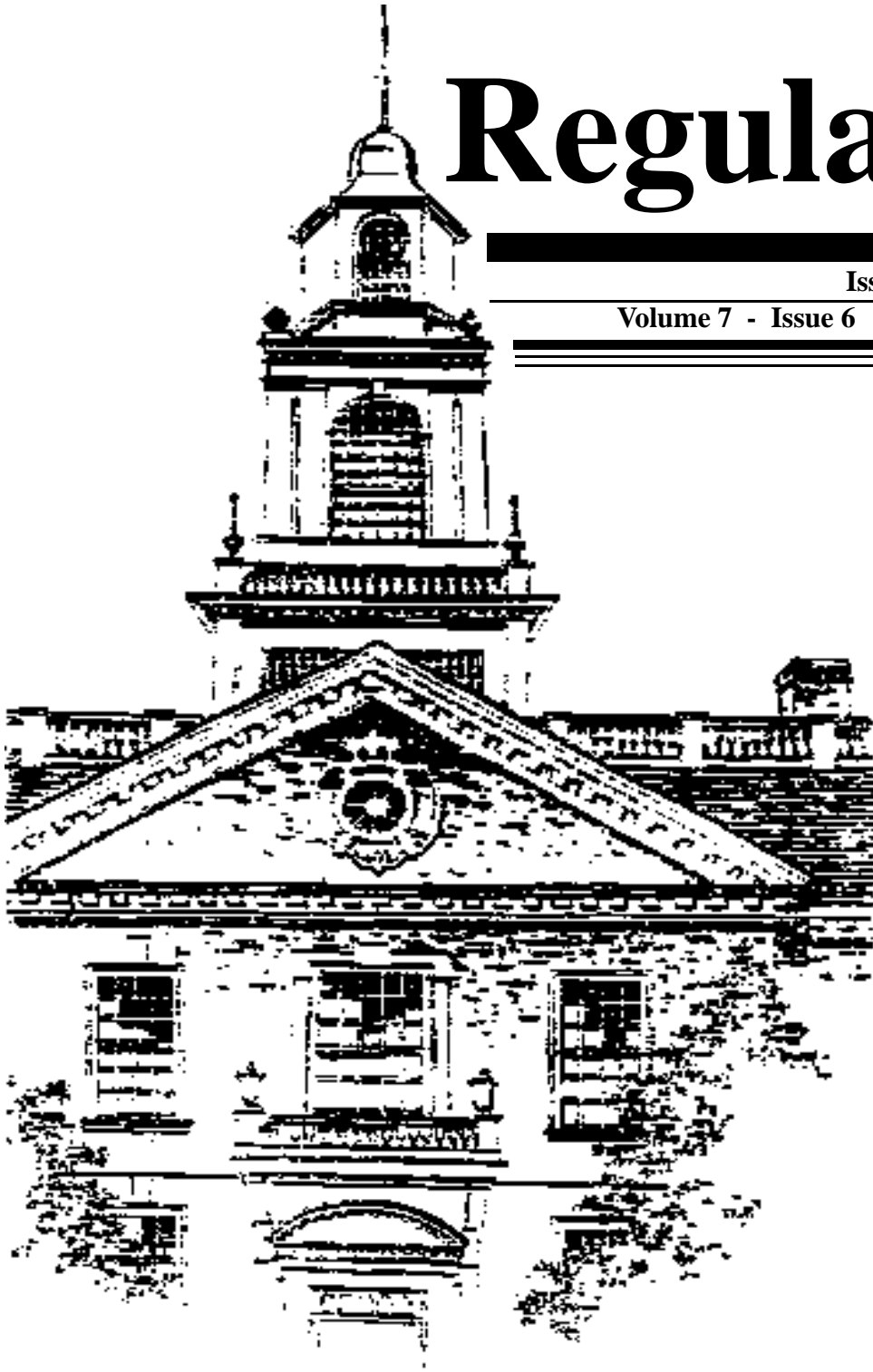

Delaware Register of Regulations



Issue Date: December 1, 2003

Volume 7 - Issue 6

Pages 683 - 841

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Proposed

Final

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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, 2003.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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. 1541-1542 (06/01/03)

Refers to Volume 6, pages 1541-1542 of the Delaware Register issued on June 1, 2003.

SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the Delaware Register of Regulations is \$135.00. 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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title.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

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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
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.
MAY 1	APRIL 15	4:30 P.M.

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**DEPARTMENT OF
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BOARD OF PHARMACY**

24 DE Admin. Code 2500
Statutory Authority: 24 Delaware Code,
Section 2509 (24 Del.C. §2509)

PUBLIC NOTICE

PLEASE NOTE: THE PROPOSED CHANGES TO REGULATION 11.0 OF THE BOARD OF PHARMACY CONTAINED AN ERROR AT 11.3.4. THE TEXT WAS INADVERTENTLY STICKEN THROUGH. IT SHOULD HAVE BEEN UNDERLINED TO INDICATE NEW LANGUAGE. THE CORRECT VERSION FOLLOWS.

PLEASE TAKE NOTICE, pursuant to 29 Del.C. §2509, the Delaware Board of Pharmacy (Board) proposes to modify Regulation 11.0 as it relates to emergency use medication, labeling, consultant pharmacist duties, and drug disposal in nursing homes. There were technical and substantive errors in the changes published September 1, 2003 and they are being republished with the corrections to the following sections: 11.2.5, 11.2.6, 11.4.1, 11.5.2, 11.5.3.2

A public hearing will be held on December 8, 2003 at 9:30 a.m. in the Jesse Cooper Building, Room 309 (third floor conference room), Federal and Water Streets, Dover, DE 19901. Written comments can be submitted at any time prior to the public hearing in care of David Dryden, Executive Director, at the above address. In addition to publication in the Register of Regulations and two newspapers of general circulation, copies of the proposed regulation can be obtained by calling (302)739-4798.

11.0 Pharmaceutical Services in Nursing Homes

11.1 Definition: A nursing home is an institution licensed by the Division of Public Health ~~State Board of Health~~ that provides permanent facilities that include in-patient beds and medical services, including continuous nursing services, to provide treatment for patients who do not currently require continuous hospital services. Rest-Residential and Assisted Living beds in licensed nursing homes are exempt from this regulation. They are considered under Health Care Facilities.

11.2 General Requirements

11.2.1 Each ~~administrator~~ facility shall provide ~~within the facility~~, a cabinet or medication carts for individual patient medications ~~prescriptions~~. These storage units shall be of sufficient size and located where easily accessible. They shall be locked when not in use and the key and/or code for ~~for the lock of~~ the storage unit shall be

carried by or be accessible only to registered nurses, licensed practical nurses, or pharmacists. Controlled substances storage shall be in compliance with State and Federal statutes and regulations.

11.2.2 ~~All bleaches, detergents, disinfectants, and external preparations so labeled shall be kept in a separate locked cabinet, compartment, or room apart from medicines, drugs or foods.~~ Internal medications must be stored separately from external medications.

11.2.3 ~~Adequate refrigeration (36° to 46° Fahrenheit) must be used to store medications requiring refrigeration. Medications requiring refrigeration must be stored within the USP/NF refrigeration temperature range of 36 to 46 degrees Fahrenheit.~~

11.2.4 Medications which require room temperature storage must be maintained at either USP/NF ranges of 59 to 86 degrees Fahrenheit or the manufacturer's labeled range.

11.2.5 No persons except properly authorized ~~licensed~~ personnel shall handle or administer medications ~~"caution legend drugs"~~ from individual prescriptions.

11.2.6 Schedule II substances shall be secured under two locks in securely fixed boxes or drawers in the medication storage area, medication cart, ~~interim~~ or emergency use medication supplies. ~~These are to be kept separate from non-controlled medications. There shall be accountability procedures for all Schedule II substances present.~~

11.2.7 There shall be accountability procedures for all controlled substances present. There shall be readily retrievable records maintained showing the receipt and disposition of all controlled substances. These records must be maintained for 2 years.

11.3 ~~Stock Medication~~ Emergency Use Medications

11.3.1 ~~Non-legend medications:~~

11.3.1.1 ~~A minimal amount of non-legend drugs may be kept as stock supply.~~

11.3.1.2 ~~If accountabilities for individual patients are found to be inadequate upon inspection, then the stock non-legend medications may be subject to limitations.~~

11.3.2 ~~Legend medications – Emergency, IV, and Anaphylactic supplies~~

11.3.2.1 ~~Certain legend medications for emergency use may be stocked by the nursing home subject to Board approval.~~

11.3.2.2 ~~Emergency use medications are those which may be required to meet the immediate therapeutic needs of patients and which are not available from any other authorized source in sufficient time to prevent risk or harm to patients by delay resulting from obtaining such drugs from other sources.~~

11.3.2.3 ~~IV's and Vaccines must be submitted on an IV interim a stock list~~

11.3.2.4 ~~Only one IV box may be maintained~~

at the facility, unless an exemption is granted, by the Board. The number of Anaphylaxis or Emergency boxes must also be submitted for Board approval.

11.3.2.5 If there is no specific accountability procedure at the facility for needles and syringes, then these must be submitted on an IV or emergency box list for approval. These are legend items in the State of Delaware.

11.3.3 Legend medications – Interim supply

The criteria for legend interim medications requiring Board approval are as follows:

11.3.3.1 The interim supply may consist of medications selected from the following categories:

- 11.3.3.1.1 antibiotics
- 11.3.3.1.2 pain medications
- 11.3.3.1.3 antidiarrheal
- 11.3.3.1.4 cold/cough/antihistamines
- 11.3.3.1.5 antiemetics
- 11.3.3.1.6 antihypertensive
- 11.3.3.1.7 anticonvulsants
- 11.3.3.1.8 antidiabetic agents
- 11.3.3.1.9 cardiovascular drugs
- 11.3.3.1.10 respiratory/bronchodilators
- 11.3.3.1.11 sedatives/hypnotics
- 11.3.3.1.12 anticoagulants
- 11.3.3.1.13 H2 antagonists

11.3.3.2 The pharmacy, medical, and nursing staff committee may select a maximum quantity of 6 dosage units for items present in this supply.

11.3.3.3 There can be no more than a total of 60 legend items present in this interim supply.

11.3.3.4 Only one interim box may be maintained at the facility, unless an exemption is granted, by the Board. A request for an additional box or supply must be submitted to the Executive Secretary of the Board for approval.

11.3.1 Emergency use medications are those which may be required to meet the immediate therapeutic needs of patients, as determined by the prescriber, and which are not available from any other authorized source in sufficient time to prevent risk or harm to patients by delay resulting from obtaining such drugs from other sources.

11.3.2 It is the responsibility of the facility and provider pharmacy to determine the supply of emergency use medication that are to be stocked as well as documenting their locations within the facility. A list of current contents must be attached to the medication supply.

11.3.3 Accountability for emergency use medications.

11.3.3.1 The pharmacy provider must be contacted within 24 hours after medication is used from the supply and the pharmacy must restock the supply within a reasonable time to prevent harm to patients.

11.3.3.2 The provider pharmacy is responsible for the accuracy of all emergency use medications at the time

of the filling of the medication. This check must also include any medication that became available when the medication is accessed. Records documenting use of an emergency medication must be kept for a minimum of 2 years at the provider pharmacy and must be readily available for inspection by the Board.

11.3.3.3 Failure to comply with these procedures can result in the suspension or denial of the use of emergency use medications.

11.3.3.4 Violations of accountability procedures for emergency use medications may result in review proceedings before the Board.

11.3.4 There must be an accountability procedure at the facility for needles and syringes.

11.3.4 Approved lists for legend drug boxes.

11.3.4.1 The most current approved signed list or lists for each box must be maintained in the pharmacy, attached to the box or boxes in the facility, and shall become part of the Policy and Procedures manual.

11.3.4.2 When additions or deletions are made, then a complete revised list must be submitted for Board approval

11.3.5 Accountability for legend stock usage.

11.3.5.1 The pharmacy provider must be contacted within 24 hours after medication is used from the supply. The pharmacist shall review the records of new or changed orders to assure appropriateness. These records must indicate the patient name, location, name of medication, strength, quantity removed, date, time and nurse's signature.

11.3.5.2 Failure to comply with all aspects and intent of these procedures outlined can result in the revocation, suspension, or denial of the privilege of having controlled substances present in these supplies.

11.3.5.3 Continuous violations of accountability procedures for the non controlled legend medications may result in review proceedings before the Board of Pharmacy.

11.4 Return Medication Procedures.

11.4.1 All unused portions of any patient's discontinued prescription medication shall be immediately isolated. Non-controlled medication shall be destroyed or and returned to the pharmacist or provider pharmacy supplying pharmaceutical services within 72 hours with the appropriate notation of such returns for disposal disposition. The notation shall include the date, quantity, and name and strength of the medication.

11.4.2 Medications for hospitalized patients must be isolated, and may be held until the patient's return or permanent discharge.

11.4.3 Destruction of discontinued controlled patient medication and discharged or deceased patient's controlled medication may be jointly performed by the consultant pharmacist or provider pharmacist with a

~~designated nurse witness if shall be jointly performed by two authorized licensed personnel~~ within 72 hours of the discontinuation of the medication or discharge of the patient. A record of the destruction must be signed by both parties and kept at the facility for 2 years.

11.5 Labeling

11.5.1 Labels on controlled substances must show the actual refill date and amount of medication dispensed.

11.5.2 ~~If a unit dose system is used, then~~ The provider pharmacy must maintain prescription records required by State and Federal law in addition to a readily retrievable record of the actual refills, amount dispensed and accountability of the amounts used.

11.5.3 A pharmacy providing prescriptions for ~~inpatient~~ use in a nursing home may label the prescription, "to be administered according to current physician's orders." ~~provided that:~~

11.5.3.1 ~~The MAR accurately reflects the prescriber's current orders.~~

11.5.3.2 ~~The pharmacy is informed of any change in directions within twenty-four (24) hours and promptly records the change on the patient's profile. Prescriptions for leave of absence or discharge must be labeled in compliance with 24 Del.C. §2536.~~

11.5.4 A change in a medication order that involves a direction change must be communicated to the pharmacy within 24 hours, and the labeling on medication currently in the facility may be handled in the following ways:

11.5.4.1 A licensed nurse or pharmacist may apply an accessory label to the medication which denotes that there has been a direction change.

11.5.4.2 A label(s) with new directions may be requested from the pharmacy and applied to the current medication supply by a licensed nurse or pharmacist.

11.6 Duties of Consultant Pharmacist (CP):

11.6.1 A consultant pharmacist (CP) to a nursing home in the State of Delaware must be licensed to practice pharmacy in the State of Delaware. The consultant pharmacist shall be responsible for the general supervision of the nursing home pharmaceutical services and the direct supervision of registered pharmacy interns, who may assist in chart reviews. Supervision of chart reviews by a pharmacy intern must be documented by the supervising pharmacist.

11.6.2 The consultant pharmacist shall provide the administrator of a nursing home with a statement indicating those minimum professional services that will be provided. This statement shall be incorporated into the nursing home Pharmacy Policy and Procedure Manual.

11.6.3 ~~When a pharmacist becomes the consultant to a nursing home, he or she~~ The consultant pharmacist must notify the Board in writing within ten days

~~of the starting date, starting as a consultant in the State. The Delaware State Board of Pharmacy shall be notified in writing within ten days by the consultant pharmacist of termination of said services.~~

11.6.3.1 If the consultant pharmacist has not served in that position in the State of Delaware, he/she must appear before the Board for an interview within ninety days after assuming that position.

11.6.4 The consultant pharmacist shall be responsible for written policies and procedures which shall include, but not be limited to:

11.6.4.1 Procedures for administering the services outlined in the statement of proposed services.

11.6.4.2 Policies governing practitioner medication orders, medication errors, automatic stop orders, medications for patient discharge and leave of absence.

11.6.4.3 Policies and procedures necessary to insure the safe use, administration, control and accountability of all drugs through out the nursing home in compliance with State and Federal laws.

