the Board's satisfaction, no later than February 1, 2011, that such person has practiced clinical social work for at least 20 years and is currently practicing clinical social work, shall be exempted from this provision, except that such person shall be required to show successful completion of the Association of Social Work Boards (ASWB) clinical examination.~~

(b) ~~Whenever a license to practice clinical social work in this State has expired or has been suspended or revoked, it shall be unlawful for the person to practice clinical social work in this State.~~

(a) It is unlawful for an individual who is not licensed under this chapter to do any of the following:

(1) Engage in the practice of social work.

(2) Hold the individual out to the public in this State as being qualified to practice social work.

(3) Use in connection with the individual's name or otherwise assume or use any title or description conveying or tending to convey the impression that the individual is qualified to practice social work.

(b) It is unlawful for an individual to practice social work in this State if the individual's license to practice social work is expired, suspended, or revoked.

(c) Exemptions.

(1) This chapter does not apply to an individual who meets any of the following criteria:

a. Is licensed in good standing to practice social work in another jurisdiction, provided that the individual has made prior written application to the Board to practice social work in this State and the Board has approved the application. An individual may practice social work, within the scope of practice designated by the individual's license, in this State under this subsection for no more than 30 days per year. An individual who provides services under this subsection is deemed to have submitted to the Board's jurisdiction and bound by the laws of this State.

b. Is certified or licensed in this State by any other law, and is engaged in and acting within the scope of the profession or occupation for which the individual is certified or licensed.

c. Is clergy of any denomination, when engaging in activities that are within the scope of the performance of that individual's regular or specialized ministerial duties.

d. Performs assessments such as basic information collection, gathering of demographic data, and informal observations, screening, and referral to determine a client's general eligibility for a program or service and a client's functional status for the purpose of determining need for services unrelated to a behavioral health diagnosis or treatment plan.

e. Creates, develops, or implements a service plan unrelated to a behavioral health diagnosis or treatment plan. Service plans may include job training and employability, housing, general public assistance, in-home services and supports or home-delivered meals, de-escalation techniques, peer services, or skill development.

f. Participates as a member of a multi-disciplinary team to implement behavioral health services or a treatment plan, provided that all of the following conditions are met:

1. The team includes 1 or more health care professionals licensed under Title 24.

2. The activities that each team member performs are consistent with the scope of practice for that member's license under Title 24.

3. Individuals exempted under paragraph (c)(1)f. of this section do not engage in any of the following restricted practices:

A. Diagnosis of mental, emotional, behavioral, addictive, and developmental disorders and disabilities.

B. Client assessment and evaluation.

C. Provision of psychotherapeutic treatment.

D. Development and implementation of assessment-based treatment plans.

(2) Nothing in this subsection may be construed as requiring a license for any particular activity or function solely because the activity or function is not listed in this subsection.

(3) Licensure of social workers employed on [the date of enactment of this Act] by a state agency or private or non-profit agency is voluntary. However, an individual who is newly-employed or employed in a new position by a state agency or private or non-profit agency 5 years after [the date of enactment of this Act] must be licensed under this chapter if the individual provides services as a social worker. Individuals to whom this paragraph applies and who choose to seek licensure must do so under the grandfathering provisions of § 3907B of this title.

Section 5. Amend § 3904, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 3904. Board of ~~Clinical~~ Social Work Examiners — Appointment; composition; qualifications; term of office; suspension or removal; compensation.

(a) The Board of ~~Clinical~~ Social Work Examiners (“Board”) ~~shall consist~~ consists of 7 members who are appointed by the Governor and meet the following qualifications:

(1)a. Four professional members, who shall be licensed clinical social workers, consisting of 2 licensed clinical social workers and 2 at-large professional members who may be baccalaureate social workers, master’s social workers, or licensed clinical social workers.

b. and 3 Three public members. To serve on the Board, a public member shall not be, nor ever have been, a clinical members who are accessible to inquiries, comments, and suggestions from the general public and are not, nor have ever been, any of the following:

1. A social worker, nor or a member of the immediate family of a clinical social worker, worker.

2. shall not have been employed Employed by a social work agency; agency.

3. shall not have had Holder of a material financial interest in the providing of goods and services to clinical social workers; workers.

~~4. nor have been engaged~~ Engaged in an activity directly related to clinical social work. Such public members shall be accessible to inquiries, comments and suggestions from the general public.

(b) Each member ~~shall serve~~ is appointed for a period of 3 years, and may ~~succeed himself or herself for~~ serve 1 additional term; ~~provided, however, that where a member was initially appointed to fill a vacancy, such member may succeed himself or herself for only 1 additional full term. Any person appointed to fill a vacancy on the Board shall hold office for the remainder of the unexpired term of the former member term. Each term of office shall expire~~ expires on the date specified in the appointment, ~~except that each member shall serve until a successor is duly appointed~~ appointment; ~~however, a member remains eligible to participate in Board proceedings until the Governor replaces that member.~~

(c) ~~A person who has never served on the Board may be appointed to the Board 2 consecutive times; but, no such person shall thereafter be eligible for 2 consecutive appointments. No person who has been twice appointed to the Board, or who has served on the Board for 6 years within any 9-year period, shall again be appointed to the Board until an interim period of at least 1 term has expired since such person last served. An individual who has served on the Board for 6 years may not be appointed to the Board again until the expiration of an interim period of at least 3 years since the individual last served.~~

(d) ~~A member of the Board shall be suspended or removed by the Governor~~ The Governor may suspend or remove a member for misfeasance, nonfeasance, malfeasance, or neglect of duty.

(1) ~~A member is deemed in neglect of duty if the member is absent from 3 consecutive Board meetings without good cause or fails to attend at least 50% of all regular Board meetings in a calendar year.~~

(2) ~~A member who is deemed in neglect of duty is considered to have resigned.~~

(3) ~~A member subject to disciplinary proceedings shall be~~ is disqualified from Board business until the charge is adjudicated, or the matter is otherwise concluded.

(4) A Board member may appeal any suspension or removal to the Superior Court.

(e) ~~No~~ A member of the Board while serving on the Board shall ~~may not~~ be a president, chairperson chair, or other elected official of a professional association for social workers ~~other than the Board.~~

(f) The provisions set forth for employees in Chapter 58 of Title 29, ~~shall apply~~ apply to all members of the Board, and to all agents ~~that the Board appointed~~ appoints or otherwise employed by the Board employs.

(g) Each member of the Board shall be reimbursed for all expenses involved in each meeting, including travel, and in addition shall receive compensation per meeting attended in an amount determined by the Division in accordance with Del. Const. art. III, § 9.

(h) An act or vote by an individual appointed in violation of this section is invalid. An amendment or revision of this chapter is not sufficient cause for an appointment or attempted appointment in violation of subsection (e) of this section, unless the amendment or revision amends this chapter to permit such an appointment.

Section 6. Amend § 3905, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3905. Board of Clinical Social Work Examiners — ~~Officers; Organization; officers; meetings; quorum.~~

(a) In the same month of each year ~~year~~, the members shall elect, from among their number, a President, a ~~Vice-President~~ Vice-President, and Secretary. Each officer ~~shall serve~~ serves for 1 year, and may serve no more than 2 consecutive years in the same office.

(b) The Board shall hold regularly scheduled business meetings at least once in each quarter of a calendar year, and at such other times as the President deems necessary, or at the request of a majority of the Board members.

(c) ~~A majority of members shall constitute a quorum; and no action shall be taken without the affirmative vote of at least 4 members. Any member who fails to attend 3 consecutive meetings, or who fails to attend at least 1/2 of all regular business meetings during any calendar year, shall automatically upon such occurrence be deemed to have resigned from office and a replacement shall be appointed.~~ constitutes a quorum for the purpose of transacting business. The Board may not take disciplinary action without the affirmative vote of at least 4 members.

(d) ~~Minutes of all meetings shall be recorded; and, copies shall be maintained by the Division of Professional Regulation~~ must be recorded and the Division shall maintain copies of meeting minutes. At any hearing where evidence is presented, a record from which a verbatim transcript can be prepared ~~shall~~ must be made. The expense of preparing any transcript ~~shall~~ must be incurred by the person requesting it.

Section 7. Amend § 3906, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3906. Board of Clinical Social Work Examiners — Powers and duties.

