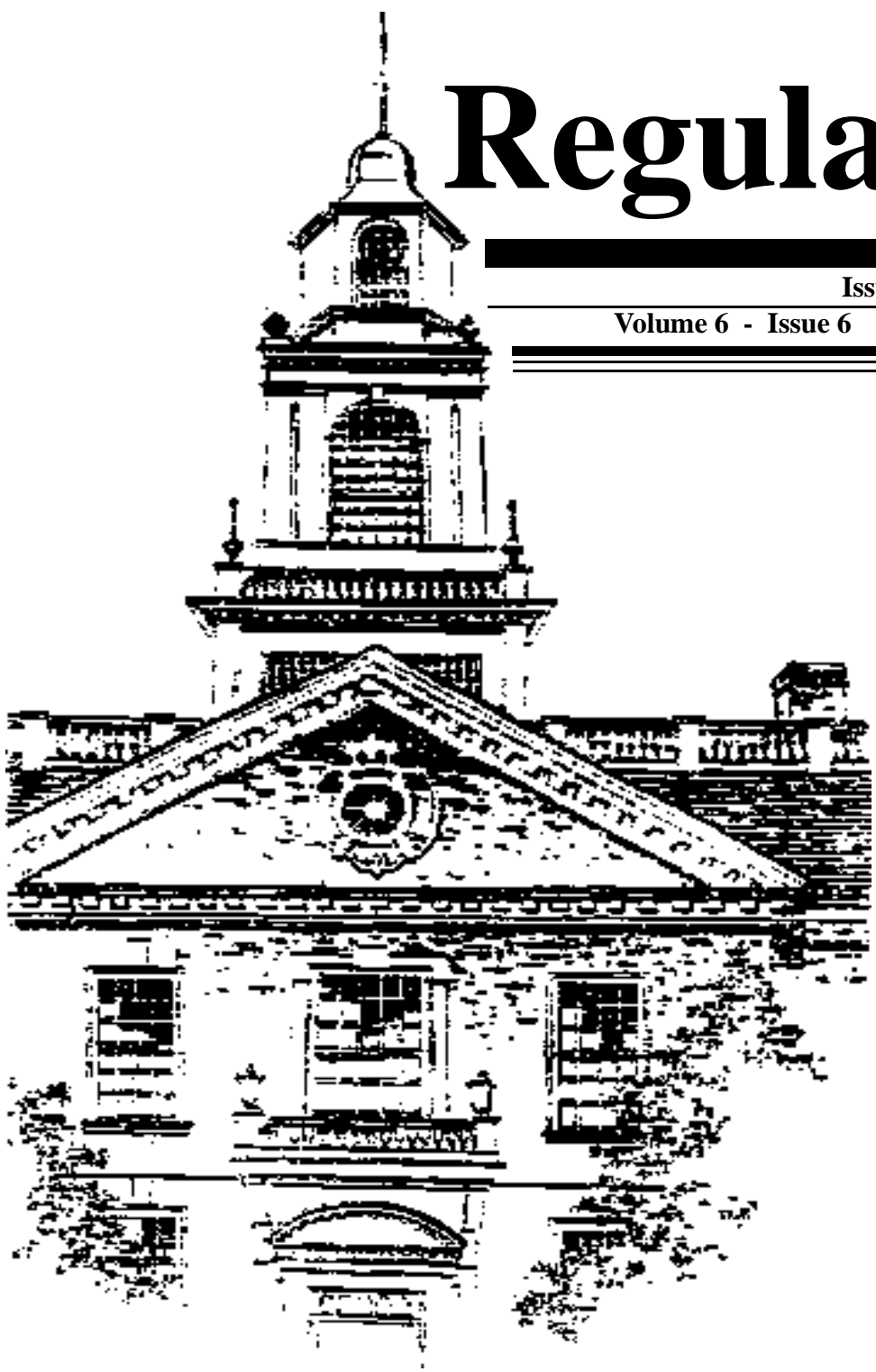

Delaware Register of Regulations



Issue Date: December 1, 2002

Volume 6 - Issue 6

Pages 708 - 821

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Emergency

Proposed

Final

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Calendar of Events &

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Pursuant to 29 Del.C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before November 15, 2002.

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DELAWARE REGISTER OF REGULATIONS

The Delaware Register of Regulations is an official State publication established by authority of 69 Del. Laws, c. 107 and is published on the first of each month throughout the year.

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

The Register will also publish some or all of the following information:

- Governor's Executive Orders
- Governor's Appointments
- Attorney General's Opinions in full text
- Agency Hearing and Meeting Notices
- Other documents considered to be in the public interest.

CITATION TO THE DELAWARE REGISTER

The Delaware Register of Regulations is cited by volume, issue, page number and date. An example would be:

6 DE Reg. 279 - 280 (09/01/02)

Refers to Volume 6, pages 279 - 280 of the Delaware Register issued on September 1, 2002.

SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the Delaware Register of Regulations is \$120.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-744-4114 or 1-800-282-8545 in Delaware.

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

Delaware citizens and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

Under 29 Del.C. §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt, within the time allowed, of all written materials, upon all the testimonial and written

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

Any person aggrieved by and claiming the unlawfulness of any regulation may bring an action in the Court for declaratory relief.

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken.

When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

Except as provided in the preceding section, no judicial review of a regulation is available

unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the Register of Regulations.

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME

DECEMBER 1	NOVEMBER 15	4:30 P.M.
JANUARY 1	DECEMBER 15	4:30 P.M.
FEBRUARY 1	JANUARY 15	4:30 P.M.
MARCH 1	FEBRUARY 15	4:30 P.M.
APRIL 1	MARCH 15	4:30 P.M.

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Symbol Key

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Emergency Regulations

Under 29 **Del.C.** §10119, if an agency determines that an imminent peril to the public health, safety or welfare requires the adoption, amendment or repeal of a regulation with less than the notice required by 29 **Del.C.** §10115, then the following rules shall apply: (1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable; (2) The order adopting, amending or repealing a regulation shall state in writing the reasons for the agency's determination that such emergency action is necessary; (3) the order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days; (4) When such an order is issued without any of the public procedures otherwise required or authorized by Chapter 101 of Title 29, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and (5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the Register of Regulations.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,
Section 107 (31 **Del.C.** §107)

NATURE OF THE PROCEEDINGS:

This emergency regulation is being promulgated to amend the Title XIX Medicaid State Plan to change drug-pricing methodology, effective January 1, 2003. Delaware Health and Social Services ("Department") must take this action on an emergency basis as a cost containment initiative. The Department has determined that a threat to the public welfare exists if is not implemented without prior notice or hearing.

Summary of Proposed Change:

Currently, Delaware reimburses pharmaceuticals using the lower of:

- the usual and customary charge to the general public for the product,
- the **Average Wholesale Price (AWP) minus 12.9%** plus a dispensing fee, or
- a State-specific maximum allowable cost (DMAC) and, in some cases, the federally defined Federal Upper Limit (FUL) prices plus a dispensing fee.

The proposed State Plan Amendment (SPA) changes the AWP methodology as follows:

- Brand name drugs:

- for traditional chain pharmacies and independent pharmacies: AWP minus 16.32% plus a dispensing fee per prescription
- for non-traditional pharmacies: AWP minus 24.32% plus a dispensing fee per prescription.
- Generic drugs for all pharmacies: Average of the Average Wholesale Price (AAWP) minus 58% plus a dispensing fee per prescription.

The dispensing fee remains the same.
The SPA also:

- clarifies terms used in the methodology process by revising the definition of the Delaware Maximum Allowable Cost (DMAC)
- provides definitions of traditional and non-traditional pharmacies; and,
revises reimbursement limits and exceptions.

FINDINGS OF FACT:

The Department finds that these changes should be made in the best interest of the general public of the State of Delaware. The Department will receive, consider, and respond to petitions by any interested person for the reconsideration or revision thereof.

THEREFORE, IT IS ORDERED, that the proposed revision to the regulation be adopted on an emergency basis without prior notice or hearing, and shall become effective January 1, 2003.

Vincent P. Meconi, Secretary, DHSS
11.13.02

DSS EMERGENCY ORDER REGULATIONS #02-48**REVISIONS:**

ATTACHMENT 4.19-B
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State/Territory DELAWARE

Reimbursement for pharmaceuticals:**Overview**

The Delaware Medical Assistance (DMAP) program will reimburse pharmaceuticals using the **lower** of

- the usual and customary charge to the general public for the product,
- ~~the Average Wholesale Price (AWP) minus 12.9% plus a dispensing fee, or~~
- Brand name drugs:
 - for traditional chain and independent pharmacies: AWP-16.32% plus dispensing fee per prescription
 - for non-traditional pharmacies: AWP-24.32% plus dispensing fee per prescription
- Generic drugs for all pharmacies: AAWP-58% plus dispensing fee per prescription
- a State-specific maximum allowable cost (DMAC) and, in some cases, the Federally defined Federal Upper Limit (FUL) prices plus a dispensing fee.

Entities that qualify for special purchasing under Section 602 of the Veterans Health Care Act of 1992, Public Health Service covered entities, selected disproportionate share hospitals and entities exempt from the Robinson-Patman Price Discrimination Act of 1936 must charge the DMAP no more than an estimated acquisition cost (EAC) plus a professional dispensing fee. The EAC must be supported by invoice and payment documentation.

Definitions:

~~**Delaware Maximum Allowable Cost (DMAC)** - The DMAC payment limits will be calculated, for drugs selected by the DMAP, by First Data Bank (FDB) under contract with Delaware Medicaid using the following protocol:~~

- ~~All DMACs will be based on the direct prices.~~
- ~~FDB will use the lowest of either Geneva Generic or Rugby prices. These are national generic labelers/manufacturers that sell directly to pharmacies.~~
- ~~Prices for solid dosing forms will be based on a package size of 100. If that size is not available, the next largest package size will be used.~~
- ~~Prices for liquid products will be based on 120 ml~~

~~for over-the-counter (OTC) medications and 473-480 ml for legend products.~~

- ~~All unit dose packaging calculations will be eliminated.~~
- ~~If neither identified labeler markets the product, the median of all other HCFA rebate participating sources will be used to establish a price.~~

~~Drugs are selected based on experience with charges from pharmacies, which indicates that the product cost is less than or equal to AWP minus 20%.~~

~~Additional medications will be added to the DMAC program after general provider notification.~~

Delaware Maximum Allowable Cost (DMAC) - A maximum price set for reimbursement when a single source product has Average Selling Prices provided by the manufacturer that indicates the AWP is exaggerated. A DMAC will also be established if a single provider agrees to a special price. Any willing provider can dispense the product.

Federal Upper Limit (FUL) - The FUL is a federally defined price and constitutes the upper limit of reimbursement where a DMAC limit does not exist.

ATTACHMENT 4.19B
Page 14a

Limits - the maximum allowed using any of the state methods for calculation ingredient costs.

Non-Traditional Pharmacy - long term care and specialty pharmacies.

Traditional Pharmacy - retail independent and retail chain pharmacies.

Reimbursement Policy:

- ~~Pharmacy providers are free to dispense any product they wish (within the limits of State and federal laws governing pharmacies), but the DMAP payment will not exceed the limits identified above.~~
- ~~The limits apply to all drugs listed in Appendix B (FUL/MAC listing containing the generic name and upper limit/unit source) of the Pharmacy Provider Manual, including brand and substitutes/generics.~~
- ~~State DMAC/FUL limits do not apply to drugs in unit dose packages~~
- ~~The limits apply to all drugs that have a FUL or DMAC.~~
- ~~Medicaid reimbursement is limited to only those drugs supplied from manufacturers that have a~~

~~signed national agreement or an approved existing agreement under Section 1927(a) of the Social Security Act. Restrictions in drug coverage are listed on Page 5 Addendum of Attachment 3.1-A of this Plan.~~

Exceptions:

Exceptions to the reimbursement limits can be made if a physician certifies in ~~his/her~~ their own handwriting that a specific brand is medically necessary, ~~for a particular recipient. The medical necessity must be documented on a FDA Med-Watch form based on the client experiencing an adverse reaction.~~

- ~~A check-off box is NOT acceptable.~~
- ~~A notation of intent in the prescribing physician's own handwriting (such as, "brand necessary", "brand only", dispense as written") IS acceptable (42 CFR §447.331).~~
- ~~Phone-in prescriptions which qualify for an exception must be followed by the proper certification written by the prescriber.~~
- ~~Faxed prescriptions must follow Board of Pharmacy regulations.~~

When an exception exists and a pharmacist wishes to override the limit due to the medical necessity of using the brand name product, refer to the billing section of the Provider Manual for instructions on the proper coding of the claim.

~~If the pharmacist is not willing to accept the DMAP's DMAC/FUL payment when a prescription is received for a brand name product with no substitutions permitted AND the physician has not indicated that the brand is medically necessary according to the above instructions, the pharmacist should:~~

- ~~contact the physician to obtain proper written documentation, or~~
- ~~refer the recipient to another pharmacy that may be willing to fill the prescription for the DMAC price, or, as a last resort,~~
- ~~request full payment from the recipient for the product.~~

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,
Section 107 (31 Del.C. §107)

NATURE OF THE PROCEEDINGS:

This emergency regulation is being promulgated to reduce the number of nursing home patient health care assessments, effective January 1, 2003. Delaware Health and Social Services ("Department") must take this action on an emergency basis as a cost containment initiative. The Department has determined that a threat to the public welfare exists if is not implemented without prior notice or hearing.

SUMMARY OF PROPOSED REVISION

This emergency regulation amends the Division of Social Services Title XIX Medicaid State Plan to reduce the number of nursing home patient health care assessments to two times per year, effective January 1, 2003.

FINDINGS OF FACT

The Department finds that these changes should be made in the best interest of the general public of the State of Delaware. The Department will receive, consider, and respond to petitions by any interested person for the reconsideration or revision thereof.

THEREFORE, IT IS ORDERED, that the proposed revision to the regulation be adopted on an emergency basis without prior notice or hearing, and shall become effective January 1, 2003.

Vincent P. Meconi, Secretary, DHSS
11.18.02

DSS EMERGENCY ORDER REGULATION #02-50

REVISION:

**ATTACHMENT 4.19-D
PAGE 4**

The Department will assign classes to nursing home patients. Initial classification of patients occurs through the State's pre-admission screening program. These initial classifications will be reviewed by Department nurses within 31 to 45 days after assignment. Patient classification will then be reviewed ~~on an ongoing 90-day basis~~ twice a year. Facilities will receive notices from the Department concerning class changes and relevant effective dates.

1. In order to establish the patient classification for reimbursement, patients are evaluated and scored by

Medicaid review nurses according to the specific amount of staff assistance needed in Activity of Daily Living (ADL) dependency areas. These include Bathing, Eating, Mobility/Transfer/Toileting. Potential scores are as follows:

- 0 - Independent
- 1 - Supervision (includes verbal cueing and occasional staff standby)
- 2 - Moderate assistance (requires staff standby/physical presence)
- 3 - Maximum Assistance

Patients receiving moderate or maximum assistance will be considered "dependent" in that ADL area. Patients receiving supervision will not be considered dependent.

Reimbursement is determined by assigning the patient to a patient classifications based on their ADL scores or range of scores.

Each patient classification is related to specific nursing time factors. These time factors are multiplied by the 75th percentile nurse wage in each provider group to determine the per diem rate for each classification.

2. Patients receiving an active rehabilitative/preventive program as defined and approved by the Department shall be reimbursed at the next higher patient class. For qualifying patients at the highest level, the facility will receive an additional 10 percent of the primary care rate component.

To be considered for the added reimbursement allowed under this provision, a facility must develop and prepare an individual rehabilitative/preventive care plan. This plan of care must contain rehabilitative/preventive care programs as described in a Department approved list of programs. The services must seek to address specific activity of daily living and other functional problems of the patient. The care plan must also indicate specific six month and one-year patient goals, and must have a physician's approval.

Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

Proposed Regulations

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation; The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

**DELAWARE COUNCIL ON
POLICE TRAINING**

Statutory Authority: 11 Delaware Code,
Section 8404(a)(5) (11 Del.C. 8404(a)(5))

The Council on Police Training (COPT), in accordance with 11 Delaware Code Section 8404(a)(14) and 29 Delaware Code Section 10115 of the Administrative Procedures Act, hereby gives notice that it shall hold a public hearing on December 19, 2002 at 9:00 a.m. in the conference room at the Delaware State Police Training Academy, N. DuPont Highway, Dover, Delaware 19903.

The Council on Police Training will receive written comments or oral testimony from interested persons regarding the following regulation to amend the current COPT regulation II-16 (Emergency Care & CPR Training). The final date for interested persons to submit written comments shall be the date of the public hearing. Written comments should be addressed to: Captain Gregory Warren, State Police Headquarters, P.O. Box 430, Dover, DE 19903-0430.

Anyone wishing to make written or oral comments who would like a copy of the proposed regulation may contact the COPT at (302) 739-5903, or write the above address.

PROPOSED REVISION

~~As authorized by 8404(a)(5): In order to retain certification, all police officers in the State of Delaware must receive recertification in Emergency Care every three years, and recertification in C.P.R. annually from a certified Council on Police Training or Delaware State Fire School~~

~~instructor. The Chief of Police shall forward to the Administrator, documentation of recertification for each officer under his/her command within 90 days of the anniversary of initial Emergency Care & C.P.R. Certification.~~

All police officers in the State of Delaware shall have successfully completed a First Responder course adhering to the United States Department of Transportation curriculum for First Responder courses as offered by the Delaware State Fire School or as taught in a certified police training academy by a credentialed medical services instructor.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF NURSING**

24 Delaware Admin. Code 1900
Statutory Authority: 24 Delaware Code,
Section 1906(1) (24 **Del. C.** §1906(1))

The Delaware Board of Nursing in accordance with 24 **Del.C.** 1906(1) has proposed to amend Section 7.6 "Dispensing" of the Board's Rules and Regulations.

This proposed rules and regulations specified the limited extent to which licensed practical nurses are authorized to engage in dispensing of medications.

A public hearing will be held on Wednesday, January 15, 2003 at 9:00 a.m. in the second floor Conference Room A, Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware.

Anyone desiring a copy of the proposed change of the Rules and Regulations may obtain a copy from the Delaware Board of Nursing, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904, (302) 744-4516 or 744-4515. Persons desiring to submit written comments on the revised rules and regulations may forward these comments to the above address. The final date to receive written comments will be January 15, 2003.

7.0 Standards of Nursing Practice

7.1 Authority "Standards of nursing practice" means those standards of practice adopted by the Board that interpret the legal definitions of nursing, as well as provide criteria against which violations of the law can be determined. Such standards of nursing practice shall not be used to directly or indirectly affect the employment practices and deployment of personnel by duly licensed or accredited hospitals and other duly licensed or accredited health care facilities and organizations. In addition, such standards shall not be assumed the only evidence in civil malpractice litigation, nor shall they be given a different weight than any other evidence.

7.2 Purpose The purpose of standards is to establish minimal acceptable levels of safe practice for the Registered and Licensed Practical Nurse, and to serve as a guide for the Board to evaluate safe and effective nursing care.

7.3 Standards of Practice for the Registered and Licensed Practical Nurse

7.3.1 Standards related to the Registered Nurse.

7.3.1.1 The Registered Nurse shall conduct and document nursing assessments of the health status of individuals and groups by:

7.3.1.1.1 Collecting objective and subjective data from observations, examinations, interviews and written records in an accurate and timely manner. The data include but are not limited to:

7.3.1.1.1.1 Biophysical and emotional status and observed changes;

7.3.1.1.1.2 Growth and development;

7.3.1.1.1.3 Ethno-cultural, spiritual, socio-economic and ecological background;

7.3.1.1.1.4 Family health history;

7.3.1.1.1.5 Information collected by other health team members;

7.3.1.1.1.6 Ability to perform activities of daily living;

7.3.1.1.1.7 Consideration of client's health goals;

7.3.1.1.1.8 Client knowledge and perception about health status and potential, or maintaining health status;

7.3.1.1.1.9 Available and accessible human and material resources;

7.3.1.1.1.10 Patterns of coping and interaction.

7.3.1.1.2 Sorting, selecting, reporting, and recording the data.

7.3.1.1.3 Analyzing data.

7.3.1.1.4 Validating, refining and modifying the data by using available resources including interactions with the client, family, significant others, and health team members.

7.3.1.1.5 Evaluating data.

7.3.1.2 Registered Nurses shall establish and document nursing diagnoses that serve as the basis for the strategy of care.

7.3.1.3 Registered Nurses shall develop strategies of care based on assessment and nursing diagnoses. This includes, but is not limited to:

7.3.1.3.1 Prescribing nursing intervention(s) based on the nursing diagnosis.

7.3.1.3.2 Initiating nursing interventions through

7.3.1.3.2.1 Giving care.

7.3.1.3.2.2 Assisting with care.

7.3.1.3.2.3 Delegating care.

7.3.1.3.3 Identifying to the identification of priorities in the strategies of care.

7.3.1.3.4 Setting realistic and measurable goals for implementation.

7.3.1.3.5 Identifying measures to maintain comfort, to support human functions and responses, to maintain an environment conducive to well being, and to provide health teaching and counseling.

7.3.1.3.6 Supervising the caregiver to whom care is delegated.

7.3.1.4 Registered Nurses shall participate in the implementation of the strategy of care by:

7.3.1.4.1 Providing care for clients whose conditions are stabilized or predictable.

7.3.1.4.2 Providing care for clients whose conditions are critical and/or fluctuating, under the direction and supervision of a recognized authority.

7.3.1.4.3 Providing an environment conducive to safety and health.

7.3.1.4.4 Documenting nursing interventions and client outcomes.

7.3.1.4.5 Communicating nursing interventions and client outcomes to health team members.

7.3.1.5 Registered Nurses shall evaluate outcomes, which shall include the client, family, significant others and health team members.

7.3.1.5.1 Evaluation data shall be appropriately documented; and

7.3.1.5.1.1 Be communicated to the client, family, significant others and appropriate members of the health care team; and

7.3.1.5.1.2 Used as a basis for modifying outcomes by reassessing client health status, modifying nursing diagnoses, revising strategies of care or prescribing changes in nursing interventions.

7.4 Standards of Practice for the Licensed Practical Nurse

7.4.1 Standards related to the Licensed Practical Nurse's contributions to the nursing process.

7.4.1.1 The Licensed Practical Nurse shall contribute to and document nursing assessments of the health status of individuals and groups by:

7.4.1.1.1 Sorting, selecting, reporting, and recording the data.

7.4.1.1.2 Collecting objective and subjective data from observations, examinations, interview and written records in an accurate and timely manner. The data include but are not limited to:

7.4.1.1.2.1 Biophysical and emotional status and observed changes;

7.4.1.1.2.2 Growth and development;

7.4.1.1.2.3 Ethno-cultural, spiritual, socio-economic, and ecological background;

7.4.1.1.2.4 Family health history;

7.4.1.1.2.5 Information collected by other health team members;

7.4.1.1.2.6 Ability to perform activities of daily living;

7.4.1.1.2.7 Consideration of client's health goals;

7.4.1.2 Licensed Practical Nurses shall participate in establishing and documenting nursing diagnoses that serve as the basis for the strategy of care.

7.4.1.3 Licensed Practical Nurses shall participate in developing strategies of care based on assessment and nursing diagnoses.

7.4.1.3.1 Contributing to setting realistic and measurable goals for implementation.

7.4.1.3.2 Participating in identifying measures to maintain comfort, to support human functions and responses to maintain an environment conducive to well-being, and to provide health teaching and counseling.

7.4.1.3.3 Contributing to setting client priorities.

7.4.1.4 Licensed Practical Nurses shall participate in the implementation of the strategy of care by:

7.4.1.4.1 Providing care for clients whose conditions are stabilized or predictable.

7.4.1.4.2 Providing care for clients whose conditions are critical and/or fluctuating, under the directions and supervision of a recognized licensed authority.

7.4.1.4.3 Providing an environment conducive to safety and health.

7.4.1.4.4 Documenting nursing

interventions and client outcomes.

7.4.1.4.5 Communicating nursing interventions and client outcomes to health team members.

7.4.1.5 Licensed Practical Nurses shall contribute to evaluating outcomes by appropriately documenting and communicating to the client, family, significant others and the health care team members.

7.5 Standards Related to the Registered and Licensed Practical Nurse's Competencies and Responsibilities.

7.5.1 Registered and Licensed Practical Nurses shall:

7.5.1.1 Have knowledge of the statutes and regulations governing nursing and function within the legal boundaries of professional and practical nursing practice.

7.5.1.2 Accept responsibility for competent nursing practice.

7.5.1.3 Function as a member of the health team:

7.5.1.3.1 By collaborating with other members of the health team to provide optimum care, or

7.5.1.3.2 As an LPN under the direction and supervision of a recognized licensed authority.

7.5.1.4 Consult with nurses, other health team members and community agencies for continuity of care and seek guidance as necessary.

7.5.1.5 Obtain instruction and supervision as necessary when implementing nursing techniques.

7.5.1.6 Contribute to the formulation, interpreting, implementing and evaluating of the objectives and policies related to professional and practical nursing practice within the employment setting.

7.5.1.7 Participate in evaluating nurses through peer review.

7.5.1.8 Report unsafe nursing practice to the Board and unsafe practice conditions to recognized legal authorities.

7.5.1.9 Practice without discrimination as to age, race, religion, sex, sexual orientation, national origin, or disability.

7.5.1.10 Respect the dignity and rights of clients regardless of social or economic status, personal attributes or nature of health problems.

7.5.1.11 Respect the client's right to privacy by protecting confidentiality unless obligated by law to disclose the information.

7.5.1.12 Respect the property of clients, their families and significant others. In addition to the proceeding, the Registered Nurse shall:

7.5.1.13 Delegate to others only those nursing interventions that those persons are prepared or qualified to perform.

7.5.1.14 Supervise others to whom nursing interventions are delegated.

7.5.1.15 Retain professional accountability for care when delegating.

7.5.1.16 Teach safe practice to other health care workers as appropriate.

7.6 Dispensing

7.6.1 Definitions

7.6.1.1 ~~“Dispense” — To deliver a medication pursuant to a standing order. “Dispensing” means providing medication according to an order of a practitioner duly licensed to prescribe medication. The term shall include both the repackaging and labeling of medication from bulk to individual dosages.~~

7.6.1.2 “Prescription label” - a label affixed to every prescription or drug order which contains the following information ~~at~~ to a minimum.

7.6.1.2.1 A unique number for that specific drug order.

7.6.1.2.2 The date the drug was dispensed.

7.6.1.2.3 The patient’s full name.

7.6.1.2.4 The brand or established name and manufacturer and the strength of the drug to the extent it can be measured.

7.6.1.2.5 The practitioner’s directions as found on the prescription order.

7.6.1.2.6 The practitioner’s name.

7.6.1.2.7 The initials of the dispensing nurse.

7.6.1.2.8 The name and address of the facility or practitioner from which the drug is dispensed.

7.6.1.2.9 Expiration date.

7.6.1.3 “Standing order” - An order written by the practitioner which authorizes a designated registered nurse or nurses to dispense prescription drugs to his/her patients) according to the standards listed below.

7.6.2 Standards:

~~7.6.2.1 Only registered nurses may assume the responsibility of dispensing as defined in the Nurse Practice Act. and delineated below.~~

~~7.6.2.2 The medication must be prepackaged by a pharmaceutical company or prepared by a registered pharmacist.~~

~~7.6.2.3 The nurse shall be responsible for proper drug storage of the medication prior to dispensing.~~

~~7.6.2.4 The practitioner who originated the prescription or drug order must be on the premises or he/she or their designated coverage shall be available by telephone during the act of dispensing.~~

~~7.6.2.5 Once a drug has been dispensed it shall not be returned for reuse by another or the same patient in an institutional setting.~~

~~7.6.2.6 The nurse may not designate any part of the dispensing function to any other individual who is not licensed to dispense.~~

~~7.6.2.7 The dispensing nurse must assure~~

~~compliance to the state generic substitution laws when selecting the product to be dispensed.~~

~~7.6.2.8 The nurse dispensed prescription may not be refillable; it requires the authority of the prescriber with each dispensing.~~

~~7.6.2.9 A usage review process must be established for the medicines dispensed to assure proper patient usage.~~

~~7.6.2.10 All dispensed drugs must be labeled as defined above and dispensed in proper safety closure containers that meet the standards established by the United States Pharmacopoeia for stability.~~

~~7.6.2.11 Record keeping must include the maintenance of the original written prescription of drug order for at least three years, allow retrospective review of accountability, and provide an audit trail. All dispensing records must be maintained on site, and available for inspection by authorized agents of the Board of Health, Pharmacy, and Nursing.~~

~~7.6.2.12 The dispensing nurse shall assume the responsibility of patient counseling of drug effects, side-effects, desired outcome, precautions, proper storage, unique dosing criteria, drug interactions, and other pertinent data, and record evidence of patient education.~~

~~7.6.2.13 Conformance to paragraphs G through L are not necessary if the original prescription was dispensed by a pharmacist for that specific patient.~~

7.6.3 Medication modifications

~~7.6.3.1 A nurse may accept a change in the dosage of a medication from a pharmacist who is acting as an agent of the physician.~~

7.6.2 Authority to Dispense

7.6.2.1 Registered Nurses may assume the responsibility of dispensing as defined in the Nurse Practice Act.

7.6.2.2 Licensed Practice Nurses may assume the responsibility of dispensing as authorized by the Nurse Practice Act and defined in these Regulations, Section 7.6.2.2.1., 7.6.2.2.2, and 7.6.2.2.3

7.6.2.2.1 Licensed Practical Nurses may provide to a patient pre-packaged medications in accordance with the order of a practitioner duly licensed to prescribe medication where such medications have been pre-packaged by a person with lawful authority to dispense drugs.

7.6.2.2.2 Licensed Practical Nurses, per written order of a physician, dentist, podiatrist, advanced practice nurse, or other practitioner duly licensed to prescribe medication, may add the name of the client to a preprinted label on a pre-packaged medication.

7.6.2.2.3 Licensed Practical Nurses in a licensed methadone clinic may apply a preprinted label to a pre-packaged medication.

7.6.3 Standards for Dispensing

7.6.3.1 All licensed nurses engaged in

dispensing shall adhere to these standards.

7.6.3.1.1 The medication must be prepackaged by a pharmaceutical company or prepared by a registered pharmacist.

7.6.3.1.2 The nurse shall be responsible for proper drug storage of the medication prior to dispensing.

7.6.3.1.3 The practitioner who originated the prescription or drug order must be on the premises or he/she or their designated coverage shall be available by telephone during the act of dispensing.

7.6.3.1.4 Once a drug has been dispensed it shall not be returned for reuse by another or the same patient in an institutional setting.

7.6.3.1.5 The nurse may not delegate any part of the dispensing function to any other individual who is not licensed to dispense.

7.6.3.1.6 The dispensing nurse must assure compliance to the state generic substitution laws when selecting the product to be dispensed.

7.6.3.1.7 The nurse-dispensed prescription may not be refillable; it requires the authority of the prescriber with each dispensing.

7.6.3.1.8 A usage review process must be established for the medicines dispensed to assure proper patient usage.

7.6.3.1.9 All dispensed drugs must be labeled as defined above and dispensed in proper safety closure containers that meet the standards established by the United States Pharmacopoeia for stability.

7.6.3.1.10 Record keeping must include the maintenance of the original written prescription of drug order for at least three years, allow retrospective review of accountability, and provide an audit trail. All dispensing records must be maintained on site, and available for inspection by authorized agents of the Board of Health, Pharmacy, and Nursing.

7.6.3.1.11 The dispensing nurse shall assume the responsibility of patient counseling of drug effects, side-effects, desired outcome, precautions, proper storage, unique dosing criteria, drug interactions, and other pertinent data, and record evidence of patient education.

7.6.3.1.12 Conformance to paragraphs 6 through 11 are not necessary if the original prescription was dispensed by a pharmacist for that specific patient.

7.7 Delegation

7.7.1 Definitions

7.7.1.1 "Unlicensed Assistive Personnel" - Individuals not licensed to perform nursing tasks that are employed to assist in the delivery of client care. The term "unlicensed assistive personnel" does not include members of the client's immediate family, guardians, or friends; these individuals may perform incidental care of the sick in private homes without specific authority from a licensed nurse (as

established in 24 Del.C. §1921(a)(4) of the Nurse Practice Act).

7.7.1.2 "Delegation" - Entrusting the performance of selected nursing duties to individuals qualified, competent and legally able to perform such duties while retaining the accountability for such act.

7.7.1.3 "Supervision" - The guidance by a registered nurse (RN) for the accomplishment of a function or activity. The guidance consists of the activities included in monitoring as well as establishing the initial direction, delegating, setting expectations, directing activities and courses of action, critical watching, overseeing, evaluating, and changing a course of action.

7.7.1.4 "Accountability" - The state of being accountable, answerable, or legally liable for actions and decisions, including supervision.

7.7.2 Conditions

7.7.2.1 The following conditions are relevant to delegation:

7.7.2.1.1 Only RNs may delegate.

7.7.2.1.2 The RN must be knowledgeable regarding the unlicensed assistive personnel's education and training and have opportunity to periodically verify the individual's ability to perform the specific tasks.

7.7.2.1.3 The RN maintains accountability for determining the appropriateness of all delegated nursing duties and responsibility for the delivery of safe and competent care. Unlicensed assistive personnel may not reassign a delegated act.

See 1 DE Reg. 1888 (6/1/98)

7.7.3 Criteria

7.7.3.1 The RN may delegate only tasks that are within the scope of sound professional nursing judgment to delegate.

7.7.3.2 Determination of appropriate factors include, but are not limited to:

7.7.3.2.1 stability of the client's condition

7.7.3.2.2 educational background, skill level, or preparation of the individual

7.7.3.2.3 nature of the nursing act that meets the following:

7.7.3.2.3.1 task is performed frequently in the daily care of a client

7.7.3.2.3.2 task is performed according to an established sequence of steps

7.7.3.2.3.3 task may be performed with a predictable outcome

7.7.3.2.3.4 task does not involve ongoing assessment, interpretation or decision making that cannot be logically separated from the task itself.

7.7.3.3 The RN must be readily available in person or by telecommunication.

7.7.4 Exclusions

7.7.4.1 The following activities require

nursing knowledge, judgment, and skill and may not be delegated by the RN to an unlicensed assistive person. These exclusions do not apply to Advanced Practice Nurses.

See 1 DE Reg. 1888 (6/1/98)

7.7.4.2 Physical, psychological, and social assessment which requires professional nursing judgment, intervention, referral, or follow-up;

7.7.4.3 Development of nursing diagnosis and care goals;

7.7.4.4 Formulation of the plan of nursing care and evaluation of the effectiveness of the nursing care provided;

7.7.4.5 Specific tasks involved in the implementation of the plan of care which require nursing judgment, skill, or intervention, that include, but are not limited to: performance of sterile invasive procedures involving a wound or anatomical site; nasogastric, newly established gastrostomy and jejunostomy tube feeding; nasogastric, jejunostomy and gastrostomy tube insertion or removal; suprapubic catheter insertion and removal; (phlebotomy is not considered a sterile, invasive procedure);

7.7.4.6 Administration of medications, including prescription topical medications; and

7.7.4.7 Receiving or transmitting verbal orders.

*** PLEASE NOTE: AS THE REST OF THE REGULATIONS WERE NOT AFFECTED THEY ARE NOT BEING REPRODUCED HERE.**

BOARD OF EXAMINERS OF PSYCHOLOGISTS

24 Delaware Admin. Code 3500

Statutory Authority: 24 Delaware Code,
Section 3506 (24 **Del. C.** §3506(a)(1))

Please take notice, pursuant to 29 **Del.C.** Ch. 101 and 24 **Del.C.** Ch. 35, the Delaware Board of Examiners of Psychologists proposes the following amendment to Rule 7.2 of the Delaware Board of Examiners of Psychologists' Rules and Regulations.

A public hearing will be held on the proposed amendment to Rule 7.2 on January 6, 2003 at 9:00 a.m. in Conference Room A of the Cannon Building, 861 Silver Lake Blvd., Dover, Delaware. The purpose of this hearing will be to receive public comments on the proposed amendment to Rule 7.2 in order that the Board of Examiners of Psychologists may vote to adopt, amend or reject said amendment at its January, 2003 meeting.

The Board will receive and consider input in writing from any person regarding the proposed amendment to Rule 7.2. Written comments should be submitted to the Board up

through and including the date and time of the hearing on January 6, 2003 at 9:00 a.m., to Vicki Gingrich, Administrative Assistant, at the Division of Professional Regulation, Cannon Building, 861 Silver Lake Blvd., Suite 203, Dover, Delaware 19904-2467. For copies of the proposed amendment to Rule 7.2, please contact Ms. Gingrich at the above address or by calling (302) 744-4500.

7.0 Supervised Experience

The types of supervision pertinent to licensure as a psychologist or registration as a psychological assistant are comprised of three types of supervisory experiences:

7.1 Predoctoral internship supervision as required by doctoral programs in psychology. The predoctoral internship consists of a minimum of 1,500 hours of actual work experience completed in not less than 48 weeks, nor more than 104 weeks. At least 50% of the predoctoral supervised experience must be in clinical services such as treatment, consultation, assessment, and report writing, with at least 25% of that time devoted to face-to-face direct patient/client contact. No more than 25% of time shall be allocated for research.

7.2 Postdoctoral supervision is required for initial licensure as a psychologist. Postdoctoral experience must consist of ~~3,000~~ 1,500 hours of actual work experience. This experience is to be completed in not less than ~~two years~~ one year and not more than three calendar years, save for those covered under 24 **Del.C.** §3519(e). For those individuals the accrual of ~~3,000~~ 1,500 hours of supervised postdoctoral experience must take place within six calendar years from the time of hire. There is to be one hour of face-to-face supervision for every 1-10 hours of clinical work. This experience shall consist of at least twenty-five percent and not more than sixty percent of the time devoted to direct service per week in the area of the applicant's academic training. "Direct service" consists of any activity defined as the practice of psychology or the supervision of graduate students engaging in activities defined as the practice of psychology. Not more than 25% of this supervision can be done by other licensed mental health professionals besides psychologists.

The purpose of the postdoctoral supervision is to train psychologists to practice at an independent level. This experience should be an organized educational and training program with explicit goals and a clear plan to meet those goals. There should be regular written evaluations based on this program.

7.3 Supervision of psychological assistants is required at the frequency of one hour of face-to-face supervision for every 1-10 hours of clinical work by the psychological assistants, as required by Section 9 of the Rules and Regulations. An individual registered as a psychological assistant may or may not be receiving supervision in pursuit of independent licensure as a psychologist.

7.4 A psychologist providing either postdoctoral supervision or supervision of psychological assistants must have been in practice for two years post licensure in this or any other state without having been subject to any disciplinary actions. He/she must provide 24-hour availability to both the supervisee and the supervisee's clients, or ensure that adequate alternative coverage is provided in the supervisor's absence. The supervising psychologist shall have sufficient knowledge of all clients including face-to-face contact when necessary and must be employed or under contract in the setting where the clinical service takes place and the supervision must occur within that setting.

See 2 DE Reg. 776 (11/1/98)

*** PLEASE NOTE: AS THE REST OF THE REGULATIONS WERE NOT AFFECTED THEY ARE NOT BEING REPRODUCED HERE.**

MERIT EMPLOYEE RELATIONS BOARD
Statutory Authority: 29 Delaware Code,
Section 5914 (29 Del.C. §5914)

Public Notice
Proposed Changes To
State Of Delaware Merit Rules

PLEASE TAKE NOTICE that on August 1, 2002, pursuant to 29 Del.C. §5914 and 29 Del.C. ch. 101, proposed changes in two (2) Rules in Chapter 10 of the Merit Rules have been transmitted to the Merit Employee Relations Board of the State of Delaware ("MERB") from the Director of the Office of State Personnel ("Director"). The proposed changes, which the Director asserts have been approved by both the Director and by the Statewide Labor-Management Committee, would modify Merit Rule No. 10.0230 and Merit Rule No. 10.0240.

The stated basis for the proposed changes are legislative modifications of the Delaware Statutes governing State Classified Service and the Merit Rules:

By 72 Del. Laws. c. 359, the provisions of 29 Del.C. §5921 [relating to the appointment of the highest ranking candidates] was modified by the Delaware General Assembly by deleting the second sentence which read "The rules shall not require the employing agency to interview more than 1 person on such list." and substituting in its place a new sentence reading "These rules shall not require an employing agency with less than 200 full time employees to interview more than 1 person on such list. If the employing agency has 200 or more full time employees, the rules shall require the employing agency to interview at least 5 persons on such list."

As a result of the legislative change, the Director has proposed that Merit Rule No. 10.0230 be modified as follows:

Rule No. 10.0230 Any candidate whose name appears on a certified list may be considered to fill the vacancy for which the list was requested. Agencies with 200 or more full-time employees shall interview at least five candidates from the list if there are at least five names on the list. Agencies with fewer than 200 full-time employees shall interview at least one candidate from the list. ~~If~~ ~~Should~~ the list ~~be~~ ~~is~~ unsatisfactory, it may be returned and ~~subsequent~~ new lists may be requested, provided the reasons for rejection accompany the returned list.

By 73 Del. Laws. c. 142, the provisions of 29 Del.C. §5919 [relating to eligibility lists] was modified by the Delaware General Assembly by deleting 29 Del.C. §5919 in its entirety and replacing it with a new §5919 which reads:

The rules shall provide for the establishment of eligibility lists for appointment and promotion. Such lists shall include the names of successful candidates in the order of their relative performance in the particular examinations, except where such lists contain fewer than 15 candidates, in which case the names of the successful candidates may be listed in alphabetical order. Eligibility for appointment from any such list shall continue for not more than 3 years. Vacant positions in pay grades 1-4 will be filled by agency recruitment efforts unless an eligibility list is required by federal law for that position.

The Director has proposed the following change to Merit Rule No. 10.0240 :

Merit Rule No. 10.0240 Eligibility lists must be rank ordered in accordance with procedures outlined by the Director, ~~except that if the number of qualified candidates is less than 15, the~~ ~~In those circumstances where there are no ranking procedures in place and the number of qualified candidates is equal to or fewer than the maximum number to be certified,~~ names may be certified in alphabetical order. In those instances, the appointing authority ~~must~~ shall be informed that the list is in alphabetical order.

On January 9, 2003, the MERB will conduct a Public Hearing on the proposed Merit Rule changes submitted by

the Director. The hearing will begin at 9:30 a.m. in the 2nd Floor Conference Room of the Margaret M. O'Neill Building, 410 Federal Street, Dover, Delaware.

The MERB will also receive and consider timely filed written submissions from interested individuals and groups concerning the proposed Merit Rule changes. The final date for any such written submissions is the date set forth above for the public hearing. Any such submissions should be mailed or delivered to the following address:

Merit Employee Relations Board
Margaret M. O'Neill Building, Suite 213
410 Federal Street
Dover, Delaware 19901

PLEASE NOTE pursuant to 24 Del.C. §5914, the changes **as proposed by the Director** will shall become final upon the completion of the public hearing, unless rejected by a majority of the members appointed to the Board. Anyone wishing to obtain copies of the Director's written filing with MERB or to present oral comments at the hearing should call Ms. Jean Lee Turner the Merit Employee Relations Board at (302) 739-6772.

Chapter 10.0000 Certification

10.0100 Request for Certification

Whenever an appointing authority desires to fill a position, a request for certification of eligibles shall be completed following the procedure prescribed by the Director.

10.0200 Certification of Eligibles

Upon receipt of a request for certification, the appointing authority shall certify all names from layoff list that exists for the class, names of former employees approved for reinstatement, current employees eligible for transfer and no more than 5 or 15% of the eligible candidates, whichever is the greater number.

10.0210 If the appointing authority requests names to fill more than one position, the number of names certified shall be increased by twice the number of additional vacancies.

10.0220 While an appointing authority is considering names from a certified list, subsequent requests may be received for certified lists using the same eligibility register for other vacancies. The number of names on each certified list will be determined in accordance with 10.0210, that is, the number of names shall be increased by two (from the base of 15% or 5) for each prior outstanding vacancy being considered from the same employment register.

10.0230 Any candidate whose name appears on a certified list may be considered to full the vacancy for which

the list was requested. Agencies with 200 or more full-time employees shall interview at least five candidates from the list if there are at least five names on the list. Agencies with fewer than 200 full-time employees shall interview at least one candidate from the list. ~~If Should~~ the list be is unsatisfactory, it may be returned and ~~subsequent~~ new lists may be requested, provided the reasons for rejection accompany the returned list.

10.0240 Eligibility lists must be rank ordered in accordance with procedures outlined by the Director, ~~except that if the number of qualified candidates is less than 15, the~~ In those circumstances where there are no ranking procedures in place and the number of qualified candidates is equal to or fewer than the maximum number to be certified, names may be certified in alphabetical order. In those instances, the appointing authority ~~must~~ shall be informed that the list is in alphabetical order.

10.0300 Residence

For tie breaking purposes, Delaware residents with identical final scores will be placed on the certified list.

10.0400 Veteran's Preference

Veterans and disabled veterans, as defined in Chapter 2 or their unmarried widows, shall receive five (5) additional and ten (10) additional points respectively upon successful completion of an examination for initial appointment to State employment only and that they may be required to present proof of honorable discharge, and in the case of disabled veterans, of disability.

DEPARTMENT OF AGRICULTURE THOROUGHBRED RACING COMMISSION

Statutory Authority: 3 Delaware Code,
Section 10103 (3 Del.C. §10103)

The **Commission** proposes to amend the Rules as follows: 1) amend Rule 13.01 to provide that owners who are stabled on the licensee's grounds and who have started a horse may claim, and that an owner shipping in a horse may claim a horse to replace a claimed horse, and to set forth the procedure to obtain an open claiming license; and, 2) amend Rule 13.16 to add a provision that a stable will lose its claiming rights when eliminated by sale of horses or removal from the grounds, and that an owner who claims a horse under the rule is required to reinstate his eligibility to claim under the rules.

The Commission issues these proposed rules pursuant to 3 Del.C. §10103 and 29 Del.C. §10115. The Commission will accept written comments from December 1, 2002 through December 30, 2002. The Commission will hold a public hearing on the proposed amendments on January 6,

2003 at 11:00 a.m. at Delaware Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901. Written comments should be submitted to John Wayne, Administrator of Racing, Delaware Thoroughbred Racing Commission, 2320 S. DuPont Highway, Dover, DE 19901.

Part 13-Claiming Races

13.01 Owners Entitled:

~~In claiming races, any horse is subject to claim for its entered price by any Owner in good standing who possesses a valid/current Delaware license.~~

In claiming races, any horse is subject to claim for its entered price by any Owner in good standing, who has horses stabled on the Licensee's grounds, and who has started a horse at the race meeting at which the claim is made. An Owner may claim out of the race in which he first starts a horse. Owners shipping in from other stable areas who have a horse claimed shall be allowed one claim to replace the horse lost via claiming.

A new Owner, i.e., an individual, partnership, corporation or any other authorized racing interest who has not held an Owner's license in any racing jurisdiction during the prior year, is eligible to claim by obtaining an "Open Claiming License" from the Commission.