11.6.4.4 Policies and procedures outlining the destruction of wastage for all controlled medications.

11.6.4.5 Policies governing appropriate storage of medications, an effective drug recall procedure and labeling of all prescription drugs and biologicals in accordance with State and Federal requirements. For registered out-of-state providers an additional labeling requirement is having the toll-free telephone number on the prescription labels.

11.6.4.6 Policies and procedures governing patient drug regimen review, which shall include procedures for reporting irregularities, and documenting that such reviews have been performed. The provider pharmacy is to receive copies of all practitioners' orders to be reviewed with the information on the patient profiles.

11.6.4 ~~The CP shall be responsible for the development of written policies and procedures which shall include, but not be limited to:~~

11.6.4.1 ~~Procedures for administering the services outlined in the statement of proposed services.~~

11.6.4.2 ~~Policies governing physician medication orders, medication errors, automatic stop orders, and medications for patient discharge and leave of absence. emergency; medication~~

11.6.4.3 ~~Policies and procedures necessary to insure the safe use, administration, control and accountability of all drugs throughout the nursing home in compliance with Federal and State laws.~~

11.6.4.4 ~~Policies and procedures outlining the return or destruction on site of wastage for all controlled substances.~~

11.6.4.5 ~~Policies governing appropriate storage of medications, an effective drug recall procedure, and labeling of all prescription drugs and biologicals in~~

accordance with Federal and State requirements. For registered out-of-state providers an additional labeling requirement is having their toll-free telephone number on the prescription labels.

~~11.6.4.6 Policies and procedures governing patient drug regimen reviews, which shall include procedures for reporting irregularities, and documenting that such reviews have been performed. The provider pharmacy is to receive copies of all physicians' orders to be reviewed with the information on the patient profiles.~~

11.6.5 If the nursing home has a pharmacy or quality related committee Pharmacy and Therapeutics Committee or Quality Assurance or Assessment Committee, the consultant pharmacist CP shall serve on that committee.

11.6.6 The consultant pharmacist or designated pharmacy staff shall make inspections of each nursing station and related drug storage areas at least monthly. A pharmacy support person may assist with inspection under the direct supervision of a pharmacist. Nursing station inspections must include, but are not limited to the following : (1) Documentation of medication storage area(s) (59 to 86 Fahrenheit) and refrigerator temperatures (36 to 46 degrees Fahrenheit), (2) documentation of security of all drugs (e.g. medication room cabinets, carts, Board approved drug boxes), (3) proper labeling, including any accessory or cautionary instructions, (4) proper expiration dates, (5) cleanliness, (6) accountability of all medication and (7) interim, emergency, IV, anaphylactic boxes or kits are properly maintained. A copy of these inspection reports must be maintained at the facility.

11.6.6.1 Nursing station inspections must include, but are not limited to, documentation of the following:

11.6.6.1.1 medication storage area(s) (59 to 86 degrees Fahrenheit) and refrigerator temperatures (36 to 46 degrees Fahrenheit);

11.6.6.1.2 security of all drugs;

11.6.6.1.3 proper labeling, including any accessory or cautionary instructions;

11.6.6.1.4 proper expiration dating;

11.6.6.1.5 cleanliness;

11.6.6.1.6 emergency use medication supplies are properly maintained.

11.6.6.2 A copy of these inspection reports must be maintained at the facility for two years.

11.6.7 The consultant pharmacist shall review the drug regimen of each patient monthly at the facility. Each patient's chart will be reviewed at the facility. Documentation of the review is accomplished in the following manner:

11.6.7.1 If the pharmacist determines that there are no irregularities in the patient's drug regimen, he/she must note in the patient's chart that he/she has reviewed the drug regimen, found no irregularities, and sign and date this

notation. This documentation must remain on the patients' charts for a minimum of 12 months.

11.6.7.2 If the pharmacist determines that there are irregularities, he/she must prepare a drug regimen review report summary which includes any pertinent information such as the patient's diagnosis(es), the drug regimen, any pertinent laboratory findings, dietary considerations, etc., and his/her recommendations for improving the drug therapy of the patient. This written recommendation shall be forwarded to the attending practitioner, with the original documentation maintained in the patient chart. The written summaries must be maintained in the facility. A copy must be sent to the Medical Director, attending physician, Administrator and the Director of Nursing.

11.6.7.3 Nursing unit inspections and a summary report of patient drug regimen reviews must be submitted to the Director of Nursing and the Administrator monthly.

11.6.8 The consultant pharmacist is responsible for the accountability of all medications. A random sample will be done monthly to identify overages or shortages of any medications. Documentation will be made of irregularities and will include date of audit, patient identification, a listing of overages or shortages, and an explanation if known. A plan for correction will be included in the documentation where appropriate. Documentation will be maintained for a period of 12 months at the facility.

~~11.6.9~~ 11.6.8 The consultant pharmacist CP shall be responsible for providing information to the nursing home staff, as may be appropriate or required, to ensure safety, understanding and compliance with policies and procedures pertaining to pharmacy-related activities and concerns.

~~11.6.10~~ 11.6.9 The consultant pharmacist CP shall assume all other responsibilities required of a consultant pharmacist CP as set forth in any State or Federal or State statutes or regulations as enacted or amended or may be enacted or amended.

~~Notwithstanding this Regulation, nothing in the Regulation shall render a practice unlawful which is required by Federal regulation.~~

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.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF ELECTRICAL EXAMINERS**
Statutory Authority: 24 Delaware Code,
Section 1406(a)(1) (24 **Del.C.** 1406(a)(1))

PUBLIC NOTICE

The Delaware Board of Electrical Examiners in accordance with 24 **Del.C.** §1406(a)(1) has proposed changes to its rules and regulations. The proposed changes provide the standard for electrical services, itemize information necessary on inspection forms, provide that licensees are responsible for any work for which they authorize an inspection, and require inspection agencies to inform the Board of personnel changes.

A public hearing will be held at 10:00 a.m. on, January 6, 2004 in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Electrical Examiners, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

1.0 License required.

1.1 No person shall perform electrical services or represent themselves as qualified to perform electrical services without first having been duly licensed unless specifically excepted by statute. 24 **Del.C.** §§1407, 1419

1.2 To perform “electrical services” or “electrical work” means to plan, estimate, layout, perform, or supervise the installation, erection, or repair of any electrical conductor, molding, duct, raceway, conduit, machinery, apparatus, device, or fixture for the purpose of lighting, heating, or power in or on any structure or for elevators, swimming pools, hot tubs, electric signs, air conditioning, heating, refrigeration, oil burners, and overhead and underground primary distribution systems.

1.3 A license is not required for servicing equipment in the fields of heating, air conditioning, refrigeration or appliances.

1.4 A licensee under this chapter shall perform all electrical services or electrical work in accordance with the standards established in the National Electric Code (NEC) as adopted by the Delaware Fire Commission and in any applicable local building code. The version of the NEC applicable to a particular project is determined by the Delaware Fire Commission.

2.0 Applications.

2.1 Applications may be obtained in person during regular business hours or by mail from the Division of Professional Regulation, Cannon Building, Ste. 203, 861 Silver Lake Boulevard, Dover, DE 19904-2467. Applications must be made in the name of the individual, not a company. The Board shall approve the application form to insure that it contains all of the information necessary to

satisfy the statutory requirements for licensure.

2.2 Applications which are incomplete shall be retained for one year to allow an applicant the opportunity to supplement the application. After one year, incomplete applications are destroyed. Thereafter, an applicant must resubmit a current application with the appropriate fee.

2.3 Applications approved for testing will be valid for two years. If the test isn't taken, the application is destroyed. Thereafter, an applicant must resubmit a current application with the appropriate fee.

3.0 Qualifications.

3.1 Persons demonstrating the education and experience qualifications set forth in 24 Del.C. §1408 may be licensed as a master electrician, limited electrician, master electrician special, or limited electrician special.

3.2 An applicant shall submit proof of qualifications verified by his or her affidavit on a form approved by the Board. Proof of experience requires an employer's affidavit describing the nature of the experience. If an applicant cannot obtain the required affidavit from the supervising licensed electrician, tax W-2 forms showing full-time employment may be substituted at the discretion of the Board. The required experience and training must be completed prior to taking the licensure test.

3.3 Applicants relying on military training and experience shall submit official documentation from the supervising officials showing type and approximate hours of work experience. Other official military documentation that reliably verifies military training and experience may be accepted when supervisory officials are not available or cannot be located.

3.4 The requirement of two years of technical training under 24 Del.C. § 1408 (a)(1)(c) can be met by successful completion of two years of technical training related to electrical technology in a vocational/technical high school or by completion of 48 credit hours in technical training related to electrical technology at an accredited post-secondary school.

3.5 The experience necessary under 24 Del.C. §1408 to qualify for a particular license must relate to the activity authorized by such a license as defined in 24 Del.C. §1402(10) - (13).

See 4 DE Reg. 1788 (5/1/01)

See 6 DE Reg. 1495 (5/1/01)

4.0 Examinations.

4.1 As a condition of licensure, applicants shall obtain a grade of 75% on the Division-approved test. Only the National Electrical Code Book can be used during the test as a reference. Applicants should submit a completed application with all necessary credentials for Board approval at least 45 days before the test is given. As long as the credentials have been approved, a license may issue from the

Division of Professional Regulation upon proof of obtaining a passing score on the test, proof of insurance, and payment of the fee as provided herein. A member of the State Board of Electrical Examiners may attend the examination. All scores will be presented to the Board at the first meeting after the examination results are available. The roster of persons qualified for licensure will appear in the minutes.

4.2 Applicants who fail two consecutive times with a grade of less than 50% each time must wait one year before retesting.

See 4 DE Reg. 1788 (5/1/01)

5.0 Fees

5.1 Fee information can be obtained from the Division of Professional Regulation, Cannon Building Ste. 203, 861 Silver Lake Boulevard, Dover, DE 19904 -2467.

6.0 License and Insurance.

6.1 The license will be issued by the Division of Professional Regulation to a qualified applicant upon receipt of the required fee and proof of insurance.

6.2 Each licensee shall maintain general liability insurance of at least \$300,000.00. Proof of said insurance shall be submitted at the time of license issuance and each renewal.

6.3 The insurance requirement is satisfied for a licensee who is performing work as an employee as long as the employer is insured for the risk on the work performed as required under these regulations. A licensee who also works independently from his or her employer must maintain separate insurance for that risk as provided under these regulations.

See 4 DE Reg. 1788 (5/1/01)

7.0 Expiration and Renewal.

7.1 Beginning in 2002, all licenses expire June 30 and biennially every two years thereafter.

7.2 As a condition of renewal, each applicant must show proof of continuing education as required in the Rules and Regulations. Extra continuing education hours do not carry over to the next licensing period. Renewal applications will be audited by the Board for compliance with the continuing education requirements.

7.3 A license is expired when a licensee has failed to either complete the requirements for renewal or obtain permission for inactive status. A licensee may activate an expired license within one year of the date the renewal application was due by meeting all requirements and paying an additional fee set by the Division of Professional Regulation.

7.4 A licensee with a valid license may request in writing to be placed on inactive status. An inactive status can be effective for up to two years and renewed biennially by application to the Division upon proof of 10 hours of

continuing education. Said license may be reactivated by the Board upon written request, proof of insurance, and payment of a prorated fee to be computed by the Division of Professional Regulation.

7.5 A licensee is not authorized to work as a licensed electrician in this State during the period of inactive status.

7.6 An individual whose license has expired for more than one year must reapply as a new applicant. Any prior training and experience satisfies the requirements under 24 Del.C. §1408(a). However, the applicant must take the examination required by §1408(5) again and achieve a passing score.

See 4 DE Reg. 1788 (5/1/01)

8.0 Continuing Education

8.1 Continuing education (CE) is required of all licensees and proof shall be submitted to the Board by April 30 of any year after 2000 in which a license is to be renewed. For example, if a license must be renewed June 30, 2001, the proof of completion of CE is due on April 30, 2001. A licensee who has submitted CE hours that are not allowed will be notified so that he or she may obtain replacement CE before the June 30 expiration of the license.

8.2 Courses must be approved by the Board in order to qualify as CE. Licensees may contact the Administrative Assistant of the Board at the Division of Professional Regulation to determine whether particular courses have been approved.

8.2.1 Courses shall be designed to maintain and enhance the knowledge and skills of licensees related to providing electrical services.

8.2.2 Sponsors or licensees can obtain Board approval of courses at any time by completing a form approved by the Board and including a course outline with the number of classroom hours and name of the instructor.

8.2.3 Sponsors or licensees seeking pre-approval should submit the request as provided in 8.1.2 at least 60 days before the CE course is being offered.

8.2.4 Approval of CE automatically expires on September 1, 2002 and every three years thereafter on each September 1. A sponsor or licensee must reapply for approval as provided in 8.2.1.

8.3 Licensees shall complete 10 hours of approved CE during each renewal period with the following exceptions - a person licensed less than one year does not need to complete CE at the first renewal; a person licensed one year but less than two years must submit 5 CE hours at the first renewal. Beginning with the licensee's second renewal, 5 of the 10 CE hours required for renewal must be related to the National Electrical Code.

8.4 The Board may consider a waiver of CE requirements or acceptance of partial fulfillment based on the Board's review of a written request with supporting documentation of hardship.

8.5 A log of CE on a form approved by the Board shall be maintained and submitted. Documentation of the CE should not be routinely sent with the log but must be retained during the licensure period to be submitted if the renewal application is selected for CE audit. Random audits will be performed by the Board to ensure compliance with the CE requirements. Licensees selected for the random audit shall submit attendance verification.

See 4 DE Reg. 1788 (5/1/01)

9.0 Loss of license holder

9.1 A procedure permitting temporary practice after loss of a licensee to avoid business interruption is provided in 24 Del.C. §1418 and is necessary only where there is no currently employed licensee to assume the duties of the former license holder.

9.2 The notification must include documentation of the business relationship with the former license holder.

10.0 Exceptions.

10.1 No license is required for performing electrical work by the following persons or entities:

10.1.1 persons working under the supervision of a Delaware licensed master or limited electrician;

10.1.2 persons under the supervision of a licensed electrician who is the owner or full-time employee of a company performing electrical work;

10.1.3 a professional engineer in a manufacturing or industrial plant having six years experience in electrical planning and design who is registered with the Board as the person responsible for the plant repairs, maintenance, and electrical additions;

10.1.4 the Department of Transportation, or a contractor, for work performed by or under the supervision of the Department for the installation erection, construction, reconstruction and/or maintenance of drawbridges and traffic control devices

10.1.5 persons working beyond the main breaker or fuse of 200 amps or less in a structure used exclusively for agriculture;

10.1.6 persons performing the work of any light or power company, electric or steam railway company, telegraph or telephone company when the work is part of the plant or service used in rendering authorized service to the public such as power delivery by an electric company. This exception ends at the point of service, termination box, or demarcation point;

10.1.7 a homeowner who has obtained a homeowner's permit provided by law.

11.0 Reciprocity

11.1 An applicant for licensure by reciprocity shall complete an application approved by the Board and cause a certificate of good standing to be sent to the Board from the

licensing agencies of all jurisdictions where the applicant is or has been licensed. Upon request an applicant for licensure under this provision must submit to the Board a copy of reciprocal state's current licensure requirements. If the reciprocal state's requirements are not substantially similar to those of this State, as determined by the Board, the applicant shall submit proof of practice for at least five years after licensure. Proof of practice can be by an employer's affidavit, tax form w-2, or tax Schedule C.

11.2 If the reciprocal state's requirements are not substantially similar to those of this State, as determined by the Board, the applicant shall submit proof of practice for at least five years after licensure. Proof of practice requires an employer's affidavit describing the nature of the applicant's experience. If an applicant cannot obtain an affidavit from the employer, tax W-2 forms showing full-time employment may be substituted at the discretion of the Board. A self-employed applicant may submit tax form Schedule C as proof of practice.