(a) The Board ~~shall have the authority to~~ may do all of the following:

(1) Formulate rules and regulations, with appropriate notice to those ~~affected; all rules affected.~~ Rules and regulations shall must be promulgated in accordance with the procedures specified in the Administrative Procedures Act of this State [Chapter 101 of Title 29]. Each rule or regulation shall must implement or clarify a specific section of ~~this chapter; chapter.~~

(2) Designate the application form to be used by all ~~applicants~~, applicants and to process all applications; applications. An application form may not require a picture of the applicant; information relating to the applicant's citizenship, place of birth, or length of state residency; or personal references.

(3) Designate, ~~under § 3908(a) of this title~~, a written national examination, prepared by either ~~the a~~ a national professional association or by a recognized legitimate national testing service and service, approved by the Division of Professional Regulation Division, and administered to applicants. The examination shall must be prepared for testing on a national basis, and not specifically prepared at the Board's request of the Board for its individual use. The national examination shall be taken by persons applying for licensure except applicants who qualify for licensure by reciprocity;

(4) ~~Provide for the administration of all examinations, including notice and information to applicants;~~
[Repealed.]

(5) Evaluate certified records to determine whether an applicant for licensure, who has been previously licensed, certified certified, or registered in another jurisdiction to practice clinical social work, work has engaged in any act or offense that would be grounds for disciplinary action under this chapter and whether there are disciplinary proceedings or unresolved complaints pending against ~~such applicants~~ the applicant for such acts or ~~offenses~~; offenses.

(6) Grant licenses to all persons applicants who meet the qualifications for licensure and/or or renewal of ~~licenses~~; licenses.

(7) Establish by rule and regulation continuing education standards required for license ~~renewal~~; renewal.

(8) Refer all complaints from licensees and the public concerning practitioners licensees, or concerning practices of the Board or of the profession, to the Division of Professional Regulation for investigation pursuant to under § 8735(h) of Title 29; ~~and, 29 and~~ assign a Board member of the Board to assist the Division in an advisory capacity with the investigation of the technical aspects of the complaint. ~~Such member shall recuse himself or herself from the deliberations on the complaint; A Board member who is assigned to assist the Division under this paragraph may not participate in deliberations on the complaint.~~

(9) ~~Determine whether or not a practitioner shall be the subject of a disciplinary hearing; and, if so, to conduct such hearing in accordance with this chapter and the Administrative Procedures Act [Chapter 101 of Title 29];~~
[Repealed.]

(10) Conduct hearings and issue orders in accordance with procedures established pursuant to under this chapter, Chapter 101 of Title 29, and § 8735 of Title 29. ~~Where such provisions conflict with the provisions of this chapter, this chapter shall govern;~~

~~(11) Where it has been determined~~ If the Board determines after a disciplinary hearing, hearing that penalties or sanctions should be imposed, to designate and impose the appropriate sanction or penalty after time for appeal has lapsed; penalty.

(12) Bring proceedings in the courts for the enforcement of this chapter.

~~(13) Perform random post-renewal audits of continuing education credits submitted by licensees for license renewal.~~

~~(14) Request a copy of supervisory logs from an applicant who has applied for license under this chapter, as established in the rules and regulations.~~

(b) The Board of ~~Clinical Social Work~~ Examiners shall promulgate regulations specifically identifying these ~~crimes; crimes~~ which are substantially related to clinical social work.

Section 8. Amend § 3907, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 3907. Qualifications of applicants; ~~licensure tiers~~; report to Attorney General; judicial review.

(a) An applicant who is applying for examination and licensure under this chapter shall submit evidence, verified by oath and satisfactory to the Board, that ~~such person~~ the applicant meets all of the following criteria:

(1) ~~Has received a doctoral or master's degree in clinical social work from a college or university accredited by the Council on Social Work Education. In addition, the applicant shall submit proof satisfactory to the Board that, subsequent to the receipt of a master's degree from an accredited school of social work, the applicant has acquired 2 years of clinical social work experience acceptable to the Board. The clinical social work experience shall consist of not less than 3,200 hours, at least 1,600 hours of which shall have been under professional supervision acceptable to the Board. Acceptable supervision shall mean supervision by a licensed clinical social worker. When such supervision is not available, the applicant may be supervised by a master's level degree social worker, a licensed psychologist, or a licensed psychiatrist. Persons holding degrees from programs outside the United States or its territories must provide evidence of training and degree equivalent to accredited programs. These applicants are responsible for providing the Board with an educational credential evaluation from an agency or institution recognized by the Board for this purpose;~~
[Repealed.]

(2) ~~Has not engaged in any of the acts or offenses that would be grounds for disciplinary action under this chapter; has no disciplinary proceedings or unresolved complaints pending against that person in any jurisdiction where the applicant previously has been, or currently is, licensed to practice clinical social work. chapter.~~ Applicants who have been or who currently are licensed to practice clinical social work in another jurisdiction must provide the

Board with a certified statement to this effect from the Board, ~~or from a board or~~ comparable agency of each jurisdiction in which the applicant has ever been licensed to practice clinical social work. Applicants for licensure in this State ~~shall be~~ are deemed to have given consent to the release of such information and ~~to waive~~ waived all objections to the admissibility of such ~~evidence; evidence.~~

(3) Has not been convicted of a felony sexual offense; offense.

(4)a. Has submitted, at the applicant's expense, fingerprints and other necessary information in order to obtain the following:

~~a. 1.~~ A report ~~from the State Bureau of Identification~~ of the applicant's entire criminal history record ~~from the State Bureau of Identification in this State~~ or a statement from the State Bureau of Identification that the State Central Repository contains no such information relating to that person individual.

~~b. 2.~~ A report of the applicant's entire federal criminal history record pursuant to under the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. § 534). The State Bureau of Identification ~~shall be~~ is the intermediary for purposes of this section and the Board of Clinical-Social Worker Examiners ~~shall be~~ is the screening point for the receipt of said the federal criminal history records.

b. An applicant may not be licensed as a clinical social worker until the applicant's criminal history reports have been produced. ~~An applicant whose record shows a prior criminal conviction may not be certified by the Board unless a waiver is granted pursuant to this chapter.~~ The State Bureau of Identification may release any subsequent criminal history to the Board; Board.

(5) ~~Shall Does~~ not have any impairment related to drugs or alcohol or a finding of mental incompetence by a physician, licensed mental health professional, or licensed or certified substance abuse professional that would limit the applicant's ability to undertake the practice of clinical social work in a manner consistent with the safety of the public; and public.

(6) ~~Shall provide such~~ Has or will provide all information ~~as may be required on an the application form furnished by the Board. No application form shall require a picture of the applicant; require information relating to citizenship, place of birth, length of state residency; nor require personal references.~~

(7) Has not been convicted of a crime that is substantially related to social work or any offense which would limit the applicant's ability to carry out the applicant's professional duties with due regard for the health and safety of clients. The Board may, by affirmative vote of a quorum of the Board, waive the requirement of this paragraph if it finds, after a hearing or review of documentation, that the applicant seeking waiver meets, when the applicant's application is filed, all of the following criteria:

a. For waiver of a misdemeanor conviction or violation, the applicant is not incarcerated, on work release, on probation, on parole, or serving any part of a suspended sentence and is in substantial compliance with all court orders pertaining to fines, restitution, and community service.

b. For waiver of a felony conviction, more than 5 years have elapsed since the date of conviction; the applicant is not incarcerated, on work release, on probation, on parole, or serving any part of a suspended sentence; and the applicant is in substantial compliance with all court orders pertaining to fines, restitution, and community service.

c. The applicant has not been convicted of a felony sexual offense.

d. The applicant is capable of practicing social work in a competent and professional manner.

e. Granting the waiver will not endanger the public health, safety, or welfare.

(8) Has submitted to the Board reports from child and adult abuse registries in Delaware and every state in which the applicant has ever been licensed or employed, or resided as an adult.

(b) Licensed clinical social worker. An applicant who is applying for licensure as a licensed clinical social worker shall submit evidence, verified by oath and satisfactory to the Board, that the applicant meets all of the following requirements:

(1) Meets the criteria under subsection (a) of this section.

(2) Has graduated and received a master's or doctoral degree in social work from a program accredited by the Council on Social Work Education or its successor, or has graduated and received a doctoral degree from a program the Board has approved.

(3) Has successfully passed an examination that the Board designated under § 3906(a)(3) of this title.

(4) Has completed 2 years of supervised experience that the Board has approved, under the supervision of a licensed clinical social worker, after receiving a master's or doctoral degree described in paragraph (b)(2) of this section. If an applicant demonstrates to the Board's satisfaction and in compliance with the Board's rules and regulations that a licensed clinical social worker was not available for supervision, the applicant may complete 2 years of supervised experience supervised by a master's social worker, licensed psychologist, or licensed psychiatrist, if the supervision meets all other requirements established in the Board's rules and regulations.