In order to obtain an open claiming license and file an open claim, an individual must comply with the following procedures:

(a) Depositing an amount no less than the minimum claiming price of the intended claim at that meet with the Horsemen's Bookkeeper. Such amount shall remain on account until a claim is in fact made. In the event of withdrawal of such fund, any license issued hereunder shall be automatically revoked and terminated.

(b) Securing an Owner or authorized racing interest license by the Commission. Such license will be conditioned upon the making of a claim and shall be revoked if no such claim is, in fact, made within thirty (30) racing days after issuance or if the deposit above required is withdrawn prior to completion of a claim.

(c) Naming a Trainer licensed by the Commission who will represent him once said claim is made.

See 5 DE Reg. 849 (10/1/01)

13.02 Claim by Agent:

A claim may be made by an authorized agent, but an agent may claim only for the account of those for whom he is authorized and registered as agent and the name of the authorized agent, as well as the name of the Owner for whom the claim is being made, shall appear on the claim slip.

13.03 Claiming Own Horse Prohibited:

No person shall claim his own horse or cause his own horse to be claimed, directly or indirectly, for his own

account. No claimed horse shall remain in the same stable or under the care or management of the Owner or Trainer from whom claimed.

13.04 Limits on claims:

No person shall claim more than one horse from any one race. No authorized agent, although representing several Owners, shall submit more than one claim for any race. When a stable consists of horses owned by more than one person, trained by the same Trainer, not more than one claim may be entered on behalf of such stable in any one race. An Owner who races in a partnership may not claim except in the interest of the partnership, unless he has also started a horse in his own individual interest. An owner who races in a partnership may claim in his or her individual interest if the individual has started a horse in the partnership. The individual must also have an account with the horsemen's bookkeeper that is separate from the partnership account.

See 2 DE Reg. 2043 (5/1/99)

13.05 Thirty Day Prohibition -- Racing Claimed Horse:

A claimed horse shall not run for twenty days after being claimed in a race in which the determining eligibility price is less than twenty-five percent more than the price for which the horse was claimed. The day claimed shall not count but the following calendar day shall be the first day, and the horse shall be entitled to enter whenever necessary so that it may start on the twenty-first day calendar following the claim. This provision shall not apply to starter handicaps, allowance and starter allowance races.

See 5 DE Reg. 1710 (3/1/02)

13.06 Thirty Day Prohibition -- Sale of Claimed Horse:

No horse claimed in a claiming race shall be sold or transferred, wholly or in part, to anyone within thirty (30) days after the day it was claimed, except in another claiming race. No claimed horse shall race elsewhere until sixty (60) calendar days after the date on which it was claimed or until after the close of the meeting at which it was claimed, whichever comes first. The day claimed shall not count, but the following calendar day shall be the first day and the horse shall be entitled to enter elsewhere whenever necessary so the horse may start on the 61st calendar day following the claim. The Stewards shall have the authority to waive this rule upon application, so as to allow a claimed horse to race in a stakes race. The Stewards may also permit a horse claimed in a steeplechase or hurdle race to race elsewhere in a steeplechase or hurdle race after the close of the steeplechase program, if such a program ends before the close of the meeting at which it is claimed.

Revised: 7/16/86

13.07 Form of Claim:

Each claim shall be made in writing on a form and in an envelope supplied by Licensee. Both form and envelope must be filled out completely and must be accurate in every detail.

13.08 Procedure for Claim:

Claims must be deposited in the claim box at least ten (10) minutes before post time of the race from which the claim is being made. No money or its equivalent shall be put in the claim box. For a claim to be valid, the claimant must have, at the time of filing the claim, a credit balance in his account with the Horsemen's Bookkeeper of not less than the amount of the claim.

Revised: 8/15/95

13.09 Stewards' Duties:

The Stewards, or their designated representatives, shall open the claim envelopes for each race as soon as the horses leave the paddock en route to the post. They shall thereafter check with the Horsemen's Bookkeeper to ascertain whether the proper credit balance has been established with the Licensee and with the Racing Secretary as to whether the claimant has claiming privileges at Licensee's meeting.

13.10 Conflicting claims:

If more than one valid claim is filed for the same horse, title to the horse shall be determined by lot under the supervision of the Stewards or their designated representative.

13.11 Delivery of Claimed Horse:

Any horse that has been claimed shall, after the race has been run, be taken to the paddock for delivery to the claimant, who must present written authorization for the claim from the Racing Secretary. No person shall refuse to deliver to the person legally entitled thereto a horse claimed out of a claiming race and, until delivery is made, the horse in question shall be disqualified from further racing.

13.12 Nature and Effect of a Claim:

Claims are irrevocable. Title to a claimed horse shall be vested in the successful claimant from the time the said horse is a starter and said claimant shall then become the Owner of the horse, whether it be alive or dead, sound or unsound, or injured, during the race or after it. A claimed horse shall run in the interest of and for the account of the Owner from whom claimed.

13.13 Prohibited Practices:

No person shall offer or enter into an agreement to claim or not to claim or to attempt to prevent another person from claiming any horse in a claiming race. No person shall attempt, by intimidation, to prevent anyone from running a

horse in any claiming race. No Owner or Trainer shall make an agreement with another Owner or Trainer for the protection of each other's horses in a claiming race.

Rule 13.06 Rev. March 1976.

13.14 Invalidation of Claim:

Claims which are not made in keeping with the Rules shall be void. The Stewards may, at any time in their discretion, require any person filing a claim to furnish an affidavit in writing that he is claiming in accordance with these Rules. The Stewards shall be the judges of the validity of the claim and, if they feel that a "starter" was nominated for the purpose of making its Owner eligible to claim, they may invalidate the claim.

13.15 Necessity to Record Lien:

Any person holding a lien of any kind against a horse entered in a claiming race must record the same with the Racing Secretary and/or Horsemen's Bookkeeper at least thirty (30) minutes before post time for that race. If none is so recorded, it shall be conclusively assumed, for claiming purposes, that none exists.

13.16 Claiming Privileges-Eliminated Stable:

If a person's stable shall be eliminated within thirty (30) racing days or less remaining in the current racing season, and such person is unable to replace the horse(s) lost via a claim by the end of the racing season, such person may apply to the Stewards for an additional thirty (30) racing days of eligibility to claim in the new race meeting as long as the person owns no other horses at the start of the next race meeting.

Should a stable at a meeting be eliminated by sale or removal from the grounds, the right to claim is void. After claiming a horse under the conditions of this Rule, the Owner shall be required to reinstate his eligibility to claim pursuant to these Rules before being eligible to make another claim.

See 1 DE Reg. 714 (12/1/97)

13.17 Claim Embraces Horse's Prior Engagements:

The engagements of a claimed horse pass automatically with the horse to the claimant.

13.18 Caveat Emptor:

Notwithstanding any designation of sex or age appearing on the racing program or in any racing publication, the claimant of a horse shall be solely responsible for determining the age or sex of the horse claimed.

13.19 Racing Claimed Horse:

Repealed

See 2 DE Reg. 374 (9/1/98)

See 5 DE Reg. 1710 (3/1/02)

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 Del.C. §122(d))

Educational Impact Analysis

**525 Requirements for Vocational-Technical
Education Programs**

530 Cooperative Education

535 Diversified Occupations Programs

A. Type Of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis Of Subject Matter Of The Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend regulations 525 Requirements for Vocational-Technical Education Programs, 530 Cooperative Education and 535 Diversified Occupations Programs by adding regulations 530 and 535 to regulation 525 making one regulation instead of three. Other amendments include substituting the word "Career" for the word "Vocational" (including the word "Vocational" in the title of regulation 525) when applied to teachers and programs and correcting the names of three student organizations. Language was also removed from Sections 2.1 and 2.11 that could have restricted the approval of certain Career and Technical Programs in the regular high schools in the state (required as per Section 264 of the 2003. Budget Epilogue). Additional amendments were made for clarity in 3.3. and 4.3 concerning the inclusion of training objectives in each student's training agreement and the ages and signatures required for the State Work Permit for Minors.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation corrects and clarifies parts of the regulation thus making it more effective as a tool for improving student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation seeks to standardize the quality of all career and Technical programs in the state.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation does, indirectly through the Career and Technical Education Program requirements, help to insure the health and safety of career and technical education students.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation does not directly address a student's legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision making at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation will not place any unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation will be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? There must be regulations in place in order to carry out state and federal mandates for career and technical education.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no additional cost to the State or to the local school boards of compliance with the regulation.

525 Requirements for ~~Vocational~~ Career-Technical Education Programs

1.0 All ~~Vocational~~ Career-Technical Education Programs shall meet the provisions of Delaware's State Plan for ~~Vocational~~ Career and Technical Education and meet the provisions of the content standards approved by the Department of Education or, if there are no approved state content standards, meet local program standards approved by the Department of Education.

2.0 All local school districts and charter schools offering that offer state approved ~~vocational-technical-education programs~~ Career-Technical Education Programs shall:

2.1 Have the approval of the Department of Education

before implementing new programs. ~~New programs of a similar nature may not be approved where enrollment may compete with already existing programs.~~

2.2 Have adequate funding to support and sustain the instructional program.

2.3 Employ teachers certified in ~~vocational-technical education program~~ Career-Technical Education Program areas.

2.4 Make provisions for meeting the unique needs of all students.

2.5 Establish and maintain an active advisory committee which includes labor and management personnel to assist in the development and operation of the program.

2.6 Use present and projected labor market information, available from the Delaware Occupational Information Coordinating Committee, to determine the need for new and continuing ~~vocational-technical education programs~~ Career-Technical Education Programs.

2.7 Survey local business and industry to determine their occupational needs and the availability of placement and employment opportunities for program completers.

2.8 Survey the student population to determine their occupational interests and needs.

2.9 Organize and financially support ~~vocational-career-technical student organizations~~ as integral components of ~~vocational-technical education programs~~ Career-Technical Education Programs in public schools that complement and enrich instruction. The following ~~vocational~~ career-technical student organizations are affiliated in Delaware:

2.9.1 Business Professionals of America (BPA)

2.9.2 Technology Student Association (TSA)

2.9.3 Distributive Education Clubs of America (DECA), an association of marketing students

2.9.4 ~~Future Homemakers of America (FHA/HERO)~~ Family, Career and Community Leaders of America (FCCLA)

2.9.5 The National ~~Future Farmers of America (FFA)~~ FFA Organization

2.9.6 ~~Vocational Industrial Clubs of America (VICA)~~ Skills USA/VICA

2.10 Integrate related academic content into individual ~~vocational-technical~~ career-technical education courses, and guide students through a course selection process that supports the necessary academic preparation required by the student's career path and educational goals.

2.11 Schedule trade and industrial education programs, when offered, for a minimum of two consecutive periods a day or the equivalent, five days a week for two or more years. ~~Trade and Industry programs are highly specialized and are conducted in comprehensive vocational technical school districts. Any exception must be requested in writing showing just cause, and be approved by the Department of Education.~~

2.12 Establish no rules practices or regulations that

interfere with, prohibit or otherwise prevent students from having the opportunity to learn about, enroll in and complete a ~~vocational-technical education program~~ Career-Technical Education Program in a ~~Vocational-Technical School District~~ career-technical school district.

2.13 Use equipment and facilities comparable to that used by local business and industry for which the ~~vocational-technical program~~ Career-Technical Education Program is preparing students.

2.14 Schedule Department of Education and Delaware Advisory Council on Career and Vocational Education program review and monitoring visits upon request.

See 1 DE Reg. 1196 (2/1/98)

3.0 Cooperative Education Programs: Cooperative Education provides senior Career-Technical Education Program students with coordinated on-the-job training not ordinarily available in the classroom. During the student's senior year, employers may provide this on-the-job training in occupations directly related to the Career-Technical-Education Program in which the student is enrolled. For the purpose of granting credit during the school year two hours of Cooperative Education Work Experience shall equal one hour of instructional time. In a summer Cooperative Education Work Experience Program one-half unit of credit shall be granted and shall be counted toward the units of credit necessary for graduation.

3.1 In order to qualify for Career-Technical Education funding units the Career-Technical Education Program Teacher or Career Guidance Counselor shall be provided with a full class period, each day, for every fifteen (15) students enrolled in the Cooperative Education Work Experience Program in order to make quarterly visits to the student's place of employment to ensure coordination between the classroom and the on-the-job experience.

3.2 In order to qualify for Career-Technical Education funding units the students shall; possess minimum occupational competencies specified by the Career-Technical Education Teacher Coordinator before being placed in cooperative employment, be in their senior year and be in a Cooperative Education Work Experience Program that relates directly to the student's current or completed career-technical education pathway and be supervised through on-site visits by an assigned Career-Technical Education Program Teacher Coordinator or Career Guidance Counselor.

3.3 In order to qualify for Career-Technical Education funding units the school shall have on file, for each student; a training agreement that includes training objectives and is signed by a parent or guardian, the employer, the student and a representative of the district. A State Work Permit for Minors in accordance with State Department of Labor regulations shall also be on file.

See 2 DE Reg. 111 (7/1/98)

4.0 Diversified Occupations Programs: Diversified Occupations Programs provide students with coordinated on-the-job training not ordinarily available in the classroom. During the student's junior and senior year, employers provide this on-the-job training. For the purpose of granting credit during the school year, two hours of work experience in a Diversified Occupations Work Experience Program shall equal one hour of instructional time. In a summer Diversified Occupations Work Experience Program one-half unit of credit shall be granted and that credit shall be counted toward the units of credit necessary for graduation.

4.1 In order to qualify for Career-Technical Education funding units a Career-Technical Education Program Teacher or Career Guidance Counselor shall be provided with a full class period, each day, for every fifteen (15) students enrolled in the Diversified Occupations Work Experience Program in order to make on-site visits to the student's place of employment to ensure coordination between the classroom and the on-the-job experience.

4.2 In order to qualify for Career-Technical Education funding units the students shall; possess minimum readiness competencies as specified by the Career-Technical Education Program Teacher Coordinator before being placed in a Diversified Occupations Work Experience Program employment situation, be in their junior or senior year and be actively enrolled in a Diversified Occupations Work Experience Program that meets for at least one class period per week.

4.3 In order to qualify for Career-Technical Education funding units the school shall have on file, for each student: a training agreement that includes training objectives and is signed by a parent or guardian, the employer, the student and a representative of the district. A State Work Permit for Minors in accordance with State Department of Labor regulations shall also be on file.

See 2 DE Reg. 111 (7/1/98)

PROFESSIONAL STANDARDS BOARD

Amendment Of Certification Regulations 302, 304, 311, 312, 313, 314, 1535, 1536, 1538

A. Type of Regulatory Action Requested.

Amendment to Existing Regulation

B. Synopsis Of Subject Matter Of Regulation

The Professional Standards Board in cooperation and collaboration with the Department of Education seeks the approval of the State Board of Education to amend the following regulations:

302	Certification Administrative – Superintendent
304	Certification Administrative – Assistant Superintendent for Curriculum
311	Certification Administrative – Elementary School Principal or Assistant Principal
312	Certification Administrative – Secondary School Principal or Assistant Principal
313	Certification Administrative – Principal of a School for Children with Disabilities
314	Certification Administrative – Principal or Assistant Principal/Administrator of Adult and Adult/Alternative Education
1535	Certification Administrative – Administrative Assistant
1536	Certification Administrative – Director
1538	Certification Administrative – Supervisor

It is necessary to amend these regulations in order to comply with changes in statute regarding the licensure and certification of educators. Further, by amending these regulations, the number of regulations will be reduced from nine to three, thereby furthering the goal of reducing the number and complexity of regulations.

Regulations 311 Certification Administrative – Elementary School Principal or Assistant Principal, 312 Certification Administrative – Secondary School Principal or Assistant Principal, 313 Certification Administrative – Principal of a School for Children with Disabilities, and 314 Certification Administrative – Principal of Assistant Principal/Administrator of Adult and Adult/Alternative Education will be amended by deleting them in their entirety and replacing them with regulation 1530 Certification Administrative – School Principal. This amended regulation is aligned with the Delaware Administrator Standards and acknowledges the core of skills and knowledge required for school leaders. The amended regulation also reflects current research in school leadership and is consistent with leader training and preparation programs being delivered and/or developed in the State of Delaware.

Regulations 1535 Certification Administrative – Administrative Assistant, 1536 Certification Administrative – Director, and 1538 Certification Administrative – Supervisor will be amended by deleting them in their entirety and replacing them with regulation 1531 Certification Administrative – School Leader I. This amended regulation is aligned with the Delaware Administrator Standards and acknowledges the core of skills and knowledge required for school leaders. The amended regulation also reflects current research in school leadership and is consistent with leader training and preparation programs being delivered and/or developed in the State of Delaware. Further, the amended regulation acknowledges the expanded skill and knowledge required at a broader level than the school building level.

Regulations 302 Certification Administrative – Superintendent and 304 Certification Administrative – Assistant Superintendent for Curriculum will be amended by deleting them in their entirety and replacing them with regulation 1532 Certification Administrative – School Leader II. This amended regulation is aligned with the Delaware Administrator Standards and acknowledges the core of skills and knowledge required for school leaders. The amended regulation also reflects current research in school leadership and is consistent with leader training and preparation programs being delivered and/or developed in the State of Delaware. Further, the amended regulation acknowledges the expanded and deeper skill and knowledge required to exercise leadership as a chief school officer or assistant.

C. Impact Criteria

1. Will the amended regulations help improve student achievement as measured against state achievement standards? The amended regulations address student achievement by educational leaders support and lead Delaware educators and establish and sustain positive environments which encourage high student achievement.

2. Will the amended regulations help ensure that all students receive an equitable education? The amended and new regulations helps to ensure that all school administrators hired to lead buildings or districts meet high standards for certification.

3. Will the amended regulations help to ensure that all students' health and safety are adequately protected? The amended regulations address educator certification. Regulations concerning high standards and appropriate credentials and training for school leaders help to ensure that all students' health and safety are adequately protected.

4. Will the amended regulations help to ensure that all students' legal rights are respected? The amended regulations address school leader certification, not students' legal rights. Appropriate credentials and training for school leaders will help to ensure that all students' legal rights are respected.

5. Will the amended regulations preserve the necessary authority and flexibility of decision makers at the local board and school level? The amended regulations will preserve the necessary authority and flexibility of decision makers at the local board and school level. By reducing the number and complexity of the regulations, decision makers at the local board and school level will have greater authority and flexibility.

6. Will the amended regulations place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulations will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subjects to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subjects to be regulated rests with the Professional Standards Board, in collaboration and cooperation with the Department of Education, and with the consent of the State Board of Education.

8. Will the amended regulations be consistent with, and not an impediment to, the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulations will be consistent with, and not an impediment to, the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulations? *14 Del. C.* requires that we promulgate these regulations.

10. What is the cost to the state and to the local school boards of compliance with the amended and new regulations? There is no additional cost to local school boards for compliance with the regulations.

~~302 Certification Administrative—Superintendent~~

~~Effective July 1, 1993~~

~~1.0 The following shall be required for the Standard License for the Superintendent and the general Assistant Superintendent in all school districts:~~

~~1.1 Degree required~~

~~1.1.1 Master's degree plus thirty graduate semester hours or a Doctor's degree from a regionally accredited college or university and;~~

~~1.2 Experience~~

~~1.2.1 A minimum of three years of successful, full-time elementary or secondary experience, at the building level, as a teacher or administrator and;~~

~~1.3 Specialized Professional Preparation~~

~~1.3.1 Graduate level coursework must include the following areas:~~

~~1.3.1.1 Personnel Administration~~

~~1.3.1.2 Supervision/Evaluation of Staff~~

~~1.3.1.3 Curriculum Development and~~

~~Instruction~~

~~1.3.1.4 School Business Management~~

~~1.3.1.5 School Law/Legal Issues in Education~~

~~1.3.1.6 Human Resource Management~~

~~1.3.1.7 Organizational Management~~

~~1.3.1.8 Child or Adolescent Development, if not taken at the undergraduate level.~~

~~2.0 The following shall be required for the Limited~~

Standard License

2.1 The Limited Standard License may be issued for a period of three years, at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License as listed in 1.0.

2.1.1 Requirements listed in 1.1. and 1.2.

2.1.2 Within six semester hours as required in

1.3

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

~~304 Certification Administrative Assistant Superintendent For Curriculum~~

Effective July 1, 1993

1.0 The following shall be required for the Standard License for an individual who is employed to be in charge of the specialized areas of curriculum/program development within a public school district.

1.1 Degree required

1.1.1 ~~Master's degree from a regionally accredited college plus 30 graduate semester hours and,~~

1.2 Experience

1.2.1 ~~A minimum of three years of successful, full-time elementary or secondary experience, at the building level, as a teacher or administrator and,~~

1.3 Specialized Professional Preparation

1.3.1 ~~A minimum of 18 semester hours of graduate level coursework in Curriculum to include: curriculum development, design, implementation and evaluation and,~~

1.3.2 ~~A minimum of 18 semester hours of graduate level coursework in the area of administration, to include one course in each of the following areas:~~

1.3.2.1 ~~Supervision/Evaluation of Staff~~

1.3.2.3 ~~School Business Management~~

1.3.2.3 ~~School Law/Legal Issues in Education~~

1.3.2.4 ~~Human Resource Management~~

1.3.2.5 ~~Organizational Management~~

1.3.2.6 ~~Personnel Administration~~

1.3.2.7 ~~Child Development if not taken at undergraduate level~~ 1.2.1.8 ~~Adolescent Development if not taken at undergraduate level.~~

2.0 The following shall be required for the Limited Standard License

2.1 The Limited Standard License may be issued for a period of three years at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License in 1.0.

2.1.1 Meets requirements specified in 1.1 and

1.2 and,

2.1.2 ~~Within nine semester hours of meeting the requirements in 1.3.1 and 1.3.2.~~

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

1532 Certification Administrative – School Leader II

1.0 This regulation shall apply to the issuance of a standard certificate for school district superintendents and assistant superintendents, pursuant to 14 Del. C. § 1220.

2.0 The following shall be required for the Standard Certificate for school district superintendents and assistant superintendents.

2.1 Educational requirements

2.1.1 A doctoral degree in educational leadership from a regionally accredited college, or

2.1.2 A master's or doctoral degree in any field from a regionally accredited college and successful completion of a Delaware approved alternative routes to certification program for school leaders/superintendents. Until approval and implementation of an alternative routes to certification program occurs, candidates completing the standard certificate in accordance with 2.1.2 of this regulation shall provide evidence of graduate course work in the following areas, either as part of the master's or doctoral degree program or in addition to it.

2.1.2.1 Personnel Administration

2.1.2.2 Supervision/Evaluation of Staff

2.1.2.3 Curriculum Development and

Instruction

2.1.2.4 School Business Management

2.1.2.5 School Law/Legal Issues in Education

2.1.2.6 Human Resource Management

2.1.2.7 Organizational Management

2.1.2.8 Child or Adolescent Development, if not taken at the undergraduate level.

2.2 Experience requirements

2.2.1 A minimum of five (5) years of experience consisting of full-time classroom teaching and/or full-time school leadership experience at the building or district level.

~~311 Certification Administrative Elementary School Principal Or Assistant Principal~~

Effective July 1, 1993

1.0 The following shall be required for the Standard License for the principal of a building containing any combination of grades K-8 designated as an elementary school, and is valid for a principal of a middle level school.

1.1 Degree required

1.1.1 Master's degree from a regionally accredited college and;

1.2 Experience

1.2.1 A minimum of three years of successful, full-time classroom teaching experience at the elementary level or two years of elementary classroom teaching experience, as specified, and a one-year internship in Administration at the elementary level and;

1.3 Specialized Professional Preparation

1.3.1 Master's degree from a regionally accredited college with an approved program in Elementary School Administration and;

1.3.2 A minimum of three semester hours in each of the following areas:

1.3.2.1 Child Development

1.3.2.2 Methods of Teaching Reading at the elementary level

1.3.2.3 Methods of Teaching Mathematics at the elementary level or;

1.3.3 Completion of any graduate program in Elementary School Administration and;

1.3.4 A minimum of three semester hours in each of the following areas:

1.3.4.1 Child Development

1.3.4.2 Methods of Teaching Reading at the elementary level

1.3.4.3 Methods of Teaching Mathematics at the elementary level or;

1.3.5 A Master's degree in any field and;

1.3.6 A three-semester-hour graduate-level course in each of the following areas:

1.3.6.1 Elementary School Administration

1.3.6.2 Supervision/Evaluation of Staff

1.3.6.3 Curriculum Development

1.3.6.4 School Business Management

1.3.6.5 School Law/Legal Issues in Education

1.3.6.6 Human Relations and

1.3.7 A minimum of three semester hours in each of the following areas:

1.3.7.1 Child Development

1.3.7.2 Methods of Teaching Reading at elementary level

1.3.7.3 Methods of Teaching Mathematics at elementary level

(The requirements specified in 1.3.1 and 1.3.2 and 1.3.3. may be met by previously taken undergraduate coursework or through undergraduate or graduate level coursework taken specifically to meet these requirements.)

2.0 The following shall be required for the Limited Standard License:

2.1 The Limited Standard License may be issued for a period of three years, at the request of a Delaware public school district, to a person employed in the above position to

allow for the completion of the requirements for the Standard License in 1.0:

2.2 Master's degree from a regionally accredited college and;

2.3 Meets requirements listed in 1.2 and;

2.4 Within six semester hours of the coursework specified in 1.3.2 or 1.3.4 or 1.3.6 and 1.3.7.

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

312 Certification Administrative—Secondary School Principal Or Assistant Principal

Effective July 1, 1993

1.0 The following shall be required for the Standard License for the principal of a building containing grades 7-12 designated as a junior high school, high school, vocational high school or a senior high school. Valid for a principal of a middle-level school.

1.1 Degree required

1.1.1 Master's degree from a regionally accredited college and;

1.2 Experience

1.2.1 Minimum of three years successful, full-time classroom teaching experience at the secondary level or two years of successful, full-time secondary classroom teaching experience and a one-year internship in School Administration at the secondary level and;

1.3 Specialized Professional Preparation

1.3.1 Master's degree from an accredited college in an approved program for Secondary School Administration; and

1.3.2 A minimum of three semester hours of Adolescent Development, if not taken at the undergraduate level or;

1.3.3 Completion of a graduate program in Secondary School Administration and;

1.3.4 A minimum of three semester hours of Adolescent Development, if not taken at the undergraduate level or;

1.3.5 A Master's degree in any field and;

1.3.6 A three-semester-hour graduate-level course in each of the following areas

1.3.6.1 Secondary School Administration

1.3.6.2 Supervision/Evaluation of Staff

1.3.6.3 Curriculum Development

1.3.6.4 School Business Management

1.3.6.5 School Law/Legal Issues in Education

1.3.6.6 Human Relations

1.3.6.7 Three-semester-hours Adolescent Development, taken at the graduate or undergraduate level.

~~2.0 The following shall be required for the Limited Standard License:~~

~~2.1 The Limited Standard License may be issued for a period of three years at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License as in 1.0.~~

~~2.1.1 Master's degree from a regionally accredited college and;~~

~~2.1.2 Meets the requirements in 1.2 and;~~

~~2.1.3 Within six semester hours of the completion of the coursework in 1.3.6.~~

~~3.0 Licenses that may be issues for this position include Standard and Limited Standard.~~

~~313 Certification Administrative Principal Of A School For Children With Disabilities~~

~~Effective July 1, 1993~~

~~1.0 The following shall be required for the Standard License for a principal of a school for children with disabilities.~~

~~1.1 Degree required~~

~~1.1.1 Master's degree from a regionally accredited college and;~~

~~1.2 Experience~~

~~1.2.1 Three years of full-time, successful classroom experience as a teacher of children with disabilities, while holding a Standard License to teach children with disabilities. Standard certification is limited to these areas of special education: LD, SED, MD, VI, HI, PI, Autistic/Severely Disabled and combinations thereof and;~~

~~1.3 Specialized Professional Preparation~~

~~1.3.1 A Master's degree in any field from a regionally accredited college; and~~

~~1.3.2 The individual shall meet the State of Delaware's requirement for Standard certification as an Elementary or Secondary School Principal; and~~

~~1.3.3 The individual shall hold, or be eligible to hold a Standard License as a teacher of exceptional children LD, SED, MD, VI, HI, PI, Autistic or Severely Disabled and combinations thereof.~~

~~2.0 The following shall be required for the Limited Standard License~~

~~2.1 The Limited Standard License may be issued for a period of three years, at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License in 1.0.~~

~~2.1.1 Meets all requirements in 1.1, 1.2, 1.3.1 and;~~

~~2.1.2 Within six semester hours of meeting the~~

~~requirement in 1.3.2.~~

~~3.0 Licenses that may be issued for this position include Standard and Limited Standard.~~

~~314 Certification Administrative Principal Or Assistant Principal/Administrator Of Adult And Adult/Alternative Education~~

~~Effective July 1, 1993~~

~~1.0 The following shall be required for the Standard License.~~

~~1.1 Degree required~~

~~1.1.1 Master's degree from a regionally accredited college and;~~

~~1.2 Experience~~

~~1.2.1 A minimum of three years of successful, full-time or full-time/part-time experience in an adult educational setting, working as an administrator, coordinator, counselor or teacher. One year of the three years may be experience in an alternative education or non-traditional educational setting, as long as the program is regularly organized and supported by state/federal funding and;~~

~~1.3 Specialized Professional Preparation~~

~~1.3.1 Completion of one course in each of the areas listed below. Coursework may be taken either within or in addition to the Master's degree or as part of a Department of Education pre-approved, in-service program in adult education. The total number of credits required, independent of the type of course, is twenty-one semester hours or its equivalent.~~

~~1.3.1.1 Adult Learning and the Adult Learner~~

~~1.3.1.2 Organization and Administration of Adult Education Programs~~

~~1.3.1.3 Program Planning and Development (Curriculum) in Adult Education~~

~~1.3.1.4 Program Evaluation in Adult Education~~

~~1.3.1.5 Financial Management~~

~~1.3.1.6 Human Relations~~

~~1.3.1.7 Evaluation and Supervision of Staff~~

~~1.3.1.8 Legal Issues in Education~~

~~2.0 The following shall be required for the Limited Standard License~~

~~2.1 The Limited Standard License may be issued for a period of three years, at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License as listed in 1.0.~~

~~2.1.1 Master's degree from an accredited college and;~~

~~2.1.2 Meets requirements of 1.2 and;~~

~~2.1.3 Within six semester hours of meeting the requirements in 1.3.~~

~~3.0 Licenses that may be issued for this position include Standard and Limited Standard.~~

1530 Certification Administrative – School Principal

1.0 This regulation shall apply to the issuance of a standard certificate for school principal, pursuant to 14 Del. C. § 1220.

2.0 The following shall be required for the Standard Certificate for the principal of an elementary or intermediate school, a middle school, a high school, a school for exceptional students, or an adult education program.

2.1 Educational requirements

2.1.1 A master's degree in educational leadership from a regionally accredited college, or

2.1.2 A master's degree in any field from a regionally accredited college and a current principal certificate from another state or a master's degree in any field from a regionally accredited college and successful completion of a Delaware approved alternative routes to certification program for school leaders. Until approval and implementation of an alternative routes to certification program occurs, candidates completing the standard certificate in accordance with 2.1.2 of this regulation shall fulfill the following requirements.

2.1.2.1 A three semester hour graduate level course in each of the following areas: School Administration (at the level to be initially assigned), Supervision/ Evaluation of Staff, Curriculum Development, School Business Management, School Law/Legal Issues in Education, Human Relations, and Adolescent Development, if not taken at the undergraduate level.

2.2 A minimum of three (3) years of full-time classroom teaching experience at the level to be initially assigned as a school principal or assistant principal, except at the middle level, where the full-time classroom teaching experience may be at any K-12 level.

1535 Certification Administrative – Administrative Assistant

~~Effective October 11, 2001~~

~~1.0 The following shall be required for the Standard License~~

~~1.1 Degree required~~

~~1.1.1 Master's degree from a regionally accredited college and;~~

~~1.2 Experience~~

~~1.2.1 A minimum of three years of successful, full-time classroom teaching experience, or three years of administrative experience, and;~~

~~1.3 Specialized Professional Preparation~~

~~1.3.1 Specific training or satisfactory experience including an internship and/or fieldwork in the area in which employed.~~

~~2.0 The following shall be required for the Limited Standard License~~

~~2.1 The Limited Standard License may be issued for a period of three years, at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License in 1.0.~~

~~2.1.1 Master's degree from an accredited college and;~~

~~2.1.1.1 Meets the requirements of 1.2 and;~~

~~2.1.1.2 Within six semester hours of meeting the requirements as specified in 1.3.~~

~~3.0 Licenses that may be issued for this position include Standard and Limited Standard.~~

~~See 5 DE Reg. 856 (10/1/01)~~

1536 Certification Administrative – Director

~~Effective October 11, 2001~~

~~1.0 The following shall be required for the Standard License for persons employed to be responsible for the administration of specialized instructional areas:~~

~~1.1 Degree required~~

~~1.1.1 Master's degree plus thirty semester hours of graduate level coursework from a regionally accredited college(s) and;~~

~~1.2 Experience~~

~~1.2.1 A minimum of three years of successful, full-time classroom teaching experience or;~~

~~1.2.2 A minimum of three years of successful, full-time administrative experience in the specific area to be directed, within a school system or;~~

~~1.3 Specialized Professional Preparation~~

~~1.3.1 Master's degree plus thirty semester hours of graduate level coursework from a regionally accredited college(s) with a major in Educational Supervision and Curriculum or Educational Administration or Educational Leadership, or Human Resource Management; and Twenty-one semester hours of graduate level coursework specific to the area to be directed or;~~

~~1.3.2 Master's degree in any field plus thirty semester hours of graduate level coursework from a regionally accredited college(s) to include the following graduate level coursework:~~

~~1.3.2.1 A minimum of twenty-one semester hours of graduate level coursework specific to the area to be directed and;~~

~~1.3.2.2 A minimum of twenty-one semester hours of graduate level coursework in the area of~~

administration, to include at least one course in each of the following areas:

- 1.3.2.2.1 Curriculum Development and Instruction
- 1.3.2.2.2 Supervision/Evaluation of Staff
- 1.3.2.2.3 School Business Management
- 1.3.2.2.4 School Law/Legal Issues in Education
- 1.3.2.2.5 Human Resource Management
- 1.3.2.2.6 Human Development (to include child/adolescent development)
- 1.3.2.2.7 Organizational Management

(NOTE: Any of the requirements listed in 1.3.1. or 1.3.2 may be met by coursework taken either within or in addition to the Master's degree plus thirty semester hours.)

2.0 The following shall be required for the Limited Standard License

2.1 The Limited Standard License may be issued for a period of three years, at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License in 1.0.

2.1.1 Master's degree plus thirty semester hours of graduate level coursework from a regionally accredited college; and

2.1.2 Meets all experience requirements in 1.2 and

2.1.3 Meets the Specialized Professional Preparation requirement in the specialized area 1.3.2.1 and is within six semester hours of meeting the administrative coursework in 1.3.2.1.

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

See 5 DE Reg. 856 (10/1/01)

1538 Certification Administrative – Supervisor

Effective October 11, 2001

1.0 The following shall be required for the Standard License for persons employed to be responsible for the administration of specialized areas:

1.1 Degree required

1.1.1 Master's degree from a regionally accredited college and;

1.2 Experience

1.2.1 A minimum of three years of successful, full-time classroom teaching experience in the instructional area to be supervised and;

1.3 Specialized Professional Preparation

1.3.1 Master's degree from a regionally accredited college with a major in Educational Supervision and Curriculum and;

1.3.2 Fifteen semester hours of graduate level coursework, specific to the area to be supervised or;

1.3.3 A Master's degree in any field from a regionally accredited college with the following graduate level coursework included within, or in addition to, the degree:

1.3.3.1 A minimum of fifteen semester hours of graduate level coursework in the area to be supervised and;

1.3.3.2 A minimum of fifteen semester hours of graduate level coursework in administration to include one course in each of the following areas:

1.3.3.2.1 Curriculum Development

1.3.3.2.2 Supervision/Evaluation of Staff

1.3.3.2.3 Human Relations

1.3.3.2.4 School Law/Legal Issues

2.0 The following shall be required for the Limited Standard License

2.1 The Limited Standard License may be issued for a period of three years at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License in 1.1.

2.1.1 Master's degree from a regionally accredited college; and

2.1.2 Meets all requirements in 1.2.

2.1.3 Within six semester hours of meeting the specific coursework requirements in 1.3.1 and 1.3.2, or within six semester hours of meeting the specific coursework requirements in 1.3.3.1 and 1.3.3.2.

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

See 5 DE Reg. 856 (10/1/01)

1531 Certification Administrative – School Leader I

1.0 The following shall apply to the issuance of a standard certificate for directors, supervisors, administrative assistants, and managers in instructional areas, pursuant to 14 Del. C. § 1220.

2.0 The following shall be required for the standard certificate for directors, supervisor, administrative assistants, and managers in instructional areas.

2.1 A master's degree in educational leadership from a regionally accredited college, or

2.2 A master's degree in any field from a regionally accredited college and successful completion of a Delaware

approved alternative routes to certification program for school leaders. Until approval and implementation of an alternatives routes to certification program occurs, candidates completing the standard certificate in accordance with 2.2 of this regulation shall fulfill the following requirements:

2.2.1 A minimum of twenty-four semester hours of graduate level course work, completed either as part of the master's degree or in addition to it, in administration to include at least one course in each of the following areas: Curriculum Development, Supervision/Evaluation of Staff, Human Relations, and School Law/Legal Issues and in the area(s) to be supervised (may include courses in curriculum, instruction, and/or methods) and.

2.3 A minimum of three (3) years of full-time classroom teaching experience at the K-12 level.

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES
DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code,
Section 203 (16 Del.C. §203)

Nature of the Proceedings

The attached regulations, "State of Delaware Birth Defect Surveillance and Registry Program Regulations" are being proposed in accordance with 16 Delaware Code, Chapter 2.

The proposed regulations define birth defect reporting requirements for health care providers in Delaware. The regulations also provide for reported birth defect data to be compiled in a Statewide Birth Defects Registry. The Registry will be used to gather data to assist with identification of risk factors, including environmental and hereditary; assist in the investigation of causes and prevalence; and assist in the development of strategies to reduce the occurrence of, or prevent such defects.

Notice of Public Hearing

The Community Health Care Access Section, Division of Public Health, Department of Health and Social Services will hold a public hearing to discuss the proposed Delaware Birth Defect Surveillance and Registry Program Regulations.

The public hearing will be held on Friday, January 10, 2003 at 1:00 PM in the third floor conference room of the Jesse Cooper Building, Federal and Waters Streets, Dover, Delaware.

Copies of the proposed regulations are available for

review by contacting:

JoAnn Baker, Community Health Care Access
Jesse Cooper Building
Federal and Water Streets
Dover, Delaware 19903
Telephone: (302) 744-4554

Anyone wishing to present his or her oral comments at this hearing should contact David Walton at (302) 744-4700 by Thursday, January 9, 2003. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by January 10, 2003 to:

David P. Walton, Hearing Officer
Division of Public Health
P.O. Box 637
Dover, Delaware 19903-0637

**BIRTH DEFECT SURVEILLANCE AND REGISTRY
PROGRAM REGULATIONS**

Authority: 16 Delaware Code, Chapter 2, Section 203

1.0 Purpose

1.1 Birth defects are one of the causes of infant mortality and disabilities in Delaware. A Birth Defects Surveillance System, or Birth Defects Registry, will enable the Department of Health & Social Services (DHSS), Division of Public Health (DPH) to collect birth defects data, to create a statewide registry, and to link surveillance with tracking of individual children for the provision of services.

1.2 The purpose of the Birth Defects Registry is to provide information to Public Health officials as to the existence of previously unrecognized health and environmental hazards, help prevent certain birth defects and ultimately decrease the infant mortality rate. The Birth Defects Registry will gather data to assist with identification of risk factors, including environmental and hereditary, assist in the investigation of causes and prevalence; assist in the development of strategies to reduce the occurrence of, or prevent such defects; and track and follow-up abnormal newborn hearing screening results.

1.3 The usefulness of the data collected in the Birth Defects Registry will depend upon the full and accurate reporting of such defects by health care practitioners, health care facilities, clinics and laboratories.

1.4 The Birth Defects Registry will be a component of the Newborn Screening Case Management System, including metabolic and hearing screening. All results of metabolic and hearing screens will become part of the screening record. Tracking and follow-up of incomplete and abnormal cases will be followed by the Division of Public

Health Newborn Screening Program.

2.0 Definitions The following words shall have the meanings indicated:

"BIRTH DEFECT" means any structural or biochemical abnormality, regardless of cause, diagnosed at any time before or after birth, that requires medical or surgical intervention or that interferes with normal growth or development. This includes abnormal newborn hearing screening. Reportable birth defects are listed in Appendix A of these Regulations.

"DIVISION" refers to the Division of Public Health under the Department of Health and Social Services.

"REGISTRY" means a central data bank containing collected, classified, coded, and sorted data relating to defects in children under age 5, reported by health care providers.

"SURVEILLANCE" means the process of identifying and investigating birth defects in children under age 5.

3.0 Reporting Requirements

The provisions of this section shall apply to the Delaware Health and Social Services, Division of Public Health, Birth Defect Registry:

3.1 The registry shall collect information on all births after viability and any child under the age five (5) who is a resident of the state of Delaware, or whose parent is a resident of Delaware, and who is diagnosed at any time prior to age five (5) as having a birth defect. For the purposes related to the registry the Division shall have access to any medical record of the child that pertains to a diagnosed or suspected birth defect. Prenatal information on the birth mother may be obtained with prior consent.

3.2 Any diagnosed birth defects shall be reported for all infants and children up to age 5, including those who have since died (if the data is still available).

3.3 For purposes of these reporting requirements, reportable diagnoses are those diagnoses, from the International Classification of Diseases (ICD), as listed in Appendix A of these regulations. The reportable diagnoses listed in Appendix A may be revised, upon notice, to reflect changes in publications accepted for use by the Centers for Disease Control and Prevention or State.

3.4 The following persons and organizations are required to report occurrences of birth defects within 30 days of diagnosis to the Division of Public Health.

3.4.1 Any physician, surgeon, dentist, podiatrist, certified nurse midwife, or other health care practitioner who diagnoses or provides treatment, or both, for a child under age 5 with birth defects who is not known to be previously reported:

3.4.2 The designated representative of any clinical laboratory that performs any test which identifies a child or children under age 5 with birth defects not known to

be previously reported; and

3.4.3 The designated representative of any hospital, dispensary, clinic, or other similar public or private institution that diagnoses or provides treatment, or both, for a child or children under age 5 with birth defects.

3.4 The administrative officer of every health care facility shall be responsible for establishing reporting procedures at that facility, using the identified Birth Defect Registry reporting form. Reporting procedures must ensure that each infant initially diagnosed as having a birth defect shall be reported to the Division. Any presumptive or actual diagnosis in a child up to the age of 5 must be reported to the Division.

3.5 Reporting sources shall complete the Division of Public Health Birth Defects Surveillance Form for each reported case, and forward the completed form to the Division of Public Health Director or designee.

4.0 Confidentiality of Reports

4.1 No report of a diagnosis or treatment of a birth defect shall be disclosed in such a way as to identify the child who is the subject of the report, or as to identify the child's family. However, patient-identifying information may be exchanged among authorized agencies as approved by the Department and upon receipt by the Department of satisfactory assurances by those agencies of the preservation of the confidentiality of such information. Agencies will maintain the confidentiality of any information exchanged for the purpose of delivery of program services, evaluation, early intervention and epidemiological investigation.

4.2 No individual or organization providing information pursuant to these regulations shall be held liable for divulging such information to the Division.

5.0 Penalties

Any person or organization required to report the diagnosis or treatment of a birth defect pursuant to these regulations, and who violates these regulations, shall be subject to a fine of up to \$100 for each violation, pursuant to 16 Del.C. Sec. 206. Justices of the Peace Courts have jurisdiction over such violations.

6.0 Severability

In the event any particular clause or section of the regulations should be declared invalid or unconstitutional by any court of competent jurisdiction, the remaining portions shall remain in full force and effective.