See 6 DE Reg. 1495 (5/1/03)

12.0 Required Inspection.

12.1 Every licensee shall file a request for an inspection by a licensed inspection agency no later than five working days after the commencement of electrical work. The inspection agency shall complete the inspections no later than five working days after the application has been received.

12.2 A request for an inspection shall be filed with the inspection agency on a form, signed by the licensee, or person authorized under Rules 12.7, 12.8, or 12.9, containing at least the following information:

12.2.1 Full names of the licensee and any job foreman

12.2.2 License number, type (T-1, T-2, or Specialty) and expiration date

12.2.3 Date inspection requested

12.2.4 Location of work to be inspected

12.2.5 Permit numbers, if applicable

12.2.6 Requestor's name and contact information, if other than the licensee

12.2.7 A detailed description of the work to be inspected including any devices or equipment

12.2.8 Signature of the licensee

12.3 A licensee who signs a request for inspection form is deemed to have authorized and shall be responsible for the work described in the form.

12.4 An inspection agency shall not conduct an inspection of work performed until it has received a request made in compliance with Rule 12.2.

12.5 An inspection agency is responsible to insure that the standards for its inspection are those established in the National Electric Code as adopted by the Delaware Fire Commission and in any applicable local building code. The

version of the Code applicable to a particular project is determined by the Delaware Fire Commission.

12.6 An inspection report shall be recorded legibly on a form containing at least the following information:

12.6.1 Full name of the licensee

12.6.2 License number, type (T-1, T-2, or Specialty) and expiration date

12.6.3 Location of work to be inspected

12.6.4 Permit numbers

12.6.5 Inspector's full name

12.6.6 A detailed description of the work inspected

12.6.7 Deficiencies noted, any applicable NEC section, and inspection dates

12.6.8 Signature of inspector

12.6.9 Date inspection completed.

~~12.7~~ 12.7 Any professional engineer excepted from licensure shall at least annually file with the Board a certificate of inspection by a licensed inspection agency and a letter stating that all repairs, maintenance, and additions to a manufacturing or industrial plant meet the Standards of the National Electrical Code. The annual inspection should include a representative sampling of the work performed by the authority of the responsible professional engineer.

~~12.8~~ 12.8 Any person performing electrical work on agricultural structures excepted from licensure shall nevertheless obtain a certificate of inspection from a licensed inspection agency for new installations.

~~12.9~~ 12.9 Any person authorized to perform work by a homeowner's permit shall obtain a final inspection by a licensed inspection agency.

13.0 Organization of the Board

13.1 Election of Officers

Annually during the July meeting, the Board shall elect officers to serve for a one year term from September 1-August 31.

13.2 Duties of the Officers

13.2.1 President - The president shall preside at all meetings, designate subordinates when provided by law, sign correspondence on behalf of the Board, and perform other functions inherent in the position. In conducting meetings or hearings, the President may limit or exclude evidence as provided under the Administrative Procedures Act unless overruled by a majority of the Board.

13.2.2 Vice President - The Vice President assumes the duties and powers of the President when the President is unavailable.

13.2.3 Secretary - The Secretary assumes the duties and powers of the President when neither the President nor the Vice President is available.

13.2.4 Complaint officer - The complaint officer shall be a member who works with the investigator of the Division of Professional Regulation when complaints are

investigated pursuant to 29 **Del.C.** §8807. The complaint officer shall report to the Board when complaints are closed and recuse himself or herself from participating in disciplinary hearings involving matters that have been reviewed in his or her capacity as complaint officer.

13.2.5 Education officer - The education officer may review courses submitted for continuing education approval and makes recommendations to the Board.

13.3 Meeting Minutes

The minutes of each meeting are taken by the Administrative Assistant from the Division of Professional Regulation and approved by the Board.

See 4 DE Reg. 1788 (5/1/01)

14.0 Homeowners Permits

14.1 The Division of Professional Regulation is authorized to issue homeowners' permits pursuant to an application process approved by the Board. Generally homeowner's permits are not required for replacement in kind but are required for new construction, renovation, and any work that requires a building permit.

14.2 A homeowner shall not be permitted to install his or her own internal wiring, electrical work or equipment associated with a hot tub or a swimming pool.

See 4 DE Reg. 1788 (5/1/01)

15.0 Inspection agencies

15.1 Inspection agencies shall be licensed in accord with the provisions of 24 **Del.C.** §1421 in order to operate in Delaware. An application on a form approved by the Board must be filed at the Division of Professional Regulation. Licenses must be renewed annually on June 30 by completing the renewal form and paying the fee determined by the Division.

15.2 No inspection agency will be approved until it produces proof of general liability insurance in the amount of at least \$1,000,000.00 and errors and omissions insurance in the amount of at least \$1,000,000.00.

15.3 Inspection agencies must submit, to the Division of Professional Regulation, the names of its employees who are inspectors and proof of compliance with the statutory requirements for inspectors. Inspectors must have seven years of experience in residential, commercial, or industrial wiring. Proof of experience shall be submitted by affidavit of the named employer, a tax form w-2, or tax Schedule C. The experience requirement for an inspector employed by an approved inspection agency on July 20, 1999 is satisfied with seven years of inspection experience. Each inspector shall also submit a passing score for the Electrical one and two family dwelling and the Electrical General examinations within 18 months of employment and the Electrical Plan Review examination within 24 months of employment. For inspectors employed by the inspection agency on July 20, 1999, the time for taking said

examinations shall run from the date these regulations become effective and not the date first employed.

15.4 An employee of an inspection agency shall confirm that the person who has filed for an inspection is a licensee under this chapter, a homeowner having a permit, or a person who has performed work allowed under an exception to licensure. The Division of Professional Regulation will provide quarterly lists of licensees to each inspection agency licensed in this State.

15.5 If a violation found in an inspection is not corrected within 15 days as provided in 24 **Del.C.** §1421(g), the inspection agency shall notify the Board in writing and include a copy of the notice of violation. The Division of Professional Regulation will send, on behalf of the Board, the notice of violation to the other inspection agencies and to any local building inspector having jurisdiction over the structure.

See 4 DE Reg. 1788 (5/1/01)

See 6 DE Reg. 1495 (5/1/03)

15.6 An inspection agency shall notify the Board in writing within 10 days when an employee leaves the agency or when a new employee is hired by the agency. This notification shall include the full name and address of the inspector. The date a new employee is hired by an inspection agency marks the beginning of the period in which the inspection examinations in Rule 15.3 must be successfully completed.

16.0 Voluntary treatment option for chemically dependent or impaired professionals.

A voluntary treatment option is available for chemically dependent or impaired professionals as provided in 29 **Del.C.** §8807(n) who are reported to the Board or Division using the following procedures:

16.1 If the report is received by the president of the Board, that president shall immediately notify the Director of Professional regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the president of the Board, or that president's designate or designates.

16.2 The president of the Board or that president's designate or designates shall, within seven (7) days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

16.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within thirty (30) days following notification to the professional by the participating Board president or that president's designate(s).

16.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board president or that president's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the president of the Board or that president's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the President of the Board.

16.5 Failure to cooperate fully with the Board president or that president's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option and the Board president or that president's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in 29 **Del.C.** §8807(h).

16.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to the following provisions:

16.6.1 Entry of the regulated professional into a treatment program approved by the Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

16.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the president of the Board or to that president's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the president of the Board or that president's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

16.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

16.6.4 Agreement by the regulated professional

to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this paragraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

16.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the Board's president, or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

16.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

16.8 The Board's president, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

16.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

16.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

16.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a non-disciplinary matter.

16.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected.

DEPARTMENT OF EDUCATION

14 DE Admin. Code 220
Statutory Authority: 14 Delaware Code,
Section 220 (14 **Del.C.** §220)

**EDUCATION IMPACT ANALYSIS
PURSUANT TO 14 DEL. C. SECTION 122(D)**

**240 Recruiting and Training of Professional Educators
for Critical Curricular Areas**

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 regulation 240 Recruiting and Training of Professional Educators for Critical Curricular Areas. The amendment is necessary in order to reflect the changes made pursuant to 14 **Del. C.** 1108(b). This section of the law now stipulates that an exception may be made to 8.2.5 of this regulation in that a loan for education in a Critical Curricular area may be forgiven by the Secretary of Education if it is determined that the recipient is unable to meet his or her payment obligation because of total and permanent disability or death. The amendment also includes a definition of total and permanent disability and the form for the physician to certify as to total and permanent disability.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses forgiveness of loans in the Critical Curricular Program not student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses forgiveness of loans in the Critical Curricular Program not equitable education issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses forgiveness of loans in the Critical Curricular Program not health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses forgiveness of loans in the Critical Curricular Program not students' 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 not effect 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 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 and accountability resides with the Department of Education.

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? The change in the Delaware Code requires the Department of Education to amend the regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? The cost will be absorbed by the State.

**240 Recruiting and Training of Professional Educators
for Critical Curricular Areas**

The programs shall be administered in accordance with 14 **Del.C.**, Chapter 11, and the following rules and regulations pursuant to the appropriation of funds in the annual Budget Bill.

1.0 Designation of Critical Curricular Areas - Annually, on a date not later than the July meeting of the State Board of Education, the Secretary of Education shall present a recommendation to the State Board on the Critical Curricular Areas to be addressed during that fiscal year. This recommendation will be based upon supply and demand information obtained from local school districts and from state and national sources.

2.0 Allocation of Funds - Annually, on a date not later than the July meeting of the State Board of Education, the Secretary of Education shall present a recommendation to the State Board of Education on the preliminary allocation of funds among the five programs authorized by Chapter 11. Final allocations will be based upon the total appropriation for that fiscal year and the number of eligible applicants for the five programs.

3.0 Applications - All applicants for funds under any of the five programs shall be required to complete an application on a form prescribed by the Department of Education and shall be required to provide whatever information and documents the Department determines are necessary for the effective and efficient management of the programs.

4.0 Academic Year Institute - The Academic Year Institute is an ongoing program specifically designed to meet certification requirements in the critical areas of teacher shortage as determined by the Department of Education. This is a part-time program which shall be offered during the regular school year. Participants will register for a maximum of three semester hours of graduate/undergraduate college courses per semester. The Institute will be sponsored by the Department of Education and will be located at the University of Delaware and/or Delaware State University.

4.1 Eligibility

4.1.1 The candidate shall be employed as a teacher in the public schools of Delaware or in another State agency offering secondary education programs.

4.1.2 The candidate shall submit a completed application and other documentation and information by the specified closing date for application.

4.1.3 The candidate shall express an intent to enroll in a course or courses which will lead to certification in one or more of the critical curricular areas.

4.2 Financial Aid

4.2.1 Academic Year Institute participants shall receive full support for tuition, textbooks, laboratory fees and mileage for approved courses.

4.2.2 Depending upon the institution and the course or courses in which the participant is enrolled, the Department of Education shall either make direct payment to the institution for tuition and laboratory fees or will reimburse the participant for costs upon receipt of proper documentation of the participant's expenses.

4.2.3 The Department of Education shall reimburse the participant for expenditures for textbooks and mileage upon receipt of a completed personal reimbursement form.

4.3 Selection Procedures

4.3.1 Participants shall be selected competitively from the eligible applicants for the program within the limits of the funds authorized for the program.

4.3.2 An application review panel, composed of Department of Education staff members, shall meet twice each year - after the close of the application period for each semester - to review applications and select participants.

5.0 Summer Inservice Program (Summer Institute) - The Summer Institute Program is a summer program specifically designed to meet certification requirements in the critical areas of teacher shortage as determined by the

Department of Education. The program will be offered during a six-week period in the summer beginning not later than the last week in June. Participants shall register for a minimum of six semester hours of graduate/undergraduate credit in a specifically designed program focused on building skills and knowledge in the critical curricular areas. The Summer Institute, modeled after the National Science Foundation format, shall be sponsored by the Department of Education and will be located at the University of Delaware and/or Delaware State University.

5.1 Eligibility

5.1.1 The candidate shall be employed as a teacher in the public schools of Delaware or in another State agency offering secondary education programs.

5.1.2 The candidate shall not be currently certifiable in the critical curricular area being addressed by the Summer Institute for which application is made.

5.1.3 The candidate shall submit a completed application and other required information and documentation by the closing date for application.

5.1.4 The candidate shall express an interest and intent to pursue certification in one or more of the critical curricular areas for which he or she is not currently certifiable.

5.1.5 The candidate shall submit a letter of recommendation from the Superintendent or an appropriate supervisor of the candidate's school district or agency.

5.2 Financial Aid

5.2.1 Summer Institute participants shall receive full support for tuition, textbooks, and laboratory fees. Depending on the institution and the program in which the participant is enrolled, the Department of Education shall either make direct payment to the institution for these costs or shall reimburse the participant upon receipt of proper documentation of the participant's expenses.

5.2.2 The participants shall also receive a stipend as determined by the Department of Education. This stipend shall be paid by the Department of Education to the participant upon receipt of notification from the institution that the participant successfully completed all courses taken with a minimum grade of "C".

5.3 Selection Procedures

5.3.1 Participants shall be selected competitively from the eligible applicants for the program within the limits of the funds authorized for the program.

5.3.2 An application review panel, composed of Department of Education staff members, shall meet annually after the close of the application period to review applications and select participants.

6.0 Program For Persons From Other Professions Who Will Prepare To Teach - This program is designed to provide financial assistance to persons from other professions who possess the training and skills to teach in the

critical curricular areas of teacher shortage as determined by the Department of Education but who lack the professional education courses required to qualify for a standard certificate. Participants shall be permitted to enroll in the institution of higher education of their choice and shall be reimbursed for the tuition costs, within limits specified below, for up to six semester hours of credit per semester.

6.1 Eligibility

6.1.1 The candidate shall be a resident of the State of Delaware.

6.1.2 The candidate shall have a graduate or undergraduate degree from an accredited institution of higher education in a field related to one or more of the critical curriculum areas.

6.1.3 The candidate shall first submit official transcripts to the Department of Education for evaluation.

6.1.4 Candidates who lack no more than six semester credits of coursework from meeting the content area requirements in one or more of the critical curriculum areas shall be invited to apply for participation in the program.

6.1.5 The candidate shall submit a completed application form and must express an interest and intent to pursue certification.

6.1.6 The candidate shall submit a plan outlining educational plans, including a timeline, to complete the professional education courses needed to obtain certification.

6.2 Financial Aid

6.2.1 The participant shall receive financial support for tuition costs for up to six semester hours of credit per semester.

6.2.2 The participant may receive assistance for a maximum of thirty semester credits of professional education courses but must update his or her application and receive approval in advance each semester.

6.2.3 The participant shall be reimbursed for tuition costs in an amount not greater than the tuition charged a Delaware resident by the University of Delaware for a course or courses of equal credit value.

6.2.4 The Department of Education shall reimburse the participant upon receipt of proper documentation of the participant's expenses and upon receipt of notification from the institution that the participant successfully completed the courses for which reimbursement is requested with a minimum grade of "C".

6.3 Selection Procedures

6.3.1 An application review panel, composed of Department of Education staff members shall meet on an as-needed basis to review applications and select participants.

6.3.2 Participants shall be selected from eligible applicants on a first-come basis, except that applicants approved for one semester will be given preference in future semesters until they complete their educational

requirements, use their total eligibility, or are unsuccessful in achieving the minimum grade of "C" in approved courses.

6.3.3 Participants shall be limited and the approval process will be terminated when authorized funds for this program in any fiscal year have been allocated.

7.0 Teacher Scholarship Loan Programs - The Teacher Scholarship Loan Program is designed to meet certification requirements in the critical areas of teacher shortage as determined by the Department of Education. This is a full-time program offered during the regular school year. As a minimum, participants shall register for the number of semester hours required of a full-time student.

7.1 Eligibility

7.1.1 The candidate shall have taught in a Delaware public school for at least one year prior to the year in which the scholarship is to be used.