(c) Master's social worker. An applicant who is applying for licensure as a master's social worker shall submit evidence, verified by oath and satisfactory to the Board, that the applicant meets all of the following requirements:

(1) Meets the criteria under subsection (a) of this section.

(2) Has graduated and received a master's degree in social work from a program accredited by the Council on Social Work Education or its successor.

(3) Has successfully passed an examination that the Board designated under § 3906(a)(3) of this title.

~~(d) All individuals licensed as a clinical social worker in this State shall be required to be fingerprinted by the State Bureau of Identification, at the licensee's expense, for the purposes of performing subsequent criminal background checks. Licensees shall submit by January 1, 2013, at the applicant's expense, fingerprints and other necessary information in order to obtain a criminal background check.~~

(d) Baccalaureate social worker. An applicant who is applying for licensure as a baccalaureate social worker shall submit evidence, verified by oath and satisfactory to the Board, that the applicant meets all of the following requirements:

(1) Meets the criteria under subsection (a) of this section.

(2) Has graduated and received a baccalaureate degree in social work from a program accredited by the Council on Social Work Education or its successor.

(3) Has successfully passed an examination that the Board designated under § 3906(a)(3) of this title.

~~(b) (c) Where the Board has found~~ If the Board finds, to its satisfaction, that an application is fraudulent, or that false information has been intentionally supplied, it shall report its findings to the Attorney General for further action.

~~(e) (f) Where the application of a person has been refused or rejected, and such applicant feels that the Board has acted without justification; has~~ If an applicant believes the Board has denied an applicant without justification, imposed higher or different standards for the applicant than for other applicants or licensees; or has licensees, or in some other manner contributed to or caused the failure of ~~such the~~ application, the applicant may, within 30 days of such denial, appeal the Board's decision to the Superior Court.

Section 9. Amend Chapter 39, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 3907A. Applicants educated outside of the United States or its territories.

In addition to meeting all other applicable requirements under § 3907 and § 3909 of this title, an applicant whose application is based on a diploma or degree issued by a social work program outside of the United States or its territories shall furnish evidence satisfactory to the Board that the applicant completed a course of professional instruction equivalent to a program approved by the Council on Social Work Education or its successor. The applicant shall arrange and pay for a credential evaluation of the foreign program, to be completed by an agency that the Board has approved.

Section 10. Amend Chapter 39, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 3907B. Qualifications of applicant; grandfathering.

(a) Grandfathering period.

(1) The Board shall issue a license to an applicant who meets all the applicable requirements under this section and has submitted a completed, signed application and the applicable fee within 2 years of [the date of enactment of this Act].

(2) If the applicant does not provide all of the information that the Board has requested within 2 years after [the date of enactment of this Act], the application for licensure is considered ineligible for grandfathering and is closed.

(b) An applicant who applies for licensure as a master's social worker during the grandfathering period shall submit evidence, verified by oath and satisfactory to the Board, that the applicant meets the criteria under § 3907(a) of this title and has at least 1 of the following:

(1) At least 10 years of work experience obtained within 12 years immediately preceding application and supported by an experience affidavit, as established by the Board's rules and regulations. The applicant must have obtained the work experience within the scope of master's social work.

(2) At least 2 years of work experience obtained within the 4 years immediately preceding application and supported by an experience affidavit, as established by the Board's rules and regulations. The applicant must have obtained the work experience within the scope of master's social work. An applicant seeking licensure under this subsection must also have graduated and received a master's degree that meets at least 1 of the following criteria:

a. Is a master's degree in social work from a program accredited by the Council on Social Work Education or its successor.

b. Is a master's degree in human services, social and behavioral sciences, psychology, sociology, or other related degree that the Board accepts, as established by the Board's rules and regulations, from an accredited college or university.

(c) An applicant who applies for licensure as a baccalaureate social worker during the grandfathering period shall submit evidence, verified by oath and satisfactory to the Board, that the applicant meets the criteria under § 3907(a) of this title and has at least 1 of the following:

(1) At least 3 years of work experience obtained within 5 years immediately preceding application and supported by an experience affidavit, as established by the Board's rules and regulations. The applicant must have obtained work experience within the scope of baccalaureate social work.

(2) At least 1 year of work experience obtained within 2 years immediately preceding application and supported by an experience affidavit, as established by the Board's rules and regulations. The applicant must have obtained work experience within the scope of baccalaureate social work. The applicant must have also graduated and received a baccalaureate degree that meets at least 1 of the following criteria:

a. Is a baccalaureate degree in social work from a program accredited by the Council on Social Work Education or its successor.

b. Is a baccalaureate degree from an accredited college or university in human services, social and behavioral sciences, psychology, sociology, or other related degree that the Board accepts, as established by the Board's rules and regulations.

Section 11. Amend § 3908, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 3908. Examination.

~~(a) The Board shall administer, in the same month of each year, or at such times as are determined by the American Association of State Social Work Boards (AASSWB), or its successor, a national clinical examination prepared by the American Association of State Social Work Boards, or its successor. Such national written examination shall be obtained from and graded by the American Association of State Social Work Boards, or its successor. There is no limit on the number of times that an applicant may sit for the national examination. The Board shall promulgate regulations to designate each of the following:~~

(1) An examination, as described in § 3906(a)(3) of this title, to be administered to applicants.

(2) The maximum number of times an applicant may take the national examination designated under paragraph (a)(1) of this section.

~~(b) In the event the applicant has already taken and passed the national clinical examination prepared by the American Association of State Social Work Boards, or its successor designated under paragraph (a)(1) of this section, the Board shall accept the certificate or other evidence of successful completion shall be accepted, and no the applicant is not required to take any further state examination shall be necessary.~~

Section 12. Amend § 3909, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 3909. Reciprocity.

~~An applicant for licensure who is licensed as a clinical social worker in another state shall meet all of the qualifications for licensure under §§ 3907 and 3908 of this title. The applicant shall contact the American Association of State Social Work Boards, or its successor, and obtain and provide to the Board a certified statement as to whether there are any outstanding or ongoing disciplinary actions and/or ethical violations against the applicant or whether the applicant has engaged in any of the acts or offenses that would be grounds for disciplinary action under this chapter. In the event that a disciplinary proceeding or unresolved complaint is pending, the applicant shall not be licensed in this State until the proceeding or complaint has been resolved. Applicants for licensure as licensed clinical social workers in this State shall be deemed to have given consent to the release of such information and to waive all objections to the admissibility of such information as evidence at any hearing or other proceeding to which the applicant may be subject. Each application for licensure shall be accompanied by payment of the application fee.~~

(a) Upon payment of the required fee and submission and acceptance of a written application on forms that the Board provides, the Board shall grant a license to an applicant who has done all of the following:

(1) Presented proof of a current, active license in good standing and with no disciplinary action taken against the applicant in another jurisdiction whose standards the Board has determined are substantially similar to those of this State.

(2) Presented proof that, in any other jurisdiction in which the applicant is or was licensed, the applicant's license is in good standing or the applicant is voluntarily no longer licensed.

(3) Successfully passed an examination that the Board designated under § 3906(a)(3) of this title.

(4) Provided the Board with a certified statement as to whether any outstanding or ongoing disciplinary actions or ethical violations are against the applicant, or whether the applicant has engaged in any of the acts or offenses that may be grounds for disciplinary action under this chapter. Applicants are deemed to consent to the release of information regarding disciplinary actions or ethical violations and waive all objections to the admissibility of the information as evidence at any hearing or other proceeding to which the applicant may be subject under this chapter.

(b) An applicant who has a license in another jurisdiction that has less stringent requirements than those of this State may obtain a license under this section if the applicant can prove to the Board's satisfaction that the applicant has worked in another jurisdiction in the field for which the applicant is seeking a license in this State for at least 5 years in the

7 years immediately preceding application in this State. The Board may determine whether the requirements of another jurisdiction are less stringent than those of this State.

Section 13. Amend § 3910, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3910. Fees.

