



Division of Legislative Services

Amanda Waid McAtee and Ben Kowal
Joint Legislative Oversight and Sunset Committee Analysts

Full Review: Controlled Substance Advisory Committee
Staff Presentation
April 10, 2025

Why We Did This Review

- **JLOSC selected full reviews in 2023 for boards and commissions created and never reviewed.**
 - Selected Controlled Substance Advisory Committee for review on March 2, 2023.
- **Full reviews require self-report and entity presentation.**
 - Self-report available on JLOSC website.
- **Reviews entity performance with criteria established in JLOSC statute.**
 - Review criteria outlined in the report (objective, scope, and methodology), used a compilation of statutory review criteria (§ 12011(b), Title 29).
 - **Criteria #1** For licensing entities, the extent to which they have licensed qualified applicants. – Not a licensing entity but reviews applications for the distressed cemetery fund.
 - **Criteria #2** The extent to which the entity has served the public interest. – Reviewed main duties in Chapter 79A, Title 29.
 - **Criteria #3** The extent to which the entity has recommended statutory changes. – Board self-report included recommendations to improve operations in fiscal year 2020.
 - **Criteria #4** Review implementation of past JLOSC recommendations. – Does not apply to this review.



Origin of the Advisory Committee



The Uniform Controlled Substances Act created in response to the opioid epidemic.

Under this Act, the Advisory Committee was established in 2013 to advise the Secretary of State on issuing and renewing controlled substance registrations.

- The federal DEA maintains a controlled substance registry, but many states like Delaware also require a state-level registration.
- 7 practitioner types: physicians, dentists, veterinarians, podiatrists, physician assistants, advanced practice registered nurses (APRN), and optometrists.
 - To prescribe controlled substances must hold a practitioner license, DEA registration, and Delaware controlled substance registration.
 - Facilities that store or dispense controlled substances, such as pharmacies, hospitals, distributors, manufacturers, and research facilities, must also register.

What We Found in this Review:

- **The Controlled Substance Advisory Committee's statute is short and gives broad authority only to advise on applications for controlled substances registration.**
 - The Advisory Committee has promulgated regulations to provide clarification and has demonstrated the ability to act in a manner more consistent with a licensing board rather than advisory.
 - Secretary of State is outlined throughout code as the actor to make all decisions with controlled substance registry but in practice this is done through the Office of Controlled Substances (created in Code) which is under the Division of Professional Regulation.
 - Office of Controlled Substances is managed by a licensed pharmacist who is the Director of the Board of Pharmacy.



Staff Findings



There is overlapping and unclear continuing education requirements.

- June 2023: DEA requires an 8-hour, one time training course on treating and managing patients with opioid or other substance use disorders for federal registration.
- Delaware requires applicants to self-certify they completed a state webinar which is out of date.
 - Then require 2 hours of continuing education at renewal on topics such as controlled substance prescribing practices, chronic pain treatment, opioid risks, abuse detection, and related subjects.
 - Each professional license has continuing education requirements for each renewal.
 - Confusion with these requirements and DHSS Help Is Here website reflect incorrect information.
- Staff found this to be burdensome to the licensee and DPR because they audit renewals and then go through hearings for deficiency.
 - Last renewal DPR audited 64 controlled substance registry renewals.

Staff Findings

- **The Secretary of State if tasked with implementing education programs to prevent and deter misuse and abuse of controlled substances.**
 - **This is not taking place.**
 - DHSS and other committees dedicated to this subject matter do this and engagement could be improved.
 - For example, emergency reclassification made, and later legislation codified reclassification for xylazine.
 - Resistant to Narcan, in drug supplies without user knowledge (similar to Fentanyl), creates skin lesions, affects public health.
 - Other states who did similar reclassifications (Pennsylvania and Ohio) published public health alerts and education materials, Delaware did not.
- There is the Prescription Monitoring Program (PMP) included in the Act, this Advisory Committee receives PMP updates.
 - PMP Advisory Board no longer holds meetings.
- There is a Drug Overdose Fatality Review Commission in this Act to make annual recommendations to the Governor and General Assembly regarding practices or conditions which impact the frequency of overdose deaths and measures to reduce the frequency of such overdose deaths.
 - The Advisory Committee is not included in their section of the Act.
- Annual reporting under the Uniform Controlled Substances Act is outdated and does not involve the Advisory Committee, despite addressing subject matter that falls within the Advisory Committee's responsibilities.