7.1.2 The candidate shall be employed as a teacher in a Delaware public school and/or must be a resident of the State of Delaware at the time of application.

7.1.3 The candidate shall express an interest and intent to pursue certification in one or more of the critical curricular areas identified by the Department of Education.

7.1.4 The candidate shall hold a standard Delaware teaching certificate but must not be currently certifiable in the critical curricular area specified in 7.1.3 above.

7.1.5 The candidate shall submit a completed application and other documentation and information by the specified closing date for application.

7.1.6 The candidate shall, if currently employed, have prior approval from his or her employing local district board of education.

7.1.7 The candidate shall be accepted into an approved program in an institution of higher education leading to certification in the critical curriculum area specified in 7.1.3 above.

7.2 Financial Aid

7.2.1 Teacher Scholarship Loan Program participant shall receive a scholarship in an amount equal to the salary he or she would receive for service as a teacher, as specified in 14 Del. C. Ch. 13.

7.2.2 A participant, who was employed by a Delaware public school district in the year prior to receipt of the scholarship and who is on leave of absence during the year of the scholarship, shall continue to receive all State-supported employee benefits through a grant from the Department of Education to the employing district. (Such participants shall be considered to be on sabbatical leave and for purposes of salary increments and pension eligibility and computation, a year of leave shall be considered a year of experience as provided in 14 Del. C. §1325(9).

7.2.3 A participant may receive a local salary supplement and local employee benefits if the employing

district elects to provide them at the expense of the employing district.

7.2.4 A district shall also be eligible to receive an interest-free loan, in an amount to be determined by the Department of Education, which the participant may use to defray the cost of tuition and books. The actual amount of the loan will be dependent upon estimated costs of these two items and other financial resources available to the participant.

7.2.5 Participants receiving a loan shall execute a promissory note, in the amount of the loan, to the State Treasurer. This note will be forgiven at the rate of one-third of the loan for each of three years of teaching in a Delaware public school after completion of the study authorized. In any year the teacher fails to meet the teaching obligation, the loan shall be due and payable for the unpaid balance plus interest specified in the note.

7.3 Selection Procedures

7.3.1 Participants shall be selected competitively from the eligible applicants for the program within the limits of the funds authorized for the program.

7.3.2 The applicant review panel, composed of Department of Education staff members, shall meet once each year at the close of the application period to review applications.

8.0 Student Loan Program - The Student Loan Program is for Delaware residents who are accepted into an institution of higher learning to be trained as a teacher in the critical area of teacher shortage as determined by the Department of Education. A student selected for the program may attend any accredited college or university in the United States where the appropriate training will result in certification as a teacher for a critical area of teacher shortage as determined by the Department of Education.

8.1 Eligibility

8.1.1 The candidate shall have been a Delaware resident for a period of one year at the time of application.

8.1.2 The candidate shall have Scholastic Aptitude Test (SAT) scores of 500 verbal and 500 quantitative. Candidates already in a college or university program must be maintaining a "C" average or better in courses in the critical curriculum areas.

8.1.3 The candidate shall have been admitted to an accredited college or university program directed toward certification in a critical curricular area as determined by the Department of Education.

8.1.4 The candidate shall submit a completed application and other documentation and information by the specified date for application.

8.2 Financial Aid

8.2.1 Student Loan Program participants shall receive a loan, the amount to be determined by the Department of Education, for one year's study, less

scholarship aid available from other sources.

8.2.2 The loan may be renewed from year to year through a four-year training program.

8.2.3 Participants in the Student Loan Program shall execute a promissory note, in the amount of the loan, to the State Treasurer. The entire note will be forgiven on the basis of two years of teaching in a Delaware public school in a critical curriculum area for each year of loan granted.

8.2.4 Each year of the loan will be interest-free to those who meet the two-year teaching obligation for each year of loan granted.

8.2.5 In the event that the participant does not graduate, does not continue to study in the critical curriculum area, or does not meet the teaching obligation, the entire loan, with interest specified by the State Treasurer, shall be due and payable. Payment of the note and interest shall be in accordance with the time schedule specified in the note.

8.2.5.1 Pursuant to 14 Del. C. 1108(b) an exception may be made to 8.2.5 of this regulation in that the loan may be forgiven by the Secretary of Education if it is determined that the recipient is unable to meet his or her payment obligation because of total and permanent disability or death. For purposes of this regulation, total and permanent disability shall mean the loan recipient is unable to work and earn money because of an injury or illness that is expected to continue indefinitely or result in death. In order to qualify for this exception the loan recipient must provide documentation that has been completed, signed and certified by a licensed doctor of medicine or doctor of osteopathy with the following information:

"I certify, in my best professional judgment, the loan recipient _____ is unable to work and earn money because of an injury or illness that is expected to continue indefinitely or result in death. I understand that any recipient able currently or in the future to work and earn money, even on a limited basis, is not considered to have a Total or Permanent Disability.

I am a (check one) _____ doctor of medicine _____ doctor of osteopathy legally authorized to practice in the state of _____ and my professional license number issued by that state is _____.

Physician's signature _____ Name (printed) _____ Date _____

Address _____ City, State, Zip _____

() _____

Telephone _____

In the case of death, a surviving family member must provide a certified copy of the death certificate.

8.3 Selection Procedures

8.3.1 Participants shall be selected competitively from the eligible applicants for the program within the limits of the funds authorized for the program.

8.3.2 The applicant review panel, composed of Department of Education staff members, shall meet twice each year at the close of the application period for each semester to review applications.

See 3 DE Reg. 100 (7/1/99)

**EDUCATION IMPACT ANALYSIS
PURSUANT TO 14 DEL. C. SECTION 122(D)**

**245 Michael C. Ferguson Achievement Awards
Scholarship**

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend section 1.0 of regulation 345 Michael C. Ferguson Achievement Awards Scholarship. The amendment clarifies the issue of scholarship eligibility for students repeating the eighth grade.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses the qualifications required to be eligible for the Ferguson Scholarship which can be a motivator for student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses the qualifications required to be eligible for the Ferguson Scholarship not equity issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses the qualifications required to be eligible for the Ferguson Scholarship not health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses the qualifications required to be eligible for the Ferguson Scholarship not students' 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 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? The change must be made through amending the regulation.

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 local school boards for compliance with this amended regulation.

**245 Michael C. Ferguson Achievement Awards
Scholarship**

The Michael C. Ferguson Achievement Awards Scholarship Program, included in the Educational Accountability Act of 1998, recognizes students who demonstrate superior performance on the assessments administered pursuant to 14 Del. C. Section 153 (c).

1.0 Subject to available funding, the Michael C. Ferguson Achievement Awards shall be made based on the student's score on the results of the annual spring administration of the Delaware Student Testing Program. Scores from re-testing shall not be considered. Students who have completed the eighth grade prior to first participating in the eighth grade assessment(s) pursuant to 14 Del.C. §151 shall not be eligible to receive an eighth grade scholarship. The Scholarships may be awarded to a maximum of 300 eighth grade students in the content areas of reading, writing and mathematics and to a maximum of 300 tenth grade students in the content areas of reading, writing, and mathematics.

1.1 The highest scoring eighth and tenth grade students in the state in reading, in writing and in mathematics shall receive the scholarships.

1.1.1 The eighth grade awards may be given to a

maximum of 150 students in the areas of reading, writing and mathematics. The number of awards shall be as close to fifty in each area as possible and the unassigned awards shall be awarded in the priority order of reading, mathematics and writing.

1.1.2 The tenth grade awards may be given to a maximum of 150 students in the areas of reading, writing and mathematics. The number of awards shall be as close to fifty in each area as possible and the unassigned awards shall be allocated in the priority order of reading, mathematics and writing.

1.2 The highest scoring eighth and tenth grade students in the state in reading, in writing and in mathematics, who participate in the free and reduced lunch program and who are not already identified as one of the students in section 1.1. shall receive the scholarships.

1.2.1 The eighth grade awards may be given to a maximum of 150 students in the areas of reading, writing and mathematics. The number of awards shall be as close to fifty in each area as possible and the unassigned awards shall be allocated in the priority order of reading, mathematics and writing.

1.2.2 The tenth grade awards may be given to a maximum of 150 students in the areas of reading, writing and mathematics. The number of awards shall be as close to fifty in each area as possible and the unassigned awards shall be allocated in the priority order of reading, mathematics and writing.

1.3 A Foreign Exchange student who is on a temporary visa is not eligible to receive the Michael C Ferguson Achievement Award Scholarship.

2.0 Students may receive a scholarship in more than one content area and may also receive scholarships for their 8th and their 10th grade scores.

3.0 The Michael C. Ferguson Scholarship Award can only be used at a regionally or nationally accredited post secondary institution or at a Delaware or other state approved private business and trade school in the United States of America. The award cannot exceed direct educational costs.

4.0 All scholarship awards shall be deposited in an account at the Delaware Higher Education Commission in an interest bearing account. Interest earned shall be utilized by the Department of Education and/or Delaware Higher Education Commission to offset administrative expenses associated with the program.

4.1 Funds deposited for scholarships through the Michael C. Ferguson Achievement Awards shall cease to be available to the recipient if the recipient does not attend a post secondary institution within five calendar years after

graduating from high school.

4.2 It is the responsibility of the parent or guardian to notify the Higher Education Commission of any change of address during the scholarship eligibility period. Students may receive their scholarship awards even if they are living in another state at the time they attend a post secondary institution.

4.3 The Department of Education shall annually announce the winners of Michael C. Ferguson Scholarships.

4.4 The Delaware Higher Education Commission shall send a "Request for Information" form to Michael C. Ferguson Scholarship recipients annually to update their account information

4.4.1 The Delaware Higher Education Commission shall send enrollment verification forms to institutions identified by recipients. When completed verification forms are received by the Delaware Higher Education Commission, disbursement of scholarship funds will be made to the institution.

4.4.2 If a student does not plan to attend a post secondary institution immediately after high school graduation, it is the student parent or guardian's responsibility to provide timely notification to the Delaware Higher Education Commission prior to enrollment in order to receive payment of the scholarship.

4.4.3 Recipients may defer all or a portion of payment of Michael C. Ferguson Scholarships beyond their first post secondary year, but must assume the responsibility to notify the Delaware Higher Education Commission of their plans to claim the Scholarship, and may not extend payment beyond the five year limit.

See 4 DE Reg. 224 (7/1/00)

**EDUCATION IMPACT ANALYSIS
PURSUANT TO 14 DEL. C. SECTION 122(D)**

**707 Salary Continuation: Operation Noble Eagle and
Enduring Freedom**

The Secretary of Education intends to repeal regulation 707 Salary Continuation: Operation Noble Eagle and Enduring Freedom. The repeal is necessary because Senate Bill 169 of the 142nd General Assembly amended Title 14 Section 1327 concerning pay for "principals, teachers or other school employee taking a leave of absence who as a member of the Delaware National Guard or a United States military reserve organization, that has been ordered to active duty by Presidential determination to augment active forces for any operational mission". This amendment, in addition to broadening the reference to "any operational mission" instead of a specific military operation, designated the State

Personnel Office as the entity to make the rules and regulations necessary to implement the pay provisions of the law and not the Department of Education as was previously indicated in Title 14 Section 1327 of the Code.

~~**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 Districts shall process claims in accordance with the procedures and forms developed by the Department of Education.~~

**PROFESSIONAL STANDARDS BOARD
EDUCATION IMPACT ANALYSIS
PURSUANT TO 14 DEL.C. SECTION 122(D)**

1507 Professional Growth Salary Increments

A. Type Of Regulatory Action Requested
New 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 adopt regulation 1507 Professional Growth Salary Increments. It is necessary to adopt this regulation in order to provide procedures for implementation of movement by educators on the salary schedule set forth in 14 Del.C., §1305. This regulation addresses movement from one column to another based on the satisfactory completion of graduate level course work toward a master's degree or graduate level course work completed toward a second master's degree, a doctorate, or as part of a course of study directly related to an educator's job assignment.

C. Impact Criteria

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation addresses student achievement by promoting the pursuit of relevant graduate level education programs by educators to help ensure that highly-qualified teachers teach Delaware students.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation addresses educator professional growth salary incentives, not equity in students' education.

3. Will the new regulation help to ensure that all students' health and safety are adequately protected? The new regulation addresses the educator professional growth salary incentives, not health and safety issues.

4. Will the new regulation help to ensure that all

students' legal rights are respected? The new regulation addresses educator professional growth salary incentives, not students' legal rights.

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

6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation 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 subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject 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 new 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 new 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 new regulation? 14 Del.C. Requires that we promulgate this regulation.

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

1507 Professional Growth Salary Increments (Effective 7/1/04)

1.0 Content: This regulation shall apply to professional growth salary increments for educators, pursuant to 14 Del. C. § 1305 (q).

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"Critical needs areas" means content, specialty, or administrative areas identified by the Department as areas of shortage in Delaware schools.

"Department" means the Delaware Department of

Education.

"Educator" means a public school employee who holds a license issued under the provisions of 14 Del.C., Chapter 12, and includes teachers, specialists, and administrators, and as otherwise defined by the Standards Board and State Board, but does not include substitute teachers.

"Graduate level course" means any course which is awarded graduate level credit by a regionally accredited college or university.

"Graduate level course of study" means a non-matriculated but focused and coherent program of study (e.g., a certificate program) which is directly linked to professional responsibilities.

"Matriculated graduate credit" means credit earned from a regionally accredited college or university earned toward a master's degree or a doctorate degree.

"Standards Board" means the Professional Standards Board established pursuant to 14 Del.C. § 1201.

"State Board" means the State Board of Education of the State pursuant to 14 Del.C. §104.

3.0 Educators who hold a bachelor's degree and who are enrolled in a master's degree program at a regionally accredited college or university may accrue graduate level credits toward salary increments on the basic salary schedule for educators, set forth in 14 Del.C., § 1305 (a). No credits earned prior to the conferring of a bachelor's degree may be applied toward movement on the salary schedule. Credits shall be applied in the order in which they were taken and no credit may be applied more than once toward movement on the salary schedule.

3.1 Educators enrolled in a master's degree program at an accredited college or university may apply for movement to the bachelor's plus 15 column of the basic salary schedule for educators, set forth in 14 Del.C., §1305 (a), upon completion of 15 graduate credits toward a master's degree.

3.2 Educators enrolled in a master's degree program at an accredited college or university may apply for movement to the bachelor's plus 30 column of the basic salary schedule for educators, set forth in 14 Del.C., §1305 (a), upon completion of 30 graduate credits toward a master's degree.

3.3 Upon completion of a master's degree program at an accredited college or university, an educator may apply for movement to the master's degree column of the basic salary schedule for educators, set forth in 14 Del.C., § 1305 (a).

4.0 Educators who hold a master's degree may accrue credits beyond the master's degree toward salary increments toward a master's degree plus 15 graduate credits, a master's degree plus 30 graduate credits, a master's degree plus 45 graduate credits, or a doctorate degree on the basic salary schedule for educators, set forth in 14 Del.C., §1305 (a). All credits taken must be graduate level and must be:

4.1 Earned through a graduate-level course of study clearly related to the educator's professional responsibilities and otherwise approved pursuant to 14 Del.C., Chapter 12, or

4.2 Earned toward a second master's degree, or

4.3 Matriculated graduate credits earned toward a doctorate degree.

5.0 Use of Undergraduate and In-service Credits.

5.1 Educators entitled to rightward movement on the basic salary schedule for educators, set forth in 14 Del.C. § 1305 (a), on the basis of in-service or undergraduate credits approved prior to July 1, 2004, shall continue to be entitled to such movement in the event of any future application for movement submitted after July 1, 2004.

5.1.1 For example, an educator who holds a bachelor's plus 15 or a bachelor's plus 30 approved prior to July 1, 2004 and based entirely on in-service or undergraduate credits, shall be entitled to move to a master's plus 15 or master's plus 30, whichever is applicable, upon completion of a master's degree program.