The amount to be charged for each fee imposed under this chapter shall must approximate and reasonably reflect all costs necessary to defray the Board's expenses ~~of the Board as well as the~~ and proportional expenses incurred by the ~~Division of Professional Regulation that the Division incurs~~ in its services on behalf of the Board. ~~There shall be a~~ A separate fee must be charged for each service or activity; ~~but, activity, but~~ no fee shall may be charged for a purpose not specified in this chapter. ~~The application fee shall not be combined with any other fee or charge. At the beginning of each calendar year the Division of Professional Regulation, or any other state agency acting in its behalf, shall compute, for each separate service or activity, the appropriate Board fees for the coming year.~~

Section 14. Amend § 3911, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3911. Issuance of license; renewal; inactive status; ~~reinstatement.~~

(a) The Board shall issue a license to each applicant who meets the ~~requirements of this chapter for licensure as a clinical social worker~~ applicable qualifications and who pays the fee ~~established~~ required under § 3910 of this title ~~this chapter.~~

(b)(1) Each license shall must be renewed biennially, in such a manner ~~as is determined by the Division of Professional Regulation that the Division determines,~~ and upon payment of the ~~appropriate~~ required fee and submission of a ~~renewal form provided by the Division of Professional Regulation, and proof attestation~~ that the licensee has met the continuing education requirements ~~that the Board~~ established by the Board.

(2) ~~The~~ Each license will expire ~~expires~~ on January ~~1~~ 31 of the renewal year.

(3) ~~The Division~~ A late fee shall be set by ~~the Division of Professional Regulation~~ a late fee. If a ~~practitioner~~ licensee fails to renew the license in 1 year from the renewal date, the ~~practitioner licensee~~ licensee must ~~re-apply~~ reapply for licensure.

(c)(1) Any licensee, upon written request, may be placed in an inactive status for up to 1-year 3 years. ~~The Board may extend the inactive status for additional 1-year periods upon written request of the licensee.~~

(2) The renewal fee of a licensee on inactive status will must be prorated in accordance with the amount of time ~~a person~~ the licensee is on inactive status.

(3) ~~The licensee may re-enter practice~~ reactivate the license after meeting all of the following criteria:

a. ~~Providing the Board with written notification to the Board of the licensee's intent to do so and after that the licensee intends to reactivate the license.~~

b. ~~satisfying~~ Satisfying all the continuing education requirements and requirements.

c. ~~paying~~ Paying the appropriate renewal fee.

(4) ~~A licensee who fails to reactivate a license within 3 years of being placed on inactive status must reapply for licensure.~~

~~(d) A former licensee, whose license has been revoked, and who subsequently is permitted to apply for reinstatement, shall apply for a new license, and shall successfully complete the national clinical examination and shall pay all appropriate fees.~~

Section 15. Amend § 3912, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3912. Continuing education.

The Board shall promulgate regulations that require licensees to complete ~~at least 45~~ continuing education hours for each biennial licensing period. ~~Continuing education may consist of, but not be limited to, additional professional development in the field of clinical social work, including attendance at workshops, seminars, lectures and preparation of a first-time clinical course.~~

~~If a licensee shall be unable to complete the required continuing education hours during any biennial licensing period, the Board may extend, for good cause shown by the licensee, the time to complete the required number of hours up to 120 days after the close of the biennial licensing period. The Board shall set forth by regulation the procedures that shall be applicable to such extensions. Such regulations may provide that each application for an extension be accompanied by an appropriate administrative fee as determined by the Division of Professional Regulation.~~

Section 16. Amend § 3913, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3913. Privileged communications.

~~No licensed clinical~~ A social worker may ~~not~~ disclose any information acquired from persons a person consulting the social worker in a professional capacity except:

(1) ~~With the written consent of such person; or the person or, in the case of death or disability, the written consent of such the person's personal representative; representative.~~

(2) ~~That a licensed clinical~~ A social worker shall ~~not be~~ is not required to treat as confidential a communication that reveals the planning of any violent crime or ~~aet; act.~~

(3) ~~That any licensed clinical~~ A social worker who knows or reasonably suspects child abuse or neglect shall ~~make a~~ must report to the Division of ~~Child Protective~~ Family Services of the Department of Services for Children, Youth and Their Families according to § 904 of Title 16; 16.

(4) ~~When~~ If the person waives the privilege by bringing charges against the licensed ~~elinical~~ social worker.

Section 17. Amend § 3914, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3914. Complaints.

(a) ~~A practitioner or member of the public desiring to file a complaint against a practitioner or licensee regulated by the Board shall file a written complaint with the Division of Professional Regulation. All complaints shall be received and investigated by the Division of Professional Regulation in accordance with the procedures as specified in § 8735(h) of Title 29. The Division shall be responsible for issuing a final written report at the conclusion of the investigation. The Division shall receive and investigate, in accordance with § 8735 of Title 29, all complaints under this chapter.~~

(b) The Division shall issue a final, written report at the conclusion of its investigation of a complaint under this chapter.

Section 18. Amend § 3915, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 3915. Grounds for discipline; procedure.

(a) ~~Practitioners regulated under this chapter shall be~~ A licensee or former licensee ~~is~~ subject to these disciplinary actions ~~set forth~~ established in § 3916 of this title if, after a hearing, the Board finds that the ~~practitioner~~ licensee or former licensee ~~has done any of the following:~~

(1) Employed or knowingly cooperated in fraud or material deception in order to be licensed as a ~~elinical social worker; has worker,~~ impersonated ~~another person holding a license; licensee, or~~ allowed another ~~person~~ individual to use the ~~practitioner's~~ the licensee's or former licensee's license, or aided or abetted ~~a person an individual~~ not licensed as a ~~elinical social worker to represent himself or herself~~ the individual as a ~~elinical social worker; worker.~~

(2) Illegally, incompetently ~~incompetently,~~ or negligently practiced ~~elinical social work; work.~~

(3) ~~Excessively used or abused drugs either in the past or currently; excessive use or abuse of drugs shall mean any use of narcotics, controlled substances, or illegal drugs without a prescription from a licensed physician, or~~

~~the abuse of alcoholic beverage such that it impairs the practitioner's ability to perform the work of a clinical social worker; Engaged within the previous 10 years or currently engages in the excessive use or abuse of drugs.~~

~~(4) Been convicted of a crime that is substantially related to clinical the practice of social work, work or any offense which would limit the ability of the practitioner to carry out the practitioner's professional duties with due regard for the health and safety of clients; however, after a hearing or review of documentation demonstrating that the applicant meets the specified criteria for a waiver, the Board, by an affirmative vote of a majority of the quorum, may waive this paragraph (a)(4), if it finds all of the following:~~

~~a. For waiver of a felony conviction, more than 5 years have elapsed since the date of the conviction. At the time of the application the applicant may not be incarcerated, on work release, on probation, on parole or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.~~

~~b. For waiver of a misdemeanor conviction or violation, at the time of the application the applicant may not be incarcerated, on work release, on probation, on parole or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.~~

~~c. The applicant is capable of practicing clinical social work in a competent and professional manner.~~

~~d. The granting of the waiver will not endanger the public health, safety or welfare.~~

~~e. The applicant has not been convicted of a felony sexual offense;~~

~~(5) Violated a lawful provision of this chapter, chapter or any lawful regulation established thereunder; under this chapter.~~

~~(6) Exceeded the scope of the licensee's license, as the scope is defined in this chapter or any lawful regulation established under this chapter. For example, baccalaureate social work may be practiced only under supervision as provided by regulation. And, a master's social worker must be supervised to provide clinical services as provided by regulation.~~

~~(6) Had the practitioner's licensee's license, certification certification, or registration as a clinical social worker suspended or revoked, or other disciplinary action taken by the appropriate licensing authority in another jurisdiction; provided, however, that jurisdiction, if the underlying grounds for such action in another jurisdiction have been presented to the Board by certified record; and the Board has determined that the facts found by the appropriate authority in the other jurisdiction constitute 1 or more of the acts defined in this chapter. Every person licensed as a clinical social worker in this State shall be licensee is deemed to have given consent to the the social work board or other comparable agency in another jurisdiction to release of this information by the Board of Clinical Social Work~~

~~Examiners or other comparable agencies in another jurisdiction and to waive all objections to the admissibility of previously adjudicated evidence of such acts or offenses; offenses.~~

(7) Failed to notify the Board that the ~~practitioner's~~ licensee's license as a ~~clinical~~ social worker in another ~~state jurisdiction~~ has been subject to ~~discipline, discipline~~ or has been surrendered, ~~suspended~~ suspended, or revoked. A certified copy of the record of disciplinary action, surrender, ~~suspension~~ suspension, or revocation ~~shall be~~ is conclusive evidence ~~thereof; of the discipline, surrender, suspension, or revocation.~~

(8) Been convicted of a felony sexual offense; offense.