APPENDIX A October 2002

DELAWARE BIRTH DEFECTS REGISTRY REPORTABLE DIAGNOSES

PROPOSED REGULATIONS

743

<u>Broad Categories</u>	<u>Specific Categories</u>	<u>ICD-9 Codes</u>	<u>Congenital Anomalies of the Ear</u>
			<u>Anotia/microtia</u> 744.01,744.23
<u>Congenital Infections</u>	<u>Congenital syphilis</u>	<u>090.0-090.3</u>	<u>Congenital Anomalies of the Cardiovascular System</u>
	<u>Congenital rubella</u>	<u>771.0</u>	<u>Common truncus</u> 745.0
	<u>Congenital cytomegalovirus</u>	<u>771.1</u>	<u>Transposition of great arteries</u> 745.10,745.11, 745.12, 745.19
	<u>Congenital toxoplasmosis (not specific code)</u>	<u>771.2</u>	<u>Tetralogy of Fallot</u> 745.2
	<u>Other infections specific to perinatal period</u>	<u>771.80</u>	<u>Ventricular septal defect</u> 745.4
	<u>Other congenital infections</u>	<u>771.x</u>	<u>Atrial Septal Defect</u> 745.5
			<u>Endocardial cushion defect</u> 745.60,745.61, 745.69
<u>Neoplasms</u>	<u>Neurofibromatosis</u>	<u>237.70</u>	<u>Single Ventricle</u> 745.3
			<u>Pulmonary valve atresia and stenosis</u> 746.01,746.02
<u>Endocrine, Nutritional, Metabolic, Immunological Diseases</u>	<u>Congenital hypothyroidism</u>	<u>243.00</u>	<u>Tricuspid valve atresia and stenosis</u> 746.1
	<u>Phenylketonuria</u>	<u>270.10</u>	<u>Ebstein's anomaly</u> 746.2
	<u>Galactosemia</u>	<u>271.1</u>	<u>Aortic valve stenosis</u> 746.3
	<u>Cystic Fibrosis</u>	<u>277.00.01</u>	<u>Hypoplastic left heart syndrome</u> 746.7
	<u>Other Metabolic diseases</u>		<u>Patent ductus arteriosus >2500 gms</u> 747.0
<u>Diseases of Blood</u>	<u>Sickle Cell Disease</u>	<u>282.60</u>	<u>Coarctation of aorta</u> 747.10
	<u>Other hemoglobinopathies</u>	<u>282.63, 282.69, 282.4</u>	<u>Pulmonary artery anomalies</u> 747.3
			<u>Congenital anomalies of the Respiratory System</u>
<u>Developmental Disorders</u>	<u>Developmental Language Disorder</u>	<u>315.31-315.39</u>	<u>Anomalies of larynx/trachea/bronchus</u> 748.30
	<u>Coordination Disorder</u>	<u>315.40</u>	<u>Lung agenesis/hypoplasia</u> 748.5
	<u>Mental Retardation</u>	<u>317 - 319</u>	<u>Other respiratory anomalies</u>
<u>Congenital Anomalies of Central Nervous System</u>	<u>Anencephalus</u>	<u>740.0-740.1</u>	<u>Congenital Anomalies of the Orofacial Area</u>
	<u>Spina bifida without anencephalus</u>	<u>741.0,741.9w/o 740.0-740.10</u>	<u>Cleft palate without cleft lip</u> 749.00-749.04
	<u>Hydrocephalus without spina bifida</u>	<u>742.3 w/o 741.0, 741.9</u>	<u>Cleft lip with or without cleft palate</u> 749.1,749.2
	<u>Encephalocele</u>	<u>742.0</u>	<u>Choanal atresia</u> 748.0
	<u>Microcephalus</u>	<u>742.1</u>	<u>Congenital Anomalies of the Gastrointestinal Tract</u>
	<u>Holoprosencephaly/Porencephaly</u>	<u>742.2</u>	<u>Esophageal atresia/tracheoesophageal fistula</u> 750.3
	<u>Other Congenital Anomalies of Nervous System</u>	<u>742.4 - 742.9</u>	<u>Atresia/stenosis of intestine and rectum</u> 751.10,751.2
			<u>Hirschsprung's disease (congenital megacolon)</u> 751.3
<u>Congenital Anomalies of the Eye</u>	<u>Anophthalmia/microphthalmia</u>	<u>743.0,743.1</u>	<u>Anomalies of internal fixation of bowel</u> 751.40
	<u>Congenital cataract</u>	<u>743.30-743.34</u>	<u>Biliary atresia</u> 751.61
	<u>Aniridia</u>	<u>743.45</u>	<u>Malrotation of intestine</u> 751.4*
	<u>Glaucoma</u>	<u>743.20-743.22</u>	<u>Pyloric stenosis</u> 750.5
	<u>Coloboma</u>	<u>743.46*</u>	<u>Anorectal malformation</u> 751.4*
			<u>Congenital Anomalies of the Genitourinary System</u>

PROPOSED REGULATIONS

<u>Renal Agenesis/hypoplasia</u>	<u>753.0</u>
<u>Bladder exstrophy</u>	<u>753.5</u>
<u>Cloacal exstrophy</u>	<u>*</u>
<u>Cystic/dysplastic kidneys</u>	<u>753.10, 753.15</u>
<u>Obstructive genitourinary defect</u>	<u>753.2, 753.6</u>
<u>Hypospadias and Epispadias</u>	<u>752.6</u>
<u>Ambiguous genitalia</u>	<u>752.9*</u>
<u>Polycystic kidneys</u>	<u>753.12-753.14</u>
<u>Congenital Anomalies of the Musculoskeletal Regions</u>	
<u>Reduction defect, upper limbs</u>	<u>755.20-755.29</u>
<u>Polydactyly/Syndactyly/Adactyly</u>	<u>755.00-755.02</u> <u>755.10-755.14</u> <u>755.4*</u>
<u>Reduction defect, lower limbs</u>	<u>755.30-755.39</u>
<u>Arthrogryposis multiplex congenital</u>	<u>754.89*</u>
<u>Achondroplasia</u>	<u>756.4</u>
<u>Osteogenesis imperfecta</u>	<u>756.51</u>
<u>Other skeletal dysplasia</u>	
<u>Gastroschisis</u>	<u>756.7</u>
<u>Omphalocele</u>	<u>756.7</u>
<u>Diaphragmatic hernia (moved up)</u>	<u>756.6</u>
<u>Scoliosis/Lordosis/Kyphosis</u>	<u>754.0, 756.19</u>
<u>Congenital hip dysplasia</u>	<u>754.30, 754.31</u> <u>754.35*</u>
<u>Club Foot</u>	<u>754.50, 51, 53, 60, 70, 79</u>
<u>Craniosynostosis</u>	<u>756.0*</u>
<u>Chromosomal Disorders</u>	
<u>Trisomy 21 (Down syndrome)</u>	<u>758.0</u>
<u>Trisomy 13</u>	<u>758.1</u>
<u>Trisomy 18</u>	<u>758.2</u>
<u>Autosomal deletion syndromes</u>	<u>758.30</u>
<u>Other conditions due to autosomal anomalies</u>	<u>758.50</u>
<u>Gonadal dysgenesis (Turner's syndrome)</u>	<u>758.60</u>
<u>Klinefelter's syndrome</u>	<u>758.70</u>
<u>Other conditions due to sex chromosome anomalies</u>	<u>758.80</u>
<u>Conditions due to anomaly of unspecified Chromosome</u>	<u>758.90</u>
<u>Fragile X Syndrome</u>	<u>759.83</u>

Other Congenital Malformations

<u>Amniotic bank disruption complex</u>	<u>no code</u>
<u>Embryopathy from Toxic Exposure in Utero</u>	
<u>Fetal Alcohol syndrome</u>	<u>760.71</u>
<u>Phenytoin</u>	<u>760.79*</u>
<u>Isotretinoin</u>	<u>760.79*</u>
<u>Warfarin</u>	<u>760.79*</u>
<u>Other toxic exposures</u>	<u>760.7x</u>
<u>Conductive hearing loss, external ear</u>	<u>389.01</u>
<u>Conductive hearing loss, middle ear</u>	<u>389.03</u>
<u>Ear disorder, unspecified</u>	<u>388.9</u>
<u>Hearing loss, noise-induced</u>	<u>388.12</u>
<u>Hearing loss, sudden, unspecified</u>	<u>388.2</u>
<u>Hearing loss, unspecified</u>	<u>388.9</u>
<u>Sensorineural hearing loss, unspecified</u>	<u>389.10</u>

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code,
Section 3204 (16 Del.C. §3204)

Nature of the Proceedings

The attached regulations, "State of Delaware Cancer Registry Regulations" are being proposed in accordance with 16 Delaware Code, Chapter 32.

The proposed regulation defines procedures to be used by health care providers to report cancer to Delaware Health and Social Service's Cancer Registry. The proposed regulation specifies forms that shall be used for this purpose, deadlines for submission, and fines. The proposed regulation also describes information to be retained by health care providers that diagnose cancer, and that health care providers may request a voluntary audit.

Notice of Public Hearing

The Disease Prevention and Control Section, Division of Public Health, Department of Health and Social Services will hold a public hearing to discuss the proposed Delaware Cancer Registry Regulations.

The public hearing will be held on Monday, December 23, 2002 at 10:00 AM in the third floor conference room of the Jesse Cooper Building, located on Federal and Water Streets, Dover, Delaware.

Copies of the proposed regulations are available for review by contacting:

Dr. Leroy Hathcock,
Disease Prevention and Control
Federal and Water Streets
Dover, Delaware 19903

Telephone: (302) 744-4790

Anyone wishing to present his or her oral comments at this hearing should contact David Walton at (302) 744-4701 by Friday, December 20, 2002. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by January 3, 2003 to:

David P. Walton, Hearing Officer
Division of Public Health
P.O. Box 637
Dover, Delaware 19903-0637

CANCER REGISTRY REGULATIONS

1.0 Purpose

These regulations are promulgated by the Department pursuant to Senate Bill 372 of the 141st General Assembly. These regulations are also independently authorized by 29 Del.C. §7903. The purpose of the regulations is to implement Title 16, Chapter 32 of the Delaware Code.

2.0 Definitions

“Benign tumor” means any nonmalignant neoplasm, regardless of the tissue or origin, that appears on the American College of Surgeons most recently published list of reportable cancers and benign tumors.

“Cancer” means any malignant neoplasm, regardless of the tissue origin, that appears on the American College of Surgeons most recently published annual list of reportable cancers and benign tumors.

“Clinical laboratory” means a facility in which tests are performed identifying findings of anatomical changes, and/or specimens are interpreted and pathological diagnoses are made.

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

“Health care provider” means:

person, corporation, facility or institution licensed by this State pursuant to Titles 16 or 24 of the Delaware Code to perform any act to or on behalf of a patient during the patient’s medical care, treatment, or confinement, or

a clinical laboratory. When a person acting as a health care provider is working for a corporation, facility, or institution, the corporation, facility, or institution shall be considered the health care provider for purposes of these regulations.

3.0 Duty to Report

Each health care provider shall complete and submit to the Department the forms described in Section 3 with respect to (a) each patient whom it diagnoses with cancer or a benign

tumor, and (b) each patient for whom it renders any care after the individual is diagnosed with cancer or a benign tumor. Compliance by one health care provider with this Section with respect to an individual patient shall not obviate compliance by other health care providers with respect to the same patient.

4.0 Forms Supplied by Department

Forms prepared by the Department for use by health care providers in complying with Section 2 shall request all data required by the reporting requirements of the National Cancer Data Base established by the American College of Surgeons. Forms prepared under this section shall also request disclosure of the address at which the patient has lived for the longest period of time, the occupation at which the patient has worked for the longest period of time, and the name and address of the employer at the occupation where the patient has worked for the longest period of time, if such information is available to the health care provider. A health care provider shall make reasonable efforts to obtain all information requested by the form prepared under this Section. However, reasonable efforts by a clinical laboratory shall not include the interviewing of patients to obtain required information.

5.0 Retention of Required Information

A health care provider who is treating a patient who has been diagnosed with cancer or a benign tumor shall ask that patient to fill out a form requesting disclosure of the address at which the patient has lived for the longest period of time in his or her life, the occupation at which the patient has worked for the longest period of time in his or her life, and the name and address of the employer at the occupation where the patient has worked for the longest period of time. The health care provider shall retain the form required by this Section with the patient’s medical records pursuant to generally accepted protocol for the retention of patient medical records. The health care provider shall include the information from the form required by this Section with information it submits pursuant to Section 2 of these regulations. The Department shall provide a form for use in complying with this Section.

6.0 Deadlines for Submission

A health care provider shall provide the information required by Section 2 within 180 days of the initiation of treatment of a patient or diagnosis of that patient with a cancer or benign tumor, whichever is earlier.

7.0 Failure to Submit Required Information

A health care provider that fails to comply with Section 5 shall permit the Department to audit its records and abstract information that should have been provided under Section 5. The health care provider shall reimburse the

Department for the cost of said audit. If the audit does not identify a compliance failure by the health care facility or provider, the cost of such audit shall not be assessed against the facility or provider.

8.0 Voluntary Audit

A health care provider may voluntarily request that an audit be performed if it does not intend to submit the information required by Section 5. The Department shall determine if the request for an audit will be honored. The health care provider shall reimburse the Department for the cost of said audit if the Department honors the request. The Department shall determine whether said costs shall be prepaid, or paid upon completion of the audit.

9.0 Fines

Failure to comply with Section 5 of these regulations may result in a \$100 fine against the health care provider that has failed to comply. Each failure to comply shall constitute a separate violation and shall subject the health care provider to a separate \$100 fine.

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,
Section 107 (31 Del.C. §107)

PUBLIC NOTICE Medicaid/Medical Assistance programs

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to amend the Title XIX Medicaid State Plan to change the drug pricing methodology.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by December 31, 2002.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

Summary of Proposed Change:

Currently, Delaware reimburses pharmaceuticals using

the **lower** of:

- the usual and customary charge to the general public for the product,
- the **Average Wholesale Price (AWP) minus 12.9%** plus a dispensing fee, or
- a State-specific maximum allowable cost (DMAC) and, in some cases, the federally defined Federal Upper Limit (FUL) prices plus a dispensing fee.

The proposed State Plan Amendment (SPA) changes the AWP methodology as follows:

- Brand name drugs:
 - for traditional chain pharmacies and independent pharmacies: AWP minus 16.32% plus a dispensing fee per prescription
 - for non-traditional pharmacies: AWP minus 24.32% plus a dispensing fee per prescription.
- Generic drugs for all pharmacies: Average of the Average Wholesale Price (AAWP) minus 58% plus a dispensing fee per prescription.

The dispensing fee remains the same.

The SPA also:

- clarifies terms used in the methodology process by revising the definition of the Delaware Maximum Allowable Cost (DMAC)
- provides definitions of traditional and non-traditional pharmacies; and,
- revises reimbursement limits and exceptions.

REVISIONS:

**ATTACHMENT 4.19-B
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State/Territory DELAWARE

Reimbursement for pharmaceuticals:

Overview

The Delaware Medical Assistance (DMAP) program will reimburse pharmaceuticals using the **lower** of

- the usual and customary charge to the general public for the product,
- ~~the Average Wholesale Price (AWP) minus 12.9% plus a dispensing fee, or~~
- Brand name drugs:
 - for traditional chain and independent pharmacies: AWP-16.32% plus dispensing fee per prescription
 - for non-traditional pharmacies: AWP-24.32% plus dispensing fee per prescription

- Generic drugs for all pharmacies: AAWP-58% plus dispensing fee per prescription
- a State-specific maximum allowable cost (DMAC) and, in some cases, the Federally defined Federal Upper Limit (FUL) prices plus a dispensing fee.

Entities that qualify for special purchasing under Section 602 of the Veterans Health Care Act of 1992, Public Health Service covered entities, selected disproportionate share hospitals and entities exempt from the Robinson-Patman Price Discrimination Act of 1936 must charge the DMAP no more than an estimated acquisition cost (EAC) plus a professional dispensing fee. The EAC must be supported by invoice and payment documentation.

Definitions:

~~**Delaware Maximum Allowable Cost (DMAC)** — The DMAC payment limits will be calculated, for drugs selected by the DMAP, by First Data Bank (FDB) under contract with Delaware Medicaid using the following protocol.~~

- ~~All DMACs will be based on the direct prices.~~
- ~~FDB will use the lowest of either Geneva Generic or Rugby prices. These are national generic labelers/manufacturers that sell directly to pharmacies.~~
- ~~Prices for solid dosing forms will be based on a package size of 100. If that size is not available, the next largest package size will be used.~~
- ~~Prices for liquid products will be based on 120 ml for over the counter (OTC) medications and 473–480 ml for legend products.~~
- ~~All unit dose packaging calculations will be eliminated.~~
- ~~If neither identified labeler markets the product, the median of all other HCFA rebate participating sources will be used to establish a price.~~

~~Drugs are selected based on experience with charges from pharmacies, which indicates that the product cost is less than or equal to AWP minus 20%.~~

~~Additional medications will be added to the DMAC program after general provider notification.~~

Delaware Maximum Allowable Cost (DMAC) - a maximum price set for reimbursement when a single source product has Average Selling Prices provided by the manufacturer that indicates the AWP is exaggerated. A DMAC will also be established if a single provider agrees to a special price. Any willing provider can dispense the product.

Federal Upper Limit (FUL) - The FUL is a federally defined price and constitutes the upper limit of

reimbursement where a DMAC limit does not exist.

ATTACHMENT 4.19B
Page 14a

Limits - the maximum allowed using any of the state methods for calculation ingredient costs.

Non-Traditional Pharmacy - long term care and specialty pharmacies.

Traditional Pharmacy - retail independent and retail chain pharmacies.

Reimbursement Policy:

- ~~Pharmacy providers are free to dispense any product they wish (within the limits of State and federal laws governing pharmacies), but the DMAP payment will not exceed the limits identified above.~~
- ~~The limits apply to all drugs listed in Appendix B (FUL/MAC listing containing the generic name and upper limit/unit source) of the Pharmacy Provider Manual, including brand and substitutes/generics.~~
- ~~State DMAC/FUL limits do not apply to drugs in unit dose packages~~
- ~~The limits apply to all drugs that have a FUL or DMAC.~~
- ~~Medicaid reimbursement is limited to only those drugs supplied from manufacturers that have a signed national agreement or an approved existing agreement under Section 1927(a) of the Social Security Act. Restrictions in drug coverage are listed on Page 5 Addendum of Attachment 3.1-A of this Plan.~~

Exceptions:

Exceptions to the reimbursement limits can be made if a physician certifies in his/her their own handwriting that a specific brand is medically necessary for a particular recipient. The medical necessity must be documented on a FDA Med-Watch form based on the client experiencing an adverse reaction.

- ~~A check-off box is NOT acceptable.~~
- ~~A notation of intent in the prescribing physician's own handwriting (such as, "brand necessary", "brand only", dispense as written") IS acceptable (42 CFR §447.331).~~
- ~~Phone-in prescriptions which qualify for an exception must be followed by the proper certification written by the prescriber.~~
- ~~Faxed prescriptions must follow Board of~~

Pharmacy regulations.

When an exception exists and a pharmacist wishes to override the limit due to the medical necessity of using the brand name product, refer to the billing section of the Provider Manual for instructions on the proper coding of the claim.

~~If the pharmacist is not willing to accept the DMAP's DMAC/FUL payment when a prescription is received for a brand name product with no substitutions permitted AND the physician has not indicated that the brand is medically necessary according to the above instructions, the pharmacist should:~~

- ~~• contact the physician to obtain proper written documentation, or~~
- ~~• refer the recipient to another pharmacy that may be willing to fill the prescription for the DMAC price, or, as a last resort,~~
- ~~• request full payment from the recipient for the product.~~

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,
Section 107 (31 Del.C. §107)

PUBLIC NOTICE**Medicaid/Medical Assistance programs**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to amend the Title XIX Medicaid State Plan to change the number of nursing home patient health assessments to two times per year.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by December 31, 2002.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

DSS PROPOSED REGULATION #02-51**REVISION:**

The Department will assign classes to nursing home patients. Initial classification of patients occurs through the State's pre-admission screening program. These initial classifications will be reviewed by Department nurses within 31 to 45 days after assignment. Patient classification will then be reviewed ~~on an ongoing 90-day basis~~ twice a year. Facilities will receive notices from the Department concerning class changes and relevant effective dates.

1. In order to establish the patient classification for reimbursement, patients are evaluated and scored by Medicaid review nurses according to the specific amount of staff assistance needed in Activity of Daily Living (ADL) dependency areas. These include Bathing, Eating, Mobility/Transfer/Toileting. Potential scores are as follows:

0 - Independent

1 - Supervision (includes verbal cueing and occasional staff standby)

2 - Moderate assistance (requires staff standby/physical presence)

3 - Maximum Assistance

Patients receiving moderate or maximum assistance will be considered "dependent" in that ADL area. Patients receiving supervision will not be considered dependent.

Reimbursement is determined by assigning the patient to a patient classifications based on their ADL scores or range of scores.

Each patient classification is related to specific nursing time factors. These time factors are multiplied by the 75th percentile nurse wage in each provider group to determine the per diem rate for each classification.

2. Patients receiving an active rehabilitative/preventive program as defined and approved by the Department shall be reimbursed at the next higher patient class. For qualifying patients at the highest level, the facility will receive an additional 10 percent of the primary care rate component.

To be considered for the added reimbursement allowed under this provision, a facility must develop and prepare an individual rehabilitative/preventive care plan. This plan of care must contain rehabilitative/preventive care programs as described in a Department approved list of programs. The services must seek to address specific activity of daily living and other functional problems of the patient. The care plan must also indicate specific six month and one-year patient goals, and must have a physician's approval.

**DEPARTMENT OF JUSTICE
DIVISION OF SECURITIES
DELAWARE SECURITIES ACT**

Statutory Authority: 6 Delaware Code,
Sections 7325(b) (6 Del. C. §7325(b))

**NOTICE OF PROPOSED REVISIONS TO THE
RULES AND REGULATIONS PURSUANT TO THE
DELAWARE SECURITIES ACT**

In compliance with the State's Administrative Procedures Act (APA-Title 29, Chapter 101 of the Delaware Code) and section 7325(b) of Title 6 of the Delaware Code, the Division of Securities of the Delaware Department of Justice hereby publishes notice of proposed revisions to the Rules and Regulations Pursuant to the Delaware Securities Act. The Division proposes hereby to amend sections 600, 601, 608, and 700 of the Rules and Regulations Pursuant to the Delaware Securities Act and to add a new section 610.

Persons wishing to comment on the proposed regulations may submit their comments in writing to:

James B. Ropp Securities Commissioner Department of Justice State Office Building, 5th Floor 820 N. French Street Wilmington, DE 19801 The comment period on the proposed regulations will be held open for a period of thirty days from the date of the publication of this notice in the Delaware Register of Regulations.

SUMMARY OF THE PROPOSED REVISIONS

1. Canadian Broker-Dealer Exemption: The Securities Division proposes to revise the Canadian broker-dealer registration exemption set forth at section 608 of the Rules and Regulations Pursuant to the Delaware Securities Act to extend to Canadian broker-dealer agents the benefit of the exemption. The proposed revision is consistent with the model regulation as drafted by the North American Securities Administrators Association ("NASAA"). These revisions are being proposed to correct what appears to have been an inadvertent oversight when the exemption was originally promulgated.

2. Registration Requirements for Sole Proprietorships: The Securities Division proposes to revise the registration requirements for broker-dealers and investment advisers to clarify that a person conducting a brokerage or investment advisory business as a sole proprietor need not register an agent or representative with the Securities Commissioner.

PROPOSED REVISIONS**Part F. Broker-Dealers, Broker-Dealer Agents, and Issuer Agents****§600 Registration of Broker-Dealers**

(a) A person applying for a license as a broker-dealer in Delaware shall make application for such license on Form BD (Uniform Application for Broker-Dealer Registration). Amendments to such applications shall also be made on Form BD.

(b) An applicant who is registered or registering under the Securities Exchange Act of 1934 shall file its application, together with the fee required by Section 7314 of the Act, with the NASD Central Registration Depository ("CRD") and shall file with the Commissioner such other information as the Commissioner may reasonably require.

(c) An applicant who is not registered or registering under the Securities Exchange Act of 1934 shall file its application; the fee required by Section 7314 of the Act; and an audited financial statement prepared in accordance with 17 C.F.R. §240.17a-5(d) with the Commissioner, together with such other information as the Commissioner may reasonably require.

(d) ~~A broker-dealer registered with the Commissioner shall register at least one agent with the Commissioner. Except for a broker-dealer that is a sole proprietorship or the substantial equivalent, a broker-dealer registered with the Commissioner shall register with the Commissioner at least one broker-dealer agent.~~

(e) Registration expires at the end of the calendar year. Any broker-dealer may renew its registration by filing with the NASD CRD, or with the Commissioner in the case of a broker-dealer not registered under the Securities Exchange Act of 1934, such information as is required by the NASD, together with the fee required by Section 7314 of the Act.

See 1 DE Reg 1978 (6/1/98)

§601 Registration of Broker-Dealer Agents

(a) A person applying for a license as a broker-dealer agent in Delaware shall make application for such license on Form U-4 (Uniform Application for Securities Industry Registration or Transfer). Amendments to such application shall also be made on Form U-4.

(b) An applicant for registration as an agent for a broker-dealer that is a member of the NASD shall file his or her application, together with the fee required by Section 7314 of the Act, with the NASD CRD and shall file with the Commissioner such other information as the Commissioner may reasonably require.

(c) Any applicant for registration as an agent for a broker-dealer that is not an NASD member shall file his or her application, together with the fee required by Section 7314 of the Act, with the Commissioner, together with such other information as the Commissioner may reasonably require.

(d) ~~Any applicant for a broker-dealer agent license must also successfully complete the Uniform Securities Agent State Law Examination (Series 63 or 66)~~

administered by the NASD. The Commissioner may waive the exam requirement upon good cause shown.

(e) (d) Registration expires at the end of the calendar year. Any broker-dealer agent may renew its registration by filing with the NASD CRD, or with the Commissioner in the case of a broker-dealer agent employed by a broker-dealer not registered under the Securities Exchange Act of 1934, such information as is required by the NASD, together with the fee required by Section 7314 of the Act.

See 1 DE Reg 1978 (6/1/98)

§602 Registration of Issuer Agents

(a) A person applying for a license as an issuer agent in Delaware shall make application for such license on Form U-4 (Uniform Application for Securities Industry Registration or Transfer). Amendments to such application shall also be made on Form U-4.

(b) An applicant for registration as an issuer agent shall file his or her application and the fee required by Section 7314 of the Act with the Commissioner, together with such further information as the Commissioner may reasonably require.

(c) Any applicant for an issuer agent license must also successfully complete the Uniform Securities Agent State Law Examination (Series 63 or 66) administered by the NASD. The Commissioner may waive the exam requirement upon good cause shown.

See 1 DE Reg 1978 (6/1/98)

§603 Continuing Obligation of Registrants to Keep Information Current

(a) Persons registering or registered as broker-dealers, broker-dealer agents or issuer agents are required to keep reasonably current the information set forth in their applications for registration and to notify the Commissioner of any material change to any information reported in their application for registration. An applicant or registrant who is registered with the NASD may notify the Commissioner of such material change by filing an amendment through the NASD CRD. All other persons shall notify the Commissioner directly.

(b) Failure to keep current the information set forth in an application or to notify the Commissioner of any material change to any information reported in the application shall constitute a waiver of any objection to or claim regarding any action taken by the Commissioner in reliance on information currently on file with the Commissioner.

See 1 DE Reg 1978 (6/1/98)

§604 Minimum Financial Requirements and Financial Reporting Requirements of Broker-Dealers

(a) Each broker-dealer registered or required to be registered under the Act shall comply with SEC Rules 15c3-1 (17 C.F.R. §240.15c3-1), 15c3-2 (17 C.F.R.

§240.15c3-2), and 15c3-3 (17 C.F.R. §240.15c3-3).

(b) Each broker-dealer registered or to be registered under the Delaware Securities Act shall comply with SEC Rule 17a-11 (17 C.F.R. §240.17a-11) and shall file with the Commissioner, upon request, copies of notices and reports required under SEC Rules 17a-5(17 C.F.R. §240.17a-5), 17a-10 (17 C.F.R. §240.17a-10), and 17a-11 (17 C.F.R. §240.17a-11).

(c) To the extent that the SEC promulgates changes to the above-referenced rules, broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the Securities Division for violation of this section to the extent that the violation results solely from the broker-dealer's compliance with the amended rule.

§605 Bonding Requirements of Intrastate Broker-Dealers

Every broker-dealer registered or required to be registered under the Act whose business is exclusively intrastate, who does not make use of any facility of a national securities exchange, and who is not registered under Section 15 of the Securities Exchange Act of 1934 shall be bonded in an amount of not less than \$100,000 by a bonding company qualified to do business in this state.

§606 Record keeping Requirements of Broker-Dealers

(a) Unless otherwise provided by order of the SEC, each broker-dealer registered or required to be registered under the Act shall make, maintain, and preserve books and records in compliance with SEC Rules 17a-3 (17 C.F.R. §240.17a-3), 17a-4 (17 C.F.R. §240.17a-4), 15c2-6 (17 C.F.R. §240.15c2-6) and 15c2-11 (17 C.F.R. §240.15c2-11).

(b) To the extent that the SEC promulgates changes to the above-referenced rules, broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the Securities Division for violation of this section to the extent that the violation results solely from the broker-dealer's compliance with the amended rule.

§607 Use of the Internet for General Dissemination of Information on Products and Services

(a) Broker-dealers and broker-dealer agents who use the Internet to distribute information on securities, products or services through communications made on the Internet directed generally to anyone having access to the Internet, and transmitted through postings on Bulletin Boards, displays on "Home Pages" or otherwise (an "Internet Communication") shall not be deemed to be "transacting business" in Delaware for purposes of Section 7313 of the Act based solely on the Internet Communication if the following conditions are met:

(1) The Internet Communication contains a legend in which it is clearly stated that:

(i) the broker-dealer or agent in question may only transact business in a state requiring registration if first registered, excluded or exempted from state broker-dealer or agent registration requirements, as the case may be; and

(ii) follow-up, individual responses to persons in Delaware by such broker-dealer, or agent that involve either the effecting or attempting to effect transactions in securities, will not be made absent compliance with state broker-dealer or agent registration requirements, or an applicable exemption or exclusion;

(2) The Internet Communication contains a mechanism, including and without limitations, technical "firewalls" or other implemented policies and procedures, designed reasonably to ensure that prior to any subsequent, direct communication with prospective customers or clients in Delaware, said broker-dealer or agent is first registered in Delaware or qualifies for an exemption or exclusion from such requirement. Nothing in this paragraph shall be construed to relieve a state registered broker-dealer or agent from any applicable securities registration requirement in Delaware;

(3) The Internet Communication does not involve either effecting or attempting to effect transactions in securities in Delaware over the Internet, but is limited to the dissemination of general information on securities, products or services; and

(4) In the case of an agent:

(i) the affiliation with the broker-dealer is prominently disclosed within the Internet Communication;

(ii) the broker-dealer with whom the agent is associated retains responsibility for reviewing and approving the content of any Internet Communication by the agent;

(iii) the broker-dealer or investment adviser with whom the agent is associated first authorizes the distribution of information on the securities, products or services through the Internet Communication; and

(iv) in disseminating information through the Internet Communication, the agent acts within the scope of the authority granted by the broker-dealer;

(b) The position expressed in this rule extends to state broker-dealer and agent registration requirements only, and does not excuse compliance with applicable securities registration, antifraud or related provisions;

(c) Nothing in this rule shall be construed to affect the activities of any broker-dealer and agent engaged in business in this state that is not subject to the jurisdiction of the Commissioner as a result of the National Securities Markets Improvement Act of 1996, as amended.

See 1 DE Reg 1978 (6/1/98)

§608 Registration Exemption for Certain Canadian Broker-Dealers

(a) A Canadian broker-dealer which meets the

conditions of this rule as set forth below shall be exempt from the registration requirement of Section 7313 of the Act.

(b) To be eligible for this exemption, the broker-dealer must be resident in Canada, have no office or other physical presence in Delaware, and comply with the following conditions:

(1) Only effects or attempts to effect transactions in securities with, or for, one or more of the following:

(i) A person from Canada who is temporarily present in Delaware, with whom the Canadian broker-dealer had a bona fide business-client relationship before the person entered Delaware;

(ii) A person from Canada who is present in Delaware, whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor; or

(iii) ~~A "U.S. institutional investor" or a "major U.S. institutional investor" to the extent permitted by SEC Reg. §240.15a-6 (17 CFR §240.15a-6)As otherwise permitted by the act;~~ and

(2) Is registered in its home province or territory, and a member in good standing of a self-regulatory organization or stock exchange in Canada;

(3) Files with the Securities Commissioner a notice in the form of the current application required by the jurisdiction in which its head office is located;

(4) Files with the Securities Commissioner a consent to service of process in a form which complies with the requirements of Section 7327 of the Act.

(5) Discloses to its clients in Delaware that it is not subject to the full regulatory requirements of the Act; and

(6) Is not in violation of Sections 7303 or 7316 of the Act or any rules promulgated thereunder.

(c) Exempt transactions. Offers or sales of any security effected by a broker-dealer who is exempt from registration under this Regulation are exempt from the registration requirements of Section 7304 of the Act and the filing requirements of Section 7312 of the Act.

(d) Agent exemption: An agent who represents a Canadian broker-dealer who is exempt from registration under this Regulation is also exempt from the registration requirement of Section 7313 of the Act, provided such agent maintains his or her provincial or territorial registration in good standing.

(e) Denial, Suspension or Revocation. The Commissioner may by order deny, suspend or revoke the exemption of a particular Canadian broker-dealer provided pursuant to Rule 608 if he finds that the order is in the public interest and that the Canadian broker-dealer (or any partner, officer, director, or any person occupying a similar status or performing similar functions, or any person directly or indirectly, controlling the broker-dealer) has done anything prohibited by Section 7316(a)(1) to (8),(12) or (13).

§609 Dishonest or Unethical Practices

(a) Each broker-dealer and broker-dealer agent registered in Delaware is required to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. The acts and practices described below in this rule, among others, are considered contrary to such standards and may constitute grounds for denial, suspension or revocation of registration or such other action authorized by the Act.

(b) Broker-Dealers. For the purposes of 6 Del. C. §7316(a)(7), dishonest or unethical practices by a broker-dealer shall include, but not be limited to, the following conduct:

(1) Engaging in an unreasonable and unjustifiable delay in the delivery of securities purchased by any of its customers or in the payment, upon request, of free credit balances reflecting completed transactions of any of its customers, or failing to notify customers of their right to receive possession of any certificate of ownership to which they are entitled;

(2) Inducing trading in a customer's account that is excessive in size or frequency in view of the customer's investment objective, level of sophistication in investments, and financial situation and needs;

(3) Recommending a transaction without reasonable grounds to believe that such transaction is suitable for the customer in light of the customer's investment objective, level of sophistication in investments, financial situation and needs, and any other information material to the investment;

(4) Executing a transaction on behalf of a customer without prior authorization to do so;

(5) Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders;

(6) Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account;

(7) Failing to segregate and identify customer's free securities or securities held in safekeeping;

(8) Hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by SEC regulations;

(9) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit (commissions or profits equal to 10% or more of the price of a security are presumed to be unreasonable);

(10) Failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which, together with the preliminary prospectus, includes all information set forth in the final prospectus;

(11) Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;

(12) Charging any fee for which no notice is given to the customer, and consent obtained, prior to the event incurring the fee;

(13) Offering to buy from or sell to any person any security at a stated price, unless such broker-dealer is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell;

(14) Representing that a security is being offered to a customer "at the market" or a price relevant to the market price, unless such broker-dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created or controlled by such broker-dealer, or by any person for whom he is acting or with whom he is associated in such distribution, or any person controlled by, controlling or under common control with such broker-dealer;

(15) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative or deceptive device, practice, plan, program, design or contrivance, that may include but not be limited to:

(i) Effecting any transaction in a security that involves no change in the beneficial ownership thereof;

(ii) Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or false or misleading appearance with respect to the market for the security; provided, however, nothing in this subparagraph shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers; or

(iii) Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security for the purpose of inducing the purchase or sale of such security by others;

(16) Guaranteeing a customer against loss in any securities account of such customer carried by the

broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer;

(17) Publishing or circulating or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind that purports to report any transaction as a purchase or sale of any security, unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or that purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona-fide bid for, or offer of, such security;

(18) Using any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material, or presentation based on conjecture, unfounded or unrealistic claims or assertions in a brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;

(19) Failing to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of such security, and, if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

(20) Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter or a selling group member, or from a member participating in the distribution as an underwriter or selling group member;

(21) Failing or refusing to furnish a customer, upon reasonable request, information to which he is entitled, including:

(i) with respect to a security recommended by the broker-dealer, material information that is reasonably available; and

(ii) a written response to any written request or complaint;

(22) Making a recommendation that one customer buy a particular security and that another customer sell that security, where the broker-dealer acts as a principal and such recommendations are made within a reasonably contemporaneous time period, unless individual suitability considerations or preferences justify the different recommendations;

(23) Where the broker-dealer holds itself out as a market maker in a particular security, or publicly quotes bid prices in a particular security, failing to buy that security from a customer promptly upon the customer's request to sell;

(24) Recommending a security to its customers without conducting a reasonable inquiry into the risks of that investment or communicating those risks to its agents and its customers in a reasonably detailed manner and with such emphasis as is necessary to make the disclosure meaningful;

(25) Representing itself as a financial or investment planner, consultant, or adviser, when the representation does not fairly describe the nature of the services offered, the qualifications of the person offering the services, and the method of compensation for the services;

(26) Falsifying any record or document or failing to create or maintain any required record or documents;

(27) Violating any ethical standard in the conduct rules promulgated by the National Association of Securities Dealers; or

(28) Aiding or abetting any of the conduct listed above.

(c) Broker-Dealer Agents and Issuer Agents. For the purposes of 6 Del. C. §7316(a)(7), dishonest or unethical practices by a broker-dealer agent or an issuer agent shall include, but not be limited to, the following conduct:

(1) Engaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer;

(2) Effecting securities transactions not recorded on the regular books or records of the broker-dealer that the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction;

(3) Establishing or maintaining an account containing fictitious information in order to execute transactions that would otherwise be prohibited;

(4) Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer that the agent represents;

(5) Dividing or otherwise splitting the agent's commissions, profits or other compensation from the purchase or sale of securities with any person not also registered as an agent for the same broker-dealer or for a broker-dealer under direct or indirect common control;

(6) Where a recommendation is made that an unsophisticated customer purchase an over-the-counter security that (A) trades sporadically or in small volume, and (B) is not traded on any United States securities exchange (excluding the Spokane Exchange) or on the NASDAQ National Market System, failing to inform the customer that he may not be able to find a buyer if the customer would subsequently want to sell the security;

(7) Where a recommendation is made to purchase an over-the-counter security in which the asked price is

greater than the bid by 25 percent or more, failing to inform the customer of the bid and the asked prices and of the significance of the spread between them should the customer wish to resell the security;

(8) Using excessively aggressive or high pressure sales tactics, such as repeatedly telephoning and offering securities to individuals who have expressed disinterest and have requested that the calls cease, or using profane or abusive language, or calling prospective customers at home at an unreasonable hour at night or in the morning;

(9) Conducting or facilitating securities transactions outside the scope of the agent's relationship with his broker-dealer employer unless he has provided prompt written notice to his employer;

(10) Acting or registering as an agent of more than one broker-dealer without giving written notification to and receiving written permission from all such broker-dealers; or

(11) Holding himself out as an objective investment adviser or financial consultant without fully disclosing his financial interest in a recommended securities transaction at the time the recommendation is made;

(12) Engaging in any of the conduct specified in subparagraph (b) above; or

(13) Aiding or abetting any of the conduct listed above.

(d) Prohibited practices in connection with investment company shares. For purposes of 6 Del. C. §7316(a)(7), unethical practices by a broker-dealer, broker-dealer agent or issuer agent shall include, but not be limited to, the following conduct:

(1) In connection with the offer or sale of investment company shares, failing to adequately disclose to a customer all sales charges, including asset based and contingent deferred sales charges, which may be imposed with respect to the purchase, retention or redemption of such shares;

(2) In connection with the offer or sale of investment company shares, stating or implying to a customer, either orally or in writing, that the shares are sold without a commission, are "no load" or have "no sales charge" if there is associated with the purchase of the shares a front-end loan, a contingent deferred sales load, a SEC Rule 12 b-1 fee or a service fee which exceeds .25 percent of average net fund assets per year, or in the case of closed-end investment company shares, underwriting fees, commissions or other offering expenses;

(3) In connection with the offer or sale of investment company shares, failing to disclose to a customer any relevant sales charge discount on the purchase of shares in dollar amounts at or above a breakpoint or the availability of a letter of intent feature which will reduce the sales charges to the customer;

(4) In connection with the offer or sale of

investment company shares, recommending to a customer the purchase of a specific class of investment company shares in connection with a multi-class sales charge or fee arrangement without reasonable grounds to believe that the sales charge or fee arrangement associated with such class of shares is suitable and appropriate based on the customer's investment objectives, financial situation and other securities holdings, and the associated transaction or other fees;

(5) In connection with the offer or sale of investment company shares, recommending to a customer the purchase of investment company shares which results in the customer simultaneously holding shares in different investment company portfolios having similar investment objectives and policies without reasonable grounds to believe that such recommendation is suitable and appropriate based on the customer's investment objectives, financial situation and other securities holdings, and any associated transaction charges or other fees;

(6) In connection with the offer or sale of investment company shares, recommending to a customer the liquidation or redemption of investment company shares for the purpose of purchasing shares in a different investment company portfolio having similar investment objectives and policies without reasonable grounds to believe that such recommendation is suitable and appropriate based on the customer's investment objectives, financial situation and other securities holdings and any associated transaction charges or other fees;

(7) In connection with the offer or sale of investment company shares, stating or implying to a customer, either orally or in writing, the fund's current yield or income without disclosing the fund's most recent average annual total return, calculated in a manner prescribed in SEC Form N-1A, for one, five and ten year periods and fully explaining the difference between current yield and total return; provided, however, that if the fund's registration statement under the Securities Act of 1933 has been in effect for less than one, five, or ten years, the time during which the registration statement was in effect shall be substituted for the periods otherwise prescribed;

(8) In connection with the offer or sale of investment company shares, stating or implying to a customer, either orally or in writing, that the investment performance of an investment company portfolio is comparable to that of a savings account, certificate of deposit or other bank deposit account without disclosing to the customer that the shares are not insured or otherwise guaranteed by the FDIC or any other government agency and the relevant differences regarding risk, guarantees, fluctuation of principal and/or return, and any other factors which are necessary to ensure that such comparisons are fair, complete and not misleading;

(9) In connection with the offer or sale of investment company shares, stating or implying to a

customer, either orally or in writing, the existence of insurance, credit quality, guarantees or similar features regarding securities held, or proposed to be held, in the investment company's portfolio without disclosing to the customer other kinds of relevant investment risks, including but not limited to, interest rate, market, political, liquidity, or currency exchange risks, which may adversely affect investment performance and result in loss and/or fluctuation of principal notwithstanding the creditworthiness of such portfolio securities;

(10) In connection with the offer or sale of investment company shares, stating or implying to a customer, either orally or in writing,

(i) that the purchase of such shares shortly before an ex-dividend date is advantageous to such customer unless there are specific, clearly described tax or other advantages to the customer, or

(ii) that a distribution of long-term capital gains by an investment company is part of the income yield from an investment in such shares;

(11) In connection with the offer or sale of investment company shares, making representations to a customer, either orally or in writing, that the broker-dealer or agent knows or has reason to know are based in whole or in part on information contained in dealer-use-only material which has not been approved for public distribution; or

(12) Aiding or abetting any of the conduct listed above.

(13) In connection with the offer or sale of investment company shares, the delivery of a prospectus shall not be dispositive that the broker-dealer or agent has fulfilled the duties set forth in the subparagraphs of this rule.

(e) The conduct set forth above is not exclusive. Engaging in other conduct such as forgery, embezzlement, theft, exploitation, nondisclosure, incomplete disclosure or misstatement of material facts, manipulative or deceptive practices, or aiding or abetting any unethical practice, shall be deemed an unethical business practice and shall also be grounds for denial, suspension or revocation of registration.

See 1 DE Reg 1978 (6/1/98)

§610 Examination Requirement

An individual applying to be registered as a broker-dealer or a broker-dealer agent under the Act must successfully complete the Uniform Securities Agent State Law Examination (Series 63 or 66) administered by the NASD. The Commissioner may waive the exam requirement upon good cause shown.

Part G. Investment Advisers and Investment Adviser Representatives

§700 Registration of Investment Advisors

(a) A person applying for a license as an investment

adviser in Delaware shall make application for such license on Form ADV (Uniform Application for Investment Adviser Registration under the Investment Advisers Act of 1940). Amendments to such application shall also be made on Form ADV.

(b) The applicant shall file the following items with the Commissioner: (i) the application on Form ADV; (ii) the fee required by Section 7314 of the Act; (iii) a balance sheet prepared in accordance with Schedule G of Form ADV; (iv) a list of all investment adviser representatives employed by the investment adviser; and (v) proof of compliance with Rule 710 by filing an Investment Adviser Affidavit available at <http://www.state.de.us/securities> or by contacting the Division of Securities; and (vi) such other information as the Commissioner may reasonably require.

(c) Registration expires at the end of the calendar year. Any investment adviser may renew its registration by filing with the Commissioner an updated Form ADV, together with the fee required by Section 7314 of the Act and a list of all investment adviser representatives employed by the investment adviser.

~~(d) Every investment adviser must have at least one investment adviser representative registered with the Commissioner to obtain or to maintain its license as an investment adviser. Except for an investment advisor that is a sole proprietorship or the substantial equivalent, an investment adviser registered with the Commissioner shall register with the Commissioner at least one investment advisor representative.~~

See 4 DE Reg 510 (9/1/00)

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL
DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code,
Section 903(e)(2)(a) (7 Del.C. §903(e)(2)(a))

SAN# 2002-20

1. TITLE OF THE REGULATIONS:

Tidal Finfish Regulations

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

To amend Tidal Finfish Regulation 11 and add a new regulation, Tidal Finfish Regulation 28, to remain in compliance with fishery management plans as amended and adopted by the Atlantic States Marine Fisheries Commission.

Tidal Finfish Regulation 11. RED DRUM SIZE

PROPOSED REGULATIONS

LIMITS: CREEL LIMITS; is proposed to be amended to adjust the minimum size from 18 inches to 20 inches and the maximum size to 27 inches as required in Amendment 2 to the Interstate Fishery Management Plan for Red Drum.

Tidal Finfish Regulation 28. ATLANTIC OCEAN AMERICAN SHAD SEASON AND CLOSURE; is proposed to set up a registration system for commercial gill netters intending to participate in the American shad fishery in the Atlantic Ocean in 2003 and 2004. If three or fewer Delaware licensed commercial gill netters register for this fishery, the season for American shad in the Atlantic Ocean shall open February 14 and close midnight April 21. If four or more commercial gill netters register for this fishery, the season for American shad will open later and close sooner. The exact dates of opening and closure in 2003 or 2004 will depend on the number of fishermen who register. Beginning January 1, 2005, it shall be illegal to take American shad from the Atlantic Ocean by means of gill net. The purpose of the regulation is to meet the intent of Amendment I of the Interstate Fishery Management Plan for Shad and River Herring which requires all states to reduce American shad commercial fishing effort by 40% in the ocean by January 1, 2003 and close the ocean fishery for American shad by January 1, 2005.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

If Delaware is found to be out of compliance with a Fishery Management Plan by the Atlantic States Marine Fisheries Commission, that particular fishery may be closed by the Secretary of the U.S. Department of Commerce.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code §903(e)(2)(a).

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

Individuals may present their opinions and evidence and/or request additional information by writing, calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, Delaware 19901, (302)739-3441. A public hearing on this proposed amendment and new regulation will be held at the Department of Natural Resources and Environmental Control Auditorium 89 Kings Highway, Dover DE at 7:30 PM on Monday December 30, 2002. The record will remain open for written comments until 4:30 PM on January 10, 2003.

Tidal Finfish Regulation 11. Red Drum Size Limits; Creel Limits.

(a) Unless otherwise authorized, it shall be unlawful for any person to possess any red drum, (*Sciaenops ocellatus*), that measures less than ~~eighteen (18) inches, twenty (20) inches~~ total length or more than twenty-seven (27) inches, ~~total length, except as otherwise provided in paragraph (b) in this regulation.~~

(b) Unless otherwise authorized, it shall be unlawful for any person to possess more than five (5) red drum, ~~one of which may exceed twenty-seven (27) inches, total length.~~

Tidal Finfish Regulation No. 28, Atlantic Ocean American Shad Season And Closure

(a) All Delaware licensed commercial gill netters who wish to harvest and land American shad, *Alosa sapidissima*, in the Atlantic Ocean must register with the Department their intent to participate in this Atlantic Ocean commercial shad fishery by February 1 each year during either or both of 2003 and 2004.

(b) If three or fewer licensed commercial gill netters register to participate in the Atlantic Ocean commercial Atlantic shad fishery in any given year in 2003 or 2004, then the season for that year shall open at 12:01 a.m. February 14 and shall close on or before midnight April 21. If more than three licensed commercial gill netters register to participate in the Atlantic Ocean commercial Atlantic shad fishery in any given year in 2003 or 2004, then the season start and end dates shall be adjusted according to the following table based on the number of registered Atlantic Ocean shad commercial gill net fishermen:

Number of Registered Shad Fishermen	Season Length	Season Dates
4	59 days	14 Feb. - 13 April
5	47 days	20 Feb. - 7 April
6	39 days	24 Feb. - 3 April
7	34 days	27 Feb. - 1 April
8	29 days	1 March - 29 March
9	26 days	2 March - 27 March
10	24 days	3 March - 26 March
11	21 days	4 March - 24 March

If more than 11 fishermen register to participate in the Atlantic Ocean commercial Atlantic shad fishery in 2003 or 2004, the season length for that year shall be shortened one day for each additional registered fisherman and the season dates shall be adjusted accordingly.

(c) Beginning 12:01 a.m. on January 1, 2005, it shall be unlawful for any Delaware fisherman to take and reduce to possession any American shad caught by gill net from the waters of the Atlantic Ocean.