5.1.2 In order to use undergraduate credits toward a salary increment on the basic salary schedule for educators, set forth in 14 Del.C. § 1305 (a), the credits must be completed by, and the application for salary increment submitted to, and approved by, the Office of Professional Accountability by June 30, 2004. Undergraduate credits will not be accepted for plus 15, 30 or 45 salary increments after June 30, 2004.

5.1.3 In order to use in-service credits toward a salary increment on the basic salary schedule for educators, set forth in 14 Del.C. § 1305 (a), the credits must be completed by, and the application for salary increment submitted to, and approved by, the Office of Professional Accountability by June 30, 2004. In-service credits will not be accepted for plus 15, 30 or 45 salary increments after June 30, 2004.

6.0 All credits must be expressed in terms of semester hours. College or university credits expressed in quarter hours will be converted by the Department to semester hours by multiplying the number of quarter hours by two-thirds.

7.0 Acceptable Grades

7.1 All grades for graduate level credit submitted for a professional growth salary increments must be a grade of "C" or better from the granting institution. In the case of credits earned on a pass-fail basis, a grade of "pass" is acceptable.

8.0 Trade and Industry teachers: A bachelor's degree equivalent for trade and industry teachers shall be two years of college and six years of work experience (14 Del.C., §1301). Undergraduate credit in a matriculated bachelor's

degree may be accepted in lieu of graduate credit for trade and industry teachers who do not hold a bachelor's degree. Initial placement on the basic salary schedule for educators, set forth in 14 Del.C., §1305, for trade and industry teachers who have completed two years of college and six years of work experience, is at the bachelor's degree level. In order to be eligible for movement on the basic salary schedule, trade and industry teachers must possess a standard certificate.

8.1 Movement beyond the bachelor's degree level on the basic salary schedule for trade and industry teachers shall apply as follows:

8.1.1 75 credits toward a bachelor's degree is equivalent to a bachelor's degree plus 15 credits.

8.1.2 90 credits toward a bachelor's degree is equivalent to a bachelor's degree plus 30 credits.

8.1.3 A bachelor's degree is equivalent to a master's degree on the basic salary schedule.

8.1.4 A master's degree is equivalent to a master's degree plus fifteen credits on the basic salary schedule.

8.1.5 A master's degree plus fifteen credits is equivalent to a master's degree plus 30 credits on the basic salary schedule.

8.1.6 A master's degree plus thirty credits is equivalent to a master's degree plus 45 credits on the basic salary schedule.

8.1.7 A master's degree plus 45 credits is equivalent to a doctorate degree on the basic salary schedule.

9.0 Graduate credits which are included in the approved Alternative Routes to Certification program, as defined in subchapter VI, Chapter 12 of Title 14 of the Delaware Code, are recognized as a graduate level course of study and may be applied by educators who hold master's degrees and who are enrolled in the approved alternative routes program toward a master's degree plus 15 credits, a master's degree plus 30 credits, a master's degree plus 45 credits or a doctorate degree on the basic salary schedule for educators, set forth in 14 Del.C., §1305 (a).

10.0 An applicant for a professional growth salary increment must hold a limited standard, standard or professional status certificate issued pursuant to General Regulations for Certification of Professional Public School Personnel and the specific regulations as adopted for certification effective July 1, 1993, or an initial, continuing, or advanced license issued by the Department in accordance with Subchapter III of Chapter 12 of Title 14 of the Delaware Code. An educator employed on an emergency certificate pursuant to 14 DE Admin. Code 1515 is eligible to receive a salary increment.

11.0 Acceptable Professional Degrees.

11.1 In order to be applicable to professional growth salary increments, master's and doctorate degrees must be directly related to an area or specialty in which the educator is employed, which has been identified as a critical needs area in K-12 education, or which the district or charter school, if applicable, in which the educator is employed has requested the educator to pursue. Any such request from a district or charter school, if applicable, must be in writing and must be submitted with the completed application for a salary increment.

12.0 Application Procedures.

12.1 Upon completion of the credits required for movement on the basic salary schedule for educators, set forth in 14 Del.C., §1305 (a), an applicant may apply for a salary increment. No applications will be considered prior to the completion of credits necessary for movement on the salary schedule.

12.1.1 An applicant shall secure the proper form from the local school district or charter school office, complete the form, and return it to the school district office for transmittal to the Office of Professional Accountability.

12.1.2 The applicant shall arrange for official transcripts to be submitted by the college or university directly to the Office of Professional Accountability or delivered by the applicant in an unopened, unaltered envelope.

12.1.3 An application for a salary increment for the current fiscal year (July 1 – June 30) must be received in the Office of Professional Accountability no later than June 1. This date is necessary to allow adequate time for evaluation and notification to the district payroll office for salary adjustment. Applications received after June 1 will be approved effective the first day of the next fiscal year.

13.0 Effective Date of Salary Adjustment

13.1 The salary adjustment shall be made after the evaluation and approval of the candidate's application by the Office of Professional Accountability. The adjustment will be authorized to be made retroactive to the first of the month following the date certified by transcript or official grade slip as to when the program or credit was completed. This date is necessary to allow adequate time for evaluation and notification to the district payroll office for salary adjustment. Applications received after June 1 will be approved effective the first day of the next fiscal year.

13.2 Retroactive salary adjustment may be by a single payment or by payments divided equally among all the pay periods remaining in a current fiscal year as may be determined by the district or state fiscal officers.

13.3 No salary increment shall be retroactive to a prior fiscal year.

PROFESSIONAL STANDARDS BOARD**EDUCATION IMPACT ANALYSIS
PURSUANT TO 14 DEL.C. SECTION 122(D)****1509 Meritorious New Teacher Candidate Designation****A. Type Of Regulatory Action Requested**

New Regulation

B. Synopsis Of Subject Matter Of Regulation

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the approval of the State Board of Education to adopt regulation 1509 Meritorious New Teacher Candidate Designation. This regulation applies to designating new teachers who meet criteria developed by the Mid Atlantic Regional Teachers Project as Meritorious New Teacher Candidates. This designation will be affixed to the new teacher's initial license, issued pursuant to 14 DE Admin. Code §1510.

C. Impact Criteria

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation concerns educator licensure, not student achievement.
2. Will the new regulation help ensure that all students receive an equitable education? The new regulation helps ensure that highly qualified educators are attracted to the field and rewarded for exhibiting outstanding achievement.
3. Will the new regulation help to ensure that all students' health and safety are adequately protected? The new regulation addresses educator licensure, not students' health and safety issues.
4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation addresses educator licensure, not students' legal rights.
5. Will the new regulation preserve the necessary authority and flexibility of decision makers at the local board and school level? The new regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.
6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation 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 subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration with

the Department of Education, and with the consent of the State Board of Education.

8. Will the new 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 new 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 new regulation? 14 **Del.C.** requires that we promulgate this regulation.

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

1509 Meritorious New Teacher Candidate Designation

1.0 Content: This regulation shall apply to the issuance of a Meritorious New Teacher Candidate designation to a candidate for an initial license who meets the criteria set forth by the Mid-Atlantic Regional Teachers Project, pursuant to 14 **Del.C.** §1210.

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“Department” means the Delaware Department of Education.

“License” means a credential which authorizes the holder to engage in the practice for which the license is issued.

“Meritorious New Teacher Candidate Designation” means a designation of excellence for new teachers which enables them to teach in Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, and Virginia without having to meet any additional state requirements.

“Met the highest standard” means achieved the highest grade or score awarded by the institution.

“Standard Certificate” means a credential issued to certify that an educator has the prescribed knowledge, skill and/or education to practice in a particular area, teach a particular subject, or teach a category of students”.

3.0 An applicant for an initial license (NASDTEC Level II license) who meets the requirements for an initial license and who also meets the criteria set forth by the Mid-Atlantic Regional Teachers Project shall have a Meritorious New Teacher Candidate Designation affixed to the initial

license, upon receipt of a recommendation from the candidate’s teacher preparation program that the candidate be awarded the designation of Meritorious New Teacher Candidate.

3.1 Criteria for the meritorious new teacher candidate designation are:

3.1.1 Verbal Skills:

3.1.1.1 Scores in the upper quartile of students nationally at the time the test was taken on the verbal portion of the SAT, ACT, or GRE.

3.1.2 Content Knowledge:

3.1.2.1 Elementary Education:

3.1.2.1.1 A minimum 3.5 cumulative GPA in an undergraduate professional studies program, or a minimum 3.7 cumulative GPA in a graduate professional education program.

3.1.2.1.2 Scores in the upper quartile of students nationally at the time the test was taken in math, science, social studies, and English/language arts in the PRAXIS II Content Knowledge for Elementary Teachers test.

3.1.2.2 Middle School Education:

3.1.2.2.1 A minimum 3.5 cumulative GPA in an undergraduate academic major or a minimum 3.7 cumulative GPA in a graduate program in the subject area in which a standard certificate is sought.

3.1.2.2.2 Scores in the upper quartile of students nationally at the time the test was taken on the PRAXIS II test in the applicant’s specialty area.

3.1.2.3 Secondary Education:

3.1.2.3.1 A minimum 3.5 cumulative GPA in an undergraduate academic major or a minimum 3.7 cumulative GPA in a graduate program in the subject area in which a standard certificate is sought.

3.1.2.3.2 Scores in the upper quartile of students nationally at the time the test was taken on the PRAXIS II test in the applicant’s specialty area.

3.1.3 Professional Preparation and Recommendation:

3.1.3.1 Completion of a state-approved teacher preparation program, of traditional or alternative format, with a minimum 3.5 cumulative GPA in an undergraduate professional education program, or a minimum 3.7 cumulative GPA in a graduate professional education program.

3.1.3.2 Completion of a minimum of 400 hours of supervised clinical experience, of which at least 300 hours are directed instructional student teaching. Clinical experience may occur within any state-approved model, including total immersion experiences as teachers of record.

3.1.3.3 Met the highest standard of both the university supervisor and the cooperating teacher on the institution’s formal student teacher or immersion component of the required clinical experience.

3.1.3.4 Met the highest standard on the institution's professional preparation assessment.

3.1.3.5 Received a recommendation by the teacher preparation program that the candidate be awarded the designation of meritorious new teacher candidate.

4.0 Applicants for initial licensure and the Meritorious New Teacher Candidate designation who completed teacher preparation in Delaware will be given expedited consideration of their application by the Delaware Department of Education.

5.0 A Meritorious New Teacher Candidate Designation issued to a licensee from one of the participating states and who meets the requirements for an initial license will be honored by the Department, and the most closely matched Delaware Standard Certificate will be issued to this exceptionally well-prepared teacher candidate.

6.0 This designation shall be valid for the duration of the individual's initial license.

**PROFESSIONAL STANDARDS BOARD
EDUCATION IMPACT ANALYSIS
PURSUANT TO 14 DEL. C. SECTION 122(D)**

1510 Issuance Of Initial License

A. Type Of Regulatory Action Requested

Amendment to Existing Regulation

B. Synopsis Of Subject Matter Of Regulation

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the approval of the State Board of Education to amend regulation 1510 Issuance of Initial License. This regulation applies to the issuance of an initial license as established by 14 Del.C. §1210. The amendment to this regulation is necessary to define and clarify the forms of PRAXIS I tests which are acceptable in applying the composite score, set forth procedures for the suspension of a license for failure to pass PRAXIS I, and define two years of college or technical training as applied to trade and industry teachers.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation concerns educator licensure, not student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps ensure that all educators demonstrate high standards for the issuance of an initial license.

3. Will the amended regulation help to ensure that all

students' health and safety are adequately protected? The amended regulation addresses educator licensure, not students' health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator licensure, not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers 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 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 subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.

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 new regulation? 14 Del. C. requires that we promulgate this regulation.

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

1510 Issuance of Initial License

1.0 Content: This regulation shall apply to the issuance of an initial license for educators, pursuant to 14 Del.C. §1210.

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"Alternative Routes to Licensure and Certification" means programs approved by the Department of Education to certify or license candidates who hold bachelors degrees

with appropriate to the instructional field they desire to teach, but who did not complete a regionally accredited educator preparation program.

“Composite score” means a total of an applicant’s scores on all three (3) subtests of PRAXIS I which is equal to, or greater than, the sum of the passing scores on the three subtests. Scores from either the PRAXIS I (PPST) paper and pencil test and/or from the PRAXIS I (CPPST) computerized test may be used when applying the composite score provision. Scores from the PRAXIS I computer based test (CBT) may be used when applying the composite score provision, but may not be used in conjunction with scores from the PRAXIS I (PPST) paper and pencil test and/or with the PRAXIS I (CPPST) computerized test.

“Date of hire” means the effective date of employment by a school district, charter school, or other employing authority.

“Department” means the Delaware Department of Education.

“Educator” means a public school employee who holds a license issued under the provisions of **14 Del.C.**, Chapter 12, and includes teachers, specialists, and administrators, and as otherwise defined by the Standards Board and the State Board, pursuant to **14 Del.C.** §1203, but does not include substitute teachers.

“Examination of general knowledge” means a standardized test which measures general knowledge and essential skills in mathematics or quantitative and verbal skills, including reading and writing.

“Exigent circumstances” means unanticipated circumstances or circumstances beyond the educator’s control, including, but not limited to, expiration of a license during the school year, serious illness of the educator or a member of his/her immediate family, activation to active military duty, and other serious emergencies which necessitate the educator’s temporarily leaving active service.

“Jurisdiction” means a state, territory or country.

“License” means a credential which authorizes the holder to engage in the practice for which the license is issued.

“Mentoring” means activities prescribed by the Department and/or other employing authority in which a holder of an initial license must engage during the three-year term of the initial license.

“Novice applicant” means an applicant who has not previously held an initial license in Delaware.

“PRAXIS I or “PPST” means a test from Educational Testing Service of general knowledge in reading, writing, and mathematics.

“PRAXIS I CBT” means the discontinued PRAXIS I computer based test from Educational Testing Service taken between November 1993 and December 2001, with a possible score range of 300 to 335. Scores from the PRAXIS I CBT test may not be combined with scores from

the PRAXIS I paper and pencil test or the PRAXIS I computerized test (CPPST) to derive a composite score.

“PRAXIS I CPPST” means the PRAXIS I computerized test from Educational Testing Service which began in January 2002. This test, which is delivered in a computer format, has a possible score range of 150 to 190. Scores from the CPPST and the PRAXIS I (PPST) paper and pencil test may be combined for a composite scores.

“Standards Board” means the Professional Standards Board established pursuant to **14 Del.C.** §1201.

“State Board” means the State Board of Education of the State pursuant to **14 Del.C.** §104.

“Student teaching program” means a placement within a National Association of State Directors of Teacher Education and Certification or National Council for the Accreditation of Teacher Education approved program offered by a college or university, or such alternatives as deemed appropriate to the program, such as supervised internships or other field based experience recognized as a required component of the regionally accredited educator preparation program. For the purposes of this regulation, student teaching program also means one year of teaching experience within the last year consisting of a minimum of 91 days of long term teaching experience at one assignment during which regular evaluations were conducted, evidencing at least satisfactory performance.

“Suspension” means the temporary removal of an initial license for failure to pass the PRAXIS I test.

3.0 In accordance with **14 Del.C.** §1210, the Department shall issue an initial license to a novice applicant who submits evidence of (1) receipt of a bachelors degree from a regionally accredited 4-year college or university; (2) completion of a student teaching program, or one year of teaching experience consisting of a minimum of 91 days of long term teaching experience at one assignment or enrollment in an Alternative Routes to Licensure and Certification program, and (3) a passing score on an examination of general knowledge, such as PRAXIS I, or such other alternative as may be established by the Standards Board, with the approval of the State Board. For the purposes of this regulation, a bachelor’s degree for a trades and industry teacher shall be two (2) years of college or technical training, plus six (6) years of trade experience. An initial license shall also be issued to an applicant currently licensed as an educator in another jurisdiction with less than three years of teaching experience or to an applicant who previously held a valid Delaware standard or professional status certificate who has been out of the profession for more than three years. In addition to an initial license, applicants must also apply for a standard certificate in the particular area, subject, or category in which they wish to be employed, and must verify that they possess the prescribed knowledge, skill and/or education to practice in that area, subject, or

category. (See 14 DE Admin. Code 1516).