(9) Failed to report child abuse or neglect as required by § 903 of Title 16, or ~~any successor thereto; any of its successors.~~

~~(10) Failed to report to the Division of Professional Regulation as required by § 3919 of this title.~~

(b) ~~Where a practitioner~~ If a licensee fails to comply with the Board's request that the ~~practitioner~~ licensee attend a hearing, the Board may petition the Superior Court to order such attendance, and the said Court ~~or any judge assigned thereto shall have~~ has jurisdiction to issue such ~~an~~ an order.

(c) Subject to the provisions of this chapter and subchapter IV of Chapter 101 of Title 29, ~~no license shall be restricted, suspended or revoked by the Board~~ the Board may not restrict, suspend, or revoke a license, and no practitioner's right to practice shall be limited by the Board or limit the licensee's right to practice, until such practitioner the licensee has been given notice and an opportunity to be heard in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.

Section 19. Amend § 3916, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3916. Disciplinary sanctions.

(a) The Board may impose any of the following sanctions, singly or in combination, when it finds that a licensee ~~has violated any of the conditions~~ condition or ~~violations committed any violation~~ set forth in § 3915 of this title ~~applies to a practitioner regulated by this chapter:~~

(1) Issue a letter of ~~reprimand; reprimand.~~

(2) Censure a practitioner; ~~[Repealed.]~~

(3) Place a ~~practitioner~~ the licensee on probationary status, and require the ~~practitioner~~ licensee to ~~do one or more of the following:~~

a. Report regularly to the Board upon the matters which are the basis of the ~~probation; probation.~~

b. Limit all practice and professional activities to those areas ~~prescribed by the Board; and/or the Board~~ prescribes.

c. Continue or renew the ~~practitioner's licensee's~~ professional education until the required degree of skill has been attained in those areas which are the basis of the ~~probation; probation.~~

(4) ~~Suspend any practitioner's license; the license.~~

(5) ~~Revoke a practitioner's license~~ Permanently revoke the license.

(6) Impose a monetary penalty not to exceed \$10,000 for each violation.

(b) The Board may withdraw or reduce conditions of probation when it finds that the deficiencies which required such action have been remedied.

~~(c)(1) In the event of~~ If the Board receives a formal or informal complaint concerning the activity of a licensee that presents a clear and immediate danger to the public health, ~~safety~~ safety, or welfare, the Board may temporarily suspend the ~~person's licensee's~~ license, pending a hearing, upon the written order of the Secretary of State or the Secretary's designee, with the concurrence of the Board chair or the Board chair's designee.

~~(2) An order~~ The Board may not temporarily suspending suspend a license ~~may not be issued~~ unless the ~~person licensee~~ or the ~~person's licensee's~~ attorney received at least 24 hours' written or oral notice before the temporary suspension so that the ~~person licensee~~ or the ~~person's licensee's~~ attorney may file a written response to the proposed suspension.

~~(3)~~ The decision as to whether to issue the temporary order of suspension will must be decided on the written submissions.

~~(4)~~ An order of temporary suspension pending a hearing may remain in effect for no longer than 60 days from the date of the issuance of the order unless the ~~temporarily suspended person licensee~~ requests a continuance of the hearing date. If the ~~temporarily suspended person licensee~~ requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and ~~the Board renders a decision is rendered by the Board.~~ A ~~person licensee~~ whose license has been temporarily suspended ~~pursuant to~~ under this section may request an expedited hearing. The Board ~~shall~~ must schedule the hearing on an expedited basis, provided that the Board receives the request within 5 calendar days from the date on which the ~~person licensee~~ received notification of the decision to temporarily suspend the person's license.

(d) ~~Where~~ If a license has been suspended due to a disability of the licensee, the Board, at a Board meeting, may reinstate such the license if the Board is satisfied that the licensee is able to practice with reasonable skill and safety.

(e) As a condition of reinstatement of a suspended license, license or removal from probationary status, the Board may impose such disciplinary or corrective measures as are authorized under this chapter.

(f) The Board shall permanently revoke the license of any ~~person~~ licensee who ~~the Board determines has violated § 3915(a)(8) of this title~~ is convicted of a felony sexual offense.

Section 20. Amend § 3917, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3917. Hearing procedures.

(a) If a complaint is filed with the Board ~~pursuant to § 8735(h) under § 8735~~ of Title 29, 29 alleging violation of § 3915 of this title, the Board shall set a time and place to conduct a hearing on the complaint. ~~Notice of the hearing shall be given and the hearing conducted~~ The Board shall provide notice of the hearing and conduct the hearing in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.

(b) ~~All hearings shall be informal without use of rules of evidence. If the Board finds, by a majority vote of all members, that the complaint has merit, the Board shall take such action permitted under this chapter as it deems necessary. The Board's decision shall be in writing and shall include its reasons for such decision. The Board's decision shall be mailed immediately to the practitioner.~~ [Repealed.]

(c) ~~Where the practitioner is in disagreement with the action of the Board, the practitioner~~ A licensee may appeal the Board's decision to the Superior Court within 30 days of service, ~~or of the postmarked date of the copy of the decision mailed to the practitioner~~ the date that notice of the Board's decision is mailed. Upon such appeal ~~appeal~~, the Court shall hear the evidence on the record. ~~Stays shall be granted~~ The Court may grant a stay in accordance with § 10144 of Title 29 ~~of the Delaware Code~~.

Section 21. Amend § 3918, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3918. Penalties.

(a) ~~Where the Board has reason to believe that a person is holding himself or herself out to be a clinical social worker within this State without having lawfully obtained a license or that a person previously licensed under this chapter is holding himself or herself out to be a clinical social worker, notwithstanding that the person's license has been suspended or revoked, the Board shall submit a written complaint to the Division of Professional Regulation for investigation. If the investigation confirms such unlawful conduct, the Board shall formally warn such person. If the offense continues, the Board shall make a formal complaint to the Attorney General and may issue a cease and desist order. The complaint and/or~~

order shall include all evidence known to or in possession of the Board. It is unlawful for an individual who is not licensed under this chapter to do any of the following:

(1) Engage in the practice of social work.

(2) Use in connection with that individual's name or otherwise assume or use any title or description that conveys or tends to convey the impression that the individual is qualified to practice social work.

(b) Where the Board has placed a practitioner on probationary status under certain restrictions or conditions, and the Board has determined that such restrictions or conditions are being or have been violated by the practitioner, the Board, after a hearing on the matter, may suspend or revoke the practitioner's license. An individual who violates subsection (a) of this section is guilty of a misdemeanor and subject to the following penalties:

(1) For the first offense, a fine of not less than \$500 nor more than \$1,000 for each offense.

(2) For each subsequent offense, a fine of not less than \$1,000 nor more than \$2,000 for each offense.

(c) Superior Court has jurisdiction over all violations of this chapter. Where a person not currently licensed as a clinical social worker under this chapter is convicted of violating this chapter, such offender, upon the first offense, shall be fined not less than \$500 nor more than \$1,000 for each offense, and the offender shall pay all costs. Each day a violation continues shall constitute a separate offense. The Court shall order all client fees received for unlawful service to be refunded.

(1) Justices of the peace in the county in which the offense is alleged to have occurred shall have jurisdiction over any violation of this chapter.

(2) Any person convicted of any such offense before a justice of the peace or in any court of competent jurisdiction, other than the Superior Court, may appeal to the Superior Court in the county in which the conviction was had upon giving bond in the sum of \$200 to this State with surety satisfactory to such justice or trial court, provided, however, that the appeal is taken and bond given within 7 days from the time of the conviction.

(d) A violation of this chapter shall be cause for revocation of any license issued thereunder, notwithstanding that the same violation may constitute a misdemeanor or felony. [Repealed.]

Section 22. Amend § 3919, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 3919. Duty to report conduct that constitutes grounds for discipline or inability to practice.

(a) ~~Every person~~ A licensee to whom a license to practice has been issued under this chapter has a duty to report to the Division of Professional Regulation in writing information that the practitioner licensee reasonably believes indicates any of the following:

that ~~(1) That~~ any other practitioner licensed under this chapter licensee or any other healthcare provider has engaged in or is engaging in conduct that would constitute grounds for disciplinary action under this chapter or the other healthcare provider's licensing statute.

~~(2) (b) Every person to whom a license to practice has been issued under this chapter has a duty to report to the Division of Professional Regulation in writing information that the licensee reasonably believes indicates that That~~ any other practitioner licensed under this chapter licensee or any other healthcare provider may be unable to practice with reasonable skill and safety to the public by reason of for any of the following reasons:

~~mental a. Mental~~ illness or mental ~~incompetence; incompetence.~~

~~physical b. Physical~~ illness, including deterioration through the aging process or loss of motor ~~skill; skill.~~

~~or excessive c. Excessive use or~~ abuse of drugs, including alcohol.