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code,
Section 6010, (7 Del. C. 6010)

SAN # 2002-18

1. TITLE OF THE REGULATION:

Tidal Finfish Regulations

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The Black Sea Bass Fishery Management Plan (FMP) was implemented by the National marine Fisheries Service (NMFS) and the Atlantic States Marine Fisheries Commission (ASMFC) in 1996 to manage the coastwide black sea bass stock. This management plan instituted a coast wide harvest quota, operating with daily or weekly trip limits and trigger mechanisms which lowered the trip limits in each of the quarterly harvest periods. The program was designed to allow harvest to proceed throughout each quarterly period without early closures. The plan rarely succeeded and was often characterized by early closures in many quarters. These early closures had serious economic consequences for commercial fishermen, necessitating a change to the program.

In order to improve the FMP, ASMFC adopted Amendment 13 to the plan by allocating state by state quotas to all Atlantic coast states. Delaware was allocated 5 percent of the allowable coast wide commercial quota equating to approximately 165,000 pounds of black sea bass for 2003.

The quota will be evenly distributed to those individuals that qualify and pre-register with the Department prior to the commencement of harvest operations. Two options are presented for fishermen to qualify for participation in the fish pot fishery and the commercial hook and line fishery for black sea bass. Participants will be required to provide daily harvest reports via a telephone reporting system operated by the Department.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

Delaware is required to comply with Fishery Management Plans approved by the Atlantic States Marine Fisheries Commission. Failure to do so could result in a complete closure of a specific fishery in Delaware.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code §903, (e)(2)(a).

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENTS:

Individuals may present their comments or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901. A public hearing will be held in the DNREC auditorium, 89 Kings Highway, Dover, DE 19901 at 7:30 on Wednesday, January 8, 2003. The record shall remain open for written comments until 4:30 pm on January 18, 2003.

7. PREPARED BY:

Richard Cole, (302) 739-4782

Tidal Finfish Regulation No. 23 Black Sea Bass Size Limit; Trip Limits; Seasons; Quotas

a) It shall be unlawful for any person to have in possession any black sea bass **Centropristis striata** that measures less than eleven (11) inches, total length.

b) It shall be unlawful for any recreational person to have in possession any black sea bass that measures less than eleven and one-half (11.5) inches, total length. (Note the minimum size may have to be adjusted within the range of 11.5-12.5 inches pending action taken by the Atlantic States Marine Fisheries Commission in December of 2002).

~~c) It shall be unlawful for any person to possess on board a vessel at any time or to land after one trip more than the quantity of black sea bass determined by the Atlantic States Marine Fisheries Commission for any quarter. The Department shall notify each individual licensed to land black sea bass for commercial purposes of the quarterly trip limits established by the Atlantic States Marine Fisheries Commission. It shall be unlawful for any commercial fisherman to land, to sell, trade and or barter any black sea bass in Delaware unless authorized by a black sea bass landing permit issued by the Department. The black sea bass landing permit shall be presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.~~

~~“One trip” shall mean the time between a vessel leaving its home port and the next time said vessel returns to any port in Delaware.”~~

~~d) It shall be unlawful for any person to fish for black sea bass for commercial purposes or to land any black sea bass for commercial purposes during any quarter after the date in said quarter that the Atlantic States Marine Fisheries Commission determines that quarter's quota is filled.” The Department shall notify each individual licensed in Delaware to land black sea bass for commercial purposes of any closure when a quarterly quota is filled. The black sea bass pot fishery and the black sea bass commercial hook and~~

line fishery shall be considered separate black sea bass fisheries. The total pounds allocated to each fishery by the Department shall be as follows: 96 percent of the State's commercial quota, as determined by the ASMFC, for the pot fishery; 4 percent for the commercial hook and line fishery.

e) ~~Is omitted intentionally.~~ Option 1) The Department may only issue a black sea bass landing permit for the pot fishery to a person who is the owner of a vessel permitted by the National Marine Fisheries Service in accordance with 50 CFR §§ 648.4 and who had applied for and secured from the Department a commercial food fishing license with a food fishing equipment permit for fish pots and submitted landings reports to the Department for black sea bass harvested during at least one year between 1994 and 2001.

f) ~~It shall be unlawful for any recreational fisherman to have in possession more than 25 black sea bass at or between the place where said black sea bass were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.~~ Option 2) The Department may only issue a black sea bass landing permit for the pot fishery to a person who is the owner of a vessel permitted by the National Marine Fisheries Service in accordance with 50 CFR §§ 648.4 and who has a current Delaware food fish license and a current food fishing equipment permit for fish pots.

f) Option 1) The Department may only issue a black sea bass landing permit for the commercial hook and line fishery to a person who has applied for and secured from the Department a commercial food fishing license and a fishing equipment permit for hook and line and submitted landings reports to the Department for black sea bass harvested at least one year during the period 1994 through 2001.

Option 2) The Department may only issue a black sea bass landing permit for the commercial hook and line fishery to a person who has a current Delaware commercial food fishing license and a current fishing equipment permit for hook and line.

g) ~~Any overage of the State's commercial quota will be subtracted from the next year's commercial quota. Any overage of an individual's allocation will be subtracted from that individual's allocation the next year.~~

h) ~~Each participant in a black sea bass fishery shall be assigned a equal share of the total pounds of black sea bass allotted by the Department for that fishery. A share shall be determined by dividing the number of pre-registered participants in that fishery into the total pounds of black sea bass allotted to the fishery by the Department. In order to pre-register an individual must indicate their intent in writing to participate in this fishery by 4:30 PM on a date no later than 15 days after this regulation is signed by the Secretary of the Department.~~

i) ~~It shall be unlawful for a commercial food fisherman to transfer quota allocation shares of black sea bass to another commercial food fishermen.~~

j) ~~Each commercial food fishermen participating in a black sea bass fishery shall report to the Department, via the interactive voice phone reporting system operated by the Department, each days landings in pounds at least one hour after packing out their harvest.~~

k) ~~It shall be unlawful for any recreational fisherman to have in possession more than 25 black sea bass at or between the place where said black sea bass were caught and said recreational fisherman's personal abode or temporary or transient place of lodging. (Note, the possession limit may vary between 10 and 25 black sea bass depending on action to be taken by the Atlantic States Marine Fisheries Commission in December of 2002).~~

DEPARTMENT OF PUBLIC SAFETY DIVISION OF HIGHWAY SAFETY

Statutory Authority: 21 Delaware Code,
Section 4177D (21 Del.C. § 4177D)

Notice Of Public Hearing

The Department of Public Safety will hold a hearing pursuant to 29 Del.C. Chapter 101 concerning the adoption of Policy Regulation Number 92, entitled "STANDARD OPERATING PROCEDURES FOR THE DUI EVALUATION, EDUCATION, AND OUTPATIENT TREATMENT AGENCIES FOR THE STATE OF DELAWARE, DEPARTMENT OF PUBLIC SAFETY." The Department will receive public comment regarding the proposed Department of Public Safety Policy Regulation.

Department Of Public Safety And Division Of Highway Safety Policy Regulation Number 92 Concerning: Standard Operating Procedures For The Dui Evaluation, Education, And Outpatient Treatment Agencies For The State Of Delaware, Department Of Public Safety.

Date, Time And Place Of Public Hearing

DATE: January 9, 2003

TIME: 10:00 a.m.

PLACE: Main Conference Room, 2nd Floor
Department of Public Safety
Public Safety Building
303 Transportation Circle
Dover, DE 19901

Persons may view the proposed Policy Regulation between the hours of 8:00 a.m. to 4:00 p.m., Monday through Friday, at the Division of Highway Safety, in the Public Safety Building, 2nd floor, 303 Transportation Circle,

Suite 201, Dover, DE 19901.

Persons may present their views in writing by mailing them to Lisa Moore, DUI Programs Coordinator, Division of Highway Safety, PO Box 1321, Dover, DE 19903. Written comments will be accepted until the close of business on January 8, 2003. Persons may also present their views by offering testimony at the public hearing. If the number of persons desiring to testify at the public hearing is large, the amount of time allotted to each speaker will be limited.

**Policy Regulation Number 92: Drinking Driver
Programs
Standard Operating Procedures**

1.0 Nature and Purpose

Pursuant to 21 Del.C. § 4177D, this is a policy of the Department of Public Safety, Office of Highway Safety. The purpose of this document is to provide a written operating procedure that shall apply to all Department of Public Safety contracted treatment, education and assessment providers. The Secretary of Public Safety or his/her designee must approve any changes to this document.

2.0 Definitions

"Enrollment", The point at which the intake process has been completed, the client has paid the full Education Program fee or half of the Outpatient Program fee, and the program begins to provide clinical service.

"No Show", Defined as when a client fails to show for a scheduled appointment; is late for a scheduled appointment; calls to cancel a scheduled appointment without adequate notice; arrives for an appointment without the needed documentation; or arrives for an appointment under the influence of alcohol as evidenced by a positive breathalyzer.

"Case Management", The process of coordinating and monitoring the services provided to a client both within a program and in conjunction with other providers. In the context of the Delaware DUI System, Case Management Services will only be provided by the Department of Public Safety contracted evaluation and referral provider.

"In-State Clients", The Delaware Evaluation and Referral Program will be responsible for coordinating services to address the client's DUI incident, for monitoring compliance with Delaware law regarding DUI, and updating client information and disposition status in the online tracking system. For those clients discharged at-risk, DERP is responsible for coordinating a referral for continuing treatment. DERP will also monitor the client's status for compliance with discharge requirements and update their disposition in the online tracking system.

"Out-of-State Clients", DERP is responsible for referring out-of-state clients to an approved provider in their area. DERP will continue to monitor the client's

progress and status through communications with the out-of-state agency. Once the offender has completed the program in their area, DERP will review the evaluation results for compliance with the Delaware DUI program requirements. DERP will also be responsible to update the online tracking system with regard to the client's disposition status.

"Discharge Status"

"Satisfactory", This category indicates that the client has completed the program and that he/she has evidenced positive behavioral change, which indicates the capacity for responsible future behavior.

"Discharge At Risk", This category indicates that the client has completed the program's attendance requirements and paid the required fee, but has not demonstrated sufficient change to indicate responsible behavior in the community.

"Non-Compliance", The client has failed to comply with the rules and regulations associated with program entry and has also failed to comply with the conditions and expectations as outlined in the initial sessions.

"Administrative Discharge", The client has evidenced a need for services other than those available through the program. For example, worsening alcoholism that results in admission to detoxification or residential treatment services. This status is also assigned for clients who cannot attend the program for reasons beyond their control (i.e., permanent disability occurring after enrollment).

3.0 Applicability

These standard operating procedures apply to all Department of Public Safety contracted DUI treatment, education, and assessment providers, as well as to all clients referred to this program whether they reside in or out of the State of Delaware.

4.0 Client Flow

4.1 Referral to the Delaware Evaluation and Referral Program (DERP), The court is the organization that generally makes the referral to DERP by providing them with the client's name and referral information. DERP will then process this information according to the following procedures:

4.1.1 For a DUI client residing in Delaware or seeking treatment services through a Delaware contracted provider:

4.1.1.1 Sources of Referral

4.1.1.1.1 Court System

4.1.1.1.2 Probation and Parole

4.1.1.1.3 Client Self-Referral

4.1.1.1.4 Out-of-State DMV

4.1.1.1.5 Delaware DMV

4.1.1.2 Intake and Referral Process (at

DERP)

4.1.1.2.1 DERP will enter client information into the online tracking system upon receipt.

4.1.1.2.2 The client has 72 hours from the court appearance time and date to contact DERP and schedule an interview. DERP will send an introduction letter (Attachment A) to the client, typically within 24 hours of receipt of the referral.

4.1.1.2.3 DERP will contact each client by telephone on the evening prior to his or her scheduled appointment.*

**Please note Should the client fail to contact DERP and schedule the appointment with 72 hours of their court appearance, the staff at DERP may issue a non-compliance discharge (Attachment C). Referral agency will be notified, the tracking system will be updated, and the process now stops.*

Should the client fail to keep an appointment or arrive at the appointment without the fee or required paperwork, the staff at DERP will apply a no-show fee of \$25.00 to the client's account, and the scheduling process will begin again.

Should the client fail to reschedule within 24 hours of the missed appointment, the staff at DERP may issue a non-compliance discharge. Referral agency will be notified, the tracking system will be updated, and the process now stops until the client takes the necessary steps to re-entry (Attachment D)

4.1.1.2.4 DERP will conduct a screening of the client and make a recommendation for program level of treatment, provide a supervisory clinical review (CADC), and make a referral (Attachment B) to a Delaware contracted DUI provider agency, as selected by the client.

4.1.1.2.5 A DERP screening is valid for two years. Education referrals, however, must be re-screened after each non-compliance discharge.

4.1.1.2.6 The Delaware contracted DUI provider agency selected should be county-appropriate, or by client request, and the referral shall be made within five business days of the client's assessment appointment.

4.1.1.3 Reasons for and Process of a DERP Non-Compliance

4.1.1.3.1 Client fails to contact DERP within 72 hours of court appearance.

4.1.1.3.2 Client fails to show for a scheduled appointment and does not contact DERP to reschedule within 24 hours of the missed appointment.

4.1.1.3.3 Client fails to keep two scheduled appointments per referral episode.

4.1.1.4 Completion Process (*In-State Clients at DERP*)

4.1.1.4.1 Update the tracking system with a notification date to the court (in-state or out-of-state

court) of completion.

4.1.1.4.2 Advise Delaware, or other state's DMV, of completion.

4.1.1.4.3 Notify referring organization of discharge status.

4.1.1.4.4 Close case and maintain file.

4.1.1.5 Fees (*In-State Clients*)

4.1.1.5.1 Screening - \$75.00

4.1.1.5.2 No-Show - \$25.00 per missed appointment

4.1.1.5.3 Administrative Re-Entry Processing - \$25.00

4.1.2 For a DUI client not residing in Delaware:

4.1.2.1 Sources of Referral

4.1.2.1.1 Court System

4.1.2.1.2 Probation and Parole

4.1.2.1.3 Client Self-Referral

4.1.2.1.4 Out-of-State DMV

4.1.2.1.5 Delaware DMV

4.1.2.2 Intake and Referral Process (*at DERP*)

4.1.2.2.1 Enter the client information into the online tracking system upon receipt.

4.1.2.2.2 Send to and receive back from the client a complete release of information (Attachment E) and a letter regarding the process to reach completion (Attachment F).

4.1.2.2.3 If necessary, direct the client to a facility in their area for an evaluation.

4.1.2.2.4 If required paperwork is incomplete, or not received within 15 days of the date DERP sent the letter, DERP may issue a non-compliance discharge and close the case. The Administrative Processing Fee would then be applicable for the client to re-enter the system.

4.1.2.2.5 Refer the client to a facility in their area for the appropriate program as determined by the evaluation.

4.1.2.2.6 Maintain contact with the client until all client information is received.

4.1.2.3 Completion Process (*Out-of-State Clients at DERP*)

4.1.2.3.1 Update the tracking system with a notification date to the court (in-state or out-of-state court) of completion.

4.1.2.3.2 Advise Delaware, or other state's DMV, of completion.

4.1.2.3.3 Notify referring organization of discharge status.

4.1.2.3.4 Close case and maintain file.

4.1.2.4 Fees (*Out-of-State Clients*)

4.1.2.4.1 Out of State Client Processing - \$100.00

4.1.2.4.2 Administrative Re-Entry Processing - \$25.00

4.2 Referral from DERP is made to a Delaware Department of Public Safety DUI contracted provider.

4.2.1 Intake and Referral Process (at Provider Agency)

4.2.1.1 Check the DUI tracking system and extract new referrals daily.

4.2.1.2 Print the new referral information and establish a client chart.

4.2.1.3 Mail an appropriate introduction letter (Attachment G) to the client and update the online system indicating that the initial notification has been made.

4.2.1.4 Enter data into the provider's internal client tracking system.

4.2.1.5 Conduct client Orientation Meeting and schedule clients' events, client completes clinical intake and begins the program.*

**Please note. Should the client fail to attend an Orientation within 30 days of referral, the staff at the Provider Agency shall send a 30-day letter, issue a non-compliance discharge (Attachment H), and update the tracking system. The client seeking re-entry will be responsible for any no-show fees and the administrative processing fee.*

4.2.2 Program Completion and Client Disposition (at Provider Agency)

4.2.2.1 Assign discharge status to client's event (s).

4.2.2.2 Update the online system. For clients other than satisfactory discharge, any notes that explain the status will be helpful to DMV and the court system.

4.3 Re-Licensing

4.3.1 Ignition Interlock Device Program

4.3.1.1 First Offense Election. The IID Diversion Program is offered to DUI first offenders who qualify for the regular first offense election. This election must be made in court at the time of their plea. Eligibility requirements include enrollment in an appropriate education or treatment program and license revocation of at least one month.

4.3.1.2 Refused Chemical Test. Offenders with a revoked license for refusal to submit to a chemical test may voluntarily participate in the IID program. Eligibility requirements include enrollment in an appropriate education or treatment program, license revocation for an additional two month period above and beyond their initial revocation, and their revoked license must be in the Division for a minimum period of two months (for a 12 month revocation), six months (for an 18 month revocation), or twelve months (for a 24 month revocation).

4.3.1.3 Subsequent Conviction or Probable Cause Administrative Action. Offenders revoked for a subsequent DUI offense in either of these categories may voluntarily participate in the IID program. Eligibility requirements include enrollment in an appropriate treatment

program, license revocation for an additional two month period above and beyond their initial revocation, and the revoked license must be in the Division for a minimum period of two months (for a 12 month revocation) or six months (for an 18 month revocation).

4.3.1.4 License Validity. The IID license is valid for Class D driving privileges provided the offender is driving a vehicle equipped with an approved Ignition Interlock Device and has the IID license in their possession.

4.3.2 Conditional Licensing

4.3.2.1 The conditional license is only authorized for offenders with a first DUI violation who elect the First Offender Election option in court upon meeting the specific criteria.

4.3.2.2 The offender must satisfactorily complete a minimum of sixteen (16) hours of alcohol education or treatment as determined by the Delaware Evaluation and Referral Program.

4.3.2.3 There is a minimum 90-day hard revocation before a conditional license may be issued.

4.3.2.4 The fee for a conditional license is \$10.00.

4.3.3 Reinstatement for First Offense Election

4.3.3.1 The offender must satisfactorily complete an education or treatment program as determined by the Delaware Evaluation and Referral Program.

4.3.3.2 There is a minimum six-month hard revocation before reinstatement can be made.

4.3.3.3 The offender must complete a favorable character background review with the Division.

4.3.3.4 The fee for reinstatement is \$143.75.

4.3.4 Reinstatement for DUI Conviction (without administrative action)

4.3.4.1 The offender must satisfactorily complete an education or treatment program as determined by the Delaware Evaluation and Referral Program.

4.3.4.2 There is a minimum six-month hard revocation before reinstatement can be made.

4.3.4.3 The offender must complete a favorable character background review with the Division

4.3.4.4 The fee for reinstatement is \$143.75.

4.3.4.5 The offender must pass the vision, law, and road test administered by the Division, as well as pay the \$12.50 license fee. (in-state offenders only)

4.3.5 Reinstatement for Probable Cause or Refused Chemical Test (alone or with a DUI conviction)

4.3.5.1 The offender must satisfactorily complete an education or treatment program as determined by the Delaware Evaluation and Referral Program.

4.3.5.2 The offender must serve the revocation period in full.

4.3.5.3 The offender must complete a favorable character background review with the Division.

4.3.5.4 The fee for reinstatement is \$143.75.

4.3.5.5 The offender must pass the vision, law, and road test administered by the Division, as well as pay the \$12.50 license fee. (*in-state offenders only*)

5.0 Provider Programs

5.1 DUI Education Program

5.1.1 Overview

5.1.1.1 The DUI Education Program consists of 16 hours of drug and alcohol education.

5.1.1.2 This program is designed for the first time offender who is of legal age to consume alcohol in the State of Delaware and who presents for an assessment following a DUI incident without evidence of an abuse problem, and typically with a BAC of less than 0.15.

5.1.1.3 The client referred to the program will receive 16 hours of education services through eight 2-hour classes. The class enrollment may be open or closed as long as the client does not have to wait more than 30 days to get started. The frequency of the meetings may vary by program.

5.1.1.4 Typically, the client will be referred to a program in the client's county of residence, but may request a referral to any of the three counties in Delaware.

5.1.1.5 During the course of the 16-hour program, a urine-drug screen (UDS) will be administered to every client. A positive UDS is grounds for immediate discharge at-risk from the Education program. (Other criteria that can result in a discharge at-risk can be found on Page 14.)

5.1.1.6 Clients discharged at-risk from the Education program will be referred to a higher level of care, as determined by the client's counselor. This can include a referral to a DUI Outpatient treatment program, an intensive outpatient program at another agency, or an inpatient program at another agency.

5.1.2 Associated Fees

5.1.2.1 Education Program - \$200.00

5.1.2.2 No Show - \$25.00 per missed appointment

5.1.2.3 Urinalysis - \$25.00

5.1.2.4 Administrative Re-Entry - \$25.00

5.1.3 Discharge Criteria (Attachment I)

5.1.3.1 Satisfactory. The client must attend all scheduled classes, pay the fee, and get a passing grade (80% or greater) on a standardized content test; the client must also complete the requirements of the program within 90 days of the referral. Participation must be evident and the client must present an acceptable DUI Avoidance Plan. (Attachment J) Attendance at an addiction-focused community support group is also required.

5.1.3.2 Non-Compliance. The client will be considered non-compliant and a non-compliance discharge status will be assigned if the client meets any of the following criteria:

5.1.3.2.1 The client fails to begin the program within 30 days of referral.

5.1.3.2.2 The client fails to pay the required fee according to the program, or individually designed payment plan.

5.1.3.2.3 The client contact is lost for more than 30 days.

5.1.3.2.4 The client has failed to complete the program within 90 days of the referral.

5.1.3.2.5 A non-compliance discharge will also be assigned to clients who are disruptive to the process.

5.1.3.2.6 Clients who fail to show for two consecutive scheduled appointments, or fail to show for three scheduled appointments during the entire course of treatment, will also be non-complied. (Attachment K)

5.1.3.3 At-Risk. A client who has failed to accomplish the goals and objectives of the Education Program will be released under an At-Risk status. (Attachment K) Specific reasons for this status include:

5.1.3.3.1 Failure of a client to remain abstinent while in the program.

5.1.3.3.2 Lack of participation in the group setting.

5.1.3.3.3 Lack of, or an unacceptable DUI Avoidance Plan.

5.1.3.3.4 Failure to achieve a passing grade on the content test.

5.1.3.3.5 Being arrested for an alcohol-related incident while in the program.

5.1.3.3.6 The presence of clinical issues that indicate the necessity of further treatment in accordance with the DSM IV diagnostic criteria.

5.1.3.4 Administrative Discharge. This discharge status is reserved for clients who cannot attend the program for medical reasons, have passed away, or cannot attend for a sound reason. This status may also be used to discharge a client to the services of another.

5.2 The DUI Out-Patient Treatment Program

5.2.1 Overview

5.2.1.1 This program consists of the base program and two sub-programs, all of which require a minimum of sixteen hours of drug and alcohol treatment.

5.2.1.1.1 The "21 and Under Treatment Program" provides services specifically geared to the issues most common to a population of this age.

5.2.1.1.2 The "Alternative/Mental Health Treatment Program" provides services specifically geared to the issues most common to this population.

5.2.1.2 This program is designed for the repeat offender and the first offender who presents for an assessment following a DUI incident with evidence of an abuse problem and typically with a BAC of greater than 0.15.

5.2.1.3 The client referred to the program will receive a minimum of 16 hours of treatment services. The services are provided through a variety of methods and will differ by contracted service provider. The class enrollment may be open or closed as long as the client does not have to wait more than thirty (30) days to get started. The frequency of the meetings may vary by program.

5.2.1.4 Typically, the client will be referred to a program in the client's county of residence, but may request a referral to any of the three counties in Delaware.

5.2.2 Acceptance of Prior Treatment

5.2.2.1 Clients having received prior treatment services will be required to attend the DUI Provider's DUI program orientation. Having completed any form of intensive substance abuse treatment indicates, in and of itself, a level of need that would typically warrant extended care and monitoring.

5.2.2.2 These clients will be required to submit for a detailed assessment and should bring all paperwork relating to any prior substance abuse treatment. A urine drug screen will be required at the time of assessment. Any treatment received within the last 60 days will be reviewed and a clinical decision made to determine the extent to which the treatment satisfies DUI Outpatient Treatment Program's requirements. Any treatment older than 60 days will not be considered.

5.2.2.3 If the clinical determination is that the substance abuse treatment was adequate, but the "drinking and driving" component of the program was missing, the client will be referred to a DUI Education Program to ensure that this component is received. If the treatment completed was an inpatient program, after-care services will be required prior to discharge from the DUI program.

5.2.3 Fees

5.2.3.1 Program - \$600.00

5.2.3.2 No Show (group session) - \$25.00

5.2.3.3 No Show (individual session) - \$25.00

5.2.3.4 Urinalysis - \$25.00

5.2.3.5 Administrative Re-entry - \$25.00

5.2.4 Discharge Criteria (Attachment I)

5.2.4.1 Satisfactory. The client must attend all scheduled classes, pay the fee, and get a passing grade (80% or greater) on a standardized content test; and must complete the requirements of the program within 120 days of the referral. Participation must be evident, client demonstrated a change in behavior, and the client must present an acceptable DUI Avoidance Plan. Attendance at a minimum of 6 addiction-focused community support group meetings is also required.

5.2.4.2 Non-Compliance. The client will be considered non-compliant and a non-compliance discharge status will be assigned if the client meets any of the following criteria:

5.2.4.2.1 The client fails to begin the program within 30 days of referral.

5.2.4.2.2 The client fails to pay the required fee according to the program, or individually designed payment plan.

5.2.4.2.3 The client contact is lost for more than 30 days.

5.2.4.2.4 The client has failed to complete the program within 120 days of the referral.

5.2.4.2.5 A non-compliance discharge will also be assigned to clients who are disruptive to the process.

5.2.4.2.6 Clients who fail to show for two consecutive scheduled appointments, or fail to show for three scheduled appointments during the entire course of treatment, will also be non-complied.

5.2.4.3 At-Risk A client who has failed to accomplish the goals and objectives of the Treatment Program will be released under an At-Risk status (Attachment L). Specific reasons for this status include:

5.2.4.3.1 Failure of a client to remain abstinent while in the program.

5.2.4.3.2 Lack of participation in the group setting.

5.2.4.3.3 Failure to complete the treatment plan

5.2.4.3.4 Lack of, or an unacceptable DUI Avoidance Plan.

5.2.4.3.5 Failure to achieve a passing grade on the content test.

5.2.4.3.6 Being arrested for an alcohol-related incident while in the program.

5.2.4.3.7 The presence of clinical issues that indicate the necessity of further treatment in accordance with the DSM IV diagnostic criteria.

5.2.4.4 Administrative Discharge. This discharge status is reserved for those clients who cannot attend the program for medical reasons, have passed away, or cannot attend for a sound reason. This status may also be used to discharge a client to the service of another.

5.3 Other Programs. There are other, more intensive services available for use at the discretion of the Program Managers. These include services such as residential treatment and medical detoxification. In addition, a Hardcore Program for drinking drivers is currently in the development stages. This program will target offenders with a history of DUI incidents, and offer appropriate treatment services.

6.0 Appeals Process

6.1 Overview. An individual who has been discharged from a DUI Education/Treatment Program, and has unsuccessfully appealed that discharge in accordance with the duly established appeals procedures of the education/

treatment agency, may appeal the discharge to the Division of Alcoholism, Drug Abuse and Mental Health (DADAMH).

6.2 Client Responsibilities. Within 10 days from the effective date on the official notice of the internal appeals decision of the education/treatment agency, the client must submit an appeal to DADAMH, which includes all of the following documents:

6.2.1 Notice of Appeal of Discharge to DADAMH form (Attachment M). This form should be obtained from the education/treatment agency. The client must use the form to clearly state the reason (s) for the appeal. The client must clearly cite the specific items in the discharge letter from the treatment/education agency that he/she is challenging. The client must also present objective, measurable facts that support his/her challenge to the education/treatment agency's decision.

6.2.2 Discharge letter from education/treatment agency that clearly indicates the specific reasons for discharge.

6.2.3 Official notice of the internal appeals decision from the education/treatment agency verifying that the client has completed the agency's internal appeal process, and that the decision to discharge has been upheld.

6.2.4 A fully completed and signed "Consent for Release of Confidential Information" that complies with 42 CFR requirements allowing the education/treatment agency to provide information to the DADAMH DUI Appeals Team. A copy of this form must also be given to the education/treatment agency. (This form should be obtained from the education/treatment agency.)

6.3 Education/Treatment Agency Responsibilities. The education/treatment agency that has discharged the client must:

6.3.1 Provide the client with a letter, which details the specific objective, measurable reasons why he/she has been discharged from the program. These reasons must be based upon the Criteria for Discharge that have been approved by the Office of Highway Safety (OHS) for the DUI Education/Treatment Program.

6.3.2 Offer the client the opportunity to appeal the discharge to the education/treatment agency following the appeals process approved by OHS and give the client an official notice of the internal appeals decision verifying that the discharge was upheld.

6.3.3 Explain the process to appeal further to DADAMH and provide the client with the Appeal of Discharge to DADAMH form.

6.3.4 Provide the client with the appropriate "Consent for Release of Confidential Information" form and assist the client to complete the form correctly and completely. Keep one signed original and give the client one signed copy.

6.3.5 Upon notification from the DADAMH Appeals Team that an appeal has been received, provide the

DADAMH Appeals Team, within 10 working days, the specific, objective, measurable documentation to support the reasons for discharge in the letter given to the client.

6.4 DADAMH Appeals Team Responsibilities

6.4.1 Log in and date stamp the appeal packages received from clients

6.4.1.1 Appeal packages received in the DADAMH Appeals Team office, or postmarked no later than ten (10) days from the effective date of the official notice of the internal appeals decision from the education/treatment program, will be scheduled to be reviewed by the DADAMH Appeals Team.

6.4.1.2 Appeals not received in the DADAMH Appeals Team office, or postmarked later than ten (10) days from the effective date of the official notice of the internal appeals decision from the education/treatment program, will be logged in and returned to the appellant without further action.

6.4.1.3 Appeal packages that are incomplete (i.e., do not contain all four of the items outlined in Chapter VI, Section B – Client Responsibilities above, completed inaccurately, or without appropriate signatures as required) will be logged in and returned to the appellant. If a corrected appeals package is not returned before the original ten (10) day period expires, the appeal will not be reviewed by the DADAMH Appeals Team.

6.4.2 The DADAMH Appeals Team will contact the education/treatment agency to request specific, objective, measurable documentation to support the reasons for discharge in the letter given to the client. If the documentation is not received by the DADAMH Appeals Team within 10 working days from the contact date, the Team's decision will be based solely upon the documentation provided by the appellant.

6.4.3 The DADAMH Appeals Team will meet at least monthly to review appropriately submitted appeals. All appropriately submitted appeals received by the DADAMH Appeals Team three days prior to a scheduled review will be considered at the review. Appeals received after three working days before a scheduled review will be considered at the next scheduled review.

6.4.4 The DADAMH Appeals Team will carefully consider all the required documentation provided by the client and the education/treatment provider. Decisions will be based solely on the documentation provided in writing. No in-person hearings will be conducted. No in-person appearances by education/treatment providers will be allowed. THE TEAM WILL RENDER A DECISION REGARDING WHETHER OR NOT THE EDUCATION/TREATMENT AGENCY FOLLOWED THE CRITERIA APPROVED BY DPS/OHS FOR DISCHARGE OF CLIENTS FROM THE DUI EDUCATION/TREATMENT PROGRAM.

6.4.5 Within 10 days of the review, the DADAMH

Appeals Team will notify the client, OHS, and the education/treatment agency of the Team's decision and rationale behind the decision. All decisions are final, and no subsequent review will be held by DADAMH on the same appeal.

6.4.6 Within 10 days of the review, the DADAMH Appeals Team will enter the decision into the DUI Tracking System.

7.0 Fee Schedules

Service	Current Fee
Screening by DERP	\$75.00
Out of State Processing	\$100.00
No Show (DERP)	\$25.00
Administrative Re-entry (DERP)*	\$25.00
Education Program	\$200.00
No Show (Education)	\$25.00
Outpatient Treatment	\$600.00
No Show (Treatment-Group)	\$25.00
No Show (Treatment-Individual)	\$25.00
Administrative Re-Entry (Programs)*	\$25.00
Urinalysis	\$25.00
Hardcore Program – in development	

*This is an administrative fee is for non-complined clients that do not require a new evaluation, but must be re-entered and referred to a program. The client will also be charged this fee at the Provider Agency for administrative costs associated with processing the client referral.

8.0 Reports

Each agency is responsible for maintaining current information in the tracking system on client activity. The information must be sufficient to permit the following reports to be generated:

8.1 The number of clients referred to any provider agency by DERP. The program the client was referred to within the provider agency must also be shown. The client referral date to the program represents the reference datum. All time-related information reported must be relative to this date.

8.2 The number of calendar days from referral date to the provider agency and 1st contact with client by the provider.

8.3 The number of calendar days from referral date to the provider agency and client enrollment.

8.4 The number of clients that have been referred in the target month but have not started the program in that same month.

8.5 The number of calendar days from referral date to the client completing the program.

8.6 The number of clients referred during a target month by the discharge status assigned.

8.7 It is also necessary for the agencies to report the distribution of the population by age, BAC, sex and number of DUI events.

9.0 Attachments

9.1 Client Introductory Letter from DERP

9.2 In-State Client Letter from DERP

9.3 Client Non-Compliance Letter from DERP

9.4 DERP Re-entry Letters

9.5 Standard Release of Information

9.6 Out-of-State Client Information Letters

9.7 Client Introductory Letter from Program

9.8 Client Non-Compliance Letter from Program

9.9 Discharge Criteria – Supporting Information

9.10 Sample DUI Avoidance Plan

9.11 No-Show Non-Compliance Letter from Program

9.12 At-Risk Letter from Program
DADAMH Appeals Process and Letter

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

DIVISION OF FAMILY SERVICES

Statutory Authority: 16 Delaware Code,
Chapter 9 (16 Del.C. Ch. 9)

The Delaware Department of Services for Children, Youth and Their Families, Division of Family Services is requesting public comment on "Regulations Pursuant to 16 Del. C. Ch. 9 for Designation of Substantiated Acts of Abuse or Neglect to Child Protection Levels and for Classifying Unsubstantiated Cases of Abuse or Neglect in the Division of Family Services' Internal Information System." Anyone wishing to submit written comments should submit such comments by December 30, 2002 to: Linda M. Shannon, Program Manager, Intake & Investigation, Division of Family Services, 1825 Faulkland Road, Wilmington, DE 19805. Fax comments to: (302) 633-2652

Legislation regarding the Child Protection Registry was signed into law by Governor Ruth Ann Minner on July 22, 2002. The registry is a database of information about persons the Division of Family Services has substantiated to have committed child abuse or neglect. The statute assigns individuals who are substantiated for child abuse or neglect to one of four levels for a specific number of years. The

levels also address who may be reported out to health care and child care employers for employment purposes. In addition, the statute mandates that all appeals be heard in Family Court instead of attorneys contracted by the Division of Family Services. Finally, the Division of Family Services will classify unsubstantiated cases on its internal system utilizing two categories: Unsubstantiated – No Evidence and Unsubstantiated with Concern.

303 – Regulations for Entry on to and Expungement from the Central Child Abuse Registry under 16 Del.C., Chapter 9 and 10 Del.C., Chapter 9

1.0 Legal Authorization

1.1 The legal authority for these regulations is found in the Delaware Code: Title 10, Chapters 9 and 10; Title 11, Chapters 5 and 85; Title 16, Chapter 9; and Title 31, Chapter 3.

2.0 Purpose

2.1 The purpose of these regulations is to provide a process for notice and opportunity for hearing prior to a person's entry on the Central Child Abuse Registry.

3.0 Date of Implementation

3.1 These regulations become effective ten days after publication in final form in the Delaware Register of Regulations.

4.0 Individuals Subject to the Law

4.1 Persons, adults or children, substantiated on or after April 1, 2001 to have committed child abuse or neglect, except that the opportunity for administrative expungement shall be provided for substantiated cases before or after April 1, 2001 unless a disqualifying factor applies.

5.0 Definitions

"Abuse" as defined in 16 Del.C., § 902 (1) means any physical injury to a child by those responsible for the care, custody, and control of the child, through unjustified force as defined in 11 Del.C., § 468, emotional abuse, torture, criminally negligent treatment, sexual abuse, exploitation, or mistreatment.

"Administrative Expungement" as defined in 16 Del.C., § 902A (g) means that the individual's name shall no longer be reported to employers pursuant to 11 Del.C. § 8563(b) in a Central Child Abuse Registry check as a substantiated case from the central registry. Notwithstanding the granting of a request for administrative expungement under this section, the individual's name and other case information shall remain on the central registry as substantiated for all other purposes, including, but not limited to, the Division's use of such information for historical, treatment and investigative purposes, child care

licensing decisions, reporting pursuant to 31 Del.C. § 309, reporting to law enforcement authorities, or any other purpose set forth in 16 Del.C. § 906(b).

"Central Registry" as defined in 16 Del.C., § 902 (2) means a registry of information about persons the Division of Family Services has substantiated to have committed child abuse and neglect. Substantiation may be made through civil or criminal proceedings or through civil administrative decision or proceedings where the burden of proof is at a minimum a preponderance of the evidence. The persons shall have been responsible for the care, custody, and control of the child as defined in 16 Del.C. § 902 (13).

"Department" means the Department of Services for Children, Youth and Their Families.

"Disqualifying Factors" means items that disqualify an individual from the opportunity for notice and a substantiation hearing or the opportunity for administrative expungement.

"Division" means the Division of Family Services.

"Good Cause" means discretionary factors that justify not reporting a substantiated case of child abuse or neglect to an employer. It depends upon the circumstances of the individual case and the finding of it lies in the discretion of the decision-maker to which the decision is committed.

"Neglect" as defined in 16 Del.C., § 902 means the failure to provide, by those responsible for the care, custody, and control of the child, the proper or necessary: education as required by law; nutrition; or medical, surgical, or any other care necessary for the child's well-being.

"Intent to Substantiate" means a person for whom the Division of Family Services intends to substantiate for child abuse or neglect, but whose name has not been entered on the registry.

"Preponderance of the Evidence" is a standard of proof that is met when a party's evidence indicates that the fact "is more likely than not" what the party alleges it to be. Evidence which, as a whole, shows the fact to be proved is more probable than not.

"Substantiated" means that the Division of Family Services after an investigation has concluded by a preponderance of the evidence that child abuse or neglect occurred. In addition, substantiation may occur through civil or criminal judicial proceedings, failure to request a Substantiation Hearing within the specified time frame, or by decision of a hearing officer.

"Substantiation Hearing" means a hearing held by a hearing officer to determine whether or not an individual committed child abuse or neglect.

"Substantiated Person" means a person who has been substantiated by the Division of Family Services as having committed child abuse or neglect and has been entered on the Central Child Abuse Registry.

6.0 Substantiation Hearing

6.1 Notice to Substantiated Persons Pending Entry on the Central Child Abuse Registry

6.2 At the conclusion of an investigation the Division shall send written notice, by certified mail, return receipt requested to the person's last known address, of its intent to place a person on the Central Registry for having committed child abuse or neglect, and shall advise the individual of the opportunity to request a Substantiation Hearing. The person can also be notified by personal delivery and accepting service of the notice in writing.

6.3 A person substantiated for child abuse or neglect, or an attorney acting on his or her behalf, shall have twenty (20) calendar days from the date the notice was mailed to request a Substantiation Hearing. The request for a Substantiation Hearing shall be in writing and shall be received by the Division Director, or designee, within 20 days of the date the notice was mailed.

6.4 Though the Division shall still issue its notice and the individual may request a Substantiation Hearing within twenty (20) days, when such Substantiation Hearing is timely requested, such hearing shall be stayed if civil or criminal proceedings regarding the same allegations of child abuse or neglect are pending. He or she shall be eligible to reschedule a Substantiation Hearing following the resolution of the criminal or delinquency charges or other civil court proceeding, unless the same conditions in Regulation 10.0 apply for the same child abuse or neglect incident investigated by the Division.

6.5 A person substantiated for child abuse or neglect may waive in writing his or her right to a Substantiation Hearing and request an Administrative Expungement in writing to the Division Director, or designee.

7.0 Disqualifying Factors

7.1 See circumstances identified in Regulation 10.0.

8.0 Procedures

8.1 Unless postponed or stayed, within twenty (20) calendar days of receiving a request for a hearing by the person found to have committed child abuse or neglect (appellant), a Substantiation Hearing date shall be set, and such hearing shall be held by the hearing officer within sixty (60) calendar days of the receipt of such request.

8.2 The burden of proof at the hearing shall be upon the Division, which shall be required to prove by a preponderance of the evidence that abuse or neglect occurred.

8.3 The appellant and the Division may have legal representation during the hearing. The parties may also present witnesses and other evidence on their behalf.

8.4 The hearing officer shall have the authority to:

8.4.1 issue subpoenas for witnesses and other sources of evidence, either at the request of the Division or at the request of the appellant;

8.4.2 administer oaths to witnesses;

8.4.3 exclude irrelevant, immaterial, insubstantial, cumulative and privileged evidence;

8.4.4 limit proof, rebuttal and cross-examination if they are repetitive; and

8.4.5 hold pre-hearing conferences for the settlement or simplification of issues by consent, for the disposal of procedural requests or disputes and to regulate and expedite the course of the hearing.

8.5 An audio tape recording shall be made of the hearing. Copies of the tape or request for a transcript of same may be made at the request of and expense of the appellant.

8.6 Following the Substantiation Hearing, the hearing officer shall issue a written decision to the appellant by certified mail, return receipt requested and by regular mail to the Division no later than sixty (60) calendar days from the last day of the conclusion of the hearing and arguments.

8.7 The decision shall include a brief summary of evidence and findings of fact based upon the evidence and conclusions of law. The appellant should be advised of the right to request an appeal of the decision to Family Court.

9.0 Appeal to Family Court Following Substantiation Hearing Decision

9.1 The appellant or the Division may request a review by Family Court within thirty (30) days of the date of the hearing officer's decision.

9.2 The Family Court review shall be limited in scope to whether there is substantial evidence to support the findings of fact or whether any error of law was made.

9.3 Such reviews, hearings and decisions, audio tapes, transcripts, and records on appeal to Family Court shall be confidential and not open to the public. Neither the Administrative Procedures Act 29 Del.C., Ch.101 nor the Freedom of Information Act shall apply to such hearings, any record thereof, or any evidence or documents produced or introduced at such hearings. The Division shall have the discretion to release records, the decision, and hearing evidence pursuant to 16 Del.C. § 906 (b)(18).

10.0 Entry on to the Central Child Abuse Registry

10.1 A person found to have committed child abuse or neglect shall be entered on the Central Registry when he or she:

10.1.1 fails to make timely request in writing for a Substantiation Hearing in response to a notice as specified in law and regulation or failed to make a timely written request to appeal a similar notice issued prior to the enactment of this law;

10.1.2 fails to appear at a scheduled Substantiation Hearing without prior approval of the hearing officer or fails to show that good cause existed to postpone the hearing within ten (10) calendar days after the scheduled hearing date of the reason for his or her absence from the

hearing;

10.1.3 has been afforded a hearing and the substantiation was upheld;

10.1.4 has been convicted or pled guilty to a criminal offense contained in Subchapters II or V of Chapter 5 of Title 11 including those taken nolo contendere or subsequently discharged or dismissed under a First Offenders program pursuant to 10 Del.C. § 1024 and the plea or conviction is for the same incident substantiated by the Division;

10.1.5 has been adjudicated delinquent as a juvenile for any of the comparable criminal offenses listed for adults for the same incident investigated by the Division; and

10.1.6 has been substantiated for abuse or neglect at a civil court hearing or administrative hearing at which the minimum standard of proof was preponderance of the evidence for the same incident investigated by the Division.

10.1.7 has been substantiated as provided in 16 Del.C. § 902A(f)(1).

11.0 Administrative Expungement of Substantiated Cases

11.1 An application for administrative expungement of a substantiated case may be made by any individual whose name is entered on the Central Child Abuse Registry unless there is one or more disqualifying factors. Expungement may be granted only for good cause, and at the discretion of the Division considering, but not limited to, the factors below:

11.1.1 the nature of the substantiation with respect to safety of the children who may come into the individual's direct care;

11.1.2 compliance with a DFS recommended or court-ordered treatment plan;

11.1.3 history of substantiated or unsubstantiated reports of child abuse and neglect;

11.1.4 any evidence of acts involving weapons, explosive devices, or threats of harm;

11.1.5 any evidence of domestic violence involving assaults, stalking, or cruelty to animals;

11.1.6 any evidence of addiction to drugs or alcohol that presents a significant and current threat of harm to children;

11.1.7 untreated or treated medical conditions that present a significant and current threat of harm to children;

11.1.8 length of time since the child abuse or neglect incident;

11.1.9 seriousness of the child abuse or neglect incident;

11.1.10 number of child abuse or neglect incidents;

11.1.11 indication of remorse; and changed

behavior.

11.1.12 The Division may consider any other factors relevant to the substantiated individual's application for expungement.

12.0 Disqualifying Factors

12.1 The entire criminal history of a person, including all convictions, is required to be reported for any person seeking employment with a licensed child care provider (11 Del.C. § 8561) and for a person seeking employment in a nursing home, hospital, or other entity licensed pursuant to Chapter 11 of Title 16 of the Delaware Code (16 Del.C. § 1141), thus an individual shall not be eligible for Administrative Expungement when he or she has been convicted, pled guilty, or has been adjudicated delinquent via plea or adjudication of any criminal offense contained in Subchapters II or V of Chapter 5 of Title 11, or of the same offenses if charged or delinquent in which the person was responsible for the care, custody, and control of the child at the time of the offense.

13.0 Procedures

13.1 A person placed on the Central Child Abuse Registry may submit a written request for Administrative Expungement to the Division Director, or designee, with the reasons therefor.

13.2 Within sixty (60) days of receiving the written request for Administrative Expungement, the Division shall send its decision by certified mail, return receipt requested to the person requesting expungement. The decision shall include notice of the right to appeal to a hearing officer for a hearing on the issue of administrative expungement.

13.3 A person placed on the Central Child Abuse Registry, or an attorney acting on his or her behalf, shall have thirty (30) calendar days of the Division's decision to request an Administrative Expungement hearing before a hearing officer. The request shall be made in writing to the hearing officer.

13.4 The procedures for an Administrative Expungement hearing shall be the same as for the Substantiation Hearing before a hearing officer. (See Regulations 8.3-8.7).

14.0 Appeal to Family Court Following Administrative Expungement Decision

14.1 Within thirty (30) days of the date of the hearing officer's decision, either the Division or the person requesting expungement, or an attorney acting on his or her behalf, may file a written appeal to Family Court.