Staff Recommendations Overview

- **Continue Controlled Substance Advisory Committee.**
 - with statute revisions.
- **Update statute (Chapter 47, Title 16).**
- **Release from review.**
 - upon enactment of legislation under recommendation #2.



Staff Finding and Recommendation #1

Finding: The Controlled Substance Advisory Committee was established to safeguard public health, safety, and welfare by regulating and monitoring controlled substance use and abuse through registration, inspection, investigation, and education, while issuing licenses and making regulatory recommendations.

Recommendation #1 – Continue.

Continue the Controlled Substance Advisory Committee, subject to further recommendations that JLOSC adopts.



Staff Finding and Recommendation #2

Finding: Chapter 47, Title 16 is too short.

The Controlled Substance Advisory Committee's statute is short and gives broad authority only to advise on applications for controlled substances registration. The Committee has promulgated regulations to provide clarification and has demonstrated the ability to act in a manner more consistent with a licensing board rather than advisory.

Recommendation – Statute Revisions: JLOSC should consider sponsoring a bill to update Chapter 47 to codify the Committee's purpose, administration, and operations and, using this review as a guide, applying revisions to sections covering topics such as:

- Update Committee duties, staffing, and authority. Include public outreach and education for any drug scheduling activity.
- Clarify Office of Controlled Substance staffing and administrative resources.
- Update Secretary duties regarding educational programs.
- Update reporting requirements for DOJ and Office of Controlled Substance.
- Update continuing education requirements for initial registration and renewal.

JLOSC and DPR staff will work together to develop statutory revisions. JLOSC staff will engage stakeholders as appropriate.