3.1 An applicant for an initial license shall submit the application form, official transcripts, and official scores on an examination of general knowledge, such as the PRAXIS I tests in any format, as defined in 2.0, to the Department.

3.1.1 Official transcripts shall be forwarded directly from the issuing institution or by the applicant in an unopened, unaltered envelope.

3.2 Examination of General Knowledge Requirements

3.2.1 An applicant seeking initial licensure in Delaware shall provide the Department with official test scores for one or more of the following tests of essential skills in reading, writing and mathematics: the PRAXIS I Tests (PPST) or such alternatives as set forth in 3.2.4 below.

3.2.2 Scores of Examinations of General Knowledge.

3.2.2.1 The following minimum passing scores are required in the areas of reading, writing and mathematics for each of the examinations of essential skills.

3.2.2.1.1 Pre-professional Skills Test (PPST) ~~is~~ taken between 7/1/83 and 10/22/93: reading - 175, mathematics - 175, writing - 172.

3.2.2.1.2 PRAXIS I (PPST)- Paper and Pencil Tests ~~(Tests taken on 10/23/93 and thereafter), with a possible score range of 150 to 190.)~~ and PRAXIS I eComputerized pPre-pProfessional sSkills tTests taken 1/1/02 and thereafter, both of which have a possible score range of 150 to 190, with passing scores of: reading - 175, mathematics - 174, writing - 173.

3.2.2.1.3 PRAXIS I - Computer Based Tests (CBT) (Tests taken ~~on~~between 10/23/93 and thereafter 12/31/01), with passing scores of: reading - 322, mathematics - 319, writing - 319.

3.2.3 Individuals holding Delaware certificates issued prior to July 1, 1983 are exempt from the testing requirements.

3.2.4 Acceptable alternatives to the PRAXIS I test scores include:

3.2.4.1 Scores from the California Test of Basic Skills (CTBS) shall be accepted in lieu of PPST/PRAXIS I scores if the test was taken as a condition of meeting certification or licensure requirements in that state and the scores total 123, with a minimum of at least 37 in each category.

3.2.4.2 Scholastic Aptitude Tests (SAT) taken after 4/1/95 and presented for exemption must meet the scores set forth below due to a re-centering of the SAT.

3.2.4.2.1 A minimum score of 520 on the SAT Mathematics taken prior to 4/1/95, and a minimum score of 540 on the SAT Mathematics test taken thereafter will be accepted as fulfillment of the PRAXIS I Mathematics requirement.

3.2.4.2.2 A minimum score of 480 on the SAT Verbal test taken prior to 4/1/95, and a minimum

score of 560 on the SAT verbal test taken thereafter will be accepted as fulfillment of the PRAXIS I reading requirement.

3.2.4.3 Graduate Record Examination (GRE) scores presented for exemption must meet the scores set forth below.

3.2.4.3.1 A minimum score of 490 on the Graduate Record Examination (GRE) Verbal test will be accepted as fulfillment of the PRAXIS I reading requirement.

3.2.4.3.2 A minimum score of 540 on the Graduate Record Examination (GRE) Quantitative test will be accepted as fulfillment of the PRAXIS I mathematics requirement.

3.2.4.4 National Teacher Examination (NTE) Core Battery Communications Skills with a minimum score of 670 will be accepted as fulfillment of the PRAXIS I writing requirement.

3.2.5 Any Scholastic Aptitude Test (SAT) scores, Graduate Records Exam (GRE) scores or NTE Communication Skills scores intended to be used as an exemption for the PPST/PRAXIS I, shall be submitted within the same timeline as that required for PRAXIS I and scores must pre-date the employment date.

3.2.6 Timeline for Examination of General Knowledge.

3.2.6.1 An applicant for an initial license must pass the three PRAXIS I (PPST) tests in any format or an approved alternative within the period of time from the date of hire to the end of the next, consecutive fiscal year.

3.2.6.1.1 If proof of passage of PRAXIS I is not provided by the end of the next consecutive fiscal year, the initial license shall be suspended for a maximum of two years.

3.2.6.1.2 Suspension.

3.2.6.1.2.1 An applicant who does not pass PRAXIS I during the time period of the suspension, and whose initial license is expired, must reapply and may be issued an initial license, valid for three years, if he/she meets the requirements for initial licensure then in effect.

3.2.6.1.2.2 Notwithstanding the foregoing, the superintendent of the employing school district or charter school or other employing authority may submit to the Secretary of Education a written request for a one-year extension. The request must document the effectiveness of the applicant.

3.2.6.1.3 Composite Score.

3.2.6.1.3.1 Scores from either the paper and pencil PRAXIS I (PPST) test and/or from the computerized PRAXIS I (CPPST) test, begun in January, 2002, both of which have a possible score range of 159 to 190, may be used when applying the composite score provision. Scores from the PRAXIS I computer based test (CBT), taken between November, 1993 and December 31,

2001 may be used when applying the composite score provision, but may not be used in conjunction with the paper and pencil PRAXIS I test and/or with the computerized PRAXIS I (CPPST) test.

~~3.2.6.1.3.2 3-2-6-1-4~~ An applicant for an initial license who does not achieve a passing score on PRAXIS I, but whose score on PRAXIS I is within 2 points of the passing score on the reading, writing, or mathematics section of PRAXIS I may use a composite score to meet the requirements of passage. ~~Notwithstanding the use of a composite score, an applicant who seeks to teach in the secondary content areas of mathematics or English/language arts must meet the passing score in that content area.~~

3.2.6.1.3.3 Notwithstanding the use of a composite score, an applicant who seeks to teach in the secondary content area of mathematics must meet the current state passing score for the PRAXIS I mathematics test. An applicant who seeks to teach in the secondary content area of English/language arts must meet the current state passing score for the PRAXIS I reading and writing tests.

3.2.6.2 An applicant in a vocational trade and industry area must pass PRAXIS I or an approved alternative within six (6) years of the date of employment or before the expiration of the initial license, whichever is later.

3.2.7 There is no limit on the number of times an individual may take the PPST/PRAXIS I. Once passed, a section need not be taken again.

3.2.7.1 Passing scores in each area (reading, writing, mathematics) may be attained in any testing format.

3.2.8 Submission of Scores of Examination of General Knowledge.

3.2.8.1 Test scores shall be official and sent directly from Educational Testing Service or other test vendor to the Department.

3.2.8.2 Unopened, unaltered envelopes containing PPST/PRAXIS I scores, or scores of acceptable alternatives, sent to the individual may be accepted as official. The Department shall determine whether the scores as presented are acceptable.

3.2.8.3 Direct verification from another State Department of Education shall be considered as official. An original of the grade form shall be forwarded directly from the other State Department to the Department. This method will be accepted only when official test scores from Educational Testing Service are not available.

3.3 Trades and Industry Teacher Experience Requirements.

3.3.1 A bachelor's degree equivalent for a trades and industry teacher shall be two (2) years of college or technical training, plus six (6) years of trade experience. The requirement for two (2) years of college or technical training may be satisfied through the satisfactory completion of the requirements for any one or an appropriate combination of the following experiences in the area to be taught equaling:

3.3.1.1 An associate's degree with a major in the specific occupational area to be taught; or

3.3.1.2 Two years of college majoring in the specific occupational area to be taught with at least 50% of the major courses required for a bachelor's degree satisfactorily completed; or

3.3.1.3 A state-issued certificate indicating completion of apprenticeship hours and apprentice-related training (e.g. journey papers); or

3.3.1.4 Four years of sequential Delaware Trade Extension courses; or

3.3.1.5 Four years of National Center for Construction Education and Research's *Contren* documented training; or

3.3.1.6 Nine high school credits of career and technical high school training; or

3.3.1.7 Passage of the State of Delaware Licensing test, offered through the Division of Professional Regulation; or

3.3.1.8 576 hours of military training; or

3.3.1.9 576 hours postsecondary trade school training; or

3.3.1.10 Completing the written and performance teacher testing for the National Occupational Competency Testing Institute with a minimum score set by the Department; or

3.3.1.11 DOE approved equivalents.

4.0 An initial license is valid for three (3) years, unless revoked, and may not be renewed. Notwithstanding the foregoing, an initial license issued to an applicant in a vocational trade and industry area is valid for up to six (6) years to provide time for completion of specified college level course work required for certification.

4.1 An initial license issued to an applicant who is not currently employed by a school district, charter school, or other employing authority shall be inactive until such time as an applicant is employed by a public school district or charter school. Once employed, the initial license shall be in effect for three (3) years from the date of hire until the last day of the month of issuance three (3) years later, except in the case of the vocational and trade industry areas which shall expire on the last day of the month of issuance six (6) years later.

4.2 During the term of the initial license, license holders are required to participate in mentoring and other prescribed professional development activities offered by the Department and by the school district or charter school or other employing authority in which they are employed.

5.0 Applicants with Foreign Credentials.

5.1 Applicants graduating from foreign institutions shall provide an analysis of the degree equivalency, along with all other required application materials, which shall be

reviewed by the Department.

6.0 The Department may extend an initial license for a period not to exceed one (1) year, exigent circumstances warranting the necessity of such extension.

6.1 A license holder whose license expires during the school year may have the initial license extended until the last day of the fiscal year upon a request from the district superintendent, charter school administrator, or other employing authority. This extension shall be considered an exigent circumstances and shall not exceed one (1) year in length.

7.0 An educator may take a leave of absence of up to three (3) years with no effect upon the validity or expiration of the initial license.

8.0 An applicant shall disclose his or her criminal conviction history upon application for an initial license. Failure to disclose a criminal conviction history is grounds for denial or revocation of an initial license as specified in 14 Del.C., § 1219.

9.0 This regulation shall apply to all requests for issuance of an initial license, except as specifically addressed herein.

~~9.1 Educators whose applications for certification in Delaware were received prior to August 31, 2003, and whose applications and credentials have been reviewed by the Department and resulted in the issuance of a prescription letter shall be required to meet the General Regulations for Certification of Professional Public School Personnel and the Specific Regulations as adopted for certification effective July 1, 1993.~~

9.2 1 Educators employed on a Limited Standard Certificate or a Temporary Certificate issued prior to August 31, 2003 shall continue on that certificate until the requirements specified are met or the certificate expires, whichever comes first. In no case shall a Limited Standard or Temporary Certificate be valid after July 1, 2008.

10.0 The Secretary of Education may, at the request of the superintendent of a local school district or charter school administrator or other employing authority, review licensure credentials on an individual basis and grant a license to an applicant who otherwise does not meet the requirements for initial license, but whose effectiveness is documented by the local school district, charter school, or other employing authority.

**PROFESSIONAL STANDARDS BOARD
EDUCATION IMPACT ANALYSIS
PURSUANT TO 14 DEL. C. SECTION 122(D)**

1516 Standard Certificate

A. Type Of Regulatory Action Requested

Amendment to Existing Regulation

B. Synopsis Of Subject Matter Of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 1516 Standard Certificate from the *Regulations of the Department of Education*. The regulation concerns the requirements for certification of educational personnel. It is necessary to amend this regulation to address ways in which educators may acquire the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students by adding graduation from an NCATE specialty organization recognized educator preparation program or from a NASDTEC approved educator preparation program offered by a regionally accredited college or university outside the State of Delaware. The definition of educator is expanded to include specialists. A clarification is made that an individual under investigation by another state will not be issued a certificate until there is a favorable resolution to the investigative proceeding. The date by which all requirements must be met by individuals working on limited standard or temporary certificates is changed from 2009 to 2008.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers 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 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 subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.

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 new regulation? 14 **Del.C.** requires that we promulgate this regulation.

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

1516 Standard Certificate

1.0 Content: This regulation shall apply to the issuance of a standard certificate, pursuant to 14 **Del.C.** §1220(a).

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"Certification" means the issuance of a certificate, which may occur regardless of a recipient's assignment or employment status.

"Department" means the Delaware Department of Education.

"Educator" means a public school employee who holds

a license issued under the provisions of 14 **Del.C.**, Chapter 12, and includes teachers, specialists, and administrators, and as otherwise defined by the Standards Board and the State Board pursuant to 14 **Del.C.**, §1203, but does not include substitute teachers.

"Examination of content knowledge" means a standardized test which measures knowledge in a specific content area.

"License" means a credential which authorizes the holder to engage in the practice for which the license is issued.

"Standard Certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

"Standards Board" means the Professional Standards Board established pursuant to 14 **Del.C.** §1201.

"State Board" means the State Board of Education of the State pursuant to 14 **Del.C.** §104.

3.0 The Department shall issue a standard certificate to an educator who holds a valid Delaware initial, continuing or advanced license; or limited standard, standard, or professional status certificate issued prior to August 31, 2003, who has:

3.1 Acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students by:

3.1.1 Obtaining National Board for Professional Teaching Standards certification in the area, subject, or category for which a standard certificate is requested; or

3.1.2 Meeting the requirements set forth in the relevant Department or Standards Board regulation governing the issuance of a standard certificate in the area for which a standard certificate is sought; or

3.1.3 Graduating from an NCATE specialty organization recognized educator preparation program or from a NASDTEC-approved educator preparation program, either of which must be offered by a regionally accredited college or university, with a major in the area of the standard certificate requested; or

3.2 Graduating from an educator preparation program offered by a Delaware higher education institution approved by the Department pursuant to 14 **DE Admin. Code** 399, with a major in the area of the standard certificate requested; or

3.3 Achieving a passing score on a Praxis II examination in the area requested. This section is subject to the establishment of passing scores for Praxis II examinations by the Department and their approval by the Standards Board, with concurrence from the State Board; or

3.4 Holding a valid and current certificate from another state in the area for which a standard certificate is sought.

3.4.1 A "valid and current certificate from

another state” means a current full or permanent certificate or license issued by another state. It does not include temporary, emergency or expired certificates or licenses issued from another state.

3.4.2 A certificate will not be issued to an individual who is under investigation by another state until there is a favorable resolution of that proceeding.

4.0 Educators may hold certificates in more than one area.

5.0 An applicant for a standard certificate shall submit: ~~evidence of (1) a bachelors degree from a regionally accredited 4 year college or university; (2) official transcripts and, if applicable,~~

5.1 official transcripts; or

5.2 official scores on the Praxis II examination; or

5.3 evidence of passage of the National Board for Professional Teaching Standards Certificate; or

5.4 an official copy of the out-of-state license or certification, if applicable.

5.5 If applied for simultaneously with application for an initial license, the applicant shall provide all required documentation for that application in addition to the documentation cited above.

6.0 If an applicant holds a valid initial, continuing, or advanced Delaware license; or a limited standard, standard or professional status certificate issued prior to August 31, 2003 and is requesting additional standard certificates, only that documentation necessary to demonstrate acquisition of the prescribed knowledge, skill and/or education required for the additional standard certificate requested is required.

7.0 This regulation shall apply to all requests for issuance of a standard certificate, except as specifically addressed herein. Educators holding a Professional Status Certificate or a Standard Certificate issued on or before August 31, 2003 shall be issued a Continuing License upon the expiration of their current professional status certificate or standard certificate. The Standard Certificate for each area in which they held a Professional Status Certificate or a Standard Certificate shall be listed on the Continuing License. The Department shall also recognize a limited standard certificate or temporary certificate issued prior to August 31, 2003, provided that the educator successfully completes the requirements set forth in the prescription letter received with the limited standard or temporary certificate. Requirements must be completed by the expiration date of the limited standard or temporary certificate, but in no case later than December 31, 2009 ~~8~~.