14.2 Such reviews, hearings and decisions, audio tapes, transcripts, and records on appeal to Family Court shall be confidential and not open to the public. Neither the Administrative Procedures Act 29 Del.C., Ch.101 nor the Freedom of Information Act shall apply to such hearings,

any record thereof, or any evidence or documents produced or introduced at such hearings. The Division shall have the discretion to release records, the decision, and hearing evidence pursuant to 16 Del.C. § 906 (b)(18).

15.0 Cases Substantiated Prior to April 1, 2001

15.1 A substantiated person can request a Substantiation Hearing unless they have already been notified by the Division of the right to appeal and failed to appeal, have already been given a hearing regarding the substantiation, or he or she have the circumstances described in Regulation 10.0 or in 16 Del.C. § 902A(f)(1).

15.2 A substantiated person can request an Administrative Expungement unless a disqualifying factor applies.

See 4 DE Reg. 1556 (3/1/01)

REGULATIONS PURSUANT TO 16 DEL.C. CH. 9 FOR DESIGNATION OF SUBSTANTIATED ACTS OF ABUSE OR NEGLECT TO CHILD PROTECTION LEVELS AND FOR CLASSIFYING UNSUBSTANTIATED CASES OF ABUSE OR NEGLECT IN THE DIVISION OF FAMILY SERVICES' INTERNAL INFORMATION SYSTEM.

1.0 Legal Authorization

The legal authority for these regulations is found in the Delaware Code: Title 16, Chapter 9.

2.0 Purpose

The purpose of these regulations is (1) to develop regulations that assess the risk of future harm to children from acts of abuse or neglect and to designate each such act of abuse or neglect to a Child Protection Level, pursuant to 16 Del.C. §923; and (2) to develop regulations for classifying unsubstantiated cases of abuse or neglect within the Division of Family Services' internal information system, pursuant to 16 Del.C. §924.

3.0 Date of Implementation

These regulations become effective February 1, 2003.

4.0 Applicability

These regulations apply to acts of abuse or neglect that are alleged to have occurred on or after February 1, 2003; and to the designation to Child Protection Levels of each case substantiated for abuse or neglect that was placed on the Central Registry (also known as the Central Child Abuse Registry, the Child Abuse Registry, and the Central Abuse Registry) between August 1, 1994 and February 1, 2003.

5.0 Definition

"Parent/caretaker" means those responsible for the care, custody, and control of the child as that term is defined

in §902 of Title 16 of the Delaware Code.

6.0 Assessment of the Risk of Future Harm and Designation of Child Protection Levels

6.1 During an investigation of an incident of abuse or neglect, the Division of Family Services shall be guided by 16 Del.C. §906 (b).

6.2 A person who has been substantiated for abuse or neglect must be entered on the Child Protection Registry at one of four designated Child Protection Levels related to the risk of future harm to children arising from the incident under investigation or for which a person has been substantiated.

7.0 Child Protection Level I

7.1 The following incidents of abuse or neglect shall be deemed to present a low risk of future harm to children and shall be designated to Child Protection Level I:

7.1.1 **"Educational Neglect"** means failure by a parent/caretaker to follow through with Court-ordered activity for the child after conviction in Court for "Failure to Send Child to School."

7.1.2 **"Emotional Neglect"** means mild to moderate and/or isolated incidents of isolating/shunning, rejecting, or ignoring a child.

7.1.3 **"Incarceration"** means a parent/caretaker of a child is unable to provide for the basic needs of the child because they are being detained in a correctional facility.

7.1.4 **"Mental Incapacitation"** means a parent/caretaker of a child has a medically diagnosed mental condition that renders them unable to meet the basic needs of the child.

7.1.5 **"Non-Relative Placement"** means a child whose needs are being met by a non-relative/non-family member, through no neglect or fault of the parent/caretaker.

7.1.6 **"Parent Child Conflict"** means unresolved conflict between a parent/caretaker and a child over rules, expectations, and responsibilities.

7.1.7 **"Physical Incapacitation"** means a parent/caretaker of a child has a medically diagnosed physical condition that prevents them from meeting the basic needs of the child.

7.1.8 **"Relative Placement"** means a child whose needs are being met by a relative or family as those terms are defined in 10 Del.C. §901, through no neglect or fault of the parent/caretaker.

7.1.9 **"Runaway"** means a child is absent without the permission of the parent/caretaker.

7.1.10 **"Uncontrollable Behavior"** means a child is unwilling to abide by rules and boundaries set by the parent/caretaker.

7.2 Conviction of any of the following crimes when based on the same incident of abuse or neglect as alleged in the Notice of Intent to Substantiate shall be deemed to present a low risk of future harm to children and shall be

designated Child Protection Level I: violation of compulsory school attendance requirements or truancy

7.2.1 An incident of abuse or neglect containing the elements of any crime or offense listed or described in 7.2 without regard to the institution or result of criminal or delinquency proceedings based on such incident.

8.0 Child Protection Level II

8.1 The following incidents of abuse or neglect shall be deemed to present a moderate risk of future harm to children and shall be designated Child Protection Level II:

8.1.1 “Bruises, cuts and lacerations not requiring intervention by a medical professional” means injury caused by a parent/caretaker to the body tissue of a child causing discoloration, but without breaking the skin (bruise) or an injury which causes an open wound (cut/laceration) of a child over the age of six months. The injuries did not require medical treatment beyond medical examination.

8.1.3 “Emotional Abuse” includes, but is not limited to, behaviors by a parent/caretaker toward a child such as ridiculing, demeaning, making derogatory remarks, cursing, or threatening to inflict physical or emotional harm.

8.1.6 “Lack of Supervision, ages 7 – 11” means the parent/caretaker of a child is not providing immediate care, thereby ensuring the well-being and safety for the child, who is unable to care for him/herself or respond appropriately to an emergency. These are incidents in which the parent/caretaker is physically present, but is not attending to the child due to behaviors such as sleeping or intoxication.

8.1.8 “Lock In/Out, ages 12 – 17” occurs when a parent/caretaker locks a child in a confined area such as a bedroom, closet, and car or locks the child out of the home.

8.1.7 “Moderate Physical Neglect” means failure by a parent/caretaker of a child to provide for the basic needs (e.g., food, clothing, shelter) of the child, for no apparent financial reason, and this failure decreases the child’s safety or general well-being.

8.1.2 “Other Physical Abuse” means actions prohibited by Delaware Code such as punching, kicking, biting, pulling hair, pushing/shoving, choking, and use of a deadly weapon by a parent/caretaker of a child which have not resulted in observable injury to the child.

8.1.5 “Severe Emotional Neglect” includes behaviors by a parent/caretaker such as chronically isolating/shunning, rejecting, or ignoring a child. Child witnessing of domestic violence is also included at this level.

8.1.4 “Verbal Innuendo” means inappropriate sexualized statements to a child by a parent/caretaker intended to entice or alarm.

8.2 Conviction of any of the following crimes when based on the same incident of abuse or neglect as alleged in the Notice of Intent to Substantiate shall be deemed to

present a moderate risk of future harm to children and shall be designated Child Protection Level II: interference with custody or indecent exposure in the second degree.

8.2.1 An incident of abuse or neglect containing the elements of any crime or offense listed or described in 8.2 without regard to the institution or result of criminal or delinquency proceedings based on such incident.

9.0 Child Protection Level III

9.1 The following incidents of abuse or neglect shall be deemed to present a high risk of future harm to children and shall be designated Child Protection Level III:

9.1.1 “Abandonment, ages 13 – 17” means the parent/caretaker fails to assume or refuses to assume responsibility or to provide basic care for a child on a daily basis. The basic care consists of food, clothing, shelter, medical care, reasonable and consistent financial support, and the maintenance of regular communication/contact between the parent/caretaker and child.

9.1.2 “Bizarre Treatment” means behavior toward a child by a parent/caretaker that is odd, extreme, or significantly disproportionate to the precipitating event initiated by the child, or would not be perceived as a logical consequence by a reasonable person.

9.1.3 “Bruises, cuts, lacerations requiring intervention by a medical professional” means injury caused by a parent/caretaker to the body tissue of a child causing discoloration, but without breaking the skin (bruise) or an open wound (cut/laceration) necessitating medical treatment beyond medical examination. All children under the age of six months are included at this level, regardless of the need for medical treatment beyond medical examination. Current evidence of historical injuries (perhaps appearing on an x-ray) that would have required medical treatment at the time of the injuries, but which do not necessitate current treatment, also require a finding at this level.

9.1.4 “Child, Ages 7 – 11, Left Alone” means a child who is unable to care for him/herself, or to respond to an emergency, has not been left in the care of anyone by the parent/caretaker.

9.1.5 “Dislocation/Sprain” means a medically diagnosed displacement of a bone or injury to a ligament or muscle caused by a parent/caretaker.

9.1.6 “Lack of Supervision, Age 6 and Younger” means the parent/caretaker is not providing immediate care, ensuring well-being and safety, for a child who is unable to care for him/herself or respond appropriately to an emergency. These are incidents in which the parent/caretaker is physically present, but is not attending to the child due to behaviors such as sleeping or intoxication.

9.1.7 “Lock In/Out, ages 0 – 11” occurs when a parent/caretaker locks a child in a confined area such as the bedroom, closet, and car or locks the child out of the home.

9.1.8 **“Malnutrition”** means a medically diagnosed condition of poor nourishment of a child resulting from insufficient food or an improper diet caused by a parent/caretaker.

9.1.9 **“Non-Organic Failure to Thrive”** means medically diagnosed Failure to Thrive that is documented as life-threatening.

9.1.10 **“Other Medical Neglect”** means failure by a parent/caretaker to obtain proper or necessary medical care, but the medical care is not life-threatening.

9.1.11 **“Serious Physical Neglect”** means failure by the parent/caretaker of a child to provide for the basic needs (e.g., food, clothing, shelter) of the child, for no apparent financial reason, and this failure could result in bodily harm or death.

9.2 Conviction of any of the following crimes when based on the same incident of abuse or neglect as alleged in the Notice of Intent to Substantiate shall be deemed to present a high risk of future harm to children and shall be designated Child Protection Level III: offensive touching, menacing, reckless endangering, assault in the third degree, terroristic threatening, unlawful administration of drugs or controlled substances, indecent exposure in the first degree, sexual harassment, unlawful imprisonment, abandonment of a child, or misdemeanor endangering the welfare of a child or an incompetent person.

9.2.1 An incident of abuse or neglect containing the elements of any crime or offense listed or described in 9.2 without regard to the institution or result of criminal or delinquency proceedings based on such incident.

10.0 Child Protection Level IV

10.1 The following incidents of abuse or neglect shall be deemed to present the highest risk of future harm to children and shall be designated Child Protection Level IV:

10.1.1 **“Abandonment 0 – 12”** means the parent/caretaker fails to assume or refuses to assume responsibility or to provide basic care for a child on a daily basis. The basic care consists of food, clothing, shelter, medical care, reasonable and consistent financial support, and the maintenance of regular communication/contact between the parent/caretaker and child. This finding does not include the voluntary surrender of a baby pursuant to the Safe Arms for Baby Act.

10.1.2 **“Anal Intercourse”** means penetration of the anus of a child by parent/caretaker for reasons other than appropriate medical diagnosis/treatment such as using a rectal thermometer or giving a child an enema or suppository. The penetrating object could be the parent/caretaker’s tongue, penis or fingers, or might involve inanimate objects such as crayons or pencils.

10.1.3 **“Blunt Force Trauma”** means serious or life-threatening bruises, cuts, lacerations caused by a parent/caretaker that require medical treatment beyond medical

examination.

10.1.4 **“Bone Fracture”** means a medically diagnosed break or crack in a bone or cartilage caused by a parent/caretaker.

10.1.5 **“Burn/Scald”** means a medically diagnosed injury intentionally or recklessly inflicted by the parent/caretaker to a child by contacting the child’s skin/hair to a flame, hot object, hot liquid, electrical source, or a chemical source.

10.1.6 **“Child, Aged 6 or Younger, Left Alone”** means a child who is unable to care for him/herself, or to respond to an emergency, has not been left in the care of anyone by the parent/caretaker.

10.1.7 **“Death”** means a child’s loss of life due to abuse or neglect by parent/caretaker.

10.1.8 **“Driving Under the Influence (DUI)”** means incidents documented by law enforcement of a parent/caretaker driving a vehicle under the influence of alcohol or drugs with a child present.

10.1.9 **“Exploitation”** occurs when a parent/caretaker behaves unethically toward a child, using the parent’s/caretaker’s position of power to solicit sexual acts in an attempt to obtain some type of sexual gratification. This category includes situations in which a parent/caretaker prostitutes a child or knowingly permits a child to be “used” by another party, regardless of whether the parent/caretaker receives sexual gratification or other compensation (money, drugs) or no compensation at all.

10.1.10 **“Head Trauma”** means a medically diagnosed serious or life-threatening injury inflicted by a parent/caretaker to a child’s face or head.

10.1.11 **“Inappropriate Touching”** means intentional touching of the breasts, abdomen, genital area, inner thighs or buttocks by a parent/caretaker for the sexual gratification of the parent/caretaker. The parent/caretaker and child may be clothed or unclothed and this finding is also appropriate in cases in which the parent/caretaker has asked the child to touch them. This category does not include touching by the parent/caretaker necessary to provide routine hygienic care such as bathing or to administer medications such as a menthol rub for a chest cold.

10.1.12 **“Internal Injury”** means a medically diagnosed serious injury within the abdominal or chest area inflicted by a parent/caretaker.

10.1.13 **“Life-Threatening Medical Neglect”** means a parent’s/caretaker’s failure to obtain medical care for a child has resulted in permanent functional impairment attributable to neglect. Medical diagnosis is necessary to support this finding. This category also includes failure by a parent/caretaker to use equipment such as an apnea monitor or respirator, to provide medications for health problems such as diabetes or asthma, or to practice therapies in the home for a child such as suctioning of the airway as directed

by a physician for the purpose of preventing death and sustaining life.

10.1.14 “Operating a Vessel or Boat Under the Influence (BUI)” means incidents documented by law enforcement of a parent/caretaker driving a vessel or boat under the influence of alcohol or drugs with a child present.

10.1.15 “Oral Intercourse” means oral (mouth) – genital (penis, vagina) contact between a parent/caretaker and a child.

10.1.16 “Other Sexual Abuse” means sexually inappropriate behavior between a parent/caretaker and a child which is not included in 10.1.10 – 10.1.15.

10.1.17 “Poisoning” means a parent/caretaker non-accidentally over-medicates or causes a child to ingest alcohol, drugs (legal/illegal) not prescribed for that child, or other toxic substances, resulting in significant and/or enduring functional impairment.

10.1.18 “Pornography” means production or possession of visual material (e.g., pictures, films, video) by a parent/caretaker depicting a child engaged in a sexual act or a simulation of such an act. The visual material involves sexualized content, as opposed to “naked baby” pictures.

10.1.19 “Puncture/Stab” means a parent/caretaker inflicts injury, piercing the child’s body with a pointed object, which requires medical treatment beyond medical examination.

10.1.20 “Shaken Baby” means a medically diagnosed condition in which violent shaking of an infant by a parent/caretaker has resulted in subdural hematomas (blood clots on the surface of the brain), and/or retinal hemorrhages (bleeding behind the eyes), causing serious and permanent brain damage.

10.1.21 “Suffocation” means a parent/caretaker deliberately interferes with child’s ability to breathe, by strangling, smothering or otherwise depriving the child of oxygen.

10.1.22 “Vaginal Intercourse” occurs when a parent/caretaker of a female child penetrates the child’s vagina with a penis, fingers, or with an inanimate object; or when a parent/caretaker manipulates a child of either sex to penetrate the parent’s/caretaker’s vagina.

10.2 Conviction of any of the following crimes when based on the same incident of abuse or neglect as alleged in the Notice of Intent to Substantiate shall be deemed to present the highest risk of future harm to children and shall be designated Child Protection Level 4: vehicular assault, vehicular homicide, criminally negligent homicide, assault in the first degree, assault in the second degree, murder, manslaughter, murder by abuse or neglect, incest, rape, unlawful sexual contact, sexual extortion, sexual solicitation of a child, bestiality, continuous sexual abuse of a child, possession of child pornography, unlawfully dealing in child pornography, felony endangering the welfare of a child or an incompetent person, dangerous crime against a

child, kidnapping, coercion, dealing in children, unlawful dealing with a child, sexual exploitation of a child, or promoting suicide.

10.2.1 An incident of abuse or neglect containing the elements of any crime or offense listed or described in 10.2 without regard to the institution or result of criminal or delinquency proceedings based on such incident.

11.0 Unsubstantiated Investigations

11.1 If the Division determines from its investigation not to substantiate the person for abuse or neglect, the person may not be entered on the Child Protection Registry for that reported incident. The Division shall indicate in its internal information system that the incident is unsubstantiated, and so notify the person in writing.

11.2 If the Division determines from its investigation that there is no credible evidence to substantiate the person for abuse or neglect for that incident, the internal information system will indicate that the finding is “Unsubstantiated – No Evidence.”

11.3 If the Division determines from its investigation that substantiation proceedings for that incident of abuse or neglect are not warranted or justified, but that there are reasons for concern, the internal information system will indicate that the finding is “Unsubstantiated with Concern.”

Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. [**Bracketed Bold language**] indicates text added at the time the final order was issued. [~~Bracketed stricken through~~] indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

DEPARTMENT OF EDUCATION

14 DE Admin. Code 540

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 **Del.C.** §122(d))**Regulatory Implementing Order
540 Driver Education****I. Summary Of The Evidence And Information
Submitted**

The Secretary seeks the consent of the State Board of Education to amend regulation 540 Driver Education. The regulation has been renumbered for clarity by clustering like issues together. Amendments have also been made to renumbered sections 1.1, 1.2, 1.3, 4.0 and 5.0 for the purpose of clarity. A new section 6.0 states that all high schools with twenty-five or more students shall provide instruction in driver education. Proposed amendments to regulation 540 Driver Education were previously published in the *Delaware Register of Regulations* in August 2002, (Volume 6 page 133) and due to substantive changes in the amendments it is was re-published.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on September 25, 2002, in the form hereto attached as Exhibit A. Comments were received from the Governors Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities concerning Section 1.2 of the

regulation. The Department feels that the proposed language relating to Section 504 and the ADA was carefully considered when the Department reviewed the Council's earlier comments. The Department believes that the language proposed in the published regulation protects the rights of children with disabilities under all the applicable statutes without creating the risk of contrary interpretations of the regulation and the statutes. Interestingly, framing the regulation as a negative is consistent with language in the IDEA describing the interaction of the IDEA with the Rehabilitation Act and ADA. (See 20 USC. §1415(1).

II. Findings Of Facts

The Secretary finds that it is appropriate to amend this regulation in order to add clarity and focus to the contents of the regulation and to make it clear that all high schools with twenty five or more students must provide instruction in Driver Education.

III. Decision To Amend The Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §122, the regulation attached hereto as Exhibit "B" is hereby Amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text And Citation

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** §540 in the *Regulations of the Department of Education*.

V. Effective Date Of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122, on November 21, 2002. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 21st day of November 2002.

Department Of Education

Valerie A. Woodruff, Secretary of Education

Approved this 21st. day of November 2002

State Board Of Education

Dr. Joseph A. Pika, President
Jean W. Allen, Vice President
Robert J. Gilsdorf
Mary B. Graham, Esquire
Valarie Pepper
Dennis J. Savage
Dr. Claibourne D. Smith

540 Driver Education

1.0 Delaware residents are entitled to free driver education one time only. Students who are not successful in their initial driver education course may register in any of the adult driver education programs for a fee.

1.1 ~~2-0~~ The Individualized Education Program Team, in consultation with the Driver Education teacher, may make accommodations to the Driver Education program and offer specialized instruction for special education students through the ~~students'~~ student's Individual Education Program (I.E.P.).

1.2 Nothing in this regulation shall alter a school's duties under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act to students who are qualified individuals with disabilities. Nothing in this regulation shall prevent a school from providing driver education to such students.

1.3 ~~3-0~~ Delaware residents attending school out of state as sophomores, students in excess of the September 30th unit allotment, students attending private and parochial academies in state with sophomore enrollments of less than twenty-five, home schooled students and any student

approved by the Secretary as an exceptional case are entitled to attend summer driver education without charge. Districts shall notify all nonpublic and public high schools in their district by ~~April~~ May 1st annually as to the location of the nearest summer driver education program. Summer Driver Education shall be offered between June 1 - August 31 and each request for free tuition must be approved by the Secretary of Education through the Office of the Education Associate for Driver Education, Safety and Physical Education.

1.4 ~~4-0~~ Adult Driver Education programs, when offered, shall follow the same regulations established for the high school and the summer programs. The adult programs are available to any individual for a fee through a local school district in each county. The ~~costs~~ cost per student for adult driver education will be determined by the Department of Education.

2.0 ~~5-0~~ The driver education course shall include a minimum of forty-four (44) class hours of instruction consisting of thirty (30) class hours of classroom instruction, seven (7) class hours of in-the-car behind-the-wheel laboratory instruction and seven (7) hours of actual observation in-the-car. The class hours must not be less than forty-five (45) minutes each. For those schools with varying class schedules the minimum classroom instruction must be no less than one thousand three hundred fifty (1350) minutes and behind-the-wheel laboratory instruction no less than three hundred fifteen (315) minutes.

2.1 ~~5-1~~ Driving simulators may be substituted for the required hours of behind-the-wheel laboratory instruction but only up to three (3) hours of time at the ratio of four (4) hours of driving simulation to one (1) hour of actual behind-the-wheel laboratory instruction.

2.2 ~~5-2~~ Off-the-street driving ranges or multiple driving ranges that are off the street may be substituted for actual behind-the-wheel laboratory instruction up to three (3) hours time at the ratio of two (2) hours of range instruction time to one (1) hour of actual behind-the-wheel laboratory instruction time.

2.3 ~~5-3~~ Driving simulation and off-the-street driving range time shall not be taken from or cause a reduction of classroom instruction time.

2.4 ~~5-4~~ Driving simulation and off-the-street driving range time shall not be substituted for more than one-half (½) of the total required seven (7) hours of actual behind-the-wheel laboratory instruction and only at the ratios defined in the above items. This includes individually or in any combination.

3.0 ~~6-0~~ The Driver Education teachers shall use the "Teachers' Guide for Driver Education" developed by the Department of Education for classroom instruction and

behind-the-wheel laboratory instruction time. Teachers should include student activities requiring reading, writing and research as part of the Driver Education curriculum.

~~4.0~~ ~~7.0~~ ~~Beginning with the 1998-99 school year, grades for the Driver Education Program~~ Final grades for the forty-four hour driver education course shall be either pass or fail. Districts Schools may grant one-fourth (1/4) credit for successful completion of the minimum hours in both the classroom and the behind-the-wheel laboratory experience. The one fourth credit for driver education may be included as part of the elective credits counted toward graduation.

~~4.1~~ ~~7.1~~ ~~Pass/Fail grades for publication in the Department of Education "Report of Educational Statistics"~~ must be received by the Department of Education no later than June 30th for Regular Driver Education Programs and August 31st for Summer Driver Education Programs. Final grades will be maintained by the Department for a seven-year period.

~~8.0~~ ~~During the school day, automobiles purchased by a district or leased from Fleet Services or leased directly from a dealership using state funds allocated for Driver Education shall be used solely for the instruction of students enrolled in Driver Education.~~

5.0 Automobiles purchased, leased from Fleet Services or leased directly from a dealership using state funds allocated for driver education shall be used solely for the instruction of students enrolled in Driver Education; except that a school district or charter school may permit a driver education teacher to drive such automobile to and from the teacher's place of residence when the school district or charter school determines that it would be unsafe to store the automobile overnight at the school; and further provided that in the case of a private school driver education teacher, the Education Associate for Driver Education and Physical Education at the Department of Education may permit the teacher to drive the automobile to and from school from the teacher's place of residence when it appears that it would be unsafe to store the automobile overnight at the school.

6.0 All public and non-public high schools with enrollments of twenty-five or more sophomore students shall offer driver education as an integral part of the curriculum.

See 1 DE Reg. 964 (1/1/98)

Regulatory Implementing Order 601 School/Police Relations

I. Summary Of The Evidence And Information Submitted

The Secretary seeks to amend regulation 601 School Police Relations in order to include charter schools and alternative schools in the requirements of the regulation and to clarify the list of school crimes that must be reported to the Department of Education, in addition to those required to be reported by law and to reflect current conditions. Some incidents of student misconduct have been removed from the list and bomb threats, alcohol possession and use and bullying have been added to the list. A definition of bullying has been added in 5.0. The requirement in 2.0 for DOE approved training was removed since the training is done locally with technical assistance from DOE if requested.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on September 25, 2002, in the form hereto attached as Exhibit A. Comments were received from the Governors Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities concerning the concept of "bullying" and the use of the reference to "alternative schools". The Department's response is as follows.

On January 15, 2002, a task force created by House Resolution No. 24 made recommendations to the Governor and General Assembly regarding the consistency of school district Codes of Conduct. The task force agreed with earlier findings that the development of a statewide code of conduct would "not act favorably upon the very complex problem of student behavior" and that districts should develop their own codes of conduct. The proposed regulation is consistent with the task force's findings regarding local autonomy, while allowing the Department to track and analyze information about the nature and extent of bullying in our public schools.

In addition, the Council correctly notes that alternative schools are not specifically mentioned in 14 **Del.C.** §4112. Alternative Schools are actually programs of school districts or consortia of school districts and as such are already covered in the reporting regulations. Mentioning alternative schools here simply makes that clear and is consistent with the Department's broad regulatory authority over such programs. See 14 **Del.C.** §§1603, 1605.

II. Findings Of Facts

The Secretary finds that it is appropriate to amend this regulation to clarify the list of school crimes that must be reported to the Department of Education, in addition to those required to be reported by law, and to reflect current conditions.

III. Decision To Amend The Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1603, the regulation attached hereto as Exhibit "B" is hereby amended Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text And Citation

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** §601 in the *Regulations of the Department of Education*.

V. Effective Date Of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §1603, on November 14, 2002. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 14th day of November 2002.

Department Of Education

Valerie A. Woodruff, Secretary of Education

601 School/Police Relations

~~1.0 All local school districts shall establish a policy on school/police relations. Each school district shall develop a Memorandum of Agreement (MOA) between the district board of education and each police department which provides police coverage to the district. Each district's MOA shall be in a form substantially similar to the Model Memorandum of Agreement (MMO) Between Board(s) of Education and Law Enforcement Agencies in the State of Delaware as approved by the Secretary of the Department of Education. Section 6 of the MMO must be included in each district's MOA verbatim. Districts shall submit a signed copy of its current MOA and be submitted to the Department of Education.~~

1.0 All local school districts, charter schools and alternative schools or consortia shall establish a policy on school/police relations. Each school district, charter school and alternative school or consortium shall develop a Memorandum of Agreement (MOA) with each police department which provides services to it. Each MOA shall be in a form substantially similar to a Model MOA as developed, approved and from time to time revised by the Department of Education.

~~2.0 Each school administrator involved in the student disciplinary process shall complete DOE approved training in school/police relations and in student disciplinary matters in general and, thereafter, such additional training in those areas as the Department of Education may from time to time prescribe.~~

2.0 ~~3.0~~ Each school district, charter school and alternative school or consortium shall, at the time of hiring and at the beginning of each school year thereafter, advise each school employee (as that term is defined in 14 **Dolce** §4112) of his/her duty to report school crimes and the penalty for failure to so report.

3.0 ~~4.0~~ The Superintendent of each school district and program administrator for each charter school and alternative school, or his/her designee, shall report to the DOE Department of Education all school crimes required to be reported pursuant to 14 **Dolce** §4112, and any subsequent amendment thereto. Such reports shall be made on the Student Conduct Report (SCR) form to be provided by forms as designated by the Department of Education and filed with the Department of Education within the time prescribed by statute.

~~5.0 In addition to those school crimes required to be reported pursuant to statute, the Superintendent of each school district shall report to the Department of Education the following incidents of misconduct.~~

4.0 In addition to those school crimes required to be reported pursuant to statute, the Superintendent of each school district and program administrator for each charter school and alternative school or consortia shall report to the Department of Education incidents of misconduct 4.1 through 4.7. Such reports shall be made on forms as designated by the Department of Education and filed with the Department of Education not later than five working days following the incident of student misconduct.

- 5.1 Pornography, exhibitionism, peeping
- 5.2 Criminal mischief
- 5.3 Evidence of organized gambling offenses
- 5.4 Offenses involving school property
- 5.5 Felony theft offenses
- 5.6 Forgery offenses
- 5.7 Fraud offenses
- 5.8 Tampering with public records
- 5.9 Computer/recorded sounds
- 5.10 Disorderly conduct/fighting
- 5.11 Offensive touching (non-employee)
- 5.12 Terroristic threatening (non-employee)

4.1 Pornography, possession and production

- 4.2 Bomb threats
- 4.3 Criminal mischief (vandalism)
- 4.4 Tampering with public records
- 4.5 Alcohol, possession and use
- 4.6 Felony theft (\$1,000 or more)
- 4.7 Bullying

5.0 For purposes of the reporting required pursuant to 4.7 of this regulation, "Bullying" is defined as when one person, or a group of persons, targets another person with repeated direct or indirect negative actions over a period of time which are harmful to the victim either emotionally or physically. A negative action occurs when a person knowingly inflicts, or attempts to inflict, physical or emotional injury or discomfort upon another person.

~~6.0 Such reports shall be made on the SCR form to be provided by the Department of Education and filed with the Department of Education not later than five working days following the incident of student misconduct.~~

See 1 DE Reg. 511 (11/1/97)

**Regulatory Implementing Order
707 Salary Continuation: Operation Noble Eagle And
Enduring Freedom**

**I. Summary Of The Evidence And Information
Submitted**

The secretary seeks to approve the regulation 707 Salary Continuation: Operation Noble Eagle and Enduring Freedom in order to comply with the 141st General Assembly Senate Bill 272 and Senate Amendment 1 entitled *An Act to Amend Title 14 and Title 29 Relating to Leave of Absence for Military Service*. The purpose of this bill is to assure that school district employees will continue to receive state compensation (less military service compensation) for time served on active duty in Operation Noble Eagle and Enduring Freedom.

This regulation had been approved on an emergency basis for ninety days. The Secretary is now seeking to approve the regulation for permanent inclusion in the *Regulations of the Department of Education* and in the records of the Register of Regulations.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on September 25, 2002 in the form hereto attached as Exhibit A. No comments were received.

II. Findings Of Facts

The Secretary finds that it is appropriate to approve this regulation 707 Salary Continuation: Operation Noble Eagle and Enduring Freedom in order to comply with the 141st General Assembly Senate Bill 272 and Senate Amendment 1 entitled *An Act to Amend Title 14 and Title 29 Relating to Leave of Absence for Military Service*. The purpose of this bill is to assure that school district employees will continue to receive state compensation (less military service compensation) for time served on active duty in Operation Noble Eagle and Enduring Freedom.

III. Decision To Approve The Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to approve this regulation. Therefore, pursuant to 14 **Del.C.** §1327(b) the regulation attached hereto as Exhibit "B" is hereby approved. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby approved shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text And Citation

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** §707 in the *Regulations of the Department of Education*.

V. Effective Date Of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §1327(b) on November 14, 2002.

IT IS SO ORDERED the 14th day of November 2002.

Department Of Education

Valerie A. Woodruff, Secretary of Education

**707 Salary Continuation: Operation Noble Eagle and
Enduring Freedom**

1.0 Principals, teachers and other employees of a school district called to active military service in connection with Operation Noble Eagle and/or Operation Enduring Freedom shall be eligible for continuation of their state share of salary, less any military compensation received during the initial period of active duty.

2.0 Employees receiving continuation of their state share of salary shall be placed either on a "Military Leave Without Pay" if they are to receive their pay when they return from active duty or on a "Military Leave With Pay" if they are to receive their biweekly pay while on active duty. They will

not accumulate holidays, sick leave, or annual leave while in a leave status. In accordance with state and federal statutes, employees will be credited with state service for the amount of time on military leave upon their return to active employment.

3.0 The amount of salary continuation provided through this regulation shall apply to the state share of salary only. However, a local school district may elect to provide salary continuation for the local district portion of the employee's salary.

3.1 The state share of compensation shall be limited to the state share of the base salary as calculated from the appropriate salary schedule, administrative supplements and all other stipends as provided for in 14 Del.C. Chapter 13.

3.2 Military compensation shall include base salary, basic allowance for quarters (BAQ), basic allowance for subsistence (BAS), hazardous duty pay and all other supplemental compensation. The military compensation shall be multiplied by the ratio of state share of compensation to total compensation in determining the state portion of the salary continuation.

3.3 Salary continuation checks shall be subject to applicable federal, state, and city of Wilmington taxes and FICA, if the employee is in a FICA eligible position. Pension contributions, if the employee is in a pension eligible position, and garnishments will also be made from the salary continuation checks. Other deductions from the salary continuation checks will be made in accordance with Department of Education guidelines.

4.0 Claims must be filed within 90 days of release from active duty or by Tuesday November 12, 2002 whichever is later.

4.1 Salary continuation shall be effective retroactive to September 11, 2001.

4.2 The request for continuation of salary shall be initiated by the employee. Employees must contact the school district personnel office for a copy of the forms and instructions for filing a claim.

4.3 Claims shall be processed in accordance with the procedures and forms developed by the Department of Education.

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,
Section 505 (31 Del.C. §505)

ORDER

Delaware Health and Social Services ("Department") / Division of Social Services / Medicaid/Medical Assistance Programs is proposing to amend the Title XIX Medicaid State Plan to establish a client co-pay amount for non-emergency medical transportation services. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the October, 2002 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2002 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**Summary of Proposed Regulation - Non-Emergency
Transportation Co-Pay Policy**

- Non-emergency transportation is provided to all eligible Medicaid clients under the Medicaid State Plan as an "Administrative" activity and cost. Non-emergency transportation is also provided to non-Medicaid clients participating in the DSS Chronic Renal Disease Program. Clients eligible for the Delaware Healthy Children Program are not covered for non-emergency transportation services. Non-emergency transportation services (NET) are provided under an Administrative contract with a transportation broker.
- Under the Transportation Broker contract, non-emergency transportation is provided free-of-charge to all eligible Medicaid and CRDP clients who use public bus passes or paratransit services through the Delaware Transit Corporation.
- All other means of transportation require a standard co-payment of \$1.00 per trip. A trip is defined as transportation "to" or "from" a medical service. A round-trip would incur a \$2.00 co-payment on the part of the eligible client.
- All eligible clients other than those excluded above, are liable for the applicable co-pay amount. Non-payment of this standard cost-sharing amount may

result in denial of the service at the Transportation Broker's or Transportation Provider's discretion. Providers may voluntarily provide transportation to client who cannot pay the co-pay amount, however the State will not reimburse the Transportation Broker or the Transportation Provider any co-payment amounts for which the client is or would have been liable.

- Further, the Transportation Broker or Transportation Provider have complete discretion as to whether they will pursue any unpaid co-pay amounts from clients who were provided non-emergency transportation but failed to reimburse the Transportation Provider the required co-pay fee at the time of the service. The State will not pursue unpaid co-pay amounts from clients.

Summary of Comments Received with Agency Response

The Governor's Advisory Council For Exceptional Citizens (GACEC), the Delaware Developmental Disabilities Council (DDDC), and the State Council for Persons with Disabilities (SCPD) offered the following comments:

- First, these are essentially "nuisance" co-pays. Query whether they are worth the cost of administration by providers.

Response: DSS chose to implement a co-payment for the following reasons: to control costs and to discourage unnecessary trips.

- Second, most Medicaid recipients are low-income. Why provide a disincentive to seek medical care for self or children? The \$1.00 represents a loaf of bread. To a homeless person, it may represent a bowl of soup.

Response: The Division's approach to necessary cost containment is to use strategies with the most modest impact on the user. We believe that a \$1.00 co-payment complies with this goal and minimizes the need for more drastic measures.

- Third, DSS appears uncertain that these co-pays comply with Federal regulations:

Non-Emergency Transportation (NET) is provided as an administrative activity under the State Plan. The State's position is that as an administrative activity, NET co-pay requirements are not subject to 42 C.F.R. 447.53(b), exclusions from cost-sharing.

Find attached a copy of 42 C.F.R. §447.53(b) for

facilitated reference. Literally, this regulation appears to proscribe or limit the co-pay system that DSS is attempting to adopt. Moreover, even if authorized, DSS ostensibly fails to meet 42 C.F.R. 447.53(d)(4) which requires that the State plan must "specify the basis for determining whether an individual is unable to pay the charge and the means by which such an individual will be identified to providers."

Response: Since this is an administrative activity rather than a program service, the exclusions language does not apply.

- Fourth, DSS is apparently establishing the co-pay system retroactively! See chart on p.438 containing October 1, 2002 effective date. This is not an emergency regulation and DSS should not be retroactively amending standards. Compare DSS adoption of the guaranteed eligibility regulation [5 DE Reg. 1930 April 1, 2002] which were amended to remove retroactive application provisions.

Response: DSS acknowledges that the time for comment and implementation on the State Plan Amendment was compressed. Previous notice of the potential for client co-payments was stated in 5 DE reg. 2239, June 1, 2002.

- Fifth, has the Centers for Medicare and Medicaid Services (CMS) been notified of this attempted change in the State Plan?

Response: DSS follows federal regulations regarding the submittal of state plan amendments. Accordingly, the proposed regulatory change will be submitted to CMS.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the October, 2002 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulations of the Medicaid/Medical Assistance Programs to establish a client co-payment amount for non-emergency medical transportation services be adopted and shall be final effective December 10, 2002.

Vincent P. Meconi, Secretary, November 13, 2002

***Please note that no changes were made to the regulation as originally proposed and published in the October 2002 issue of the Register at page 437 (6 DE Reg. 437). Therefore, the final regulation is not being republished. Please refer to the October 2002 issue of the Register or contact the Division of Social Services.**

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,
Section 107 (31 Del.C. §107)

ORDER

Delaware Health and Social Services (“Department”) / Division of Social Services / Food Stamp Program initiated proceedings to implement changes to the Division of Social Services Manual (DSSM). The purpose of this regulatory action is to mandate the use of utility standards.

The Department’s proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the October, 2002 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2002 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No comments were received.

Summary of Proposed Change: DSSM 9060 - Income Deductions

Authority: 7 CFR 273.9 and Section 4104 of Public Law 107-171

Purpose: Households with utility expenses will be required to use the appropriate mandatory utility standard regardless of the actual costs of their expenses. The intent is to stop prorating the allowances when more than one family shares expenses.

Reason: Mandating the use of utility standards will reduce food stamp errors and reduce the number of verifications currently needed. Eligible clients that have the allowances currently prorated may get an increase in food stamps.

Findings Of Fact

The Department finds that the proposed changes as set forth in the October, 2002 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulations of the Food Stamp Program related to Standard Utility Allowances are adopted and shall be final effective December 10, 2002.

Vincent P. Meconi, Secretary, November 13, 2002

***Please note that no changes were made to the regulation as originally proposed and published in the October 2002 issue of the Register at page 439 (6 DE Reg. 439). Therefore, the final regulation is not being republished. Please refer to the October 2002 issue of the Register or contact the Division of Social Services.**

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,
Section 107 (31 Del.C. §107)

ORDER

Delaware Health and Social Services (“Department”) / Division of Social Services / Food Stamp Program initiated proceedings to implement changes to the Division of Social Services Manual (DSSM). This regulatory action is related to the six-month reporting requirements for certified food stamp households. The Department’s proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the October, 2002 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2002 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No comments were received.

Summary Of Proposed Change: DSSM 9085 - Reporting Changes

Authority: Section 4104 of the Farm Security and Rural Investment Act of 2002

Purpose: To have all households under the six-month reporting requirements, with certain exceptions, report only when their income increases above 130% of the Federal Poverty Level.

Reason: This option will decrease client caused errors from failing to report changes.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the October, 2002 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulations of the Food Stamp Program related to Reporting Changes are adopted and shall be final effective December 10, 2002.

Vincent P. Meconi, Secretary, November 13, 2002

***Please note that no changes were made to the regulation as originally proposed and published in the October 2002 issue of the Register at page 441 (6 DE Reg. 441). Therefore, the final regulation is not being republished. Please refer to the October 2002 issue of the Register or contact the Division of Social Services.**

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,
Section 107 (31 Del.C. §107)

ORDER

Delaware Health and Social Services (“Department”) / Division of Social Services initiated proceedings to renew Delaware's eligibility status for the Temporary Assistance for Needy Families (TANF) program provided for in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), (P.L. 104-193). The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the October, 2002 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2002 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No comments were received.

Summary Of TANF State Plan Renewal

This new State Plan is submitted to renew Delaware's eligibility status for the Temporary Assistance for Needy Families (TANF) program provided for in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), (P.L. 104-193).

Delaware has been operating its TANF program under Section 1115 waivers from the Social Security Act, as approved on December 12, 1995, and amended on September 27, 1996.

The current authorization of the TANF waivers

terminated on September 30, 2002. TANF is authorized to continue through December 31, 2002. Delaware has prepared this State Plan renewal with much unknown information. Enactment of either the House or Senate Finance Committee Reauthorization Bill would make many changes in TANF, but Delaware cannot build such changes into this Plan without knowing which of the many conflicting provisions will prevail. In addition, one provision that Delaware has reviewed with particular interest is the authority provided to states by Section 711 of the Senate Finance Bill, to continue to operate TANF using section 1115 waiver provisions. Enactment of this proposal would permit Delaware to continue to operate TANF using the Delaware provisions that DHHS agreed were inconsistent with TANF based on our 1999 Waiver Inconsistency Certification.

Although our rate of caseload decline has flattened somewhat recently due to the economic downturn, we are certain that this temporary slow-down will be short-lived. Delaware's TANF program requires immediate work from caretakers in time-limited families; those who cannot secure unsubsidized employment immediately are placed in a Work for Your Welfare component.

Since the Senate Bill would permit our waivers to continue, and Delaware is unable at this time to plan what alternative provisions might be required by enactment of reauthorization legislation, we have opted to continue operating Delaware's TANF program as is currently designed with minor changes to be in compliance with certain TANF requirements. In making this decision, Delaware has carefully considered any potential risks to our ability to be meet TANF participation rates and have formulated contingency plans that will ensure we avoid participation rate penalties. Delaware's contingency plans include the potential for temporary movement of some families who are performing work services that would not count as participation under current TANF rules, into segregated or separate state programs using maintenance of effort (MOE) funding.

Delaware plans to closely watch the progress of federal TANF reauthorization and to submit any needed Amendments to this State Plan as quickly as possible after new legislative requirements become known.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the October, 2002 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulations related to the renewal of the TANF State Plan are adopted and shall be final effective December 10, 2002.

Vincent P. Meconi, Secretary, November 13, 2002

RENEWAL:

Delaware State Plan For TANF

This new State Plan is submitted to renew Delaware's eligibility status for the Temporary Assistance for Needy Families (TANF) program provided for in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), (P.L. 104-193).

Delaware has been operating its TANF program under Section 1115 waivers from the Social Security Act, as approved on December 12, 1995, and amended on September 27, 1996. ~~[Delaware received approval to continue its waiver program based on the Waiver Inconsistency Certification submitted by the Governor on September 27, 1999. Complete information about the waivers we are continuing is contained in the Waiver Inconsistency Certification.]~~

~~[Five years have passed since the enactment of PRWORA, and] [the] [The] current authorization of the TANF [program is scheduled to end on September 30, 2002, which is coincidentally the last day as the Delaware] waiver[s] [is scheduled to] terminate[d] [on September 30, 2002]. [TANF is authorized to continue through December 31, 2002.] [With reauthorization legislation still pending federal action,]~~ Delaware has prepared this State Plan renewal with much unknown information. Enactment of either the House or Senate Finance Committee Reauthorization Bill would make many changes in TANF, but Delaware cannot build such changes into this Plan without knowing which of the many conflicting provisions will prevail. In addition, one provision that Delaware has reviewed with particular interest is the authority provided to states by Section 711 of the Senate Finance Bill, to continue to operate TANF using section 1115 waiver provisions. Enactment of this proposal would permit Delaware to continue to operate TANF using the Delaware provisions that DHSS agreed were inconsistent with TANF based on our 1999 Waiver Inconsistency Certification.

~~[Delaware's TANF program has been extremely successful. From January 1997, when our waiver was implemented statewide, through December, 2001, we achieved a caseload reduction of 46 percent.]~~ Although our rate of caseload decline has flattened somewhat recently due to the economic downturn, we are certain that this temporary slow-down will be short-lived. Delaware's TANF program requires immediate work from caretakers in time-limited families; those who cannot secure unsubsidized employment immediately are placed in a Work for Your Welfare component.

Since the Senate Bill would permit our waivers to continue, and Delaware is unable at this time to plan what alternative provisions might be required by enactment of

reauthorization legislation, we have opted to continue operating Delaware's TANF program ~~[using our current waiver provisions] [as is currently designed with minor changes to be in compliance with certain TANF requirements].~~ In making this decision, Delaware has carefully considered any potential risks to our ability to ~~be in compliance with] [meet] TANF [rules] [participation rates and] [, in the event that the waivers are not extended: We]~~ have formulated contingency plans that will ensure ~~[that the State remains in compliance with whatever TANF requirements are enacted] [we avoid participation rate penalties].~~ Delaware's contingency plans include the potential for temporary movement of some families who are performing work services that would not count as participation under current TANF rules, into segregated or separate state programs using maintenance of effort (MOE) funding.

Delaware plans to closely watch the progress of federal TANF reauthorization and to submit any needed Amendments to this State Plan as quickly as possible after new legislative requirements become known.

Goals, Results And Public Involvement**Goals**

The goal of Delaware's TANF Program is to provide a welfare system based on a philosophy of mutual responsibility. In working toward that goal, the State will strive to place individuals in private or public sector unsubsidized employment that enables them to enter and maintain meaningful jobs and interrupts the intergenerational welfare dependency cycle. To that end, TANF creates positive incentives for families to become employed, and expects families to accept responsibility to become self-supporting.

Five key principles form the foundation of TANF:

1. Work should pay more than welfare.
2. Welfare recipients must exercise personal responsibility in exchange for benefits.
3. Welfare should be transitional, not a way of life.
4. Both parents are responsible for supporting their children; and
5. The formation and maintenance of two-parent families should be encouraged, and teenage pregnancy and unwed motherhood should be discouraged.

Involvement of Local Governments, the Public, and Private Sector Organizations

Welfare Reform in Delaware has a long history of active involvement and partnership between and among state and local governments and the private sector. Over a multi-year period, Delaware has engaged government, the public and the private sector in dialog about the welfare system and ways to change it.

Since its introduction in January of 1995, in the form of a waiver request, all sectors have had the opportunity to influence Delaware's welfare reform program in a series of public meetings and forums.

A collaborative partnership among the Department of Health and Social Services (DHSS), Department of Labor (DOL), and the Delaware Economic Development Office (DEDO) worked to develop Delaware's original TANF program; and the Delaware Transit Corp (DTC) has joined these components in planning any changes required.