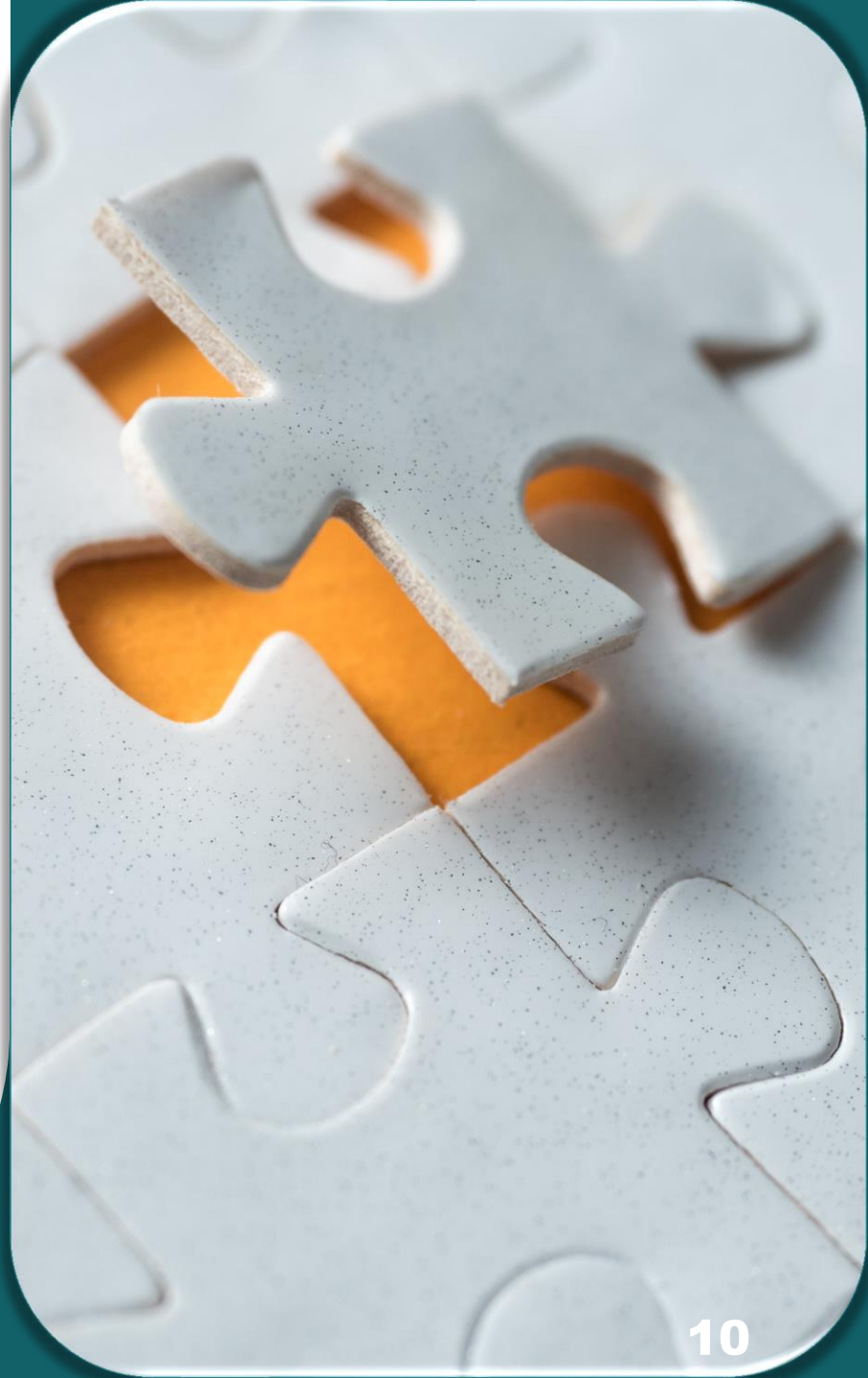
Staff Finding and Recommendation #3

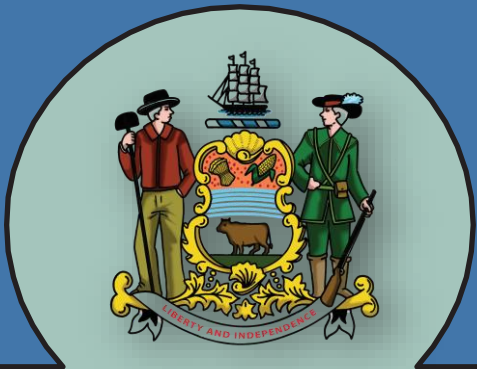
Finding: The Controlled Substance Advisory Committee consistently held public meetings and Board staff have maintained communication with JLOSC staff throughout the review. JLOSC staff do not believe that monitoring the Board beyond the JLOSC statute's required monitoring is necessary. Additionally, staff do not recommend the Board submit progress reports to comply with any JLOSC adopted recommendations.

Recommendation – Release from Review:

Release the Controlled Substance Advisory Committee from review upon enactment of legislation under Recommendation #2 or further action of JLOSC.

JLOSC statute's required monitoring: 29 *Del. C.* § 10219.



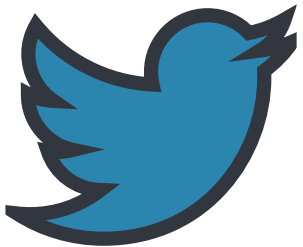


Joint Legislative Oversight & Sunset Committee

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Amanda Waid McAtee and Ben Kowal
Analysts for JLOSC
Division of Legislative Services



Email: Sunset@Delaware.gov

Written public comments accepted via email or public comment form on committee website.

Web: legis.delaware.gov/Committee/Sunset

Phone: (302) 744-4114



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Full Review: Delaware Cemetery Board
Staff Presentation
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 - **Criteria #3** The extent to which the entity has recommended statutory changes. – Board self-report included recommendations to improve operations in fiscal year 2020.
 - **Criteria #4** Review implementation of past JLOSC recommendations. – Does not apply to this review.



Origin Story: Cemetery Board



Senate Bill 256, 144th General Assembly, July 2008

- 3 main issues:
 - How many cemeteries existed?
 - Historic cemeteries fell into disrepair, no funding assistance.
 - No central place for public complaints.

Historic Wilmington Cemeteries:

- Mt. Zion (1864).
- Mt. Olive (1899).
- Riverview Cemetery (1872).



Restless Ground: The Untold
Story of Mt. Olive
New Castle County YouTube

**Definitions in bill broad, meant as a starting point,
Board created to clarify with regulations.**

Origin Story: Cemetery Board



- **Senate Bill 256 created:**
 - Cemetery registration.
 - Central place to receive public cemetery complaints.
 - Cemetery Board.
 - Manage distressed cemetery fund.
 - Create regulations to clarify statute.
 - Did not promulgate regulations, created guidelines.
 - Distressed Cemetery Fund.
 - \$2 surcharge added to each death certificate.
 - Annual audit requirement.