~~(3) (c) Every person to whom a license to practice has been issued under this chapter has a duty to report to the Division of Professional Regulation any information that the reporting person reasonably believes indicates that a person That an individual~~ certified and registered to practice medicine in this State is or may be guilty of unprofessional conduct or may be unable to practice medicine with reasonable skill or safety to ~~patients by reason of~~ clients for any of the following reasons:

~~mental a. Mental~~ illness or mental ~~incompetence; incompetence.~~

~~physical b. Physical~~ illness, including deterioration through the aging process or loss of motor ~~skill; skill.~~

~~or excessive c. Excessive use or~~ abuse of drugs, including alcohol.

~~(d) All reports (b) A licensee must file a report required under subsections (a), (b) and (c) subsection (a) of this section must be filed within 30 days of becoming aware of such information listed in paragraphs (a)(1), (2), or (3) of this section. A person licensee~~ reporting or testifying in any proceeding as a result of making a report pursuant to ~~under~~ this section is immune from claim, suit, liability, damages, or any other recourse, civil or criminal, ~~so long as if~~ the person licensee acted in good faith and without gross or wanton negligence; ~~good negligence. Good faith being is~~ presumed until proven otherwise, and ~~the licensee alleging gross or wanton negligence required to be shown by the complainant has the~~ burden of proof.

Section 23. Amend Chapter 39, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3920. Telehealth and telemedicine.

(a) Licensed clinical social work may be provided through the use of telemedicine as permitted by regulation, and may include participation in telehealth as further defined in this chapter and by regulation.

(b) Notwithstanding any other provision of law, insurers, social workers, and clients may agree to alternative siting arrangements other than the originating site, as they deem appropriate.

Section 24. This Act takes effect 1 year after enactment.



SPONSOR: Rep. Bolden & Sen. Walsh
Reps. Bennett, Brady, Dukes, Spiegelman; Sens.
Delcollo, Hansen, Pettyjohn, Sokola

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 455

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO THE STATE BOARD OF
EDUCATION.

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

1 Section 1. Amend § 104, Title 14 of the Delaware Code by making deletions as shown by strike through and
2 deletions as shown by underline as follows and redesignating accordingly:

3 § 104, State Board of Education; composition; term; powers and duties; qualifications; vacancies; staggered
4 appointments; office location; compensation; removal.

5 (a) The State Board of Education shall be composed of 7 Education, referred throughout this subchapter as "State
6 Board", consists of 9 members who shall be are citizens of the this State and shall be appointed by the Governor and
7 confirmed by the Senate. The Governor shall name the President of the Board who shall serve at the Governor's pleasure.
8 Each of the remaining members of the Board shall be appointed to serve for 6 years and appointed as follows:

9 (1) The Governor shall appoint, with Senate confirmation, 7 voting members.

10 a. Six of the 7 voting members are appointed for terms of up to 6 years, to ensure that no more than 2
11 members' terms expire in the same year. Each of the 6 voting members serves until that member's successor
12 qualifies.

13 b. One of the 7 voting members is appointed as the President of the State Board and serves at the
14 Governor's pleasure.

15 (2) The Governor shall appoint annually 1 non-voting member who is a former Delaware State Teacher of the
16 Year and employed as a Delaware public school educator. The Teacher of the Year Advisory Board shall provide
17 annually to the Governor a list of recommendations that includes at least 1 individual from each county in this State.
18 This appointment does not require Senate confirmation.

19 (3) The Governor shall appoint annually 1 non-voting member who, at the time of appointment, is or will be
20 in the next school year an 11th or 12th grade student at a public school in this State, with priority given to the selection
21 of an individual who has demonstrated commitment to ensuring quality education for Delaware students. This
22 appointment does not require Senate confirmation.

(b) The State Board of Education ~~shall have~~ has powers, ~~duties~~ duties, and responsibilities as specified in this title. Included among the powers, duties and responsibilities are those specified in this subsection. The State Board of Education shall do title, including all of the following:

(1) Provide the Secretary of Education with advice ~~and guidance with respect to~~ regarding the development of policy in those areas of education policy where rule- and regulation-making authority is entrusted jointly to the Secretary and the State Board. The State Board shall also provide ~~guidance~~ advice on new initiatives which ~~the Secretary~~ may from time to time ~~be proposed by the Secretary~~ propose. The Secretary shall consult with the State Board regularly on such issues to ensure that policy development benefits from the breadth of viewpoint and the stability which a citizens' board can offer and to ensure that rules and regulations presented to the State Board for its approval are developed with input from the State Board. ~~Consistent with its role in shaping critical educational policies, the~~ The State Board of Education may also recommend that the Secretary undertake certain initiatives which the State Board believes would improve public education in Delaware; Delaware.

(2) Provide the Secretary of Education with advice ~~and guidance~~ on the Department's annual operating budget and capital budget requests; requests.

(3) Provide the Secretary of Education with ~~guidance~~ advice in the preparation of the annual report specified in § 124 of this title, including recommendations for additional legislation and for changes to existing ~~legislation~~; legislation.

(4) Provide the Secretary of Education with ~~guidance~~ advice concerning the implementation of the student achievement and statewide assessment program specified in § 122(b)(4) of this title; title.

(5) Decide, without expense to the parties concerned, certain types of controversies and disputes involving the administration of the public school system. The specific types of controversies and disputes appropriate for State Board resolution and the procedures for conducting hearings shall must be established by rules and regulations ~~pursuant to § 121(12) under § 121(a)(12)~~ of this title; title.

(6) Fix and establish the boundaries of school districts which may be doubtful or in dispute, or change district boundaries as provided in §§ 1025, 1026, and 1027 of this title; title.

(7) Decide on all controversies involving rules and regulations of local boards of education ~~pursuant to under~~ § 1058 of this title; title.

(8) Subpoena witnesses and documents, administer and examine persons under oath, and appoint hearing officers as the State Board finds appropriate to conduct investigations and hearings ~~pursuant to under~~ paragraphs (b)(5), (6), and (7) of this ~~section~~; section.

(9) Review decisions of the Secretary of Education, upon application for review, where specific provisions of this title provide for such review. The State Board may reverse the decision of the Secretary only if it decides, after

55 consulting with legal counsel to the Department, that the Secretary's decision was is contrary to a specific state or
56 federal law or regulation, was not supported by substantial evidence, or was arbitrary and capricious. In such cases, the
57 State Board shall set forth in writing the legal basis for its ~~conclusion;~~ conclusion.

58 (10) Approve ~~such~~ Department rules and regulations as that require State Board approval, ~~pursuant to under~~
59 specific provisions of this title, before ~~such the rules and regulations are implemented;~~ implemented.

60 (11) Approve rules and regulations governing institutions of postsecondary education that offer courses,
61 programs of courses, or degrees within the State or by correspondence to residents of the this State ~~pursuant to under~~
62 ~~§ 121(16) and/or § 121(a)(16) or § 122(b)(8) of this title;~~ title.

63 (12) Any provision of Chapter 5 of this title to the contrary notwithstanding, decide appeals of decisions by
64 the board of directors of a charter school to suspend or expel a student for disciplinary reasons. In deciding such cases,
65 the State Board shall employ the ~~same~~ standard of review ~~as is set forth in under § 1058 of this title;~~ and title.

66 (13) Digitally record all of the State Board's regular monthly public board meetings of the ~~State Board of~~
67 Education and make the recordings available to the public on the Department of Education's website within 7 business
68 days of each meeting. These recordings are not official board minutes, but are a means to enhance communication to
69 the public and state legislators. The requirements of this section do not apply to meetings where recording equipment is
70 not available, to executive sessions, or to other State Board meetings of the Board, such as workshops, retreats, and
71 committee meetings. A The Department of Education must provide a written transcript of the a regular monthly public
72 board meetings State Board meeting that are is digitally recorded ~~pursuant to under~~ this paragraph, or other reasonable
73 accommodation, ~~will be provided by the Department of Education within 7 business days upon request of a person an~~
74 individual with a hearing impairment.

75 (14) ~~Pursuant to Under~~ Chapter 33 of this title, serve as the State Board for Vocational-Technical Education
76 (Career and Technical Education) and is as the "eligible agency" and sole agency responsible for the supervision of
77 administration of career and technical education for purposes of the federal Carl D. Perkins Career and Technical
78 Education Act of 2006 (Perkins IV) [20 U.S.C. § 2301 et seq.], and any subsequent reauthorization thereof, and be
79 subject to its requirements and any implementing regulations. As used in this title, "career and technical education"
80 ~~shall have~~ has the same meaning as "vocational-technical education."