From 1995 to the present, the TANF collaborative team has involved other stakeholders in a number of ways. Community partner involvement runs the gambit from support letters for TANF-related grants, to participating in the resultant project planning and implementation, to membership on an initiative's advisory/oversight council. Partnerships include the City of Wilmington's HOPE VI subsidized housing project; the Delaware Ecumenical Council on Children and Families' rural outreach project; the Division of Vocational Rehabilitation's employment efforts with people with disabilities; the National Corps/VISTA welfare-to-work mentoring program; and the Division of Substance Abuse and Mental Health's Youth Offender Re-entry initiative. Presentations on TANF are ongoing by request to the various Section 8 and Public Housing entities; to non-profits such as the First State Community Action Agency and the Latin American Community Center; and to local churches, healthcare centers, childcare providers, schools and youth centers (e.g., Boys & Girls Club).

The Social Services Advisory Council, consisting of educators, health professionals, religious leaders, representatives of community-based organizations, advocates, and government leaders, all appointed by the Governor, continues to provide advice on improving the delivery of Delaware's social programs. In addition, the Division of Social Services has regularly conducted focus groups with clients in all counties of the States, most recently in 2000 and 2001.

The requirement for a 45-day public comment period was accomplished by making the plan available for public review and comment through the following means:

- The State Plan was published in the Delaware Register on October 1, 2002;
- The State Plan was published on the Delaware web site at <http://www.state.de.us/dhss/dhss.htm> on September 15, 2002; and
- Stakeholder groups as represented by the Social Services Advisory Council, the TANF Employer Committee, and TANF program contractors were provided with individual copies of the Plan.

Delaware is proud to say that the administration addressed and continues to build on the themes the public

identified not only in TANF but in many other areas of public policy that support low income families, including the Administration's economic development, education, and family policies. A brief summary of where public policies intersect with welfare system change include:

- easing transition from welfare to work by:
 - passing through to TANF recipients a portion of the child support collected
 - enhancing child support collection strategies and achieving record child support collections
 - changing the way the welfare system budgets income so that families go off assistance only after achieving income at 75 percent of the federal poverty level
 - increasing Delaware's investment in child care so that there is no subsidized child care waiting list for eligible working families with income up to 200% of the federal poverty level
 - Increasing the income threshold below which individuals are not required to file personal income tax returns to \$15,449 for married couples and \$9,399 for single individuals; increasing the personal credit from \$100 to \$110; and reducing the tax rate for all individuals, other than the top tax bracket, by .4 percentage points
 - increasing the State minimum wage to \$6.15 an hour as of September, 2000.
- ensuring access to health care for Delaware families through:
 - providing Medicaid coverage to uninsured adults as well as all children in families with income at or below 100 percent of the federal poverty level
 - providing medical coverage for uninsured children in families with income up to 200% of the federal poverty level, through the Delaware Healthy Children Program (DHCP)
 - providing transitional Medicaid for two years for families with children who exit welfare, at incomes up to 185% of poverty.
- improving education for children by:
 - expanding access to the Early Childhood Education Program (ECAP)
 - providing extra instructional time for low-achieving students
 - operating the Parents as Teachers program statewide
 - operating the Mentoring for Students program for students who need an adult role model
 - implementing a comprehensive program to ensure safe, disciplined schools

- raising academic standards and graduation requirements and pushing for school choice and charter schools
- recruiting, through the Delaware Economic Development Office (DEDO), new companies and maintaining existing employers with good jobs that provide career opportunities
- strengthening Delaware's families by:
 - helping many thousands of welfare recipients go to work, and providing continuing support to working families
 - initiating voluntary paternity establishment
 - providing transportation support for job seekers and new workers
 - establishing more effective welfare to work programs with a work first approach to employment and training services, while providing opportunities for educational advancement
 - enabling families with both parents to receive benefits and services
 - participating with community-based organizations and the faith community to support targeted, fragile populations.
 - discouraging teen pregnancy through the Alliance on Adolescent Pregnancy Prevention
 - extending home visits to all first time parents following a child's birth
 - cracking down on domestic violence to protect vulnerable women and children
 - enforcing the Sexual Predator Act to protect vulnerable youth and prevent teen pregnancy.
- *Will Welfare Reform Influence Marriage and Fertility? Early Evidence from the ABC Demonstration*, June, 1999.
- *The ABC Evaluation - Verifying School Attendance of Welfare Recipients' Children*, June 2000
- *The ABC Evaluation – Impacts of Welfare Reform on Child Maltreatment*, August 2000
- A report, *Turning the Corner -- ABC at 4 Years*, November 2000
- *The DABC Evaluation How Have They Fared? Outcomes After Four Years for the Earliest DABC Clients*, August 2001
- *The DABC Evaluation Institutional Aspects of Welfare Reform in Delaware*, August 2001

These reports can be located at <http://www.abtassoc.com/reports/welfare-download.html>. Note that at one time, Delaware's TANF program was known as A Better Chance or ABC.

Delaware is also one of four states participating in a Welfare Reform and Family Formation research project designed to provide an increased understanding of how changes in welfare policies have affected childbearing, marriage, and other family structure factors. Abt Associates is teaming with a University of California research team in analyzing random assignment data collected in Delaware.

Ensuring Accountability

TANF is administered by the Division of Social Services (DSS), State of Delaware Department of Health and Social Services. While DHSS is the lead agency, program administration is accomplished through a partnership of DSS, Department of Labor (DOL), Delaware Economic Development Office (DEDO), and the Delaware Transit Corp (DTC).

Delaware completed a massive automation enhancement effort, to incorporate new technology in a complete redesign of DCIS. DCIS II is a large-scale, client/server, interactive eligibility determination and benefit issuance system. DCIS II automates: client registration, application entry, eligibility determination, benefit calculation, benefit issuance and work programs for more than 100 variations of cash, Medicaid and food stamp programs, administered by the Delaware Division of Social Services. DCIS II provides automated program support and supports the information needs at the state and local office level. DCIS II also incorporates program changes required by P.L. 104-193.

The most recent enhancements to DCIS II provide for on-line real-time communications between DSS workers and Employment Connection contractors. DSS now provides automated referral of non-exempted individuals to contractors, contractor staff are now able to send automated alerts to DSS workers, and contractors and DSS workers are

Results to be Measured and Methods for Measuring Progress

Delaware has committed to evaluate its welfare system. The State has a multi-year contract with Abt Associates to evaluate TANF. We continued to measure:

- the number of individuals working;
- the number of individuals sanctioned;
- the caseload size; and
- the number of months of receipt of TANF.

Recent reports by the evaluator include:

- *The ABC Evaluation - A Better Chance for Welfare Recipients? What the Public Thinks*, March, 1999;
- *The ABC Evaluation - Enrollment of Families in Delaware's A Better Chance Program: A Report on the First Three Years*, March, 1999
- *The ABC Evaluation - Carrying and Using the Stick: Financial Sanctions in Delaware's A Better Chance Program*, May, 1999.

able to share case notes about participants. In addition, contractors now directly enter hours of work participation into the system, facilitating the computation of grants for Work for Your Welfare participants.

Delaware is participating in the income and eligibility verification system (IEVS) required by section 1137 of the Social Security Act.

In addition, the State operates a fraud control program and will disqualify individuals found to have committed an intentional program violation based on findings of administrative disqualification hearings and findings of prosecution or court actions. Delaware has adopted the penalties for intentional program violations used by the Food Stamp Program; 12 months for the first offense and 24 months for a second instance. An individual committing a third offense is permanently disqualified.

Needy Families

Definition of Needy Families

For program purposes, needy families are a child and or child(ren) and caretaker relatives whose combined income and financial resources are not equal to or higher than the standards established by the State. The following sections describe these standards and how they are applied to applicants and recipients.

Income and Resource Rules for Determining Need

For purposes of determining need Delaware will continue to utilize the already established income and resource rules of the TANF program. The following specific features of Delaware's TANF program shall continue to apply:

- The equity value of a primary automobile up to \$4,650 is excluded in determining the household resources.
- The cash value of a life insurance policy will be excluded.
- In addition to the current resource limit, families will be allowed to establish Special Education and Business Investment Accounts (SEBIA) of up to \$5,000.00, including interest.
 - Families will contribute directly to their SEBIAs.
 - Funds in such accounts will not be considered as a resource. Withdrawals from such accounts must be for approved purposes, as defined in TANF. If funds are withdrawn for non-approved purposes, the money will be counted as a resource in the month received. Approved reasons for withdrawal of funds for self-sufficiency needs include, but are not limited to: dependent care expenses, security deposit for an apartment or house, or vehicle repair costs.

- Financial Assistance received from school grants, scholarships, vocational rehabilitation payments, JTPA payments, educational loans, and other loans that are expected to be repaid will not be counted as income for TANF program purposes. Also, other financial assistance received that is intended for books, tuition, or other self-sufficiency expenses will be excluded.
- Earnings of dependent children, regardless of student status, will be disregarded in determining the family's eligibility and the amount of TANF benefits.
- A one-time bonus payment of \$50.00 will be paid from TANF funds to eligible teens who graduate from high school by age 19. This bonus, which will be paid directly to the high school graduate, will be disregarded as income.

Income Tests to Determine Eligibility

There are two income tests to determine financial eligibility. The first test is a gross income test, and the second is a net income test.

- Comparing the family's income to 185% of the applicable standard of need is the gross income test. Both applicants and recipients must pass this income test.
- The other income test compares a family's income, after applying certain disregards, to the applicable standard. This is a net income test.
 - For applicants, defined as families who have not received assistance in at least one of the four months immediately preceding the application, the net income is compared to the payment standard.
 - For recipients, defined as families who have received assistance in at least one of the four months preceding the application or are current recipients, the net income is compared to the standard of need.
 - A family's income must be less than the gross and net income limits to be financially eligible for TANF. Once eligibility is established, the grant amount is determined.
 - Gross income is the total of the earned and unearned income.
 - Wages and self-employment income are examples of earned income.
 - Social Security benefits, child support, and stepparent income are examples of unearned income. Stepparent income will be included if the child's natural parent lives in the home.

Exhibit 1 contains the calculation steps for TANF

applicants.**Exhibit 1: Determining Applicant Eligibility for TANF Benefits**

Step 1) The gross income will be compared to 185% of the applicable TANF standard of need. Assistance will be denied if the income exceeds 185% of the applicable TANF standard of need.

Step 2) the standard work deduction (\$90.00) and child care expenses will be subtracted from each wage earner's earnings. The applicant's net earned income will be added to unearned income to determine the net family income. The net income will be compared to the payment standard. Assistance will be denied if the income exceeds the payment standard.

If the income is less than the payment standard;

Step 3) The standard work deduction (\$90.00), child care, and the 30 plus 1/3 disregard (if applicable) will be subtracted from each earner's earned income. This net earned income will be added to the unearned income to calculate the family's net income. The net income will be subtracted from the applicable standard of need to obtain the deficit. The deficit will be multiplied by 50%; the number calculated is the remainder. The grant is either the remainder or the payment standard whichever is less.

Exhibit 2 provides the calculations for TANF recipients.**Exhibit 2: Determining Recipient Eligibility for TANF Benefits**

Step 1) The gross income will be compared to 185% of the applicable TANF standard of need. Assistance will be denied if the income exceeds 185% of the applicable TANF standard of need;

Step 2) The standard work deduction (\$90.00), child care, and the 30 plus 1/3 disregard (if applicable) will be subtracted from each earner's earned income. The net earned income will be added to unearned income to calculate the family's net income. Assistance will be denied if the income exceeds the standard of need.

If the income is less than the standard of need;

Step 3) The net income will be subtracted from the applicable standard of need; the number calculated is the deficit. The deficit will be multiplied by 50%; the number calculated is the remainder. The grant is either the remainder or the payment standard whichever is less.

The TANF standards apply to all benefits and services provided to needy families except for Emergency Assistance, discussed on page twelve (12) and **Attachment A**; child care, described on pages three (3), twelve (12), and

twenty-four (24). Delaware has established separate need standards for these programs.

Fill-the-Gap Budgeting

Fill the Gap budgeting will be used for recipient families to determine continued eligibility and the amount of TANF benefits, so that families can retain more of their income. By having a standard of need which is greater than the payment standard a "gap" is created. The difference between the family's income and the need standard is called the deficit. The state pays a percentage of the deficit up to a maximum benefit level or payment standard.

- Three standards will be used in financial eligibility calculations: 185% of the standard of need, the need standard and the payment standard. 185% of the standard of need will be used in the gross income test.
- The standard of need used is 75% of the Federal Poverty level. This includes allowances for food, clothes, utilities, personal items, and household supplies.

Diversion Assistance Program

Delaware operates a Diversion Assistance program intended to help a family through a financial problem that jeopardizes employment and which, if not solved, could result in the family needing regular ongoing assistance. The Diversion Assistance payment will not exceed \$1,500 or the financial need resulting from the crisis, whichever is less. Diversion Assistance, which is available to both applicant and recipient families, is not a supplement to regular assistance but is in place of it.

Eligibility requirements for Diversion Assistance are as follows:

- the parent must be living with his/her natural or adopted children;
- the family has not received a Diversion Assistance payment in the past 12 months;
- the Diversion Assistance amount will alleviate the crisis;
- the parent is currently employed but having a problem which jeopardizes the employment or has been promised a job but needs help in order to accept the job;
- the family's income would qualify the family for TANF as a recipient household. (When calculating eligibility for Diversion Assistance the family is given the \$30 plus 1/3 disregard, if applicable and the family's net income is compared to the Standard of Need.);
- the family's resources would qualify for TANF.

The Diversion Assistance payment may be used for

items and/or services such as but not limited to:

- transportation (such as vehicle repairs, tires, insurance, driver's license fee, gas);
- clothing such as uniforms or other specialized clothing and footwear or other employment-related apparel;
- tools and equipment;
- medical expenses not covered by Medicaid (e.g. eye glasses);
- union dues, special fees, licenses or certificates;
- up-front costs of employment such as agency fees and testing fees;
- unpaid child care expenses which, if they remain unpaid, preclude the provision of future child care;
- relocation expenses for verified employment in another county or state. These expenses may include moving equipment rental, gas, and lodging for the days of the move and the first month's rent, rental and utility deposit.

Diversion Assistance payments will be made to a third party vendor, not the parent. When the parent receives Diversion assistance (s)he agrees to forego TANF cash assistance as follows:

- \$0 through \$500.99 for 1 month;
- \$501 through \$1,000.99 for 2 months;
- \$1,001 through \$1,500 for 3 months.

The once a year limitation on Diversion Assistance and the period of ineligibility can be eliminated when good cause exists. Good cause exists when circumstances beyond the client's control make re-application for Diversion Assistance for TANF necessary. Examples of good cause are the employer lays off the parent or a serious illness forces the parent to stop working.

The family is eligible for TANF related Medicaid in the month in which the Diversion Assistance payment is made. The family would remain eligible for Section 1931 Medicaid (TANF related Medicaid) until the family's income exceeds the Standard of Need. If the family's income exceeds the standard of need because of increased earnings or loss of the \$30 plus 1/3 disregard and the parent is working, the family may be eligible for Transitional Medicaid.

Diversion Assistance does not count as income in the child care programs, and families receiving Diversion Assistance may also be eligible to receive child care under Delaware's working poor child care program if their income does not exceed 200 percent of the federal poverty level. Receipt of Diversion Assistance would not bar receipt of Food Stamp benefits, and Food Stamp applications will be actively solicited from individuals requesting diversion assistance.

Diversion Assistance does not count against the time limit on receipt of assistance.

The family will not have to assign child support to the state. Child support received by the parent or the Division of Child Support Enforcement (DCSE) will belong to the family. DCSE will not use child support to offset or reimburse the Diversion Assistance.

Diversion Assistance is not intended to replace TANF's Emergency Assistance Program or Supportive Services payments, which will continue. The TANF Emergency Assistance Program provides identical benefits that were provided under Delaware's State Plan in effect on August 21, 1996. (See Attachment A) Rather, Diversion Assistance expands the opportunities to access as well as the value of services to support employment.

Eligibility For Assistance Under The TANF Program

Conditions of Eligibility

If the income tests described above are met, a family will be eligible to receive TANF assistance subject to the following conditions.

Relationship/Living Arrangements

A child must be living in the home of any relative by blood, marriage, or adoption who is within the fifth degree of kinship to the dependent child or of the spouse of any person named in the above group even though the marriage is terminated by death or divorce.

The caretaker of a teen parent who is not a parent must demonstrate valid circumstances why the teen is not living with a parent and must agree to be a party to the Contract of Mutual Responsibility and fulfill the same responsibilities thereunder as a parent.

Fugitive Felons; Individuals Convicted of Drug Related Felonies

Fugitive felons and parole violators are ineligible for TANF assistance. In addition, as of August 22, 1996, individuals convicted of drug related felonies are permanently barred from the date of conviction.

Family Cap Provision

No additional cash benefits will be issued due to the birth of a child, if the birth occurs more than ten (10) calendar months after the date of application for benefits under TANF.

The family cap will not apply:

- when the additional child was conceived as a result of incest or sexual assault,
- to children who do not reside with their parents
- to children born prior to the period identified above who return or enter the household

- to a child that was conceived in a month the assistance unit (i.e. the entire family) was not receiving TANF, but this does not apply in cases that close due to being sanctioned.

The family cap will apply to children who are the firstborn of minors included in a TANF grant, except that the family cap does not apply to firstborn children of minors where the child was born prior to March 1997, the date that Delaware began its TANF program.

The additional child(ren) is included in the standard of need for purposes of determining eligibility; and the income and resources of the child, including child support, is included in determining the family's income and resources. However, the child(ren) is not included in determining the payment standard for the family.

- The additional child(ren) is considered a recipient for all other purposes, including categorical Medicaid coverage, TANF child care, and Food Stamp benefits.
- Child support received for capped children is passed directly through to the family.

Denial of Benefits to Babies Born and Residing with Unmarried Teen Parents.

Cash assistance is not provided to babies born on and after January 1, 1999 to unmarried minor teen parents. This applies to both applicants and recipients. For all other purposes, these babies will be considered TANF recipients. They may also be eligible to receive Food Stamps, Medicaid and child care as well as vouchers for the baby's needs. This provision applies as long as the teen parent resides in the home with the baby, is unmarried or less than eighteen (18) years of age.

Denial of Benefits for Fraudulent Misrepresentation to Obtain Assistance in Two States

Any individual who misrepresents residence to receive TANF, Medicaid, or Food Stamp benefits in two states shall be subject to a ten-year bar if convicted in a state or federal court.

Treatment of Eligible Non-Citizens

Qualified non-citizens who enter the United States before August 22, 1996 shall be eligible to receive the same benefits and services and shall be subject to the same conditions and requirements as all other applicants and recipients.

Qualified aliens entering the United States on or after August 22, 1996, who are exempt from benefit restrictions as specified in Federal law, are eligible to receive the same benefits and services and shall be subject to the same conditions and requirements as all other applicants and

recipients.

Qualified non-citizens who enter the United States on or after August 22, 1996 are, after five years, eligible to receive the same benefits and services and shall be subject to the same conditions and requirements as all other applicants and recipients.

Program Type

Depending on circumstances, families are placed in either the Time-Limited TANF program or the Non Time-limited TANF program.

Delaware's Time-Limited TANF Program has a work first approach. Participants are expected to meet immediate work requirements in order to receive benefits.

Effective October 1, 1998, Delaware began funding its two- parent program with state only funds. The eligibility requirements, services and benefits for this state funded two-parent program are the same as the single parent Time-Limited program

Time-limits for Delaware's Time-Limited TANF Program and the interactions between time-limits and work requirements are described in the sections entitled, Work: Time Limits and Work, and TANF Benefits to Needy Families: Time Limits.

Families with the following status will receive benefits in the Non Time-limited program:

- Families that the agency has determined are unemployable, either because a parent is too physically or mentally disabled to work in an unsubsidized work setting or because the parent is needed in the home to care for a child or another adult disabled to that extent;
- Families headed by a non-needy, non-parent caretaker;
- Families headed by a non-eligible non-citizen parent who is not eligible to receive TANF benefits.
- Families where the agency has determined that the adult caretaker is temporarily unemployable, and
- Families in which the adult files a claim or has a claim being adjudicated for SSI or disability insurance under OASDI. In this case, the family must sign an agreement to repay cash benefits received under the Non Time-limited TANF program from the proceeds of the first SSI/DI check received. The amount repaid will not exceed the amount of the retroactive SSI/DI benefit.

Contract of Mutual Responsibility requirements and sanctions for noncompliance apply to families in the Non Time-limited TANF program.

Contract of Mutual Responsibility

The caretaker of children in the TANF program enters

into a Contract of Mutual Responsibility with the Division of Social Services (DSS) of the Department of Health and Social Services (DHSS). Applicants and recipients have a face-to-face interview. During this interview, the DSS worker explains to the recipient the Contract of Mutual Responsibility (CMR) and those elements specific to the client.

The Contract lists the responsibilities of the family and the supports the State will provide. The family's responsibilities include, but are not limited to: employment-related activities, school attendance and immunization requirements for children, family planning, parenting education classes, and substance abuse treatment requirements. The State provides supports to families including but not limited to: employment-related activities, training activities, child care, Medicaid, and other services identified during the development of the Contract of Mutual Responsibility.

The Contract is designed to be individualized to the specific needs and situation of each family. Therefore, the exact requirements within the Contract may vary from family to family. This document can be revised as the needs and the situation of the family evolve.

Services related to these CMR requirements will be available to the participant. If the services specified in the CMR are not reasonably available to the individual, the participant will not be sanctioned for failure to comply and the Contract will be modified to reflect that the service is currently unavailable.

It is mandatory that all caretakers enter into a Contract of Mutual Responsibility. Contracts are completed for families in the Time Limited TANF Program and the Non Time-limited TANF program as well as for teen parents. Both caretakers in an assistance unit and non-needy caretaker payees are required to develop and comply with CMRs. Other family members within the assistance unit may be required to comply with provisions of the Contract, and are subject to sanction for non-compliance.

If the caretaker is a non-needy caretaker relative, the individual would not be required to participate in employment-related activities but will be required to participate in other Contract activities.

If a caretaker objects to certain aspects of the Contract, the caretaker needs to present these objections up front, at the time of the initial Contract. If good cause can be demonstrated, the Contract can be amended to rectify the objections.

When staff has reason to believe that the family needs other services to become employed or to increase work hours and wages, these services will be identified and specified in the Contract of Mutual responsibility.

The fiscal sanction for not cooperating, without good cause, in development of the Contract will be an initial \$50.00 reduction in benefits. This reduction will increase

each month by \$50.00, either until there is compliance or the case is closed. The sanction will end with demonstrated compliance.

Individuals from Another State

All families meeting the status eligibility requirements set forth above shall be eligible for TANF benefits using Delaware rules, regardless of how long they have been residents of the State.

Statewide

All definitions and determinations of need shall be applied on a statewide basis.

Protection of Privacy of Assisted Families

31 Delaware Code, Chapter 11, Section 1101 provides that public assistance information and records may be used only for purposes directly connected with the administration of public assistance programs. Thus, all information gathered regarding individuals for public assistance purposes is considered confidential and will be safeguarded by DSS. By safeguarding public assistance information, DSS protects its clients from being identified as a special group based on financial needs and protects their right to privacy.

General information regarding expenditures, numbers of clients served, and other statistical information is a matter of public record and may be made available to any interested party. Other than the exceptions noted below, DSS will not release any information regarding a particular individual without the individual's written consent.

- DSS Financial Services Regional Operations Managers have the authority to disclose the address of a recipient to a Federal, State or local law enforcement officer at the officer's request if the officer furnishes the agency with the name of the recipient and notifies the agency that the recipient:
 - is fleeing to avoid prosecution; or
 - is a fleeing felon (or in the case of New Jersey is fleeing from conviction of a high misdemeanor); or
 - is violating a condition of probation or parole; or;
 - has information that is necessary for the officer to conduct his or her official duties; and
 - the location or apprehension of the recipient is within such official duties.
- If a law enforcement officer requests information that does not meet the guidelines indicated above, a subpoena from a court of law is required before the information can be released.
- DSS is required to report to the Division of Family Services in situations where it believes a home is

unsuitable because of neglect, abuse or exploitation of a child.

- A Court Appointed Special Advocate (CASA) is given permission to inspect and/or copy any records relating to the child and his or her family guardian without their consent. The CASA has the authority to interview all parties having significant information relating to the child. The CASA must also be notified of any staffing, investigations or proceedings regarding the child, so that they may participate and represent the child.

- If information is released under the procedures applying to CASA, pertinent details of the reasons for the release shall be documented and written notification of this release shall be sent to the last known address of the individual to whom the record refers.

- DSS has the authority to disclose information concerning applicants and recipients provided it pertains to:

1 An investigation, prosecution, or criminal or civil proceeding conducted in connection with public assistance programs.

2 the administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need. The agency must assure DSS that such information will remain confidential and will be used only to pursue services for the individual. Other means tested programs include the Supplemental Security Income Program, School Lunch and Breakfast Program, the Energy Assistance Program, and the Low Income Housing Program.

- Other agencies (such as Family and Children Services of Delaware, Inc. Catholic Social Services, Legal Aid, etc.) must provide written permission from the recipient before public assistance information may be released.
- Other governmental agencies may obtain lists of recipients from DSS if the information will be used to perform services for DSS, and the agency can assure DSS that the lists will remain confidential.

APPEALS PROCESS

DSS will provide timely and adequate notice for actions taken which affect eligibility or benefit level. Adequate notice means a written notice that includes a statement of what action the agency intends to take, the reasons for the intended agency action, the specific regulations supporting such action, explanation of the individual's right to request a fair hearing, and the circumstances under which assistance may be continued if a hearing is requested.

Timely notice means a notice which is mailed no later than 10 days before the date of action (i.e. 10 days before the intended change would be effective). When DSS learns of facts indicating that assistance should be discontinued, suspended, terminated, or reduced because of the probable fraud of the recipient, and, where possible, such facts have been verified through secondary sources, notice of a grant adjustment is timely if mailed at least five days before the action would become effective.

An opportunity for a hearing will be granted to any applicant who requests a hearing because his/her claim for assistance is denied or is not acted upon with reasonable promptness and to any applicant or recipient who is aggrieved by any Agency action.

To be considered by the Agency, a request for a hearing must be a clear expression in writing by the appellant or his/her representative to the effect that (s)he wants the opportunity to present his/her case to higher authority. The freedom to make such a request will not be limited or interfered with in any way and the Division will assist the appellant in submitting and processing his/her request. A hearing need not be granted when either State or Federal law requires automatic grant adjustments for classes of recipients, unless the reason for an individual appeal is incorrect grant computation.

WORK

Goals for Work

Delaware's TANF program is based on the belief that assistance provided is transitional and should not become a way of life. The State maintains that the way for persons to avoid dependency on welfare is for them to find and maintain employment. Thus the primary goal of TANF is to help recipients find private sector work and to help them keep such work by providing them with necessary supports.

To assist families in attaining and maintaining employment, the State will engage the efforts of the Departments of Health and Social Services, Labor and Economic Development and Delaware's private sector to provide job readiness and placement opportunities, health and child care, the EITC, and family services. In turn, TANF recipients who have the capacity to work will be required to accept work, to keep their children in school, to cooperate with child support, to bear the costs of additional children they conceive while on welfare, and to leave the welfare rolls after a defined time period.

State Agencies Involved

Delaware Health & Social Services, Labor, and Economic Development have a unique partnership. All three agencies are responsible for moving welfare clients to work. These three agencies have collaborated in developing Delaware's TANF program, in public information, in

implementation, and continue to collaborate in managing the initiative.

The Delaware Transit Corporation (DTC) in the Department of Transportation has joined the TANF collaborative team, and has assisted to develop a statewide transportation system plan for TANF, using vans and other vehicle sources.

Minutes for the TANF collaboration team for the previous six months are included as **Attachment B**.

In May 2001, the Business Planning Committee, a subcommittee of the TANF collaborative team that deals with transportation initiatives, sponsored a transportation forum in each of the three counties. The purpose of the forums was to bring together businessmen, community leaders and other stake holders to develop and advance innovative, non-traditional solutions to varying transportation problems faced by each county.

Transportation forum highlights were a panel discussion by the lead agencies that shared some "points of pride" in the program and gaps and needs in transportation, Best Practices Ideas and Transportation Information, Employer Recognition of Innovative Success Solutions and brainstorming sessions to identify transportation issues and to gather ideas for further development. Each forum was designed to highlight transportation problems that were county specific. Sussex County Government, represented by the Sussex County Administrator, was particularly effective in explaining the population growth, the economic growth and the problems created by their largely rural area.

As a result of the forums, the Business Planning Committee has been able to identify some cross-cutting themes statewide as well as county specific. They have also been able to identify ideas that need further development and which will be used as the Committee continues to find innovative solutions to transportation problems. One overriding theme from the forums was the lack of knowledge of the current transportation options available. This has led to the production of a transportation video which highlights all the options available to assist individuals as they move from dependency to self-sufficiency.

Another special partnership is that between the Division of Social Services and the Division of Child Support Enforcement. Both agencies are part of Delaware Health and Social Services. This close linkage has enabled them to partner throughout TANF development and implementation.

Involvement of Community, Education, Business, Religious, Local Government and Non-Profit Organizations to Provide Work

As noted in the discussion on page 2, every sector has been actively involved in the development of Delaware's TANF program and continues to be involved.

A TANF Employer Committee, consisting of representatives of both the public and private sector, assists

in placing welfare recipients in unsubsidized jobs and provides advice on direction, policy, and implementation of welfare-to-work efforts. This committee was established through HB 251. A major accomplishment of the Employer Committee in conjunction with DEDO and the Department of Education was the development of a program, Career Soft Skills Essentials for employers, which is now posted on the internet at www.delawareworkforce.com. The committee regularly advises the collaborative team about TANF employment issues. Minutes of committee meetings for the prior year are included as **Attachment C**.

To further promote employer interest in hiring TANF recipients, the Departments of Labor and Economic Development meet with members of the business community at regularly scheduled events like monthly Chamber of Commerce meetings as well as at special events. For example, to roll out Career Soft Skills Essentials, DEDO hosted two conferences to link employers with trainers.

The Social Services Advisory Council is established by executive order. The Governor appoints council members to advise the directors of both the Division of Social Services and the Division of Child Support Enforcement on matters related to public assistance and child support services. Council members represent the community, advocates, non-profit providers, educators, and interested citizens.

DSS and DCSE management regularly meets with the Social Services Advisory Council to discuss TANF and other Social Services and Child Support programs. Minutes of Social Services Advisory Council meetings for February, March, and April, 2002, along with information on current Council members, are attached. The Council and DSS will resume regular monthly meetings after the summer. (**Attachment D**)

Client specific focus groups were also conducted by the Director of DSS in 2000 and 2001. The 2000 focus groups, held in different locations throughout the state from May through November, asked recipients a series of questions about the TANF program, to ascertain their knowledge of various program requirements, and their experiences obtaining assistance from DSS workers and contractors. The 2001 client focus groups were held from June through October. They asked a series of questions about client work and sanction experiences, and ascertained information about specific services that had been of assistance and obstacles that clients had to overcome to obtain and retain employment. (**Attachment E**)

Based on these focus groups, there seemed to be a solid majority opinion that people understood the rules, that sanctions are appropriate, and that some people do need a push to get motivated to get back into the job market. However, clients did wish for more flexibility for individual circumstances, and requested more assistance with transportation and in juggling schedules so that program requirements could be met.

Special interest groups such as One Church, One Family and New Pathways have chosen to focus their resources on welfare families and provided mentoring support to welfare families.

Role of Public and Private Contractors in Delivery of Services

Delaware has contracted with private for-profit and non-profit providers and the local community college network to provide job readiness, job placement and retention services to welfare clients since 1986. These contractual arrangements continue under TANF. Contractors include community and faith-based social services agencies and organizations offering specialized services.

A number of community providers across the state provide academic remediation to TANF recipients.

Who Must Participate

All adult caretakers and other adults in the time-limited assistance unit who are not exempt must participate in TANF employment and training related activities. The two exemptions are: 1) a parent caring for a child under 13 weeks of age; and 2) an individual determined unemployable by a health care professional.

Teen parents are required to attend elementary, secondary, post-secondary, vocational, or training school, participate in a GED program or work.

Services to Move Families to Work

Delaware's goal is to place the adult recipient in unsubsidized employment as quickly as possible. To accomplish this goal, the current menu of services includes:

- Work readiness/Life skills
- Job search/Job placement
- Job retention
- Work Experience/OJT
- Education, including vocational education, as described in SB 101, effective July 2, 1999

Non-exempt TANF participants will participate in the job search program, consisting of job readiness classes and supervised job search activity. Unsuccessful job search participants can be placed in another job search sequence or another work-related activity such as an alternative work experience, OJT, remediation or a skills training program.

Clients must keep appointments with Employment and Training staff, cooperate in the development of the employment activities included in their Contract of Mutual Responsibility, and participate in employment and training activities. The penalty for non-compliance with any of the above client responsibilities will be subject to sanctions as described in "Sanctions: Failure to Comply with the Contract and Imposition of Sanctions" on page 29.

Work

Until January 1, 2000, one-parent families in the Time-Limited Temporary Program were required to immediately engage in meaningful job search and comply with conditions set forth in their Contract of Mutual Responsibility including work, education, and training activities. Failure to comply with the work requirements resulted in the imposition of an employment and training sanction. Recipients who were unable to locate private sector jobs despite good faith efforts to do so, were eligible to receive Work For Your Welfare payments, for participating in a workfare job, for a maximum of two more years.

Effective January 1, 2000, families initially applying for or reapplying for benefits can only receive benefits if they are employed or immediately participate in a Work For Your Welfare position. Failure to comply with the work requirements contained in their Contract of Mutual Responsibility results in the imposition of an employment and training sanction.

Single parent households are required to participate in Work for Your Welfare up to 30 hours per week, determined by dividing TANF and Food Stamp benefits by the minimum wage. If the hours determined by dividing the grants by the minimum wage exceed 30 hours per week, participants are to complete no more than 30 hours maximum participation hours. In addition to participating in Work For Your Welfare, individuals must participate in 10 hours of job search, education or a vocational activity per week.

Participants who fail to complete the hours required by dividing their grant by the minimum wage will have their grant adjusted. For each hour not worked, participants will have the grant adjusted downward by the amount of the minimum hourly wage. Participants who fail to complete the 10 hours of job search, education or a vocational activity per week are subject to employment and training sanctions.

In two parent households, one parent must participate in Work For Your Welfare and the second parent must participate in a work-related activity, including child care. The requirements for parents in two-parent households are unchanged.

The January 1, 2000 change in the work requirements for one-parent families means that, to receive Time-Limited TANF benefits in Delaware, both one-parent and two-parent families must either be employed or participate in a Work For Your Welfare position with supplementary activities as required. Delaware's requirement for immediate work activities exceeds the federal TANF mandate.

An individual enrolled in the TANF Time-Limited Program who, in accordance with the requirements in their Contract of Mutual Responsibility, participates in unsubsidized employment of at least twenty hours per week is not required to participate in Work for Your Welfare. Individuals participating in a combination of such employment and education of at least twenty (20) hours per

week are also not required to participate in Work For Your Welfare. TANF Contracts of Mutual Responsibility are designed to fit individual circumstances. It is possible for an individual enrolled in the TANF Time-Limited Program who is engaged in at least twenty (20) hours of combined work and allowable education activities to meet work requirements, if their Contract of Mutual Responsibility contains such an activity agreement.

Time limits for Delaware's Time-Limited TANF Program are described in the section entitled, TANF Benefits to Needy Families: Time Limits.

Protecting Current Workers from Displacement

Regarding the Work for Your Welfare program, DSS conforms to Section (a)(5) of the Federal Unemployment Tax Act which requires that a job offered cannot be available as a result of a strike or labor dispute, that the job cannot require the employee to join or prohibit the employee from joining a labor organization, and that program participants are not used to displace regular workers.

In addition DSS ensures that no participants, including but not limited to those placed in either a Work For Your Welfare placement or a community work experience program, displace regular paid employees of any of the organizations providing either the placement or the community work experience. Such assurance complies with State law contained in 31 Delaware Code, Chapter 9, Section 905(b). This assurance also complies with Section 407(f) of TANF, which requires that DSS will not use federal funds under TANF to place individuals in a work activity when:

- any individual is on a layoff from the same or a substantially equivalent job;
- the employer has terminated any regular employee or otherwise caused an involuntary reduction of its workforce in order to fill the vacancy created with an adult receiving TANF benefits.

In addition, DSS has established a grievance procedure, in conformance with Section 407(f)(3) of TANF, for resolving complaints for any alleged violation of nondisplacement requirements. Employees or their representatives who believe that their jobs are being displaced or infringed upon shall present their complaint to the employment contractor with authority over the placement. If the contractor is unable to resolve the problem within 15 days, the employee or representative may file a formal grievance in writing to the DSS Director's Office, who will hear a formal grievance. The employee will have an opportunity to: present their grievance on the record; present evidence; bring witnesses and cross examine witnesses; be represented by counsel; and receive a written decision.

Grievance hearings will be scheduled within thirty

calendar days of receipt of the formal grievance, and a written decision will be issued within 30 days of the hearing. If either party is dissatisfied with the State's written decision, they may appeal the decision to the U.S. Department of Labor within 20 days of receipt of the written decision. The procedures for appeal, which must be sent to the Office of Administrative Law Judges, in the U.S. Department of Labor, will be provided in writing with the decision.

Supportive Services

Delaware recognizes the importance of available child care in helping recipients participate in work-related activities, and securing and retaining unsubsidized employment. To that end, the financial resources provided for child care have been significantly increased from the FY95 child care funding level to the current request for funding.

Supportive Services, such as child care, and TANF provided assistance with other work-related expenses, such as eye examinations and corrective lenses, dental, and physicals not covered by Medicaid, transportation, fees, training, and work-related equipment, uniforms, shoes, and supplies will be available where possible. Services are provided by voucher or directly. In addition, TANF will, on a case by case basis, pay fees to purchase certificates, licenses, or testing needed to obtain employment. Medical services are not part of these supportive services. DSS will determine when such services are necessary for a TANF recipient to participate. The services shall include:

- Support provided by contractors to retain employment for one (1) year
- Health care for Delaware citizens through:
 - providing Medicaid coverage to uninsured adults with income at or below 100 percent of the federal poverty level
 - providing medical coverage for uninsured children in families with income up to 200% of the federal poverty level, through the Delaware Healthy Children program
 - providing transitional Medicaid for two years for families with children who exit welfare, at incomes up to 185% of poverty.
- Subsidized child care for families who leave TANF to go to work for a period of two years, as long as family income remains below 200 percent of the federal poverty level. In addition, to help individuals retain unsubsidized employment beyond two (2) years, Delaware also provides subsidized child care to other low income working families until the family's income exceeds 200 percent of the federal poverty level.

- Job search programs and other assistance from the Department of Labor to find a job; and
- ongoing job retention assistance.

Additional Targeted Support

Family Development Profile

The Family Development Profile is used by Delaware to identify possible social, familial, and emotional barriers to self-sufficiency, insofar as they impact an individual's ability to obtain and retain employment. Participants who complete the Profile answer questions about their self-esteem and health, and relationships with family members and other individuals. The Profile is currently being enhanced to provide the capacity to identify mental health problems.

DSS workers report that the Profile frequently surfaces major domestic issues which participants need to resolve. By utilizing the Profile, workers are able to refer participants for assistance in resolving domestic violence and other abuse situations. Further efforts to assist individuals to resolve domestic violence and other abuse situations are described in a later section: PARENTAL RESPONSIBILITY: Addressing Problems of Statutory Rape and Domestic Violence.

Substance Abuse

As part of the application and redetermination processes, workers ask clients a series of questions, called the CAGE questions, to identify substance abusers for referral to appropriate services. Through the Bridge Program and referrals to DSAMH, Delaware's TANF program offers assessment and non-medical treatment services for all substance abusers identified through this and other methods. DSAMH and Medicaid will ensure that if medical treatment services are needed they are paid from other than TANF funds.

Supporting Teens

Delaware is targeting youth by providing special services. Through the Department of Education, Delaware provides a family literacy program which includes parenting skills training and other services to teen parents and their children to prevent repeat pregnancies.

Beginning with FY 1999 funds were allocated for Delaware's Teen Pregnancy Prevention Initiative, Teen Hope, to support activities for at-risk teens in six School Based Health Centers (SBHCs) and one community site. The program, utilizing the Transtheoretical Behavior Change Model, helps youth develop skills to make better sexual and health related decisions. Initial programs have been very successful. In addition, wellness centers located in 27 high schools provide medical, health and counseling services to high school students.

Several other initiatives are being operated. The AmeriCorp Grant partnership grant with DHSS as lead was awarded in 1999. Under this grant, Planned Parenthood is managing an effort to have AmeriCorp members provide a responsible adult presence and a structured environment for youth to learn, as a strategy to prevent teen pregnancy, in the lives of at-risk teens in selected target areas. The Abstinence Education Grant currently provides mini-grants to agencies providing skills building community programs for teens.

Delaware has undertaken, through an Alliance on Adolescent Pregnancy Prevention (AAPP), a grassroots community and media outreach campaign to convince teenagers to postpone sexual activity and to avoid becoming or making someone else pregnant. AAPP works directly with parents in this initiative to improve communication between parents and children around sexuality and pregnancy prevention. In addition, AAPP provides preventive education and distributes information on preventing teen pregnancy, utilizing a number of kinds of interventions. For example, two full-time community educators visit schools, community centers, churches, and camps; and provide workshops/training to parents and children around sexuality and teen pregnancy prevention. AAPP also maintains a resource center for the community and lends or gives away brochures, videos, curriculum, posters, books, and other communications about teen pregnancy prevention and sexuality.

The Wise Guys initiative is an adolescent male responsibility program that uses an established Wise Guys curriculum over a ten-week period. The program, operating in six high school based health centers, promotes character development and prevention of adolescent pregnancy by teaching young males self-responsibility in several areas.

Delaware's teen pregnancy prevention campaign also uses billboards to convey the message, and statewide conferences to provide assistance implementing prevention activities.

Delaware's TANF program provides a positive incentive to teenagers to graduate high school by age 19 by awarding a one-time \$50 bonus. Additionally, TANF requires teenage mothers currently on welfare to live with their parent(s) or a responsible adult, stay in school, immunize their children and participate in parenting education.

Services to teens are also discussed in the Section entitled Parental Responsibility Efforts to Reduce Out-Of-Wedlock Births.

Delivery of Services Across State

Delivery of services will be consistent across the State.

TANF BENEFITS TO NEEDY FAMILIES

Computing the Benefit

Eligibility will be determined prospectively. After

establishing eligibility, benefits will be computed prospectively. Income per time period will be converted to a monthly income figure by utilizing the following conversion factors:

Weekly	4.33
Bi-weekly	2.16
Semi-monthly	2.00

Example: Given a weekly income of \$85, multiply by 4.33 to arrive at a monthly income of \$368.05.

The benefit amount will be determined by using prospective budgeting and the best estimate of earned and unearned income for the assistance unit. The payment will not be changed until the next eligibility determination, unless the recipient reports a change that would result in an increase in the benefit or there is a significant change in circumstances as defined below.

A significant change is defined as any of the following:

- change in household size;
- new source of employment;
- loss of unsubsidized employment or a change in employment status from full time to part time which was beyond the recipient's control;
- an increase of forty (40) hours or more in unsubsidized employment per month;
- receipt of a new source of unearned income; or
- increases or decreases in existing sources of unearned income totaling \$50.00 or more per month.

The recipient needs to verify all changes in circumstances.

Example: An applicant applies in May. The applicant is employed. The applicant is working 20 hours per week and earns \$5.65 per hour. The best estimate of wages is calculated by multiplying 20 hours times \$5.65 (\$113.00 per week), then multiplying the weekly figure by 4.33 to determine the monthly income of \$485.90.

Redeterminations

At least one redetermination is required every six (6) months. TANF emphasizes work and work related activity. Mandating face-to-face redeterminations might undermine that goal. Therefore, mail-in redeterminations, with a telephone interview are used as an option to encourage recipients to continue participating in employment and training activities or to keep working.

When a redetermination is due, the recipient must complete a new DSS application form (FORM 100). A redetermination is complete when all eligibility factors are

examined and a decision regarding continuing eligibility is reached.

The assistance case will be closed if a recipient fails, without good cause, to complete the redetermination review. Likewise, the assistance case of a recipient who fails, without good cause, to provide requested information necessary to establish continued eligibility will be closed.

As part of the verification process for continuing eligibility, the person will provide verification that s/he has carried out the elements of the individual Contract of Mutual Responsibility.

Time Limits

Under TANF, cash benefits are time-limited for households headed by employable adults age 18 or older who are included in the grant. Prior to January 1, 2000, Delaware limited receipt of TANF, for families in the Time-Limited Program, to twenty-four (24) cumulative months. During the time-limited period, employable adults received full benefits if they met the requirements of their Contract of Mutual Responsibility, including employment-related activities.

After the first 24 month cumulative period ended, families headed by employable adults could continue to receive cash benefits for an additional 24 cumulative months only as long as the adults participated in a Work For Your Welfare work experience program or they were working and family income was below the need standard of 75 percent of the Federal Poverty Level.

Effective January 1, 2000 the time limit for receipt of TANF cash benefits is thirty-six (36) cumulative months.

During the time-limited period, employable adult recipients receive full cash benefits only as long as they meet the requirements of their Contract of Mutual Responsibility, including participation in employment-related activities. The ultimate goal of this time-limited period is to support the employable adult's search for and placement in an unsubsidized job. Time limits will not apply when Delaware's unemployment rate substantially exceeds the national average or is greater than 7.5 percent.

Individuals found eligible for TANF prior to January 1, 2000 will still have a forty-eight (48) month time limit even if they reapply for benefits on or after January 1, 2000.

DSS will track the time remaining before a family's time limits expire and notify families on a quarterly basis of the time they have remaining before the time limits expire. At least two (2) months prior to the end of the 36 or 48 cumulative months in which a family has received assistance, DSS will remind the family that assistance will end and notify the family of the right to apply for an extension.

Extensions will be provided only to those families who can demonstrate that:

- the agency substantially failed to provide the services specified in the individual's Contract of Mutual Responsibility; the related extension will correspond to the time period for which services were not provided; or
- despite their best efforts to find and keep employment, no suitable unsubsidized employment was available in the local economy to the employable adult caretaker; the maximum extension under such circumstances will be 12 months.

Extensions may also be granted where other unique circumstances exist. Extensions will not be granted if the adult caretaker received and rejected offers of employment, quit a job without good cause, or was fired for cause or if the adult caretaker did not make a good faith effort to comply with the terms of the Contract of Mutual Responsibility.

Retroactively, starting October 1, 1995, Delaware exempted months in which a person worked twenty hours or more per from counting toward the Delaware lifetime time limit when the countable income of the family is below the need standard. So that families who have not reached the State's 36/48 month time limit won't reach the Federal 60 month time limit, benefits for these families are provided under a segregated program using State MOE funding, beginning October 1, 1999. However, both the federal and Delaware time clocks continue to run for individuals who meet their work participation requirements by participating, as permitted under the waiver, in a combination of employment and education for at least twenty (20) hours a week; and for individuals who meet their work participation requirements by participating in education for at least twenty (20) hours a week.