Fiscal Year	Total Number of Applications Received	Total Number of Applications Denied	Total Number of Applications Approved	Total Amount of Approved Applications	Amount Approved for Fiscal Year
2023	7	1	6	\$68,896.68	\$100,000
2022	8	1	7	\$72,270	\$100,000
2021	5	2	3	\$37,870	\$100,000
2020	7	0	7	\$90,770.55	\$100,000
Totals	27	4	23	\$269,807.23	\$400,000

Distressed Cemetery Fund Applications

Board Guidelines

- Maximum request of \$17,500 in 12-month period.
 - Must be future projects.
 - Cannot be for lawn maintenance or past projects.
- Requirements for cemetery to register and erect a public sign.
- 50% fund match requirement.
 - Can be funds or volunteer hours.
- Applications request detailed financial information.
- Submission of closeout report within 6 months of receiving funds.



Our Findings



- **Board reviews applications in executive session.**
- **Guidelines do not:**
 - Further define “distressed cemetery” or “financial need.”
 - Provide standard criteria for application evaluation.
- **No appeal process.**
- **No guidance provided to nonprofit cemeteries to assist with cemetery maintenance, goal to avoid or decrease distress.**
 - Proper record maintenance.
 - Creating and maintaining perpetual funds.

Staff Recommendations Overview

- **Continue Cemetery Board.**
 - with statute revisions.
- **Update statute (Chapter 79A, Title 29).**
- **Update audit requirement.**
 - Flexibility based on audit risk, move to once every 5 years.
- **Release from review.**
 - Upon enactment of legislation under recommendation #2.



Staff Finding and Recommendation #1

Finding: The Delaware Cemetery Board was established to administer the Distressed Cemetery Fund.

The Distressed Cemetery Fund is available to assist owners or volunteers of cemeteries that meet the definition of a distressed cemetery and do not have the necessary funds to improve conditions.

Recommendation #1 – Continue.

Continue the Delaware Cemetery Fund, subject to further recommendations that JLOSC adopts.



Staff Finding and Recommendation #2

Finding: Chapter 79A, Title 29 is too broad.

No regulations (17 years) despite statutory expectations for clarification.

The Board relies on vague guidelines to fulfill its duties.

Guidelines lack clarity and should be codified to improve transparency.

Codification is needed to inform the public about the Board's operations, including funding assistance requirements and its review process.

Recommendation – Statute Revisions: Chapter 79A, Title 29 technical corrections and using review as guide, updates such as:

- Update definitions.
- Include application process and requirements.
- Include which cemeteries qualify based on profit or active status.
 - Is historical preference is required or desired?
- Include whether endowment or perpetual care funds are required of active cemeteries.
 - Do these funds exclude an inactive or active cemetery from being defined as distressed?
- Include whether burial records need to be maintained for active cemeteries receiving distressed funds.

JLOSC and DPH staff will work together to develop statutory revisions.

JLOSC staff will engage stakeholders as appropriate.