81 (c)(1) The Department, through the Secretary, shall provide reasonable staff support to assist the State Board in
82 performing its duties ~~pursuant to under~~ this title ~~and shall, upon request through the Secretary, provide the State Board with~~
83 reports title. The Department shall provide to the State Board all of the following:

84 a Reports and data necessary to enable the State Board to perform its duties pursuant to under this title.

85 b. One staff member, an Executive Director. A majority of the State Board members shall appoint the
86 Executive Director. Once appointed, the Executive Director is an employee of the Department, subject to all of the

87 Department's employment policies and procedures, and serves at the pleasure of the State Board. The Executive
88 Director's duties are as follows:

89 1. Coordinate and implement all requirements for State Board meetings, including posting meeting
90 notices and minutes.

91 2. Provide necessary reports and data in conjunction with paragraph (c)(1)a. of this section regarding
92 the State Board's responsibilities.

93 3. Support State Board members in necessary training and preparation to fulfill their roles and
94 responsibilities.

95 4. Serve as the State Board's point of contact regarding matters specific to the State Board.

96 5. Produce and post minutes for each State Board meeting, including uploading digital recordings
97 under paragraph (b)(13) of this section.

98 (2) The Secretary of Education, in addition to the Secretary's other duties of office, ~~shall serve~~ serves as
99 Executive Secretary of the State Board.

100 (d) The members of the State Board appointed under paragraphs (a)(1) and (a)(2) of this section shall be
101 ~~appointed solely because of their~~ must be of good character and fitness and, in addition to the requirements of subsection
102 (a) of this section, are subject to the following qualifications:

103 (1) ~~at At least 2 members of the Board shall must have had prior experience on a local board of education;~~
104 education.

105 (2) ~~no No more than 4 members of the Board shall may belong to the same political party; party.~~

106 ~~no person shall be eligible to appointment~~ (3) ~~An individual who has not been a resident of this State for at~~
107 ~~least less than 5 years immediately preceding appointment a resident of this State; is not eligible to be a member.~~

108 ~~and no person shall~~ (4) ~~An individual who is already subject to the State Board's authority may not be~~
109 ~~appointed to the State Board who is in any way subject to its authority as a voting member.~~

110 ~~Any member of the Board shall be~~ (5) ~~A member is eligible for reappointment unless otherwise disqualified~~
111 ~~by this title.~~

112 ~~In constituting the Board,~~ (6) ~~The members must meet the following geographic qualifications:~~

113 ~~the a. The President shall and 1 other member may be appointed from the State at large, large.~~

114 ~~but the appointments of the remaining 6 members shall be made so that there shall be on the Board at~~
115 ~~least 4 b. One member is a resident of the City of Wilmington, Wilmington.~~

116 ~~2 c. Two members are residents from of New Castle County outside the City of Wilmington, Wilmington.~~

117 ~~1 from d. One member is a resident of Kent County, County.~~

118 ~~1 from e. One member is a resident of Sussex County, and 1 member at large, County.~~

119 ~~(e) Vacancies on the Board for any cause shall be filled by the Governor for the unexpired term and until a~~
120 ~~successor shall qualify.~~

121 ~~(f) The Governor may appoint members for confirmation by the Senate for terms shorter than 6 years where that~~
122 ~~is necessary to ensure that Board members' terms expire on a rotating annual basis.~~

123 ~~(g) The Board shall meet in Dover in meeting space provided by the Department shall provide or obtain office~~
124 ~~space in Dover for the State Board.~~

125 ~~(h) The State Board members of the Board shall receive \$100 for each day's attendance at the State Board~~
126 ~~meetings of the Board meetings, not to exceed 24 days' attendance in any 1 calendar year; year, and they shall be~~
127 ~~reimbursed for their actual travel and other necessary expenses incurred in attending meetings and transacting the business~~
128 ~~of the State Board.~~

129 ~~(i) The number of members who must be present at a State Board meeting in order to have a quorum and conduct~~
130 ~~official business is the majority of appointed, voting members.~~

131 ~~(j) The Governor may remove a State Board member for gross inefficiency, neglect of duty, malfeasance,~~
132 ~~misfeasance, or nonfeasance in office. A member is deemed in neglect of duty if the member is absent from 3 consecutive,~~
133 ~~regular Board meetings or attends less than 50% of State Board meetings in a calendar year. The Governor may consider~~
134 ~~the member to have resigned, and may accept the member's resignation.~~

135 ~~(k) The State Board shall rotate locations of regular meetings among the 3 counties of this State, with each~~
136 ~~location to host, whenever possible, an agenda item that is relevant to the county in which it is being held, and rotating the~~
137 ~~locations among the 3 counties in such a way to facilitate parents', teachers', and other community members' attendance.~~

138 Section 2. Amend § 105, Title 14 of the Delaware Code by making deletions as shown by strike through and
139 deletions as shown by underline as follows:

140 § 105. State Board of Education procedures.

141 ~~(a) The State Board shall hold an annual meeting in Dover each year July in Dover, during the month of July. At~~
142 ~~this meeting the Board shall each year and, at each annual meeting, elect 1 of its members to serve as Vice-President. Other~~
143 ~~meetings shall must be held at such times and places as the duties and business of the State Board require, consistent with~~
144 ~~the requirements of § 104(k) of this title. No A motion or resolution shall may not be declared adopted without the~~
145 ~~concurrence of a majority quorum of the whole State Board.~~

146 ~~(b) Whenever this Code requires that the State Board approve a regulation or other action proposed by the~~
147 ~~Department, the State Board shall must decide whether to approve such regulation or action at a meeting held in conformity~~
148 ~~with Chapter 100 of Title 29. Provided that the Department has complied with Chapter 101 of Title 29 in proposing a~~
149 ~~regulation or other regulatory action to the extent such action is governed by said Chapter 101, the State Board shall is not~~

150 be subject to said Chapter 101 in approving or refusing to approve such ~~Departmental proposal~~ the proposed regulation or
151 other regulatory action.

152 (c)(1) The State Board shall permit public comment on each agenda item before voting on the agenda item and in
153 proximity to the time at which the State Board discusses the agenda item.

154 (2) Notwithstanding paragraph (c)(1) of this section, the State Board is not required to permit public comment
155 on an agenda item that, under Delaware law or Department or State Board rules, has a formal comment period or a
156 process for making a record in an administrative matter that has closed before the State Board's discussion of the
157 agenda item, including charter school applications or formal reviews, amendments to Department and Professional
158 Standards Board regulations, and student appeals.

SYNOPSIS

This Act fulfills recommendations made by the Joint Legislative Oversight and Sunset Committee by doing the following:

(1) Establishing 2 new, nonvoting members to serve on the State Board of Education ("Board"). The new members are a former Delaware Teacher of the Year and a Delaware 11th or 12th grade student.

(2) Defining the duties of the Board's Executive Director.

(3) Clarifying that the Executive Director is selected by the Board, is an employee of the Department of Education, subject to all of the Department's employment policies and procedures, but serves at the pleasure of the Board.

(4) Requiring the Board to rotate its meetings among the 3 counties of this State in such a way to facilitate parents', teachers', and other community members' attendance.

(5) Establishing the circumstances under which a Board member may be removed, using language standard to boards and commissions in this State.

(6) Requiring the Board to permit public comment on each agenda item prior to voting on the item and in proximity to the time at which the Board discusses the item. An exception is provided if, under Delaware law or Department or Board rules, the item has a formal comment period or a process for making a record in an administrative matter that has closed before the Board's discussion of the agenda item. Examples of matters that qualify for the exception include charter school applications or formal reviews, amendments to Department of Education and Professional Standards Board regulations, and student appeals. The intent of the exception is to exclude Board actions that are quasi-judicial in nature and therefore not appropriate to open to public comment.

This Act also corrects 2 internal references and makes other technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.



SPONSOR: Rep. Bolden & Sen. Walsh
Reps. Bennett, Brady, Dukes, Spiegelman; Sens.
Delcollo, Hansen, Pettyjohn, Sokola

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 309

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE JOINT LEGISLATIVE
OVERSIGHT AND SUNSET COMMITTEE.

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

1 Section 1. Amend § 10214, Title 29 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 10214. Committee recommendations and authority to recall an agency.