After the time limit has been reached, benefits will be provided to families who have been granted an extension only for a maximum period of 12 months and only in the Work For Your Welfare component. Thus, for Time-Limited families, unless the caretaker is employed at least twenty (20) hours per week, the maximum period for receipt of benefits to families enrolled in the Time-Limited TANF Program will be sixty (60) cumulative months for families with a forty-eight (48) cumulative time limit and forty-eight (48) months for families with a thirty-six (36) month time limit.

Sanctions: Failure to Comply with the Contract and the Imposition of Sanctions

The Contract of Mutual Responsibility encompasses three broad categories of requirements: 1) enhanced family functioning; 2) self-sufficiency; and 3) teen responsibility requirements.

1 Enhanced family functioning requirements of the Contract include, but are not limited to, acquiring family planning information and attending parenting education

sessions, ensuring that children are immunized, and participating in substance abuse assessment and treatment. Sanction for non-compliance with these requirements is an initial \$50 which will increase by \$50 every month until there is compliance with the requirement. The initial \$50 reduction will be imposed whether the family fails to comply with one, or more than one requirement. Clients will have to comply with all requirements before the sanction can end.

2 Self-sufficiency requirements of the Contract of Mutual Responsibility are employment and training, work-related activities, and ensuring school attendance requirements for dependent children under age 16.

- The sanction for non-compliance with these requirements is a 1/3 reduction of the benefit for the first occurrence, 2/3 reduction for the second occurrence and a total and permanent loss of the benefit for the third occurrence for work related activities. A third occurrence of the penalty for a child under 16 not attending school is loss of all cash benefits but is curable when the parent demonstrates compliance. The duration of the first and second sanctions will each be two months or until the person complies. If, at the end of the two month period, there is no demonstrated compliance, the sanction will increase to the next level.
 - Clients will have to demonstrate compliance with all self-sufficiency requirements before all benefits are restored.
 - For the purpose of determining that the individual's failure to comply has ended, the individual must participate in the activity to which s/he was previously assigned, or an activity designed by the Employment and Training provider to lead to full participation, for a period of up to two weeks before ending the sanction.
 - The penalty for individuals who quit their jobs without good cause and do not comply with subsequent job search requirements will be loss of all cash benefits. The penalty for individuals who quit their jobs without good cause, but who comply with subsequent job search requirements, will be:
 - for a first offense, a 1/3 reduction in TANF, to be imposed for a period of two months;
 - for a second offense, a 2/3 reduction in TANF, to be imposed for a period of two months;
 - for a third offense, a permanent loss of all cash benefits.
 - For dependent children under age 16, including teen parents, the sanction will not be imposed if the parent of the teen is working with school officials or other agencies to remediate the situation.
- 3) Teen responsibility requirements include maintaining satisfactory school attendance, or participation

in alternative activities such as training or employment, for dependent children 16 years of age and older. The sanction for non-compliance with these requirements is to remove the needs of the teen from the TANF benefit and to remove the needs of the caretaker if the caretaker does not work to remedy the situation. Complying with the requirements ends the sanction.

Failing to comply with both the enhanced family functioning and self-sufficiency requirements will result in combined penalties. For example, both a \$50 reduction and a 1/3 reduction to the benefit could be assessed for first failures to comply in two areas. Demonstrated compliance will not excuse penalties for the period of noncompliance. Sanctions will be imposed for the full period of noncompliance.

Benefit Delivery: Direct Payments and Vouchers

Currently, Delaware uses check issuance as the payment method for TANF.

Delaware directly pays for center-based child care authorized for TANF participants, where the center agrees to accept the Delaware child care reimbursement rate. Some caretakers, however, receive vouchers to self-arrange and pay for their child care. Delaware will reimburse these caretakers, up to the rates published in the Child Care and Development Fund (CCDF) plan, for the cost of child care provided by licensed and license-exempt child care providers.

STAFF TRAINING

TANF training has been incorporated into the Cash Grant training which is required for all new financial services staff. APHSA training has now been incorporated into Interviewing and Coaching training which is required for all new staff.

PARENTAL RESPONSIBILITY

Adults and minor parent(s) are required to comply with parenting expectations outlined in the Contract of Mutual Responsibility.

Cooperation with Child Support Enforcement

Participants in TANF must cooperate with the Division of Child Support Enforcement as a condition of eligibility. In addition, all families are required to provide sufficient information to permit Delaware to obtain child support on behalf of the family. Exceptions can be made when the caretaker demonstrates that pursuit of child support would create a danger to the caretaker or the child(ren). It is the responsibility of the client to provide documentation to verify such a good cause claim.

Failure of a caretaker, without good cause, to cooperate

with and provide information to the DCSE to permit the State to pursue the collection of child support on behalf of dependent children will result in a full family sanction, until compliance. Applicants who fail to provide information so that Delaware may pursue child support collections will be denied. To cure the child support sanction, the caretaker will provide sufficient information to permit Delaware to pursue child support collections on behalf of the needy children in the family.

When a child lives with both the natural father and the mother but paternity has not been legally established, the parents will be referred to the Division of Child Support Enforcement (DCSE) for a voluntary acknowledgment of paternity. If the alleged father is unwilling to complete the voluntary acknowledgment of paternity, DSS will consider the child deprived of the care and support of his/her father. The case will be referred to DCSE for follow up on establishing paternity.

When a child lives with the natural father but paternity has not been legally established, the father will complete a declaration of natural relationship document and will provide acceptable verification of relationship.

When a child lives with a relative of the natural father but paternity has not been legally established, the relative must complete a declaration of natural relationship document and provide acceptable verification of relationship.

In Delaware, DCSE determines non-cooperation with child support requirements. In addition, effective January 1, 1999 DCSE began making the determination of good cause.

Distribution of Child Support Collections to TANF Recipients

Delaware, a fill-the-gap state in 1975, uses fill-the-gap to make sure that families do not experience a net loss of income due to the State retaining Child Support paid by absent parents. A portion of Child Support payments is not counted in calculating the grant.

Efforts to Reduce Out-of-Wedlock Births

Delaware believes that the number of out-of-wedlock births to teens must be reduced significantly to eliminate poverty and dependency. A study by Doble Research Associates commissioned by the Governor's Family Council, in June, 1998, concluded that Delaware's efforts to reduce teen pregnancy, including establishing more after-school program, strongly enforcing child-support enforcement and the Sexual Predator Act, and making teen mothers ineligible for cash assistance, are solidly supported by public opinion. We are undertaking a number of statewide initiatives to reduce adolescent pregnancy. Many of these initiatives are being coordinated through the activities of the Alliance for Adolescent Pregnancy Prevention (AAPP). Ventures include the provision of

adolescent health services through school-based health centers and improving teen utilization of our family planning centers.

The AAPP is a statewide public and private partnership charged with the development and implementation of a comprehensive plan to prevent adolescent pregnancy in Delaware. The organizational structure of the Alliance includes a 12 member advisory board appointed by the Governor and a statewide membership of over 200 schools, agencies, organizations, churches, and individuals concerned with teen pregnancy. Staff and program support for the Alliance is provided through a contract from the Division of Public Health (DPH) to Christiana Care.

Since its inception, the AAPP has awarded mini-grants to non-profit youth organizations to provide community based teen pregnancy programs; implemented a statewide media campaign to increase community awareness; and worked with existing coalitions to establish teen pregnancy prevention programs. AAP plans and activities include:

- statewide leadership to develop a visible, viable structure for mobilizing resources needed to impact the problem;
- data development to develop a methodology to monitor rates in real time;
- public relations efforts to increase community awareness and involvement; and
- identifying barriers to teen utilization of family planning services and developing solutions

The Division of Public Health has the lead responsibility in Delaware to implement initiatives to reduce teen pregnancy. Using the strategies and recommendations presented by AAPP, DPH activities include school based health centers, family planning clinics, parenting education, and the peer leadership program. The "teen friendly" services provided at Department of Public Health Units located at State Service Centers have resulted in a significant increase in use. In addition, all clients seen in Sexually Transmitted Disease Clinic sites receive counseling on family planning, as well as pregnancy prevention supplies.

Based on a report by Adolescent Health Survey Research (AHSR), which used a survey and focus groups with youth and their parents conducted early in 1999 to identify top strategies in pregnancy prevention, Delaware implemented a number of initiatives to prevent subsequent births, including:

- Smart Start, an enhanced prenatal program that attempts to decrease low birth weight babies, infant mortality, and maternal mortality, through social service, nutritional, and nursing support to at-risk pregnant women;

- Placing information on our combined Food Stamp/cash assistance/MA applications for the following telephone numbers: Planned Parenthood, AAPP and Delaware Helpline, to obtain information on pregnancy prevention/family planning.

In addition, family planning and reproductive health services are provided to adults in eight public health locations in Delaware; and similar services are provided to adults by Planned Parenthood of Delaware in five locations in the state. Minority populations are targeted through family planning and reproductive health services available at three Federally Qualified Health Centers in Delaware; and family planning and reproductive health services are available to Delaware State University students through the DSU health center.

These Delaware initiatives to reduce out-of-wedlock births are complemented and strengthened by the policies of TANF which:

- Require adults and minor parent(s) to obtain family planning information from the provider of their choice;
- Provide for a fiscal sanction of an initial \$50 reduction in benefits for failure, without good cause, to obtain family planning information. This reduction will increase each month by \$50.00, either until there is compliance or the case is closed. The sanction will end when the adult and/or minor parent(s) obtains the family planning information at the provider of their choice;
- Eliminate benefit increases for children conceived while a caretaker is receiving TANF, and apply this family cap to children who are the firstborn of minors included in a TANF grant where the children are born after March 1, 1997; and
- Treat two parent families the same as single parent families.

Initiatives to Promote Two-Parent Families

To provide broad-based support for working families, Delaware was one of the first States to recognize that the special eligibility requirements that applied to two-parent families contributed both to the non-formation and the break up of two-parent households. The six-quarter work history requirement was particularly responsible for non-marriage of teen parents, who had not yet worked enough to meet this qualification. The denial of benefits to two-parent families if one of the parents was working at least 100 hours a month also contributed to the low work rate of two-parent families which were receiving AFDC.

When Delaware eliminated these special deprivation requirements as part of our welfare reform waiver, the numbers of two-parent families receiving TANF soared, and we believe that, without the TANF change, many of these

households would have applied for and been found eligible for benefits as single mother families. These never formed two-parent households would have had profound effects on the ability of the family to exit welfare and on the future success of the children. We have found that the average length of stay on TANF is much lower for two-parent families, reflecting the greater incidence of retained employment when two adults are able to engage in work and share child care duties.

Delaware has always allowed taxpayers to file separately and applied the progressive rate structure to each spouse's income separately, which avoided most tax increases resulting from marriage. However, a marriage penalty could still result from uneven standard deduction amounts. By increasing the standard deduction amount for married taxpayers to exactly twice the single standard deduction beginning January 1, 2000, enactment of HB 411 has effectively eliminated the income tax "marriage penalty" in the State of Delaware

ADDRESSING PROBLEMS OF STATUTORY RAPE AND DOMESTIC VIOLENCE

Statutory Rape

The Sexual Predator Act of 1996 imposes more severe criminal sanctions on adult males who are significantly older than their victims and holds them financially accountable when children are born as a result of violations of this law.

The legislation requires a cooperative agreement as part of a multi-faceted effort to combat teenage pregnancy and reform welfare. Specifically, the law requires the Attorney General's Office, the Department of Health and Social Services, the Department of Services to Children Youth and Their Families, the Department of Public Instruction and law enforcement agencies statewide to establish a cooperative agreement specifying the various roles of the agencies involved. The Memorandum of Understanding establishing the cooperative agreement, executed on December 10, 1996, and SB346 are provided as **Attachment F**.

Victims of Domestic Violence

As required under the optional Certification of Standards and Procedures to Ensure that a State Will Screen for and Identify Domestic Violence, DSS will refer identified victims of domestic violence to appropriate services such as shelters and counseling and to Family Court. Under the Protection from Abuse Act (PFA), 10 Delaware Code, Chapter 9, Sections 1041-1048 (**Attachment G**), Family Court has the power and authority to expeditiously adjudicate all matters related to domestic violence including court ordered restraints, custody, property and financial resources.

Through this strong domestic violence Law, Delaware is

clearly committed to assisting victims of domestic violence overcome circumstances which put them in physical, emotional and/or financial jeopardy; and to assist them in seeking redress and a safe environment for themselves and their families. The Law is a strong deterrent to domestic violence, according to a study by the National Center for State Courts, released on December 2, 1996. The study reported that 86 percent of those who sought protection under the Law, which permits individuals in danger of serious physical abuse to obtain a protection order, were no longer being physically abused.

In addition, using our Family Development Profile, caseworkers ask a series of screening questions designed to identify victims of domestic violence. (**See Attachment H**) So that we are certain that workers can use this tool to effectively identify domestic violence issues, beginning 1998 all staff members at each of Delaware's 14 field sites receive a full day of Domestic Violence Training, focused on the impact of domestic violence on clients and their ability to abide by the conditions of the Contract of Mutual Responsibility. As part of this training, staff learn how to recognize and assist women who are victims of domestic violence. DSS has continued this training on an ongoing basis and now provides the training not only to field staff but to all staff.

We believe that our methodology of resolving domestic violence situations as quickly as possible, as provided for under a strong statute, is the most appropriate and best course of action to assist current victims and to prevent future violence where possible.

Delaware certifies that the Family Development Profile establishes a procedure that screens for domestic violence and that, pursuant to a determination of good cause, program requirements may be waived if it is determined that compliance would make it more difficult for individuals to escape violence. However, decisions to waive compliance with TANF requirements will be made on an individual, case by case basis, and will not endorse an individual's failure to behave proactively to ameliorate destructive domestic violence situations. For our program to work, domestic violence victims must take actions to recover their lives, using the relief provided by the domestic violence statute and the other resources Delaware makes available.

TRIBES

Delaware has no federally recognized tribes.

ADMINISTRATION

Structure of Agency

The Department of Health and Social Services is the cabinet level agency designated by the State as responsible for Delaware's public assistance programs as allowed under

Title IV-A of the Social Security Act. Within the Department, the Division of Social Services administers these programs. (Organizational chart included as Attachment I to State Plan.)

Administrative Spending

Delaware will comply with federal requirements.

Compliance With Participation Rates

In order that federal TANF funds are spent in accordance with the law (P.L. 104-193), Delaware will ensure compliance with the mandatory work and participation rate provisions of the law (as modified by this State Plan which includes our previously approved waivers, described in the *Waiver Inconsistency Certification*, submitted to the U.S. Department of Health and Human Services on September 27, 1999.)

Delaware intends to meet the participation rate requirements set forth in the TANF legislation. If the waiver is extended, as is proposed by the reauthorization legislation approved by the Senate Finance Committee, we will continue to operate in accordance with participation requirements in the waiver. If the waiver is not extended we will make necessary changes to ensure that we meet federal participation mandates. In either situation, Delaware will ensure that federal TANF funds are expended for groups of TANF clients engaged in work, using federally acceptable work activities.

Maintenance of Effort

Delaware is aware of and intends to fully comply with the requirements of the law (P.L. 104-193) to maintain a prescribed level of historic state expenditures. Delaware will ensure that expenditures of state funds for benefits and services ("Qualified State Expenditures" as defined in the law) for TANF participants (either in the Part A federally funded program or non-Part A state funded program) who are TANF eligibles will equal or exceed the required annual spending level.

Delaware has opted to continue the issuance of child support disregard and child support supplemental payments to TANF clients under our fill-the-gap waiver. Delaware considers these payments to be "cash assistance" to eligible families and therefore to be within the definition of "Qualified State Expenditures".

Financial eligibility criteria for MOE-funded assistance or services are the same as for other TANF assistance or services, except that MOE claimed for child care under the provisions of section 263.3 will follow the financial eligibility criteria established in the CCDF State Plan and associated State regulations.

Implementation Date and Plan Submittal Date

The plan is submitted for certification of completeness

on October 1, 2002. The implementation date for the provisions of this plan is October 1, 2002. Any subsequent amendments to this Plan will be indicated by amending the page of the Plan that describes the program or function being changed.

See 6 DE Reg. 442 (10/1/02)

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code,
Section 311 (18 Del.C. §311)

Order

On January 1, 1992, the Department of Insurance promulgated Regulation 41 relating to Medicare Supplement Insurance Minimum Standards. That regulation has been amended five times in the intervening years. On August 15, 2002, I approved substantial amendments to Regulation 41 based on changes to the Medicare, Medicaid and SCHIP laws. Those changes to Regulation 41 were published in the Register of Regulations on September 1, 2002 and became effective on September 15, 2002.

Subsequent to the publication of those changes, a typographical error was discovered in section 12.5.3 of the regulation. Section 12.5.3 is amended by substituting the term "12.2.6" for the term "12.2.5" as follows:

12.5.3 Section 12.2.5 ~~6~~ shall include any Medicare Supplement policy offered by any insurer.

The technical change described above does not materially or substantively alter the provisions of Regulation 41. The correction carries out the intent of the changes I approved on August 15, 2002 and assures that Regulation 41 is in compliance with applicable federal law that governs Medicare supplement coverage.

Since a public hearing is not required for the adoption of non-substantive technical changes that conform the regulation to existing law but which do not otherwise alter the substance of the regulation, there is no preexisting text or citation for purposes of reference. The limited nature of the proposed amendment does not require a full republication of Regulation 41. The final text of the proposed amendment to Regulation 41 is designated to appear in the Register of Regulations, Volume 6, Issue 6, for publication on December 1, 2002.

I hereby adopt the foregoing amendment to Regulation 41 to be effective on December 11, 2002.

Donna Lee H. Williams
Insurance Commissioner

DATED: November 4, 2002

III. Order

*** PLEASE NOTE: AS THE REST OF THE REGULATION WAS NOT AFFECTED IT IS NOT BEING REPRODUCED HERE.**

In view of the above, I hereby order that the proposed amendments be promulgated and implemented in the manner and form provided for by law, as recommended in the Hearing Officer's memorandum.

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
WATER SUPPLY SECTION**

IV. Reasons

Statutory Authority: 7 Delaware Code,
Sections 6010 and 6023 (7 Del.C. §§6010,6023)

The implementation of these amendments will be beneficial to the State of Delaware, in that it will clarify the licensing requirements of these regulations, and will reduce the potential for misinterpretations. Furthermore, by keeping the contractor liability coverage requirements at the same level as it has been in the past, the smaller contractors throughout the State of Delaware will continue to be able to conduct their business, whereas the substantially higher coverage limits initially proposed in these amendments may have, in the long run, been too great of a cost for the smaller businesses to bear. Additionally, the adoption of these amendments will help to improve and/or enhance the overall performance of the State of Delaware's licensing program for water well contractors, pump installer contractors, well drillers, well drivers, and pump installers, in furtherance of the policies and purposes of 7 Del. C. Ch. 63.

Date of Issuance: October 31, 2002

Effective Date of the Amendment: January 1, 2003

I. Background

On September 4, 2002, a public hearing was held in the DNREC Auditorium in Dover to receive comment on proposed amendments to the Delaware **Regulations for Licensing Water Well Contractors, Pump Installer Contractors, Well Drillers, Well Drivers and Pump Installers**. These proposed amendments add limitations on the work that can be performed by an individual whose license has been suspended or revoked. Additional amendments provide clarification of definitions and offer a more concise and reader-friendly version of these regulations, thereby reducing the potential for future misinterpretations. A public workshop concerning these proposed amendments was held by the Department on July 2, 2002, and comments from the public were incorporated into the drafting of these proposed amendments at that time. Additionally, Robert Wiesner, a member of the public who is also a well pump installer and contractor, offered his comments at the public hearing. The Division of Water Resources responded to these comments in a memorandum to the Hearing Officer, dated September 17, 2002. Proper notice of the hearing was provided as required by law. Thereafter, the Hearing Officer prepared his report and recommendation in the form of a memorandum to the Secretary dated October 29, 2002, and that memorandum is expressly incorporated herein by reference.

John A. Hughes, Secretary

**Regulations For Licensing Water Well Contractors,
Pump Installer Contractors, Well Drillers, Well Drivers,
And Pump Installers**

[Adopted: October 31, 2002]**[Effective: January 1, 2003]****SECTION 1 – GENERAL PROVISIONS**

1.01 Purpose

It is the purpose of [~~this regulation~~ **these regulations**] to:

A. Protect the public health and to conserve and protect the water resources of the state.

B. Examine and license those persons engaged in the

1. Contracting for and [**the drilling, boring, coring, driving, digging, construction, installation, removal, or repair of constructing, abandoning, modifying or repairing**] water wells and water test wells; ~~or~~ and

2. [**Abandoning, sealing and or modifying wells and test wells; and**]

3. The installation, repair or removal of pumping equipment in and for a ~~water~~ well. ~~or water test well; and~~

C. Provide for the Secretary to appoint a Water Well Licensing Board to advise and assist the Secretary in the

II. Findings and Conclusions

All of the findings and conclusions contained in the Hearing Officer's Memorandum dated October 29, 2002, are expressly incorporated herein and explicitly adopted as the findings and conclusions of the Secretary.

administration of the licensing program.

1.02 Statutory Authority

The Department of Natural Resources and Environmental Control establishes and adopts ~~[this regulation these regulations]~~ pursuant to the authority granted by §6010(a) and §6023 of the Delaware Environmental Protection Act, Title 7 Del. C., Chapter 60.

1.03 Scope and Applicability

A. Minimum requirements are hereby prescribed governing the licensing of persons who conduct activities governed by ~~[this regulation these regulations]~~.

B. No person shall conduct any activity contrary to the provisions of ~~[this Regulation these regulations]~~.

C. **SEVERABILITY** If any part of ~~[this Regulation these regulations]~~ or the application of any part thereof is held invalid or unconstitutional, the application of such part to other persons or circumstances and the remainder of ~~[this Regulation these regulations]~~ shall not be affected thereby and shall be deemed valid and effective.

D. ~~[This Regulation These regulations]~~ being necessary for the protection and conservation of the water resources of the state, shall be liberally construed in order to preserve the land, surface water and groundwater resources of the State of Delaware.

E. The Department shall have the right to enter at reasonable times upon any private or public property for the purpose of inspecting and investigating conditions relative to the enforcement of ~~[this Regulation these regulations]~~; upon ~~[providing verbal]~~ notice and after presenting official identification to the owner, occupant, custodian, or agent of the property.

F. **REPEALER**— The provisions of ~~[this Regulation these regulations]~~ are intended to shall supercede ~~[existing regulations of this state previous versions of these regulations. insofar as they relate to the matters included in this Regulation.]~~

1.04 Enforcement and Penalties

The provisions of ~~[this regulation these regulations]~~ shall be enforced by the Department as provided in Title 7 Del. C., §6005 and §6013. Such enforcement may include suspension or revocation of any license for cause. The failure of the Department to enforce any of the provisions of ~~[this Regulation these regulations]~~ shall not constitute a waiver by the Department of such provisions.

SECTION 2 – DEFINITIONS

2.01 Agricultural Well – A well used for watering livestock, poultry, and for aquaculture uses; or solely for watering household yards and gardens; or for other purposes related to farming in general but not including the irrigation

of lands or crops. Water is not used for human consumption or to service a dwelling.

2.02 Application Fee – ~~means~~ The fee set forth by the Secretary to apply for that must be submitted with an application for a license in one of the categories of ~~[this regulation these regulations]~~.

2.03 Board – ~~means~~ The Water Well Licensing Board.

2.04 Certificate of Insurance – ~~means~~ Contractors Liability Insurance.

2.04 Construction of Water Wells – ~~means~~ All acts necessary to obtain ground water by wells, including the location and excavation of the well, installation of casing, grout, screens, and developing and testing. complete a well from the initial penetration or excavation of the ground through development, equipment installation, and disinfection. Set-up of construction equipment before actual penetration or excavation is not considered part of construction.

2.05 Department – ~~means~~ The Department of Natural Resources and Environmental Control.

2.06 Dewatering Well – ~~means~~ the temporary lowering of the ground water level for the construction of sewer lines, water lines, elevator shafts and foundations. A well used to temporarily remove ground water during the construction of footings, sewer lines, building foundations, elevator shafts, etc.

2.07 Geotechnical Well – A well constructed for monitoring water quality, measuring water levels, for removing a product mixed with or adjacent to groundwater or for injecting air or other product(s) into the groundwater with the intent to ~~[mediate remediate]~~ contamination. Geotechnical wells are typically classified as observation, monitor, recovery or injection wells.

2.08 Installation – ~~means~~ The actual installation placement of pumps, and/or pumping equipment in and for ~~water~~ wells; and the removal of pumps and related equipment in and for wells for repair, ~~or~~ service ~~and~~ or the reinforcement thereof.

2.09 [Irrigation Well – A well that is used for the watering of lands or crops other than household lawns and gardens.]

2.10 License Fees – ~~means~~ The fee set forth by the Secretary for the licensing of water well contractors, pump installer contractors, well drillers, well drivers, and pump

installers.

2.11 ~~Person – means any individual, partnership, corporation, association, institution, cooperative enterprise, municipality, commission, political subdivision or duly established legal entity. Any individual, firm, association, organization, partnership, business, trust, corporation, company, contractor, supplier, installer, user, or owner, or any Federal, State or local governmental agency or public district or any officer or employee thereof.~~

2.12 ~~Pumps and/or Pumping Equipment – means Any equipment or material(s) utilized or intended for use in withdrawing or obtaining ground water or other fluids from water wells.~~

2.13 ~~Pump Installer Contractor – means any person engaged in the business of contracting for the installation, modification, and repair of water well pumps and related equipment. Any person licensed by the State of Delaware to engage in the business of contracting for the installation, modification, or repair of water well pumps and related equipment.~~

2.14 ~~Pump Installer – means any person in responsible charge of all on-site work in the installation, modification, and repair of water well pumps and related equipment. Any person licensed by the State of Delaware to act in responsible charge of all on-site work in the installation, maintenance, and repair of pumps and related equipment in and for wells.~~

2.15 ~~Repair of Water Wells – means work on any well involving re-drilling, deepening, changing casing and screen depths, re-screening, cleaning by use of chemicals, re-development, the removal and re-installation of pumps, pumping equipment, and all related equipment to draw water from a water well. The repair or rehabilitation of a well to restore the original yield to the best extent possible, providing the location and physical dimensions of the well are not changed.~~

2.16 ~~Secretary – means The Secretary of the Department of Natural Resources and Environmental Control or his or her duly authorized designee.~~

2.17 ~~[Test Boring and Coring] – means [The removal and collection of soil samples from the earth by means of augers, core-barrels, spoons, wash casing and bailers for the purpose of obtaining geologic and hydrologic information.]~~

2.18 ~~Water Well – means Any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise~~

~~constructed when the intended use of such excavation is for the location, testing, acquisition, or artificial recharge or injection of underground water fluids or gases, or to otherwise make use of groundwater and where the depth is greater than the diameter or width. For the purpose of [this regulation these regulations] this definition does not include geotechnical test; soil, telephone, and construction piling borings; fence posts or test pits. Horizontal closed loop heat pump circulation systems constructed within twenty (20) feet of the ground surface are not considered wells.~~

2.19 ~~Water Well Contractor – means [Any person engaged in the business of contracting for the construction of water wells, and/or the installation of pumping equipment in or for wells. Any person licensed by the State of Delaware to engage in the business of contracting for the construction, modification, repair or abandonment of wells and/or the installation, removal or repair of pumping equipment in or for wells, or both.]~~

2.20 ~~Water Well Driller – means [Any person in responsible charge of all on-site work relating to the drilling, boring, coring, driving, digging, construction, installation, removal or repair of a well. construction, developing and testing of water wells, water well alteration and repair, test boring and coring, and the installation, modification, and repair of water well pumps and related equipment. Any person licensed by the State of Delaware to act in responsible charge of all on-site work relating to the, construction, abandonment, modification, repair, development or testing of wells; test boring and coring; and the installation, removal, modification or repair of water well pumps and related equipment.]~~

2.21 ~~Water Well Driver – means [Any person in responsible charge for all on-site work relating to the driving, construction, installation, removal or repair] developing and testing of driven wells, dewatering, alteration and repair [of driven wells,] test boring, coring [and or the installation modification or repair of water well pumps and related equipment ordinarily used in driven wells. Any person licensed by the State of Delaware to act in responsible charge of all on-site work limited to the construction, abandonment, modification, repair, development, and testing of driven wells and the installation, removal, modification or repair of water well pumps and related equipment in or for driven wells.]~~

SECTION 3 – WATER WELL LICENSING BOARD

3.01 Board Membership

The Secretary shall appoint ~~[, with the power of removal,]~~ a Water Well Licensing Board (hereafter referred to as the "Board") to advise and assist the Secretary in the administration of the licensing program. The Board shall consist of six members ~~[as follows:]~~ four members ~~who are shall~~ currently licensed by the Department to engage in the construction of water wells or the installation of water well pumping equipment hold valid well driller, [well driver] or pump installer licenses, one member shall be from the office of the State Geologist ~~who shall serve at the pleasure of the Secretary~~ Delaware Geological Survey, and one member shall be from the Department. ~~who~~ All members shall serve at the pleasure of the Secretary. The member from the Department shall act as secretary of the Board and shall be responsible for the keeping of records, the collection of fees, and any other duties delegated either by the Secretary or the Board. All persons appointed to the Board shall be citizens of the United States and residents of the State of Delaware. Initially, the four Board members from the water well industry shall be appointed to staggered terms so that no more than two members' terms shall expire the same year, two being appointed to one year terms, one appointed for a two year term and one appointed for three years. Thereafter, Board members shall be appointed to terms of three years.

3.02 Board Responsibilities

The ~~[Water Well] Contractor [Licensing]~~ Board, with the consent of the Secretary, shall establish and administer such procedures and guidelines as may be necessary for the licensing regulation of those any person[, as defined in section 2.10 of this regulations,] involved in contracting for and the construction, abandonment or repair of water well construction wells or in contracting for and the installation, removal, maintenance, modification or repair of pumps in and from for wells, pump installation [and shall include at least the following provisions responsibilities including:]

- A. Develop[ing] application forms
- B. Develop[ing] examinations
- C. Review[ing] applications for adherence to the requirements of [this regulation these regulations.]
- D. [Examining] [Examination of] candidates the Recommend[ing] the granting, renewal or denial of licenses
- F. Recommend[ing] the suspension or revocation of licenses

SECTION 4 – WHO MUST BE LICENSED

4.01 Water Well Contractor, Pump Installer Contractor

A. All persons ~~[as defined in section 2.10 of this regulation,]~~ who engage in the business of contracting for [drilling, boring, coring, driving, digging, construction, installation, removal or repair of a well the construction,

~~abandonment, modification or repair of]~~ water ~~[wells,]~~ test boring and coring, dewatering in the State of Delaware shall be licensed by the Department as a water well contractor.

B. All persons ~~[as defined in section 2.10 of this regulation,]~~ who engage in the business of contracting for the installation[, removal modification], maintenance and or repair of water well pumps and [related pumping] equipment in and for wells within in the State of Delaware shall be licensed by the Department as a pump installer contractor or a water well contractor.

4.02 Well Driller, Well Driver

Except as noted in ~~[11.04(B)] [4.04(A)] and [11.05(B)] [4.04(B)] of [this regulation these regulations,]~~ all persons who actively engage in any of the following activities in within the State of Delaware shall be licensed by the Department as a well driller or well driver or shall be under the direct on-site supervision of a licensed well driller or well driver while engaged in such activities.

A. The ~~[drilling, boring, coring, driving, digging, construction, installation, removal or repair of a construction, abandonment, modification or repair of wells]~~ within ~~[in the]~~ engage in the business of water well drilling, water well driving, test boring and coring dewatering and

B. The drilling, boring, coring, driving, digging, [augering,] construction, [installation, or removal abandonment, or modification] of any excavation other than a well, to a depth greater than twenty (20) feet from the natural ground surface, where the depth is greater than the width and where the saturated zone is intercepted.

C. The installation, [removal, modification,] maintenance or repair of water well pumps or pumping equipment in or for wells

4.03 Pump Installer

Except as noted in ~~[paragraph] 4.04 [, 11.04(B) and 11.05(B)] of [this regulation these regulations,]~~ all persons engaged who engage in the installation[, removal, modification,] maintenance and or repair of water well pumps and pumping related equipment in and for wells within in the State of Delaware shall be licensed by the Department as a pump installer, well driller, or well driver, or shall be under the direct on-site supervision of a licensed plumber, pump installer, well driller or well driver.

4.04 Exceptions

A. A person owning or leasing land on which he or she is installing[, removing,] maintaining or repairing pumping equipment in or from an agricultural [a] well[, as defined in section 2.01 of this regulation, used for the irrigation of crops, for watering livestock or poultry, for aquaculture uses, or for other on-farm purposes where the water is

not to be used for human consumption or to service a residential dwelling] is exempt from the requirement to hold a pump installer license.

B. A person who holds a Delaware Plumbers License or who is working under the direct on-site supervision of a Delaware licensed plumber, well driller, well driver or pump installer and who installs, ~~removes,~~ maintains, ~~modifies~~ or repairs ~~or removes~~ pumps and pumping equipment in and for wells is exempt from the requirement to hold a pump installer license.

SECTION 5 – LICENSING PROCEDURES FOR LICENSING

5.01 Application Fee

An application for any type of license issued by the Board shall be made on forms furnished by the Board and be accompanied by a non-refundable application fee of \$10.00. All applications shall include the required non-refundable application fee.

5.02 Minimum Requirements ~~[for Licensing]~~

A. ~~Age Contractor Liability Insurance Coverage]~~

1. ~~The Board shall require, as a condition of licensing, that~~ All water well contractors and pump installer contractors shall carry and maintain ~~[the following minimum levels of contractor’s liability insurance coverage: a minimum of \$1,000,000 Contractor’s Liability insurance coverage per occurrence.]~~

Contractor’s Liability Insurance:

[Bodily Injury:	\$100,000 each person
	\$300,000 each occurrence
Property Damage:	\$ 50,000 each occurrence
	\$ 50,000 each aggregate]

2. ~~Failure to provide evidence of continual insurance coverage shall result in the automatic suspension of the water well contractor or pump installer contractor license. The suspension shall remain in effect until the Department has received proof of insurance or until the license expires. The insurance held by [a the] water well contractor or pump installer contractor shall cover all licensed well drillers, well drivers, [and] pump installers, [and others] in their employ.~~

~~[The Board may accept a Certificate of Insurance in lieu of a policy providing that the Certificate of Insurance is endorsed to include said license holder by name.]~~ Said insurance is a condition of licensing and must remain in effect during period when license is valid.

B. ~~[Well Driller Experience]~~

1. ~~[The] Applicant[s] [must shall] be at least eighteen years of age.~~

2. ~~Applicants [for well driller and well driver licenses] shall have~~ Has had at least two years experience in

~~the work for which he is applying for a license operating well construction equipment, in constructing wells, and in the installation, [removal,] maintenance[, modification] and repair of pumps in and for wells. (one year in the case of a pump installer) The Board may recommend granting a license with conditions limiting the scope of the license based on the applicant’s experience. Examples of license limitations may include but are not limited to work on geotechnical wells or dewatering wells or to the operation of certain types of equipment.~~

3. ~~Applicants [for well driller, well driver and pump installer licenses] shall demonstrate professional competence by passing a written and/or oral examination prescribed by the Board.~~

4. ~~[Applicants shall only perform work as a well driller when under the employ of a licensed water well contractor.]~~

C. ~~[Examination Well Driver]~~

1. ~~[Applicants shall be at least eighteen years of age.~~

2. ~~Applicants for licenses shall have at least two years experience in operating well driving equipment, in constructing wells, and in the installation, maintenance, and repair of pumps in and for wells.~~

3. ~~Applicants shall demonstrate professional competence by passing a written or oral examination.~~

4. ~~Applicants shall only perform work as a well driver when under the employ of a licensed water well contractor.~~

D. ~~Insurance Pump Installer]~~

1. ~~Applicants shall be at least eighteen years of age.~~

2. ~~Applicants shall have at least one year experience in the installation, maintenance, and repair of pumps in and for wells.~~

3. ~~Applicants shall demonstrate professional competence by passing a written or oral examination.~~

4. ~~Applicants shall only perform work as a pump installer when under the employ of a licensed water well contractor or pump installer contractor.]~~

5.03 Application Procedures

A. ~~[Water well contractor and pump installer contractor] license[s] applications [for] shall consist of the following:~~

1. ~~[Submission of a signed and notarized An] application on forms provided by [DNREC the Department, signed by an officer of the business seeking the license, and bearing the signature and seal or stamp of a notary public.~~

2. ~~A listing of all past or outstanding civil, administrative, or criminal proceedings instituted against the applicant (including any form of permit suspensions or revocations) for any environmental or~~

regulatory violations over the past five (5) years, regardless of location. Include details of the violation, the proceedings, and the outcome of the proceedings.]

3. ~~[Submission of the~~ All] appropriate application and license fees.

4. ~~[Submission of proof]~~ Evidence of current Contractor Liability Insurance [coverage] meeting the requirements of section 5.02(A) of ~~[this regulation these regulations.]~~

B. Well Driller, Well Driver [license applications shall consist of the following:]

1. ~~Furnishes the Board with~~ Submission of a signed and notarized application on forms provided by the Department.

2. [A listing of all past or outstanding civil, administrative, or criminal proceedings instituted against the applicant (including any form of permit suspensions or revocations) for any environmental or regulatory violations over the past five (5) years, regardless of location. Include details of the violation, the proceedings, and the outcome of the proceedings.]

3. Submission of the appropriate application fee.

4. Submission of references from two persons who are actively engaged in the well drilling business and who hold current licenses as well drillers or well drivers.
And

C. Pump Installer [license applications shall consist of the following:]

1. Submission of a signed and notarized application on forms provided by the Department.

2. [A listing of all past or outstanding civil, administrative, or criminal proceedings instituted against the applicant (including any form of permit suspensions or revocations) for any environmental or regulatory violations over the past five (5) years, regardless of location. Include details of the violation, the proceedings, and the outcome of the proceedings.]

3. Submission of the appropriate application fee.

4. Submission of references from two persons who are actively engaged in the well drilling and/or pump installation business and who hold current licenses as well drillers, well drivers, [pump installers,] or plumbers.

D. Eligibility for Examination

5.04 Application Review

The Board shall review the application and may interview the applicant to determine [that the application is in proper form and meets the requirements of these regulations. whether an applicant meets the necessary requirements by of 5.02 (A) through (D) of the above criteria to be eligible for examination. After determining that an applicant is eligible for examination, the Board shall notify] The applicant shall be notified of his [their] eligibility for examination. Applicants who are determined

to be ineligible for examination shall be so notified in writing by the Board and may reapply ~~[after]~~ 90 days from the date of notification.

5.05 ~~Notification for Examination~~ Notification

The ~~Department Board~~ shall, ~~not less than thirty days prior to the examination,~~ notify each eligible applicant of the time and place of the examination. The Board may, if the applicant meets all other requirements, issue a temporary license not to exceed 90 days duration until the next examination is given by the Board.

5.06 Examination

A. The ~~[written]~~ examination shall be given at least annually and at such other times as ~~in the opinion of the Board,~~ the number of applicants warrants. Oral examinations will be scheduled and administered as necessary. [A written request for an oral examination must be submitted before the exam is scheduled.]

B. The examination shall consist of a written and/or oral examination, and shall fairly test the applicant's knowledge and application ~~[thereof]~~ in the following subjects:

1. Basics of well drilling methods and basics of well construction;

2. State and local laws and ordinances concerning the construction, abandonment, modification and repair of water wells and/or the removal, installation or maintenance of pumps and pumping equipment, and

3. The rules and regulations promulgated in connection therein.

C. ~~[Eligibility for examination shall expire 12 months from the date the Board reviews the application. The examination may be taken no more than twice within one year 12 months of the Board's determination of eligibility.]~~

D. Applicants who fail to receive a passing grade shall wait at least 90 days before re-taking the examination.

Reciprocity

The Secretary may license, without examination, upon payment of the required application and license fees, and evidence of required insurance where applicable, applicants who are duly licensed under the laws of any other state having requirements deemed by the Board at least equivalent to those of the State of Delaware.

5.07 Reapplication after Failure of Examination

In the event When an applicant fails to receive a passing grade ~~[within one year of notification of eligibility to take the examination, during his or her period of eligibility,]~~ the applicant he shall be so notified by the Board within 30 days and ~~[may will be required to]~~ re-apply for a license subsequent examination with payment of the application fee,

~~[no less than 90 days after the date of said notification their most recent failed examination or one year from the date their previous application was received, whichever is greater subject to the requirements of section 5.03 of these regulations.]~~

~~Persons Previously Licensed-~~

~~Exemptions from Examination and Proof of Experience-~~

~~Any person who has been licensed in the business of Water Well Contractor, Pump Installer Contractor, Well Driller, Well Driver or Pump Installer by the Department for the calendar year 1981, accompanied by satisfactory proof to the Board that he was so licensed, and accompanied by payment of the required fee and the furnishing of the required insurance where applicable, be granted a license in the category of which he was licensed without fulfilling the requirements that he pass the examination prescribed in the Minimum Requirements for Licensing.~~

5.08 License Issuance

~~[Upon notification of passing the examination,]~~ The applicant shall submit the appropriate license fee upon ~~[receipt of]~~ notification of ~~[receiving a]~~ passing ~~[score on]~~ the examination. Thereafter, the Department shall issue a license. ~~Upon Notification of Being Qualified for Licensing, the Applicant shall where applicable, submit to the Board the following:~~

A. ~~Certificate of Insurance indicating Contractors Liability Insurance in the minimum amounts required where applicable and specified herein, and-~~

B. ~~Payment of License fee (payable to the "State of Delaware")~~

C. ~~License fees, effective July 1, 1991-~~

Water Well Contractor	\$150.00
Pump Installer Contractor	115.00
Well Driller	30.00
Well Driver	15.00
Pump Installer	15.00

5.09 License Denial

Any person whose application for a license has been denied shall be notified in writing and provided the reason(s) for the decision. Within thirty (30) days of notification, the person shall notify the Secretary in writing if a public hearing pursuant to 7 Del. C. §6006 is desired. If no hearing request is received within the thirty (30) day period, the decision for denial shall become final.

SECTION 6 – LICENSE RENEWAL

6.01 License Term

Licenses issued pursuant to [this regulation these regulations] are not transferable and shall expire on December 31 of each year. The Department shall send a written notice to the address on file for each water well

contractor and pump installer contractor to remind them to renew the licenses for the company and their employees. It is the responsibility of the license holder to renew the license yearly and to notify the Department of any changes.

~~All licenses shall expire on December 31st of the year issued unless otherwise indicated on the license.~~

6.02 Application for Renewal

A. In order to avoid a lapse in license term, the following shall be submitted no later than November 30 of the year the license expires. A license may be renewed PRIOR to its expiration date providing the license submits the following:

1. A renewal application on forms provided by the Department.

2. Well drillers, well drivers and pump installers shall submit satisfactory evidence of compliance with the continuing education requirements of ~~table 4 and sections 6.03 and 7 of [this regulation these regulations],~~ except as exempted by section 6.03~~[(C) (B)(2)].~~

3. ~~Any~~ Applicable renewal fee.

B. An expired license may be renewed within one (1) year following its expiration by submitting the information required in section 6.02(A)(1-3) of [this regulation these regulations] and any applicable late fee.

C. Licenses Persons who apply for renewal of their licenses under section 6.02(A) and (B) of ~~[this regulation these regulations]~~ shall not be required to take an examination. ~~as a condition of license renewal.~~

D. Reinstatement of Expired Licenses Applicants for the reinstatement renewal of licenses that have been expired for more than one (1) year shall be subject to all requirements of section 5 of ~~[this regulation these regulations].~~

6.03 Continuing Education Credit[s] [Hours]

A. ~~All licensees shall comply with the continuing education requirements of section 7.03 of these regulations as a condition for the renewal of their license.~~

A licensee person holding two (2) or more licenses issued under ~~[this regulation these regulations]~~ may fulfill the continuing education requirements for renewal of all licenses by obtaining the larger of the minimum hours of continuing education subject to the requirements of ~~[section 6.03(B) this regulation these regulations].~~

B. ~~The Secretary may consider a request for a temporary extension of a license for a period not to exceed three (3) months providing sufficient cause can be proven subject to the Secretary's discretion. In order to be considered for such an extension, the applicant must submit a written request with a statement containing the reason(s) why he or she was or is not able to obtain the necessary credits within the required time frame. Persons holding valid~~

well driller[s] or well driver[s] licenses shall complete a minimum of four (4) hours of continuing education credits prior to being granted a license renewal, with the following exceptions:

1. Persons holding [valid] well driller[s] or well driver[s] licenses that ~~are restricted~~ contain conditions limiting the license holder to the installation of dewatering wells and pumping equipment shall complete a minimum of two (2) hours of continuing education ~~credits~~ prior to being granted a license renewal.

2. **[Persons holding valid well driller or well driver licenses with a condition limiting them to the construction of geotechnical wells with hand operated tools are not required to obtain continuing education as a requirement for license renewal. The requirements of section 6.02(A)(3) shall not apply to well driller licenses that are restricted contain conditions limiting the license holder to the construction of geotechnical wells using hand operated tools.]**

C. Persons holding valid pump installer licenses shall complete a minimum of two (2) hours of continuing education [~~credits~~] prior to being granted a license renewal.

D. **[Continuing education hours required for persons licensed for less than one year shall be required as outlined in Table 1.]**

CONTINUING EDUCATION [~~CREDITS~~ HOURS]
REQUIRED FOR LICENSE RENEWAL

Months Licensed	Well Driller Well Driver (WD)	Dewatering (WD)	Pump Installer (PI)
Less than 1	0	0	0
Between 1 and 3	0	0	0
Between 3 and 6	2	1	<u>2</u>
Between 6 and 12	4	2	2

(Table 1)

E. The ~~licensee~~ licensed person shall be responsible for all costs of obtaining the required number of continuing education [~~credit~~] hours.

F. Continuing education credits for renewal of a license held for less than one year by a person who did not hold a license during the previous twelve months shall be required as shown in table 1.

SECTION 7 - ~~APPROVAL~~ OF CONTINUING EDUCATION PROGRAMS

7.01 Continuing Education Program Approval

A. Continuing education programs shall be designed to improve, advance or extend ~~the licensee's~~ license holder's professional skills and knowledge relating to the practice of ~~well~~ construction, maintenance, repair or abandonment of wells or ~~repair and~~ pump installation, removal, modification,

maintenance or repair. Acceptance of continuing education programs shall be based upon the curriculum or program content and the qualifications of the instructor.

B. Prospective continuing education programs shall be submitted for the [~~Secretary's Board's~~] approval on application form(s) provided by the Department; and, the program(s) shall be instructed by persons knowledgeable in the subject matter. ~~or shall be conducted by an accredited educational institution~~

C. ~~Applications for the approval of curriculums, programs, seminars, etc. shall be submitted on forms provided by the Department and shall include the following minimum information:~~

1. ~~Description of subject matter~~ Course outline or syllabus including the course objectives

2. Length of course or courses in actual training hours

3. Name and qualifications of instructor(s)

D. Approval of a program shall remain in effect for as long as it ~~and the instructor remain unchanged, the program content remains unchanged and the program is not outdated~~ remains essentially unchanged.

E. ~~A change in subject matter, length, or instructor(s)~~ Any significant changes [in items outlined in 7.01(C)] shall require resubmission and approval.