Staff Finding and Recommendation #3

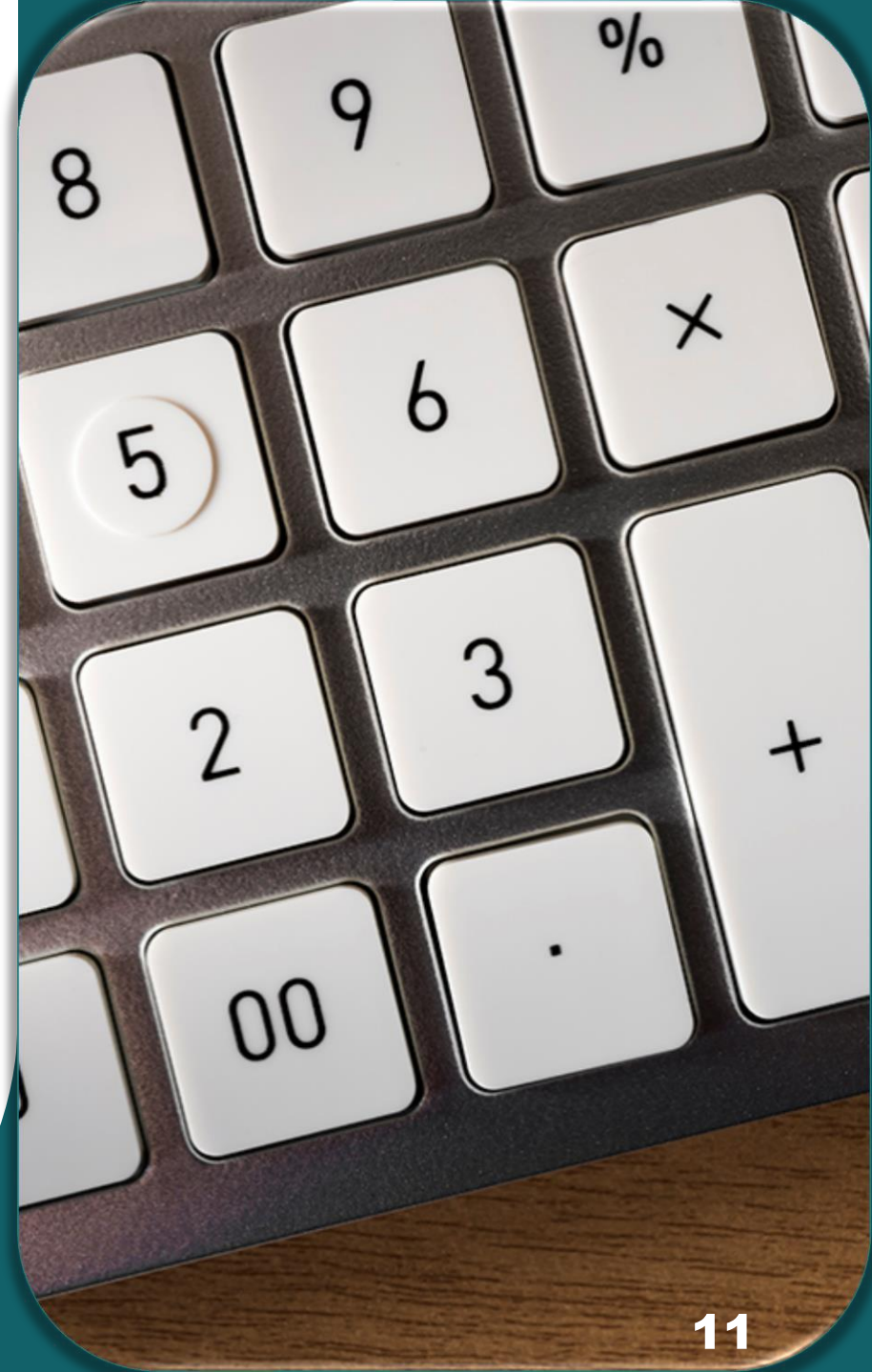
Finding: Annual audit requirement should be adjusted to reflect audit risk. Audit Distressed Cemetery Fund at least once per 5-year cycle. Distressed Cemetery Fund currently has an annual allocation of \$100,000. Averages 6 awards annually. Recent audit findings show DPH staff's commitment to addressing minor deficiencies.

Recommendation – Modify Annual Audit Requirement:

JLOSC should consider sponsoring a bill to modify the annual audit requirement to a frequency of at least once every 5 years.

JLOSC staff will work with DPH and Office of Auditor of Accounts staff to develop statutory revisions.

JLOSC staff will engage stakeholders as necessary.