8.0 A standard certificate is valid regardless of the assignment or employment status of the holder of a certificate or certificates, and is not subject to renewal. It

shall be revoked in the event the educator’s initial, continuing, or advanced license or limited standard, standard, or professional status certificate is revoked in accordance with 14 **DE Admin. Code** 1514. An educator whose license or certificate is revoked is entitled to a full and fair hearing before the Professional Standards Board. Hearings shall be conducted in accordance with the Standards Board’s Hearing Procedures and Rules.

9.0 The Secretary of Education may, upon the written request of the superintendent of a local school district or charter school administrator or other employing authority, review credentials submitted in application for a standard certificate on an individual basis and grant a standard certificate to an applicant who otherwise does not meet the requirements for a standard certificate, but whose effectiveness is documented by the local school district or charter school administrator or other employing authority.

**PROFESSIONAL STANDARDS BOARD
EDUCATION IMPACT ANALYSIS
PURSUANT TO 14 DEL. C. SECTION 122(D)**

1584 Permits – School, Classroom Aides and Autistic Residential Child Care Specialists

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 regulation 1584 Permits – School, Classroom Aides and Autistic Residential Child Care Specialists. It is necessary to amend this regulation to comply with changes in federal statute, particularly *No Child Left Behind* and its requirements for Title I paraeducators, regarding the qualifications and training of paraeducators. Amending this regulation also requires the repeal of regulation 379 Certification Paraprofessional, as the content of regulation 379 has been incorporated into regulation 1584 as amended. The amended regulation will be renamed to reflect the statutory changes.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for paraeducators.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all paraeducators employed by school districts meet high standards of performance.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses the credentialing and training requirements for paraeducators, not students' health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses the credentialing and training requirements for paraeducators, not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers 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 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 subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject 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 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? 14 **Del.C.** requires that we promulgate this regulation.

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

379 Certification Paraprofessional

Effective July 1, 1993

1.0 The following shall be required for License Level I for

~~Pre-kindergarten-12. However, it is not required for employment in any non-professional position.~~

~~1.1 High school diploma from an accredited secondary school or its equivalent and;~~

~~1.2 Three years of successful full-time experience in the Delaware public school system and;~~

~~1.3 Professional Preparation to include a minimum of 15 semester hours of college level coursework in education and/or coursework related to the area in which the individual is currently employed.~~

~~2.0 The following shall be required for License Level II-~~

~~2.1 High school diploma from an accredited secondary school or its equivalent and;~~

~~2.2 Three years of successful, full-time experience in the Delaware public school system and;~~

~~2.3 Professional Preparation to include a minimum of 30 semester hours of college level coursework in education and/or coursework related to the area in which the individual is currently employed.~~

~~3.0 The following shall be required for License Level III~~

~~3.1 High school diploma from an accredited secondary school or its equivalent and;~~

~~3.2 Three years of successful full-time experience in the Delaware public school system and;~~

~~3.3 Professional Preparation to include a minimum of 60 semester hours or an Associate's degree from a regionally accredited institution in any field. At least 15 semester hours of coursework in the area of education shall be a part of the Associate's degree or may be taken in addition to the degree.~~

1584 Permits - School, Classroom Aides And Autistic Residential Child Care Specialists

Effective October 11, 2001

1.0 The following shall be required for a Permit:

1.1 A permit shall be required for all persons hired either full time or part time as a school aide, classroom aide, or autistic residential child care specialist, regardless of funding source (state, federal, local or other funding):

1.1.1 Qualifications include evaluated experience and training that shall emphasize skills relevant to the position as well as giving consideration to unique personal qualifications. Applicants shall be at least 18 years of age.

1.2 Categories of Functions shall include those persons participating in non-teaching activities such as:

1.2.1 Classroom Aides - assisting classroom teachers in activities that support the teaching process, but are under the supervision of the teacher (such as typing stories, putting on wraps, reading stories, locating reference materials, etc.).

PROPOSED REGULATIONS

1.2.2 Autistic Residential Child Care Specialists — Assisting in training functions such as domestic, community, self-care, leisure and behavior management activities.

1.3 Credentials

1.3.1 All persons hired under the Permit Program shall be expected to submit to the district, the same credentials as required of other Licensed employees, including the Health License.

1.4 Job Definition

1.4.1 A school district shall be required to submit a job definition for any person hired as an aide or as an autistic residential child care specialist.

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

1584 Permits Paraeducators

1.0 Content: Pursuant to 14 Del.C. §1205(a) this regulation shall apply to the qualifications required of Title I paraeducators, instructional paraeducators, and service paraeducators employed, either full-time or part-time, in support positions in public schools.

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“Associate’s or higher degree” means that the degree is conferred by a regionally accredited institution of higher education or by a distance education institution that is regionally or nationally accredited through an agency recognized by the U.S. Secretary of Education.

“Completed at least 2 years of study at an institution of higher education” means the satisfactory completion of a minimum of 60 semester hours of instruction at a regionally accredited institution of higher education or by a distance education institution that is regionally or nationally accredited through an agency recognized by the U.S. Secretary of Education, in general and educational studies, including reading, writing, and mathematics content and pedagogy, unless the institution of higher education defines two years of full-time study as the successful completion of a minimum of 48 semester hours, and provides documentation of such definition.

“Department” means the Delaware Department of Education.

“Instructional paraeducator” means a public school employee who provides one-on-one or small group instruction; assists with classroom management or individual student behavior; provides assistance in a computer laboratory; provides support in a library or media center; assists in training and support with functional skill activities, such as personal care or assistive technology; or provides instructional services to students under the direct supervision of a teacher. Instructional paraeducators are those working

with regular education students and students with disabilities in schools other than Title I schoolwide schools or with students not receiving Title I services in Title I targeted assistance schools.

“Paraeducator”, as used herein, means a paraprofessional, as it is used in 14 Del.C. §1205. Paraeducators are not “educators” within the meaning of 14 Del.C. §1202 (6).

“Permit” means a document issued by the Department that verifies an individual’s qualifications and training to serve as a Title I, instructional or service paraeducator.

“Secretary” means the Secretary of the Delaware Department of Education.

“Service paraeducator” means a public school employee who provides support services other than instructional assistance to students.

“Standards Board” means the Professional Standards Board of the State of Delaware as established in response to 14 Del.C. §1205.

“State Board” means the State Board of Education of the State of Delaware established in response to 14 Del.C. §104.

“Title I paraeducator” means a public school employee who provides one-on-one or small group tutoring; assists with classroom management; provides assistance in a computer laboratory; provides support in a library or media center; or provides instructional services to students under the direct supervision of a teacher. Additionally, Title I paraeducators are all instructional paraeducators who work with regular students and children with disabilities in Title I schoolwide schools and all Title I paraeducators who work with children receiving Title I services in Title I targeted assistance schools, except those whose duties are limited to acting as a translator or as a home-school liaison.

3.0 Title I Paraeducators. A Title I paraeducator must hold a Title I paraeducator permit.

3.1 The Department shall issue a permit to a Title I paraeducator applicant who submits evidence to his/her district, charter school, or other employing authority of:

3.1.1 completion of at least two years of study in general or educational studies at an institution of higher education; or

3.1.2 receipt of an associate’s or higher degree;

or
3.1.3 evidence of a high school diploma or its recognized equivalent, and a passing score on a rigorous assessment of knowledge of, and the ability to assist in, the instruction in reading, writing, and mathematics.

3.1.3.1 Assessments which are accepted as providing evidence of knowledge and ability to assist in the instruction in reading, writing, and mathematics include:

3.1.3.1.1 Para Pro assessment with a qualifying score of 459 or higher.

3.1.3.1.2 Accuplacer Test, if taken before April 1, 2003, with the following qualifying scores:

3.1.3.1.2.1 Mathematics: greater than or equal to a total right score of 94 on arithmetic.

3.1.3.1.2.2 English: greater than or equal to a total right score of 87.

3.1.3.1.2.3 Reading: greater than or equal to a total right score of 78.

3.1.3.1.3 Such alternative as may be established by the Standards Board, with the approval of the State Board.

3.2 Pursuant to the provisions of the *No Child Left Behind Act*, Title I paraeducators hired after January 8, 2002 must meet the requirements set forth in 3.1 immediately.

3.3 Notwithstanding the above, and pursuant to the provisions of the *No Child Left Behind Act*, Title I paraeducators hired before January 8, 2002 must hold a high school diploma or its recognized equivalent and shall have until June 30, 2006 to meet the requirements of 3.1.

3.3.1 Accordingly, Title I paraeducators hired before January 8, 2002 who do not meet the requirements set forth in 3.1 above, with the exception of the high school diploma or its recognized equivalent, shall be issued a Title I paraeducator permit which shall expire on June 30, 2006 unless evidence of meeting the requirements set forth in 3.1 above is provided prior thereto. If such evidence is provided to the Department prior to June 30, 2006, the permit shall expire five years from the date of issuance and may be renewed pursuant to 5.0.

3.4 Application Procedures.

3.4.1 The district, charter school, or other employing authority shall submit the approved application form, official transcripts or official scores on an assessment of knowledge of, and the ability to assist in, the instruction in reading, writing, and mathematics, to the Department on behalf of the applicant. The district, charter school or other employing authority shall certify as part of the application form that the applicant, in their opinion, meets the requirements of 3.0.

3.4.1.1 Official transcripts shall be forwarded directly from the issuing institution or by the applicant in an unopened, unaltered envelope to the district, charter school or other employing authority.

3.4.1.2 Test scores shall be official and sent directly from Educational Testing Service or other test vendor to the district, charter school or other employing authority. Unopened, unaltered envelopes containing test scores sent to an individual may be accepted as official. The Department shall determine whether the scores, as presented, are acceptable.

4.0 All instructional paraeducators and service paraeducators must hold the appropriate permit. The Department shall issue a permit to an instructional paraeducator applicant or a service paraeducator applicant for whom the district, charter school, or other employing authority has submitted a Department approved application form and who provides evidence of a high school diploma or its recognized equivalent.

4.1 Notwithstanding the above, instructional paraeducators and service paraeducators hired before February 11, 2004 and who do not have a high school diploma may be issued the applicable permit which shall expire June 30, 2006 unless evidence of a high school diploma or its recognized equivalent is provided prior thereto. If such evidence is provided prior to June 30, 2006, the permit shall expire five years from the date of issuance and may be renewed pursuant to section 5.0

5.0 Unless stated otherwise herein, a Title I, instructional, or service paraeducator permit shall be valid for five years from the date of issuance. The Department shall renew a paraeducator permit, valid for an additional five years, to a paraeducator whose school district, charter school, or other employing authority provides evidence to the Department of successful completion of a minimum of 15 clock hours of professional development.

5.1 Fifteen clock hours of professional development is required to be completed during the term of validity of the paraeducator permit.

5.2 Options for Renewal: The following professional development activities are approved options for the renewal of a paraeducator permit. Unless otherwise stated, there is no limit to the number of hours that may be taken in any of the options listed below:

5.2.1 College credit completed at a regionally accredited college or university with a grade of "C" or better or a "P" in a pass/fail course (1 semester hour equals 15 clock hours).

5.2.2 Planned school professional development day (maximum 6 clock hours per day).

5.2.3 Professional conference, workshop, institute, or academy that contributes to the participant's knowledge, competence, performance, or effectiveness as a paraeducator (verified clock hours actively involved in workshop or conference sessions).

5.2.4 Participation on school, district, or state-sponsored committee which has as its focus curriculum, instruction, or school or district improvement (verified clock hours of service or experience).

6.0 An applicant shall disclose his or her criminal conviction history upon application for any paraeducator permit. Failure to disclose a criminal conviction history is grounds for denial or revocation of a paraeducator permit as

specified in 14 **Del. C.** §1219.

7.0 A paraeducator permit may be denied an applicant upon a finding that an applicant is unfit to be issued a permit in the State in accordance with 14 **DE Admin. Code** 1513 or revoked upon the dismissal of the permit holder for immorality, misconduct in office, incompetence, willful neglect of duty or disloyalty, and must be revoked upon a finding that the permit holder made a materially false or misleading statement in his or her permit application in accordance with 14 **DE Admin. Code** 1514.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code,
Section 122(3).o (16 **Del.C.** §122(3).o)

PUBLIC NOTICE

These regulations, "State of Delaware Regulations for Home Health Agencies," replace by rescision the current "State of Delaware Regulations for Home Health Agencies" previously adopted on February 15, 1986.

Nature of the Proceedings

The proposed Delaware Regulations for Home Health Agencies incorporate a myriad changes in the health care delivery system in the last 17 years and the most recent changes prompted by passage of HB 507 in June 2002. Major changes include:

- Requirement that the Home Health Agency office be located in Delaware;
- Requirement of a separate license for each office;
- Establishment of a 90-day probationary license;
- Addition of an "Order to Suspend" a license;
- Time restraint on reissue of a revoked license;
- Addition of Care Management Plan language;
- Definition of and a procedure for change of ownership;
- Involvement of a Registered Nurse for non-skilled patients;
- Requirement for reporting of major adverse incidents.

Notice of Public Hearing

The Office of Health Facilities Licensing and Certification, Division of Public Health, Department of Health and Social Services will hold two public hearings to

discuss the proposed Delaware Regulations for Home Health Agencies. The first public hearing will be held on December 22, 2003 at 10:00 a.m., in the First Floor Conference Room, Delaware Fire Service Center, 2307 MacArthur Road, New Castle, Delaware 19720 and the second public hearing will be held on December 23, 2003 at 10:00 a.m., in Classroom A, Suite 4F, Public Health Preparedness Section, Blue Hen Corporate Center, 655 S. Bay Road, Dover Delaware 19901.

Copies of the proposed regulations are available for review by calling the following location:

Office of Health Facilities Licensing and Certification
2055 Limestone Road, Suite 200
Wilmington, DE 19808
Telephone: (302) 995-8521

Anyone wishing to present his or her oral comments at this hearing should contact Ms. Vanette Seals at (302) 995-8521 by December 19, 2003. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by December 31, 2003 to:

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

Rules and Regulations Pertaining to Home Health Agencies

Part 1: General Terms, Conditions and Requirements

Section 65.0 Definitions

~~A. Board or State Board — means the Delaware State Board of Health.~~

~~B. Clinical Records — means a written account of all services provided a patient by the home health agency, as well as other pertinent information necessary to provide care.~~

~~C. Director — a job-descriptive term used to identify the individual appointed by the governing body to act on its behalf in the overall management of the home health agency. Job titles may include administrator, superintendent, director, executive director, president, vice president, and executive vice president. The director shall be one of the following: a physician, a registered nurse, or an individual with training or experience in health services, administration, or public health, and with at least one year of supervisory experience in home health care or related health programs.~~

~~D. Governing Body or Other Legal Authority — means the individual, partnership, agency, group, or corporation designated to assume full legal responsibility for the policy determination, management, operation, and financial~~

liability of the home health agency.

E. ~~Home Health Agency~~ — any business entity or sub-division thereof, whether public or private, proprietary or not-for-profit, which provides directly or through contract arrangements, to individuals in their home or private residence (excluding residents of hospitals and nursing homes), either (1) two or more of the following services: licensed nursing, home health aide services, physical therapy, speech pathology, occupational therapy, or social services; and where at least one of these services is licensed nursing or home health aide services; or (2) home health aide services — exclusively, provided under appropriate supervision. Home health agency does not include any visiting nurse service or home health service conducted by and for those who rely upon spiritual means through prayer alone for healing in accordance with the tenets and practices of a registered church or religious denomination.

F. ~~Home Health Aide~~ — means a non-licensed person who (1) has at least one year of practical experience in a hospital, nursing home, or home care setting; or (2) has satisfactorily completed an appropriate home care course which includes the training requirements contained within these regulations; or (3) a student nurse pursuing a degree in nursing who has completed the clinical practicum portion of their training; and (4) provides personal and health care services to an individual in their place of residence.

G. ~~License~~ — shall mean a license issued by the State Board of Health.

H. ~~Licensee~~ — shall mean the individual, corporation, or public entity with whom rests the ultimate responsibility for maintaining approved standards for the home health agency.