F. ~~Approval shall not be granted for any course, seminar, workshop, etc. dealing with the requirements of the 1999 revisions to the "Regulations for Licensing Water Well Contractors, Pump Installer Contractors, Well Drillers, Well Drivers, and Pump Installers" or the 1997 "Regulations Governing the Construction and Use of Wells."~~ Approval of program(s) dealing with proposed revisions or additions to the states' regulations governing wells noted in section 7.01(F) above and any other state or local requirements regarding well construction or repair, pump installation or pump repair may be considered for continuing education credit providing the program(s) are held within the first six (6) months of implementation of the requirements.

G. Subject to approval by the [~~Secretary Board~~], continuing education [~~credit~~] relevant to the practice of well construction, abandonment, and repair; and pump installation, removal, maintenance and repair may be obtained by, but are not limited to the following:

1. ~~Course work~~ Courses, seminars, workshops, and lectures ~~etc.~~ given by accredited educational institution[s.]

2. Courses, seminars, workshops, or lectures given by national, state ~~and or~~ local trade associations, professional organizations, product vendors, manufacturers, etc.

3. Extension studies and correspondence courses.

4. Papers written by a licensee and published in a professional journal or scientific media requiring peer review.

5. Instruction of continuing education courses.

6. Attendance at conferences and conventions sponsored by regional, national ~~and~~ or local trade associations or professional organizations.

7.02 Assignment of Credit

A. Continuing education credits shall be awarded on an hour-for-hour basis for attendance at an approved continuing education program unless otherwise indicated in section 7.02(B) through (F) of ~~[this regulation these regulations]~~.

B. Credits shall be awarded in not less than one-half (½) hour increments.

C. ~~For programs where continuing education units have been assigned, one unit is equivalent to one credit of approved training.~~ Instructor(s) of approved continuing education programs shall receive credits at the rate of one (1) credit for two (2) hours of continuing education instruction.

D. ~~[A maximum of]~~ five (5) credit hours ~~[are approved will be given]~~ for each day of attendance at a national, regional or local trade association conference or convention.

E. One-half (½) credit hour ~~[is approved will be given]~~ for attendance at a ~~local~~ trade association or professional organization meeting or seminar.

F. ~~[A maximum of]~~ three (3) credit hours shall be awarded for each paper written by a licensee and published in a scientific media or professional journal requiring peer review. The subject of the paper shall be directly related to the license holder's license category.

7.03 ~~Recording~~ Reporting Credits

A. Approved continuing education credits obtained within the appropriate license renewal period shall be credited as provided in section 7.02 of ~~[this regulation these regulations]~~.

B. The ~~licensee~~ license holder is responsible for submission of proof of attendance at all approved continuing education programs. Documentation of credits received shall consist of any one of the following, unless otherwise approved by the ~~[Secretary Board]~~:

1. A record of attendance for each course on forms provided by the Department or,
2. An official student transcript issued by the educational institution or,
3. A certificate or other documentation signed by the instructor or sponsor of the program providing the name of the individual who attended, the date the program was held, the name of the program, and the number of training hours completed, ~~and attesting to the satisfactory completion of the program.~~

C. Inability to substantiate credit hours earned shall be is grounds for disallowance of the credits in question.

SECTION 8 - ~~SUSPENSION~~ IDENTIFICATION OF LICENSE HOLDER

8.01 ~~Any person licensed by the Water Well Licensing Board~~ All well drillers, well drivers and pump installers licensed under ~~[this regulation these regulations]~~ shall, ~~possess while he is working~~ while he or she is performing any activity governed by ~~[this regulation these regulations]~~, have in his or her possession a valid and current identification card furnished by the ~~Board~~ Department and shall exhibit it on demand. The card shall bear showing his or her identity name, type of license, and license number and the license expiration date. ~~Only a person licensed by the Board shall be authorized to operate equipment used in the business of well drilling and/or pump installation, or if an unlicensed person is employed for the operation of the equipment, he shall perform all work under the immediate and continuous supervision of a person licensed by the Board present at the work site.~~

SECTION 9 - MARKING ~~OF~~ VEHICLES AND EQUIPMENT

9.01 ~~Any contractor~~ All licensed water well contractors and pump installer contractors licensed by the Water Well Licensing Board shall mark each well drilling rig, well driving rig, water tank truck, and well and pump service ~~rig~~ vehicle used by the contractor or his employee(s) with legible and plainly visible identification markings. The identification markings ~~used~~ shall be include the name of the company, corporation, or contractor and the water well or pump installer contractor's ~~[valid]~~ license number. The identification marking(s) shall be ~~printed upon~~ displayed on each side of the ~~well drilling rig, well driving rig, water tank truck, and well and pump service rig~~ vehicle(s) and equipment in letters and numerals at least 1½ inches high. ~~and~~ The letters and numerals shall be in a color sufficiently different from the color of the vehicle or equipment so that identification markings are plainly legible. Weatherproof decals or magnetic signs meeting the requirements ~~above~~ of ~~[this regulation these regulations]~~ are acceptable.

SECTION 10 - RESPONSIBILITIES OF WATER WELL CONTRACTORS, PUMP INSTALLER CONTRACTORS, WELL DRILLERS, WELL DRIVERS AND PUMP INSTALLERS

10.01 Pursuant to ~~[this regulation these regulations]~~, licensed water well contractors, pump installer contractors, well drillers, well drivers and pump installers shall be responsible for the following:

- A. Initiating work only on wells for which the proper approval has been granted
- B. Compliance with all applicable laws, regulations

and requirements

C. The conduct of work carried out by ~~himself themselves~~ and any employee ~~[or others under their supervision] and~~

D. The proper ~~and timely~~ submission of ~~completion reports for all work done, signed by the licensed water well driller or driver. all required reports and forms~~

E. ~~Maintaining contractor's liability insurance pursuant to the requirements of [this regulation these regulations] at all times~~

F. ~~Submitting proof of insurance annually~~

G. ~~Notifying the Department of any changes of employment, address, phone, etc.~~

H. ~~Submission of renewal and continuing education credit forms prior to license expiration.~~

I. ~~Well drillers, well drivers and pump installers shall only perform work authorized by their license while in the employ of the licensed water well contractor or pump installer contractor listed on their license certificate.~~

SECTION 11 – SUSPENSION OR REVOCATION OF LICENSE

~~The Board shall recommend to the Secretary the revocation of the license of any licensee who, upon hearing by the Board, has been found guilty of fraud or deceit in obtaining his license.~~

~~The Board shall recommend to the Secretary the suspension or revocation of the license of any licensee who, upon investigation and hearing by the Board, is:~~

~~a. Found to be guilty of gross negligence, incompetence, or misconduct in the business of well drilling or pump installation and repair in the State of Delaware, including flagrant violations of the laws, regulations or conditions of permits; or is~~

~~b. No longer able to perform his duties properly.~~

11.01 Board Meeting

A. Whenever the Board ~~[finds that obtains information that a]~~ the licensee ~~under this regulation~~ may be or may have been engaging in practices which are in violation of ~~the laws, regulations or conditions of permits in relation to their license or when a licensee may no longer be performing their duties properly any provision of these or other regulations applicable to water well construction and abandonment, the Board shall give written notice to notify the licensee license holder describing the alleged violation and requesting that the alleged offender appear before the Board for a hearing to [address the alleged violations or deficiencies and, if necessary,] show cause why his or her license(s) should not be suspended or revoked.~~

B. The Board shall hold an informal meeting, open to the public, to review ~~[the alleged violations and decide on a recommendation to the Secretary].~~ The Board shall consider testimony of the license holder, the Department, ~~[any relevant witnesses,]~~ and the public and shall make a

recommendation to the Secretary.

11.02 Secretary's Decision

~~The Secretary may suspend or revoke the license of a water well contractor, pump installer contractor, well driller, well driver or pump installer after considering the recommendations of the Water Well Licensing Board when it is found that the license holder:~~

~~A. Has practiced fraud, deception or concealment of material facts in obtaining a license or in the performance of their duties.~~

~~B. Has not used reasonable care, judgment or the application of their knowledge or ability in the performance of his or her duties.~~

~~C. Is incompetent or unable to perform his or her duties properly.~~

~~D. [Has] violated any provision of [this regulation these regulations], other applicable regulations or permit condition(s), [and any other environmental laws or regulations within the State of Delaware.]~~

~~E. [Has] violated any lawful order, regulation, or rule rendered or adopted by the Department.~~

~~F. Is found guilty of misconduct in the pursuit of his or her profession.~~

11.03 Notification

~~Any person whose license has been suspended or revoked shall be notified in writing and provided the reason(s) for the decision.~~

11.04 Appeals

~~Any person whose license has been suspended or revoked may appeal to the Environmental Appeals Board pursuant to Title 7 Del. C., §6008 within 20 days after receipt of the Secretary's decision.~~

Public Hearing

~~Any appeal of the Secretary's decision will be subject to the provisions in 7 Del. C., Section 6008.~~

Procedures for Hearings

~~A. The Board shall advise the Secretary to notify the alleged violator of his right to a hearing before the Board to show cause why his license would not be suspended or revoked. The notification shall be in the form of a registered or certified letter, return receipt requested, setting forth the alleged violation or violations, and making known to the alleged violator the time and place of the hearing. This notice must be given at least twenty (20) days prior to the hearing.~~

~~B. The alleged violator may appear with counsel at the hearing.~~

~~C. The Secretary shall appoint one of the members of the Board to act as the hearing officer.~~

~~D. A record shall be made of any hearing concerning revocation or suspension of licenses.~~

E. ~~At the conclusion of the hearing the Board, by a majority of those present vote, shall recommend to the Secretary suspension, revocation or affirmation of the license of the accused based upon evidence and testimony given at the hearing.~~

F. ~~The Board shall advise the Secretary of its decision within three (3) days of the hearing.~~

G. ~~The Secretary shall provide the accused with notice by registered or certified mail, return receipt requested, as to his decision within twenty (20) days of the conclusion of the hearing.~~

11.05 License Suspension – Terms and Conditions

A. A person whose water well contractor or pump installer contractor license has been suspended shall not contract for the construction, abandonment, modification or repair of a well or for the installation, maintenance, repair or removal of a pump in or for a well; [and shall not advertise, solicit business or receive payment as a water well contractor or pump installer contractor] during the term of license suspension.

B. A person whose well driller or well driver license has been suspended shall not physically operate a well rig, construct, [drill, bore, core, drive, dig, install, remove or repair] a well, abandon a well, install a pump in or for a well, remove a pump from a well, modify a pump in or for a [well or], service a pump in or for a well, [or undertake any activity that requires a license as a well driller or well driver] during the term of license suspension.

C. A person whose pump installer license has been suspended shall not install a pump in or for a well, remove a pump from a well, modify a pump in or for a well, [or] service a pump in or for a well, [or undertake any activity that requires a license as a pump installer] during the term of license suspension.

D. [Vehicles or equipment] used in any activity requiring a license pursuant to [this regulation these regulations] shall not bear the name or contractor's license number of the suspended license during the term of a water well or pump installer contractor license suspension.

E. Upon expiration of the term of suspension, the license of the suspended person, [as defined in section 2.10 of these regulations] company or corporation, shall be deemed in good standing on the first calendar day after the term of suspension has expired provided that the cause of the suspension has been corrected to the satisfaction of the Board. [In cases where a license expires prior to the end of the suspension period, the licensee must comply with the requirements of section 6 of these regulations before the license is reinstated.]

11.06 License Revocation – Terms and Conditions

A. A person whose water well contractor or pump installer contractor license has been revoked shall not

contract for the construction, abandonment, modification or repair of a well or for the installation, maintenance, repair or removal of a pump in or for a well; [and shall not advertise, solicit business or receive payment as a water well contractor or pump installer contractor] until that person has first obtained a current Delaware water well contractor or pump installer contractor license.

B. A person whose well driller or well driver license has been revoked shall not physically operate a well rig, construct a well, [drill, bore, core, drive, dig, install,] remove or repair a well, abandon a well, repair or modify a well, install a pump in or for a well, remove a pump from a well, modify a pump in or for a well, [or] service a pump in or for a well, [or undertake any activity that requires a license as a well driller or well driver] until that person has first obtained a current Delaware well driller [or well driver] license.

C. A person whose pump installer license has been revoked shall not install a pump in or for a well, remove a pump from a well, modify a pump in or for a well, or service a pump in or for a well, [or undertake any activity that requires a license as a pump installer during the term of license revocation and] until that person has first obtained a current Delaware pump installer license.

D. Vehicles [or equipment] used in any activity requiring a license pursuant to [this regulation these regulations] shall not bear the name or water well or pump installer contractor's license number of the revoked license during the term of license revocation.

E. Upon completion of the term of revocation, the person may submit an application for a license under [this regulation these regulations.]

GENERAL NOTICES

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

AIR QUALITY MANAGEMENT SECTION

Statutory Authority: 7 Delaware Code,
Section 6010 (7 Del.C. §6010)

REGISTER NOTICE

1. TITLE OF THE REGULATIONS:

Post 2002 Title V Permit Fees

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

Pursuant to House Bill 562, effective July 8, 2002, the Department shall publish each source Name, Base Fee information, and User Fee information in the Delaware Register.

These Post 2002 Title V Fees will be charged to facilities during 2003, 2004, and 2005.

3. POSSIBLE TERMS OF THE ACTION AGENCY:

N/A

4. STATUTORY BASIS:

7 Del.C., Chapter 60, section 6097, and Clean Air Act Amendments of 1990

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

NONE

6. NOTICE OF PUBLIC COMMENT:

N/A

7. PREPARED BY:

Craig A. Koska, 11/04/02

POST 2002 TITLE V FEES- INTRODUCTION

Pursuant to House Bill 562, which becomes effective 01/01/03, the attached tables were to be published in the Delaware Register. The purpose of this publishing is to allow individual sources to be aware of the fee amounts which will be billed starting January 1, 2003. The new fees will be used to assess Title V Fees for the calendar years 2003, 2004, and 2005. Any questions should be directed to the Air Quality Management Section at (302) 739-4791.

	Facility Name	Base Fee	User Fee	Total Fees
1	ALLEN FAMILY FOODS, INC	\$ 3,000	\$ 2,000	\$ 5,000
2	ALLENS MILLING COMPANY	\$ 18,000	\$ 5,000	\$ 23,000
3	AMERICAN INTERNATIONAL BUILDING	\$ 3,000	\$ 1,000	\$ 4,000
4	AMERICAN MINERALS, INC	\$ 7,500	\$ 1,000	\$ 8,500
5	AMETEK, INC /HAVEG DIVISION	\$ 7,500	\$ 1,000	\$ 8,500
6	AMTRAK WILMINGTON MAINTENANCE FACILITY	\$ 7,500	\$ 1,000	\$ 8,500
7	ARLON, INC	\$ 3,000	\$ 1,000	\$ 4,000
8	ASTRA ZENECA PHARMACEUTICALS -FAIRFAX	\$ 7,500	\$ 1,000	\$ 8,500
9	AVECIA, INC	\$ 3,000	\$ 1,000	\$ 4,000
10	BEASLEY (WARREN F.) POWER STATION	\$ 3,000	\$ 2,000	\$ 5,000
11	CAMDEL METALS CORPORATION	\$ 18,000	\$ 1,000	\$ 19,000
12	CHESWOLD AGGREGATES	\$ 3,000	\$ 1,000	\$ 4,000
13	CHRISTIANA HOSPITAL	\$ 7,500	\$ 5,000	\$ 12,500
14	CHRISTIANA MATERIALS	\$ 3,000	\$ 1,000	\$ 4,000
15	CHRISTIANA MATERIALS MIDDLETOWN	\$ 3,000	\$ 1,000	\$ 4,000
16	CIBA SPECIALTY CHEMICALS CORP.	\$ 39,500	\$ 2,000	\$ 41,500
17	CITISTEEL USA	\$ 39,500	\$ 5,000	\$ 44,500
18	CITY OF DOVER - MCKEE RUN POWER PLANT	\$ 18,000	\$ 40,000	\$ 58,000
19	CITY OF DOVER, VAN SANT GENERATING STATION	\$ 18,000	\$ 2,000	\$ 20,000
20	CITY OF SEAFORD - ELECTRIC	\$ 7,500	\$ 2,000	\$ 9,500
21	CLEAN EARTH OF NEW CASTLE	\$ 18,000	\$ 2,000	\$ 20,000

GENERAL NOTICES

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22	COATINGS INC	\$ 3,000	\$ 1,000	\$ 4,000
23	COKER CONCRETE	\$ 3,000	\$ 2,000	\$ 5,000
24	COMPUTER SCIENCE CORP.	\$ 3,000	\$ 1,000	\$ 4,000
25	CONECTIV DELMARVA GENERATION -HAY ROAD	\$ 39,500	\$ 10,000	\$ 49,500
26	CONECTIV DELMARVA GENERATION- CHRISTIANA	\$ 7,500	\$ 2,000	\$ 9,500
27	CONECTIV DELMARVA GENERATION -MADISONST.	\$ 7,500	\$ 1,000	\$ 8,500
28	CONECTIV DELMARVA GENERATION-DE CITY	\$ 7,500	\$ 1,000	\$ 8,500
29	CONECTIV DELMARVA GENERATION-EDGE MOOR	\$ 39,500	\$ 100,000	\$ 139,500
30	CONECTIV DELMARVA GENERATION-WEST SUBSTATION.	\$ 7,500	\$ 1,000	\$ 8,500
31	CONECTIV THERMAL SYSTEMS	\$ 3,000	\$ 1,000	\$ 4,000
32	CROWELL CORPORATION	\$ 3,000	\$ 1,000	\$ 4,000
33	CUSTOM DECORATIVE MOLDINGS	\$ 3,000	\$ 2,000	\$ 5,000
34	DADE BEHRING INC	\$ 3,000	\$ 1,000	\$ 4,000
35	DAIMLER CHRYSLER CORPORATION	\$ 39,500	\$ 10,000	\$ 49,500
36	DANA RAILCAR SERVICE, INC	\$ 3,000	\$ 1,000	\$ 4,000
37	DASSAULT FALCON-JET WILMINGTON	\$ 18,000	\$ 1,000	\$ 19,000
38	DE SOLID WASTE AUTHORITY CHERRY ISLAND	\$ 7,500	\$ 2,000	\$ 9,500
39	DE SOLID WASTE AUTHORITY, PIGEON POINT	\$ 7,500	\$ 2,000	\$ 9,500
40	DE SOLID WASTE AUTHORITY, SANDTOWN	\$ 7,500	\$ 1,000	\$ 8,500
41	DE SOLID WASTE AUTHORITY, SOUTHERN	\$ 7,500	\$ 1,000	\$ 8,500
42	DELAWARE CORRECTIONAL CENTER-SMYRNA, DE	\$ 7,500	\$ 1,000	\$ 8,500
43	DELAWARE HOSPITAL FOR THE CHRONICALLY ILL	\$ 3,000	\$ 1,000	\$ 4,000
44	DELAWARE RECYCLABLE PRODUCTS, INC.	\$ 3,000	\$ 1,000	\$ 4,000
45	DELAWARE STATE UNIVERSITY	\$ 7,500	\$ 1,000	\$ 8,500
46	DELAWARE TERMINAL COMPANY	\$ 7,500	\$ 1,000	\$ 8,500
47	DIAMOND MATERIALS, LLC	\$ 3,000	\$ 1,000	\$ 4,000
48	DOVER AIR FORCE BASE	\$ 18,000	\$ 2,000	\$ 20,000
49	DOVER PRODUCTS COMPANY	\$ 3,000	\$ 1,000	\$ 4,000
50	DUPONT CHESTNUT RUN	\$ 7,500	\$ 5,000	\$ 12,500
51	DUPONT EDGE MOOR	\$ 39,500	\$ 10,000	\$ 49,500
52	DUPONT EXPERIMENTAL STATION	\$ 39,500	\$ 10,000	\$ 49,500
53	DUPONT HOSPITAL FOR CHILDREN	\$ 7,500	\$ 5,000	\$ 12,500
54	DUPONT SEAFORD	\$ 18,000	\$ 100,000	\$ 118,000
55	DUPONT STINE - HASKELL RESEARCH CENTER	\$ 18,000	\$ 5,000	\$ 23,000
56	DUPONT WILMINGTON OFFICE BUILDINGS	\$ 7,500	\$ 5,000	\$ 12,500
57	E-A-R SPECIALTY COMPOSITES CORPORATION	\$ 18,000	\$ 1,000	\$ 19,000
58	EASTERN SHORE NATURAL GAS	\$ 3,000	\$ 1,000	\$ 4,000
59	EDGEMOOR MATERIALS - HOT MIX PLANT	\$ 3,000	\$ 1,000	\$ 4,000
60	FMC CORPORATION	\$ 18,000	\$ 2,000	\$ 20,000
61	FORMOSA PLASTICS CORPORATION	\$ 39,500	\$ 5,000	\$ 44,500
62	FP INTERNATIONAL INC.	\$ 18,000	\$ 2,000	\$ 20,000
63	GAC,SEAFORD INC.	\$ 3,000	\$ 2,000	\$ 5,000
64	GANDERHILL MULTIPURPOSE CJF	\$ 3,000	\$ 1,000	\$ 4,000
65	GENERAL CHEMICAL CORPORATION	\$ 39,500	\$ 10,000	\$ 49,500
66	GENERAL CLOTHING COMPANY, INC.	\$ 7,500	\$ 1,000	\$ 8,500
67	GENERAL MOTORS WILMINGTON	\$ 39,500	\$ 10,000	\$ 49,500

GENERAL NOTICES

68	HANOVER FOODS CORP., CLAYTON	\$ 7,500	\$ 1,000	\$ 8,500
69	HARDCORE COMPOSITES (Div of Harris Specialties)	\$ 3,000	\$ 1,000	\$ 4,000
70	HERCULES INCORPORATED, RESEARCH CENTER	\$ 18,000	\$ 5,000	\$ 23,000
71	HIRSH INDUSTRIES, INC.	\$ 7,500	\$ 1,000	\$ 8,500
72	HONEYWELL INTERNATIONAL	\$ 7,500	\$ 1,000	\$ 8,500
73	I. A. CONSTRUCTION CORP., GUMBORO	\$ 3,000	\$ 1,000	\$ 4,000
74	IKO PRODUCTION, WILMINGTON	\$ 3,000	\$ 1,000	\$ 4,000
75	ILC DOVER, INC.	\$ 3,000	\$ 1,000	\$ 4,000
76	INDIAN RIVER POWER L.L.C.	\$ 39,500	\$ 100,000	\$ 139,500
77	INLAND PAPERBOARD AND PACKAGING	\$ 3,000	\$ 1,000	\$ 4,000
78	INTERNATIONAL PETROLEUM CORP OF DELAWARE	\$ 3,000	\$ 2,000	\$ 5,000
79	JUSTIN TANKS, L.L.C.	\$ 7,500	\$ 1,000	\$ 8,500
80	KANEKA DELAWARE CORP.	\$ 39,500	\$ 2,000	\$ 41,500
81	KAYE CONSTRUCTION (EDWARD J.)	\$ 3,000	\$ 1,000	\$ 4,000
82	KENT GENERAL HOSPITAL	\$ 7,500	\$ 1,000	\$ 8,500
83	KRAFT FOODS INC.	\$ 18,000	\$ 1,000	\$ 19,000
84	LAFARGE CORPORATION	\$ 18,000	\$ 5,000	\$ 23,000
85	LIDLAW CORPORATION	\$ 7,500	\$ 2,000	\$ 9,500
86	LEWES ELECTRIC DEPARTMENT	\$ 3,000	\$ 1,000	\$ 4,000
87	MACDERMID INC.	\$ 7,500	\$ 1,000	\$ 8,500
88	MARITRANS	\$ 18,000	\$ 40,000	\$ 58,000
89	MBNA AMERICA- Deerfield Center	\$ 3,000	\$ 1,000	\$ 4,000
90	MEDAL L.P., AIR LIQUIDE	\$ 3,000	\$ 1,000	\$ 4,000
91	MILFORD MEMORIAL HOSPITAL	\$ 3,000	\$ 1,000	\$ 4,000
92	MOTIVA ENTERPRISE MARKETING TERMINAL	\$ 7,500	\$ 2,000	\$ 9,500
93	MOTIVA ENTERPRISES LLC, DELAWARE CITY PLANT	\$ 39,500	\$ 225,000	\$ 264,500
94	MOUNTAIRE FARMS FEEDMILL, FRANKFORD	\$ 3,000	\$ 5,000	\$ 8,000
95	MOUNTAIRE FARMS OF DELMARVA-MILLSBORO	\$ 18,000	\$ 10,000	\$ 28,000
96	MOUNTAIRE FARMS, SELBYVILLE	\$ 7,500	\$ 5,000	\$ 12,500
97	MULTI-TECH, INC.	\$ 7,500	\$ 2,000	\$ 9,500
98	NANTICOKE MEMORIAL HOSPITAL	\$ 3,000	\$ 1,000	\$ 4,000
99	NEW CASTLE HOT MIX, INC.	\$ 3,000	\$ 1,000	\$ 4,000
100	NEW LONDON TEXTILE INC	\$ 3,000	\$ 1,000	\$ 4,000
101	NORAMCO OF DELAWARE, INC.	\$ 3,000	\$ 1,000	\$ 4,000
102	NRG ENERGY CENTER, DOVER	\$ 18,000	\$ 100,000	\$ 118,000
103	NVF COMPANY, YORKLYN	\$ 7,500	\$ 2,000	\$ 9,500
104	OCCIDENTAL CHEMICAL CORP.	\$ 18,000	\$ 2,000	\$ 20,000
105	ORIENT CHEMICAL CORPORATION	\$ 3,000	\$ 1,000	\$ 4,000
106	PAT'S SUPPORT INC.	\$ 3,000	\$ 1,000	\$ 4,000
107	PERDUE AGRI-RECYCLE	\$ 3,000	\$ 5,000	\$ 8,000
108	PERDUE FARMS INC., GEORGETOWN	\$ 18,000	\$ 5,000	\$ 23,000
109	PERDUE FARMS INCORPORATED, MILFORD	\$ 3,000	\$ 2,000	\$ 5,000
110	PERDUE FARMS, BRIDGEVILLE	\$ 3,000	\$ 2,000	\$ 5,000
111	PINNACLE FOODS CORP.	\$ 3,000	\$ 2,000	\$ 5,000
112	PLAYTEX APPAREL, INC., PLANT 3	\$ 3,000	\$ 1,000	\$ 4,000
113	PLAYTEX PRODUCTS, INC - PLANT 1	\$ 3,000	\$ 1,000	\$ 4,000

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114	POWER SYSTEMS COMPOSITES	\$ 3,000	\$ 1,000	\$ 4,000
115	PRINTPACK, INC.	\$ 18,000	\$ 2,000	\$ 20,000
116	PROCTER & GAMBLE DOVER WIPES COMPANY	\$ 7,500	\$ 5,000	\$ 12,500
117	PTFE COMPOUNDS INC., NEW CASTLE	\$ 3,000	\$ 1,000	\$ 4,000
118	PURE GREEN INDUSTRIES	\$ 3,000	\$ 1,000	\$ 4,000
119	REICHHOLD	\$ 39,500	\$ 5,000	\$ 44,500
120	RODEL, INC	\$ 18,000	\$ 2,000	\$ 20,000
121	SEA WATCH INTERNATIONAL, LTD	\$ 3,000	\$ 2,000	\$ 5,000
122	SPI PHARMA	\$ 3,000	\$ 1,000	\$ 4,000
123	SPI POLYOLS, INC.	\$ 39,500	\$ 10,000	\$ 49,500
124	ST FRANCIS HOSPITAL	\$ 3,000	\$ 1,000	\$ 4,000
125	SUN COMPANY INC	\$ 39,500	\$ 40,000	\$ 79,500
126	TILCON DELAWARE, INC - BAY ROAD	\$ 3,000	\$ 2,000	\$ 5,000
127	TILCON DELAWARE, INC., GEORGETOWN	\$ 3,000	\$ 1,000	\$ 4,000
128	TILCON PORTABLE CRUSHER	\$ 3,000	\$ 1,000	\$ 4,000
129	TILCON, TERMINAL AVENUE	\$ 3,000	\$ 1,000	\$ 4,000
130	TILCON. HORSEPOND ROAD, DOVER	\$ 3,000	\$ 1,000	\$ 4,000
131	UNIQEMA	\$ 18,000	\$ 2,000	\$ 20,000
132	UNISOURCE WORLDWIDE, INC.	\$ 3,000	\$ 1,000	\$ 4,000
133	UNIVERSITY OF DELAWARE, NEWARK	\$ 18,000	\$ 2,000	\$ 20,000
134	VETERANS ADMINISTRATION HOSPITAL	\$ 7,500	\$ 1,000	\$ 8,500
135	VFL TECHNOLOGY CORP.	\$ 3,000	\$ 1,000	\$ 4,000
136	VPI MIRREX CORPORATION	\$ 18,000	\$ 2,000	\$ 20,000
137	W. L. GORE & ASSOC INC, PAPER MILL ROAD	\$ 3,000	\$ 1,000	\$ 4,000
138	WESTVACO CPD NEWARK	\$ 7,500	\$ 1,000	\$ 8,500
139	WILMINGTON HOSPITAL	\$ 7,500	\$ 1,000	\$ 8,500
140	WILMINGTON PIECE DYE	\$ 7,500	\$ 2,000	\$ 9,500
141	WILMINGTON RECYCLING, L.L.C., MARSH LANE	\$ 3,000	\$ 1,000	\$ 4,000
142	WILMINGTON WASTE WATER TREATMENT PLANT	\$ 7,500	\$ 1,000	\$ 8,500

**DELAWARE COUNCIL ON
POLICE TRAINING**

Statutory Authority: 11 Delaware Code,
Section 8404(a)(5) (11 Del.C. 8404(a)(5))

The Council on Police Training (COPT), in accordance with 11 Delaware Code Section 8404(a)(14) and 29 Delaware Code Section 10115 of the Administrative Procedures Act, hereby gives notice that it shall hold a public hearing on December 19, 2002 at 9:00 a.m. in the conference room at the Delaware State Police Training Academy, N. DuPont Highway, Dover, Delaware 19903.

The Council on Police Training will receive written comments or oral testimony from interested persons regarding the following regulation to amend the current COPT regulation II-16 (Emergency Care & CPR Training). The final date for interested persons to submit written comments shall be the date of the public hearing. Written comments should be addressed to: Captain Gregory Warren, State Police Headquarters, P.O. Box 430, Dover, DE 19903-0430.

Anyone wishing to make written or oral comments who would like a copy of the proposed regulation may contact the COPT at (302) 739-5903, or write the above address.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF NURSING**

The Delaware Board of Nursing in accordance with 24 Del.C. 1906(1) has proposed to amend Section 7.6 "Dispensing" of the Board's Rules and Regulations.

This proposed rules and regulations revision defines the specific elements of dispensing that licensed practical nurses are authorized to engage in.

A public hearing will be held on Wednesday, January 15, 2003 at 9:00 a.m. in the second floor Conference Room A, Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware.

Anyone desiring a copy of the proposed change of the Rules and Regulations may obtain a copy from the Delaware Board of Nursing, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904, (302) 744-4516 or 744-4515. Persons desiring to submit written comments on the revised rules and regulations may forward these comments to the above address. The final date to receive written comments will be January 15, 2003.

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF EXAMINERS OF PSYCHOLOGISTS**

Please take notice, pursuant to 29 Del.C. Ch. 101 and 24 Del.C. Ch. 35, the Delaware Board of Examiners of Psychologists proposes the following amendment to Rule 7.2 of the Delaware Board of Examiners of Psychologists' Rules and Regulations.

A public hearing will be held on the proposed amendment to Rule 7.2 on January 6, 2003 at 9:00 a.m. in Conference Room A of the Cannon Building, 861 Silver Lake Blvd., Dover, Delaware. The purpose of this hearing will be to receive public comments on the proposed amendment to Rule 7.2 in order that the Board of Examiners of Psychologists may vote to adopt, amend or reject said amendment at its January, 2003 meeting.

The Board will receive and consider input in writing from any person regarding the proposed amendment to Rule 7.2. Written comments should be submitted to the Board up through and including the date and time of the hearing on January 6, 2003 at 9:00 a.m., to Vicki Gingrich, Administrative Assistant, at the Division of Professional Regulation, Cannon Building, 861 Silver Lake Blvd., Suite 203, Dover, Delaware 19904-2467. For copies of the proposed amendment to Rule 7.2, please contact Ms. Gingrich at the above address or by calling (302) 744-4500.

MERIT EMPLOYEE RELATIONS BOARD
 Statutory Authority: 29 Delaware Code,
 Section 5914 (29 Del.C. §5914)

**Public Notice
Proposed Changes To
State Of Delaware Merit Rules**

PLEASE TAKE NOTICE that on August 1, 2002, pursuant to 29 Del.C. §5914 and 29 Del.C. ch. 101, proposed changes in two (2) Rules in Chapter 10 of the Merit Rules have been transmitted to the Merit Employee Relations Board of the State of Delaware ("MERB") from the Director of the Office of State Personnel ("Director"). The proposed changes, which the Director asserts have been approved by both the Director and by the Statewide Labor-Management Committee, would modify Merit Rule No. 10.0230 and Merit Rule No. 10.0240.

The stated basis for the proposed changes are legislative modifications of the Delaware Statutes governing State Classified Service and the Merit Rules:

On January 9, 2003, the MERB will conduct a Public Hearing on the proposed Merit Rule changes submitted by

the Director. The hearing will begin at 9:30 a.m. in the 2nd Floor Conference Room of the Margaret M. O'Neill Building, 410 Federal Street, Dover, Delaware.

The MERB will also receive and consider timely filed written submissions from interested individuals and groups concerning the proposed Merit Rule changes. The final date for any such written submissions is the date set forth above for the public hearing. Any such submissions should be mailed or delivered to the following address:

Merit Employee Relations Board
Margaret M. O'Neill Building, Suite 213
410 Federal Street
Dover, Delaware 19901

PLEASE NOTE pursuant to 24 Del.C. §5914, the changes **as proposed by the Director** will shall become final upon the completion of the public hearing, unless rejected by a majority of the members appointed to the Board. Anyone wishing to obtain copies of the Director's written filing with MERB or to present oral comments at the hearing should call Ms. Jean Lee Turner the Merit Employee Relations Board at (302) 739-6772.

DEPARTMENT OF AGRICULTURE

THOROUGHBRED RACING COMMISSION

The Commission proposes to amend the Rules as follows: 1) amend Rule 13.01 to provide that owners who are stabled on the licensee's grounds and who have started a horse may claim, and that an owner shipping in a horse may claim a horse to replace a claimed horse, and to set forth the procedure to obtain an open claiming license; and, 2) amend Rule 13.16 to add a provision that a stable will lose its claiming rights when eliminated by sale of horses or removal from the grounds, and that an owner who claims a horse under the rule is required to reinstate his eligibility to claim under the rules.

The Commission issues these proposed rules pursuant to 3 Del.C. §10103 and 29 Del.C. §10115. The Commission will accept written comments from December 1, 2002 through December 30, 2002. The Commission will hold a public hearing on the proposed amendments on January 6, 2003 at 11:00 a.m. at Delaware Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901. Written comments should be submitted to John Wayne, Administrator of Racing, Delaware Thoroughbred Racing Commission, 2320 S. DuPont Highway, Dover, DE 19901.

STATE BOARD OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, December 19, 2002 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Notice of Public Hearing

The Community Health Care Access Section, Division of Public Health, Department of Health and Social Services will hold a public hearing to discuss the proposed Delaware Birth Defect Surveillance and Registry Program Regulations.

The public hearing will be held on Friday, January 10, 2003 at 1:00 PM in the third floor conference room of the Jesse Cooper Building, Federal and Waters Streets, Dover, Delaware.

Copies of the proposed regulations are available for review by contacting:

JoAnn Baker, Community Health Care Access
Jesse Cooper Building
Federal and Water Streets
Dover, Delaware 19903
Telephone: (302) 744-4554

Anyone wishing to present his or her oral comments at this hearing should contact David Walton at (302) 744-4700 by Thursday, January 9, 2003. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by January 10, 2003 to:

David P. Walton, Hearing Officer
Division of Public Health
P.O. Box 637
Dover, Delaware 19903-0637

DIVISION OF PUBLIC HEALTH

Notice of Public Hearing

The Disease Prevention and Control Section, Division of Public Health, Department of Health and Social Services will hold a public hearing to discuss the proposed Delaware Cancer Registry Regulations.

The public hearing will be held on Monday, December 23, 2002 at 10:00 AM in the third floor conference room of the Jesse Cooper Building, located on Federal and Water Streets, Dover, Delaware.

Copies of the proposed regulations are available for review by contacting:

Dr. Leroy Hathcock,
Disease Prevention and Control
Federal and Water Streets
Dover, Delaware 19903
Telephone: (302) 744-4790

Anyone wishing to present his or her oral comments at this hearing should contact David Walton at (302) 744-4701 by Friday, December 20, 2002. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by January 3, 2003 to:

David P. Walton, Hearing Officer
Division of Public Health
P.O. Box 637
Dover, Delaware 19903-0637

DIVISION OF SOCIAL SERVICES
PUBLIC NOTICE
Medicaid/Medical Assistance programs

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to amend the Title XIX Medicaid State Plan to change the drug pricing methodology.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by December 31, 2002.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

DIVISION OF SOCIAL SERVICES
PUBLIC NOTICE
Medicaid/Medical Assistance programs

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to amend the Title XIX Medicaid State Plan to change the number of nursing home patient health assessments to two times per year.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by December 31, 2002.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

DEPARTMENT OF JUSTICE
DIVISION OF SECURITIES

**NOTICE OF PROPOSED REVISIONS TO THE
RULES AND REGULATIONS PURSUANT TO THE
DELAWARE SECURITIES ACT**

In compliance with the State's Administrative Procedures Act (APA-Title 29, Chapter 101 of the Delaware Code) and section 7325(b) of Title 6 of the Delaware Code, the Division of Securities of the Delaware Department of Justice hereby publishes notice of proposed revisions to the Rules and Regulations Pursuant to the Delaware Securities Act. The Division proposes hereby to amend sections 600, 601, 608, and 700 of the Rules and Regulations Pursuant to the Delaware Securities Act and to add a new section 610.

Persons wishing to comment on the proposed regulations may submit their comments in writing to:

James B. Ropp Securities Commissioner Department of Justice State Office Building, 5th Floor 820 N. French Street Wilmington, DE 19801 The comment period on the proposed regulations will be held open for a period of thirty days from the date of the publication of this notice in the Delaware Register of Regulations.

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL
DIVISION OF FISH AND WILDLIFE**

**DIVISION OF FISH AND WILDLIFE
SAN # 2002-18**

TITLE OF THE REGULATIONS:

Tidal Finfish Regulations

**BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE
AND ISSUES:**

To amend Tidal Finfish Regulation 11 and add a new regulation, Tidal Finfish Regulation 28, to remain in compliance with fishery management plans as amended and adopted by the Atlantic States Marine Fisheries Commission.

Tidal Finfish Regulation 11. RED DRUM SIZE LIMITS: CREEL LIMITS; is proposed to be amended to adjust the minimum size from 18 inches to 20 inches and the maximum size to 27 inches as required in Amendment 2 to the Interstate Fishery Management Plan for Red Drum.

Tidal Finfish Regulation 28. ATLANTIC OCEAN AMERICAN SHAD SEASON AND CLOSURE; is proposed to set up a registration system for commercial gill netters intending to participate in the American shad fishery in the Atlantic Ocean in 2003 and 2004. If three or fewer Delaware licensed commercial gill netters register for this fishery, the season for American shad in the Atlantic Ocean shall open February 14 and close midnight April 21. If four or more commercial gill netters register for this fishery, the season for American shad will open later and close sooner. The exact dates of opening and closure in 2003 or 2004 will depend on the number of fishermen who register. Beginning January 1, 2005, it shall be illegal to take American shad from the Atlantic Ocean by means of gill net. The purpose of the regulation is to meet the intent of Amendment I of the Interstate Fishery Management Plan for Shad and River Herring which requires all states to reduce American shad commercial fishing effort by 40% in the ocean by January 1, 2003 and close the ocean fishery for American shad by January 1, 2005.

NOTICE OF PUBLIC COMMENT:

Individuals may present their opinions and evidence and/or request additional information by writing, calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, Delaware 19901, (302)739-3441. A public hearing on this proposed amendment and new regulation will be held at the Department of Natural Resources and Environmental Control Auditorium 89 Kings Highway, Dover DE at 7:30 PM on Monday December 30, 2002. The record will remain open for written comments until 4:30 PM on January 10, 2003.

TITLE OF THE REGULATION:

Tidal Finfish Regulations

**BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE
AND ISSUES:**

The Black Sea Bass Fishery Management Plan (FMP) was implemented by the National marine Fisheries Service (NMFS) and the Atlantic States Marine Fisheries Commission (ASMFC) in 1996 to manage the coastwide black sea bass stock. This management plan instituted a coast wide harvest quota, operating with daily or weekly trip limits and trigger mechanisms which lowered the trip limits in each of the quarterly harvest periods. The program was designed to allow harvest to proceed throughout each quarterly period without early closures. The plan rarely succeeded and was often characterized by early closures in many quarters. These early closures had serious economic consequences for commercial fishermen, necessitating a change to the program.

In order to improve the FMP, ASMFC adopted Amendment 13 to the plan by allocating state by state quotas to all Atlantic coast states. Delaware was allocated 5 percent of the allowable coast wide commercial quota equating to approximately 165,000 pounds of black sea bass for 2003.

The quota will be evenly distributed to those individuals that qualify and pre-register with the Department prior to the commencement of harvest operations. Two options are presented for fishermen to qualify for participation in the fish pot fishery and the commercial hook and line fishery for black sea bass. Participants will be required to provide daily harvest reports via a telephone reporting system operated by the Department.

NOTICE OF PUBLIC COMMENTS:

Individuals may present their comments or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901. A public hearing will be held in the DNREC auditorium, 89 Kings Highway, Dover, DE 19901 at 7:30 on Wednesday, January 8, 2003. The record shall remain open for written comments until 4:30 pm on January 18, 2003.

**DEPARTMENT OF PUBLIC SAFETY
DIVISION OF HIGHWAY SAFETY****Notice Of Public Hearing**

The Department of Public Safety will hold a hearing pursuant to 29 **Del.C.** Chapter 101 concerning the adoption of Policy Regulation Number 92, entitled "STANDARD OPERATING PROCEDURES FOR THE DUI EVALUATION, EDUCATION, AND OUTPATIENT TREATMENT AGENCIES FOR THE STATE OF DELAWARE, DEPARTMENT OF PUBLIC SAFETY." The Department will receive public comment regarding the proposed Department of Public Safety Policy Regulation.

Department Of Public Safety And Division Of Highway Safety Policy Regulation Number 92 Concerning: Standard Operating Procedures For The Dui Evaluation, Education, And Outpatient Treatment Agencies For The State Of Delaware, Department Of Public Safety.

Date, Time And Place Of Public Hearing

DATE: January 9, 2003

TIME: 10:00 a.m.

PLACE: Main Conference Room, 2nd Floor
Department of Public Safety
Public Safety Building
303 Transportation Circle
Dover, DE 19901

Persons may view the proposed Policy Regulation between the hours of 8:00 a.m. to 4:00 p.m., Monday through Friday, at the Division of Highway Safety, in the Public Safety Building, 2nd floor, 303 Transportation Circle, Suite 201, Dover, DE 19901.

Persons may present their views in writing by mailing them to Lisa Moore, DUI Programs Coordinator, Division of Highway Safety, PO Box 1321, Dover, DE 19903. Written comments will be accepted until the close of business on January 8, 2003. Persons may also present their views by offering testimony at the public hearing. If the number of persons desiring to testify at the public hearing is large, the amount of time allotted to each speaker will be limited.

**DEPARTMENT OF SERVICES FOR
CHILDREN, YOUTH AND THEIR
FAMILIES****DIVISION OF FAMILY SERVICES**

The Delaware Department of Services for Children, Youth and Their Families, Division of Family Services is requesting public comment on "Regulations Pursuant to 16 *Del. C.* Ch. 9 for Designation of Substantiated Acts of Abuse or Neglect to Child Protection Levels and for Classifying Unsubstantiated Cases of Abuse or Neglect in the Division of Family Services' Internal Information System." Anyone wishing to submit written comments should submit such comments by December 30, 2002 to: Linda M. Shannon, Program Manager, Intake & Investigation, Division of Family Services, 1825 Faulkland Road, Wilmington, DE 19805. Fax comments to: (302) 633-2652

Legislation regarding the Child Protection Registry was signed into law by Governor Ruth Ann Minner on July 22, 2002. The registry is a database of information about persons the Division of Family Services has substantiated to have committed child abuse or neglect. The statute assigns individuals who are substantiated for child abuse or neglect to one of four levels for a specific number of years. The levels also address who may be reported out to health care and child care employers for employment purposes. In addition, the statute mandates that all appeals be heard in Family Court instead of attorneys contracted by the Division of Family Services. Finally, the Division of Family Services will classify unsubstantiated cases on its internal system utilizing two categories: Unsubstantiated – No Evidence and Unsubstantiated with Concern.

**EXECUTIVE DEPARTMENT
DELAWARE ECONOMIC DEVELOPMENT OFFICE
DEPARTMENT OF HEALTH AND SOCIAL
SERVICES AND THE TAX APPEAL BOARD****NOTICE OF RESCHEDULED PUBLIC HEARING****Title Of Regulation**

Neighborhood Assistance Act Tax Credit Program Regulation

Nature Of Proceedings; Synopsis Of The Subject And Substance Of The Proposed Regulation

In accordance with procedures set forth in 29 **Del.C.** Ch. 11, Subch. III and 29 **Del.C.** Ch. 101, the Secretary of the Department of Health and Social Services, the Director of the Delaware Economic Development Office and the

members of the Tax Appeal Board are proposing to adopt regulations pertaining to the tax credit set forth in the Neighborhood Assistance Act, 30 Del.C. §§2001 — 2007. The regulation sets forth certain definitions pertaining to the Act and the regulation and explains how to apply for an NAA Credit and the procedures pertaining to the application process.

Notice Of Public Hearing; How To Comment On The Proposed Regulations

Members of the public may receive a copy of the proposed amendments to the regulation at no charge by United States Mail by writing or calling Mr. Jack Tarburton, Delaware Economic Development Office, 99 Kings Highway, Dover, DE, 19901-7305, phone (302) 739-4271. The Secretary of the Department of Health and Social Services, the Director of the Delaware Economic Development Office and the members of the Tax Appeal Board, or an employee of the Delaware Economic Development Office designated by the Secretary, the Director and the members of the Tax Appeal Board, will hold a public hearing at which members of the public may present comments on the proposed regulation on December 9, 2002 in the conference room of the offices of the Delaware Economic Development Office on the 10th floor of the Carvel State Office Building, 820 N. French Street, Wilmington, DE, 19801 from 5:00 PM to 7:00 PM. Additionally, members of the public may present written comments on the proposed regulation by submitting such written comments to Mr. Jack Tarburton at the address of the Delaware Economic Development Office set forth above. Written comments must be received on or before November 30, 2002.

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