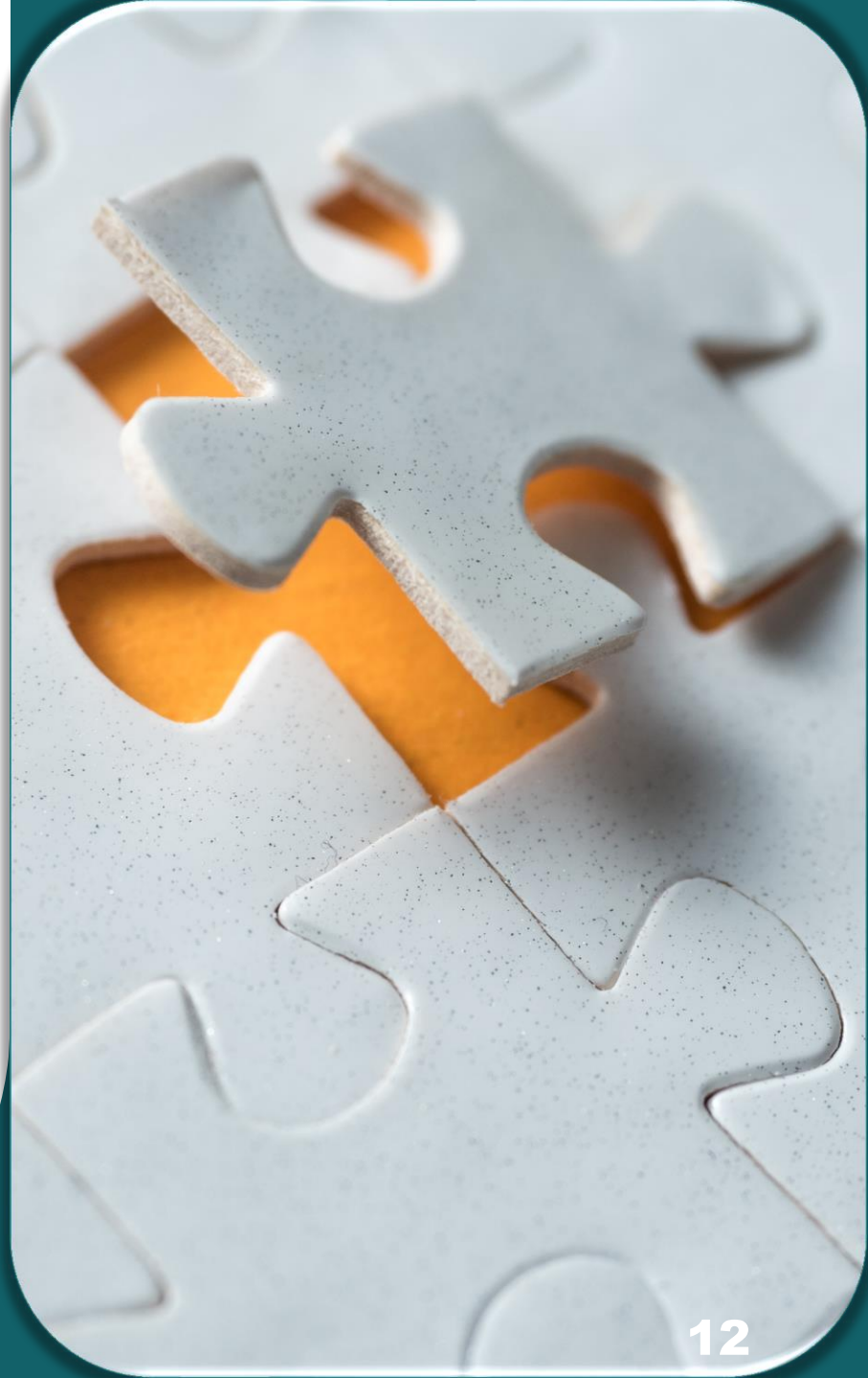
Staff Finding and Recommendation #4

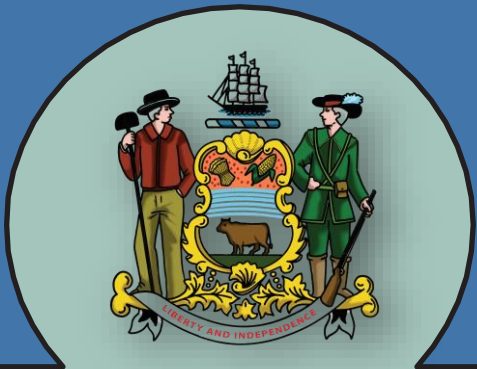
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Recommendation – Release from Review:

Release the Delaware Cemetery Board from review upon enactment of legislation under Recommendation 2.

JLOSC statute's required monitoring: 29 *Del. C.* § 10219.



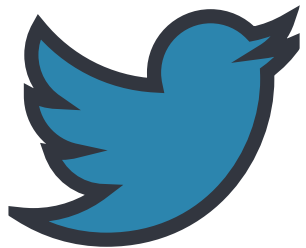


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Email: Sunset@Delaware.gov

Written public comments accepted via email or
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Web: legis.delaware.gov/Committee/Sunset

Phone: (302) 744-4114