4 (a) In its final report concerning an agency, the Committee may recommend 1 or more of the following:

5 (1) The continuance of the agency, as is; termination of the agency; termination of any program within the
6 agency; the consolidation, merger, or transfer of the agency or of functions of the agency to another agency; or
7 continuation, hold-over over, or termination of the agency unless or until certain conditions are met or modifications
8 are made, by legislation or otherwise, within a specified period of time.

9 (2) Budget appropriation limits for an agency.

10 (3) In general or specific terms, legislation which the Committee considers necessary to carry out its decision
11 as to whether an agency should be continued or terminated.

SYNOPSIS

This Act codifies the practice of the Joint Legislative Oversight and Sunset Committee to recommend the
continuation of an agency unless or until certain conditions are met or modifications are made.



June 13, 2018

State Representative Stephanie Bolden - Chairman
State of Delaware, Joint Sunset Committee
400 Legislative Avenue
Dover, Delaware

Senator John Walsh, Co-Chairman
State of Delaware, Joint Sunset Committee
411 Legislative Avenue
Dover, Delaware

**RE: DIAMOND STATE PORT CORPORATION (DSPC) / PORT OF WILMINGTON –
STATUS UPDATE**

Dear State Legislators:

The following, for your review as requested, is an update of the status of requests made by the Joint Sunset Committee to the DSPC:

Hiring Hall Replacement

Status as of June 12, 2018

- Currently
 - Engaged contractor to (Quote Attached)
 - Furnish and install new sub floor and sheet vinyl in:
 - Hire/Lunch area
 - Bathroom facilities
 - Locker room area
 - Removed all lockers and will start replacing subflooring, as required in all areas
 - Replacing bathroom fixtures as needed
 - Replaced flexible duct in the ceiling and cleaning ceiling diffusers
 - Continue to explore the possibility of additional trailers to accommodate employees waiting to start work



- Email Received from Brian Smith:

Good morning gentlemen,
Wanted to take a moment and thank Mr. Bailey, Randy Horne, Trevor Knight. For your due diligence in the project matter above.
It's my understanding that the air quality test was taken last week the results to be in soon.
The locker room floors and the bathroom have been stripped and patched in preparation for the new floor.
Would like to set up a time for meetings to discuss the memorandum from GulfTainer, their position on said structure.

Again Thank You
Brian Smith
Business Agent 1694-1

- DSPC will schedule meeting with all parties to discuss next steps
- DSPC engaged BrightFields , Inc (Environmental Services) to provide a Visual Mold Assessment and Testing Services (letter attached)
 - Testing has been complete and we will review report, meet with Brian and comply with any and all recommended suggestions
 - will install dehumidifiers in the facility

Should you require additional information, please contact me at (302) 472-7800.

Very truly yours,


Eugene R. Bailey
Executive Director

AIR BASE CARPET AND TILE MART

QUOTE

Thousands of Floors, Millions of Possibilities

230 N. Dupont Hwy
New Castle, DE 19720
Phone 302-328-1597 Fax: 302-322-9151

Date: 5/23/2018
INVOICE # 11002

Mr. Treavor Knight
Port of Wilmington
Terminal Ave
Wilmington, DE
302-598-0520
tknight@port.state.de.us

DESCRIPTION	AMOUNT
Furnish and install new sub floor and sheet vinyl in daily hire area, bath room facilities and locker room area. Owner to reset all removed items. Material specified by building owner is Mannington, Entwined ETW 457 for floor covering. Material specified for subfloor is Fiberock 1/4" thick, 3 x 5 sheet. Subfloor to be screwed down. Vinyl seams to be chemically welded. Furnish and install new 4" vinyl cove base in the same areas. Color to be selected by owner. Owner to remove and dispose of existing VCT and subflooring. Owner to repair existing damaged primary subfloor. Owner to remove existing cove base. Owner to remove existing fixtures, lockers, toilets, toilet partitions, vending machines, and office equipment.	
Owner to cut entry and exit doors to accommodate new material height. Installation to be done in two phases on two consecutive weekends.	\$30,811.88
Total Quote	
Quote valid for 30 days from: 5-18-18	
A deposit of 70% upon acceptance with balance in full within 30 days of completion.	
TOTAL	\$ 30,811.88

Make all checks payable to Air Base Carpet and Tile Mart,
If you have any questions concerning this Quote, contact: Joe Petro, Commercial, Residential Flooring Consultant
302-328-1597, jpetro@carpetmart.com


Customer Signature

5/23/18
Date

THANK YOU FOR YOUR BUSINESS!



BrightFields, Inc.
Environmental Services

May 23, 2018

Mr. Trevor Knight
Port of Wilmington
1 Hausel Road
Wilmington, Delaware 19801

**RE: Proposal to provide a Visual Mold Assessment and Testing,
and Limited Asbestos Assessment Services
Training Center
Port of Wilmington
Wilmington, Delaware
BrightFields File #0927.13.25**

Dear Mr. Knight,

Thank you for the opportunity for BrightFields, Inc. (BrightFields) to submit this proposal to provide the Port of Wilmington with a visual mold assessment and testing. It is our understanding that you would like the indoor air and ductwork tested for mold, and building materials associated with pending renovation to be assessed for asbestos content. We understand the scope of the work will be as follows:

SCOPE OF WORK

Task 1 - Visual Mold Assessment and Testing

BrightFields will provide an Industrial Hygienist to evaluate the areas of concern within the building for suspect active or historic moisture intrusion issues that may be present. The inspection will include the use of a moisture meter and a forward looking infrared (FLIR) camera to evaluate the extent of suspect moisture in the structure.

BrightFields will collect up to 10 air/tape lift samples for mold spore identification and quantification from representative locations inside and outside the property. Samples will be submitted to EMSL Analytical, Inc. (EMSL) for analysis with a 24-hour turn-around-time.

Upon receipt of the results, BrightFields will prepare an Indoor Environmental Quality Assessment Report summarizing the visual inspection, air monitoring, and sample analysis results, and provide recommendations, if necessary, to address items that may be impacting the indoor environmental quality within the building.

Task 2 - Limited Asbestos Assessment Services

BrightFields will provide a United States Environmental Protection Agency (U.S. EPA) certified, State of Delaware-approved asbestos building inspector to conduct limited asbestos sampling of building materials which may be disturbed by pending renovation activities at the above referenced property. BrightFields will submit the samples collected from the assessment to a State of Delaware certified laboratory for polarized light microscopy (PLM) analysis. After reviewing the

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laboratory results, BrightFields will complete and forward the Asbestos Assessment Report, including the laboratory analytical data and State of Delaware Asbestos Inspection Form, for your records.

SCHEDULE OF WORK

BrightFields is prepared to initiate the field work in this scope of work within one week of authorization.

COST ESTIMATE

BrightFields' fee for time and materials to perform the tasks described in this scope of work are estimated to be:

Task 1

Visual Mold Assessment and Testing:	\$1,000.00
Air/Tape Lift Sample Analysis (12 samples @ \$55/sample):	\$660.00
Assessment Reporting:	\$910.00

Task 2

Limited Asbestos Assessment:	\$330.00
PLM Bulk Sample Analysis (20 samples @ \$13/sample):	\$260.00
Assessment Report and State of Delaware Asbestos Inspection Form:	\$350.00

ESTIMATED TOTAL	\$3,510.00
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Please note that any additional materials that may require sample collection beyond the estimated number of samples indicated above will be invoiced at the appropriate rate per sample. In the event additional samples are required, your approval will be sought prior to collection and submission for analysis. You will only be charged for samples physically collected and analyzed by the laboratory.

CONTRACTUAL INFORMATION

The proposed scope of work will be performed pursuant to the attached General Contract Conditions, which contain contractual detail regarding BrightFields rates, payment terms, right of entry/site access, site restoration, location of unseen utilities/structures, regulatory compliance, sampling/analysis, warranty and limitations, liability and insurance information, confidentiality, delivery of completed reports to third parties, termination, and unanticipated changes in work scope.

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BrightFields, Inc.

Signing a copy of this letter and returning it to BrightFields will serve as authorization to proceed with the services outlined above. We are prepared to perform the work pending on your approval and schedule. Please call me at (302) 656-9600 if you have any additional questions or concerns.

Sincerely,
BrightFields, Inc.

A handwritten signature in black ink, appearing to read 'SS', followed by a horizontal line.

Sean Scanlon
Environmental Analyst

Authorization for Environmental Services:

I authorize Brightfields to perform the scope of services described herein.

Approved: *Daniel P. Lerner* Date: *5/23/18*
Authorized Agent for the Port of Wilmington