I. ~~Occupational Therapist~~ — shall mean an individual who is currently licensed as such in this State.

J. ~~Occupational Therapist Assistant~~ — shall mean anyone working under the direction of a registered occupational therapist; and (2) is a graduate of an Occupational Therapy Assistant educational program approved by the American occupational Therapy Association; and (3) has achieved a satisfactory passing score on the National Examination sponsored by the American Occupational Therapy Association.

K. ~~Other Therapist~~ — shall mean an individual who performs therapy duties, other than physical, occupational, and speech, and has completed a training program and, where appropriate, is licensed by the State.

L. ~~Parent Agency~~ — shall mean the agency that develops and maintains administrative control of offices.

M. ~~Patient Service Record~~ — means a written account of all home health aide services provided a patient by the home health agency, as well as other pertinent information necessary to provide care.

N. ~~Personal Care Services~~ — shall mean the provision of individual assistance with/or supervision of essential activities of daily living, such as eating, bathing, grooming,

and dressing and ambulating, supervision of self-administered medication, helping with prescribed exercises, performing incidental household services, reporting changes in patient's condition, completing reports and similar services. Personal care services shall not be construed to mean the provision of medical, nursing, dental, or mental health services.

O. ~~Physical Therapist~~ — shall mean an individual who is currently licensed as such in this State.

P. ~~Physical Therapist Assistant~~ — shall mean anyone working under the direction of a qualified physical therapist.

Q. ~~Physician~~ — shall mean an individual currently licensed to practice medicine, surgery, or osteopathy in this State.

R. ~~Practical Nurse~~ — shall mean an individual who is currently licensed as such in this State.

S. ~~Registered Nurse~~ — shall mean an individual who is currently licensed as such in this State.

T. ~~Services Director~~ — shall be one of the following: a physician, registered nurse, or an alternate professional, who is sufficiently qualified to provide general supervision and direction of the personnel services offered by the home health agency.

U. ~~Social worker~~ — shall mean an individual who has met the requirements of a graduate curriculum in a school of social work, leading to a master's degree, that is accredited by the council on Social Work Education; or who has the documented equivalent in education, training, and/or experience.

V. ~~Speech Therapist~~ — shall mean an individual who is currently licensed as such in this State.

Section 65.1 Licensure Application, Issuance and Renewal

A. Interpretations

~~Licenses Required.~~ No person, private or public organization, political subdivision, or other governmental agency shall establish, conduct, or maintain a home health agency without first obtaining a license from the State Board of Health. No application shall be approved and no license shall be issued until representatives of the State Board of Health have conducted an inspection of the home health agency for determination of compliance with these standards.

The term home health agency shall not be used as a part of the name of any agency or organization in this state, unless it has been so classified by the State Board of Health.

~~Effective Date and Term of License.~~ A license shall be effective for a twelve-month period following date of issue and shall expire one year following such date; however, a facility which has not been inspected during that year may continue to operate under its existing license until an inspection is made. A license issued under this Act is not assignable or transferable and is subject to suspension or revocation at any time for failure to comply with this Act and shall be posted in a conspicuous place.

Application. A person desiring to obtain a license shall file with the State Board of Health an application on a form prescribed, prepared, and furnished by the Board. The application must state the geographical area in which the home health agency will provide services. The agency will provide the name and address of each officer, director, and owner or the home health agency having an interest of ten percent or more.

Inspection. Each home health agency for which a license has been issued shall be subject to inspection at any time without prior notice by authorized representatives of the State Board of Health.

B. Separate Licenses for Offices

No separate licenses are required for offices where the parent home health agency is located within the State, however, these offices will be subject to inspection by the licensing agency.

Where a parent agency is located outside the State and has offices located within the State, the office shall be subject to State survey for licensing under these regulations.

When both a parent agency and its offices are located outside the State in a jurisdiction with a reciprocal agreement for home health licensure, the agency shall be inspected at the discretion of the State Board of Health. In the absence of a reciprocal agreement, the agency shall agree to a State survey for licensing the agency's services to Delaware residents.

Section 65.2 – Licensure Revocation or Nonrenewal

A. Reasons for Action

State Board of Health refusals. The State Board of Health may refuse to renew a license, may suspend, revoke or limit a license of a home health agency, or may suspend admissions for one of the following reasons:

1. A violation of this subpart, the act, or of other statutes and regulations, which threatens the health, safety, and welfare of patients.
2. Failure of an owner to submit a reasonable timetable for correction of deficiencies.
3. The existence of a pattern of cyclical deficiencies which extends over a period of two or more years.
4. Failure, by the holder of a provisional license, to correct deficiencies in accordance with a timetable submitted by the applicant and agreed upon by the State Board of Health.
5. Fraud or deceit in obtaining or attempting to obtain a license.
6. Lending, borrowing, or using the license of another, or in knowingly aiding or abetting the improper granting of a license.
7. Incompetence, negligence, or misconduct in operating the home health agency or in providing services to individuals.

8. Mistreating or abusing individuals cared for by the home health agency.

9. Serious violation of statutes relating to Medical Assistance or Medicare reimbursement for those agencies who participate in those programs.

B. Notice to Patients

The home health agency shall notify each patient or the patient's authorized representative, the patient's attending physician, and any third-party payers at least thirty days before the voluntary surrender of its license, or as directed under an order of denial, revocation, or suspension of license issued by the state Board of Health.

C. Notice and Hearing Prior to Denial, Suspension, or Revocation of License

Should the State Board of Health determine to deny, suspend, or revoke a license or place a home health agency on probation, it shall send to the applicant or licensee, by registered mail, a notice setting forth the particular reasons for the determination. The denial, suspension, probation, or revocation shall become final thirty days after the mailing of the notice unless the applicant or licensee, within such thirty-day period, shall give written notice of his desire for a hearing. If the applicant or licensee shall give such notice, he shall be given a hearing before the State Board of Health or its designee and may present such evidence as may be proper. On the basis of such evidence, the determination involved shall be affirmed or set aside; and a copy of such reasons upon which it is based, shall be sent by registered mail to the applicant or licensee. The decision shall become final thirty days after it is mailed, unless the applicant or licensee, within such thirty-day period, appeals the decision to the appropriate Court of the State.

D. Provisional Status

The State Board of Health may issue a provisional license for a period of less than one year in instances where:

1. The home health agency is in existence in Delaware at the time of promulgation of these regulations and requires a reasonable time period during which it may come into compliance with these regulations;
2. The home health agency has failed to demonstrate substantial compliance with the regulations but has indicated, in writing, its willingness to take the necessary corrective action to achieve substantial compliance.

The State Board of health shall designate the conditions and the time period under which a provisional license is being issued.

A provisional license may not be renewed unless the deficiencies have been substantially corrected or a satisfactory Plan for Correction Action is implemented.

Section 65.3 – Severability

Should any section, sentence, clause, or phrase of these regulations be legally declared unconstitutional or invalid for any reason, the remainder of said regulations shall not be

affected thereby.

Part 2: Agencies Providing Multiple Home Health Care Services to Patients Consistent with Section (1) of the Home Health Agency Definition

Section 65.4 – Governing Authority/Administration

A. Written Bylaws for Service/Management

The governing body or other legal authority shall organize agency services to ensure quality patient care. An organizational chart with a written description of the organization, authorities, responsibilities, accountabilities, and relationships shall be maintained which shall include, but not limited to:

1. A description of each service offered;
2. Policies and procedures pertaining to each service;
3. A description of the system for the maintenance of patient records.

B. Professional Advisory Group

An advisory group of professionals, to include at least one physician, one registered nurse (preferably with home health and/or public health experience), and representatives from other professional disciplines, shall be established. Included in the foregoing should be at least one member who is neither an owner nor an employee of the home health agency. The advisory group's responsibility is to review and advise annually the agency's policies governing scope of services offered, admission and discharge policies, medical supervision and plans of treatment, emergency care, clinical records, and program evaluations.

C. Director

There shall be a director of the home health agency who shall have responsibility for providing administrative direction to the program at all times and for carrying out the policies and procedures of the agency. The authority, duties and responsibilities of the director shall be defined in writing and shall include at least:

1. organizing and administering the home health agency;
2. operating the agency through authorization of expenditures;
3. Maintaining agency compliance with applicable laws and regulations; and
4. Preparing and submitting required reports.

A qualified person shall be authorized to act in the absence of the director.

D. Supervision of Clinical Services

The director shall appoint a full-time employee as a "services director" to provide general supervision and direction of the professional services offered by the home health agency. The services director shall be available at all times during operating hours of the home health agency and

shall participate in all activities related to the professional services provided, including the qualifications of personnel as related to their assigned duties. In his absence, he shall appoint a similarly qualified designee.

E. Written Agreements for Purchase of Services

The home health agency shall establish a written contractual arrangement for the provision of all services which are not provided directly by the agency. At a minimum, the contract shall:

1. Designate the services which are to be provided (services provided are to be within the scope and limitation set forth in the plan of treatment and may not be altered in type, amount, frequency, or duration, except in the case of adverse reaction or via mutual agreement, by the home health agency and agency/individual under contract);
2. Describe how the contracted personnel are to be administratively or professionally supervised, or both;
3. Describe how services will be controlled, coordinated, and evaluated by the home health agency;
4. Describe the procedure for submitting clinical and progress notes, scheduling of visits, and periodic patient evaluation;
5. Specify the charges for specific services provided under contract;
6. Specify that only the contracting home health agency shall bill for services provided under these written agreements and collect the applicable deductible or co-insurance payments pertaining to those contracted services;
7. Specify the period of time that the contract shall be in effect and how frequently it shall be reviewed. The contract shall be reviewed at least annually and renewed when necessary;

8. Insure that personnel and services contracted meet the requirements specified in these regulations for home health agency personnel and services, including licensure, personnel, qualifications, physical examinations, functions, supervision, orientation, in-service education, and attendance at case conferences;

9. Provide for the acceptance of patients for home health services only by the parent agency. Patients may not be admitted for home health service by a contracted individual without prior review of the case and acceptance of the patient by the home health agency in accordance with agency policies.

F. Written Personnel Policies

The home health agency shall have written policies on qualifications, responsibilities, and requirements for employment for each classification of personnel, including licensure where required.

The policies of the home health agency shall, at a minimum, provide for:

1. wage and salary schedules;
2. eligibility for vacation, sick leave, and other

fringe benefits;

3. in-service training and orientation of all personnel to the objectives, policies, and functions of the agency;

4. job descriptions for each classification of personnel.

The policies of the home health agency shall be reviewed annually and revised as necessary.

G. Staff Training Plan

An inservice educational program shall be provided on an ongoing basis, which shall include an orientation program for staff personnel employed by the agency and a continuing program for the development and improvement of skills of such personnel. The inservice program shall be geared to the needs of the sick, the handicapped, and the aged and include patient care procedures, agency policies, prevention and control of infection, confidentiality of patient information, rights of patients, and other related areas of patient care.

Records of attendance and subjects of programs for the previous year shall be available for review at the time of inspection.

H. Policies Which Control the Exposure of Patients and Staff to Persons with Communicable Diseases

Minimum requirements for employee physical examination:

1. Each person, including volunteers, who is involved in the care of patients shall have a screening test for tuberculosis as a prerequisite to employment. Either a negative intradermal skin test or a chest x-ray showing no evidence of active tuberculosis within the 90-days prior to employment shall satisfy this requirement;

2. A report of this test shall be on file at the agency of employment.

No person having a communicable disease shall be permitted to give care or service. All reportable communicable diseases shall be reported to the County Health Officer.

The home health agency shall have a written procedure to be followed in the event that a communicable disease episode occurs. It is the responsibility of the agency to:

1. See that necessary precautions are taken;

2. All rules of the State Board of Health are followed so that there is minimum danger of transmission to the patients under its care. This responsibility includes staff personnel as well as patients.

I. Rights of Patients/Clients

The home health agency must establish written policies regarding the rights and responsibilities of patients, and these policies and procedures are to be made available to patient/family or patient/guardian. The rights of patients shall be consistent with Title 16 and 31 of the Delaware

Code and the State Division of Public Health Regulations regarding Patient's Rights.

J. Program Review and Evaluation

The home health agency shall establish policies and procedures for self-evaluation of its programs.

The home health agency shall review its written policies at least annually, and revise them as necessary. The results of this review shall be presented, in writing, to the professional advisory group and to the governing body.

Section 65.5 - Patient Care Management

A. Admission, Transfer and Discharge Policies

The agency shall have written policies covering the scope and limitation of services. The policies established by the agency shall include conditions for admission, transfer, discharge, and continuing care of clients.

B. Patient Plan of Treatment and Review

A written patient care plan shall be developed with the appropriate supervisor for each home care patient. The patient care plan shall include reference to at least the following:

1. all pertinent diagnoses;

2. prognosis, including short-term and long-term objectives of treatment;

3. types (such as nursing, other therapeutic, and/or support services) and frequency of services to be provided, including any medication, diet, treatment, procedures, equipment, and transportation required;

4. functional limitations of patient; .

5. activities permitted;

6. safety measures required to protect the patient from injury;

7. sociopsychological needs of the patient.

C. Drug and Treatment Orders

Drugs, prescription and devices, and treatments shall be administered by agency staff only as ordered by the physician. The nurse or therapist shall immediately record and sign oral orders and as soon as possible obtain the physician's countersignature.

D. Coordination of Patient Services

All personnel within the same agency providing services maintain liaison to assure that their efforts effectively complement one another and support the objective outlined in the plan of treatment.

The clinical record or minutes of case conferences establish that effective interchange, reporting, and coordinated patient evaluation does occur within the same agency.

Section 65.6 - Patient Services

A. Nursing/Duties, Supervision

Nursing services shall be provided directly by registered and practical nurses duly licensed in this State and in accordance with the written plan of treatment and

acceptable standards of nursing practice and under the supervision of the services director.

Supervision.—The home health agency which provides skilled nursing service shall provide such services by and under the supervision of a registered nurse and in accordance with the plan of treatment.

B. Therapy/Duties, Supervision

Any therapy services offered by the agency directly or under arrangement are given by or under the supervision of a qualified therapist in accordance with the plan of treatment.

Supervision of Speech Therapy Services.—Speech therapy services are provided only by or under supervision of a qualified speech pathologist or audiologist.

C. Social Services /Duties, Supervision

Social services, when provided, are given by a qualified social worker and in accordance with the plan of treatment.

D. Home Health Aide/Duties, Supervision

Home health aides are selected, trained, and assigned to provide primarily personal care services for the patient under appropriate supervisor.

E. Home Health Aides/Training

Training Requirements for Home Health Aides.—Aides shall be offered a quarterly, structured program of training. The time allotted for training shall be sufficient to foster safe and skillful services to the patient. During the course of a year, the agency training program must include a minimum:

1. the role of the home health aide as a member of the professional health services team;
2. instruction and supervised practice in personal care services of the sick at home, with major attention being given to personal hygiene and activities of daily living;
3. instruction in how to assist patients to achieve maximum self-reliance through re-learning and modifying activities of daily living;
4. principles of good nutrition;
5. meal planning, food purchasing, and preparation of meals, including special diets;
6. general information on the processes of growth, development, and aging;
7. information on the emotional and physical problems accompanying illness;
8. principles and practices in maintaining a clean, healthy, and safe environment as well as a pleasant one that encourage morale building and self-help;
9. items requiring referral to the nurse or supervisor in the home health agency, including changes in the patient's condition or family situation;
10. recordkeeping, when applicable;
11. policies and objectives of the agency;
12. information concerning the duties and

responsibilities of a home health aide;

13. either behavior, confidentiality of information, and patient's rights.

Section 65.7—Clinical Records/Patient Service Records

For clients receiving home health aide services exclusively, the home health agency shall meet the requirements of Part 3, Section 65.11—Patients Service Records.

For clients receiving multiple home health care services, the home health agency shall maintain a Clinical Record in accordance with the accepted standards contained within these regulations.

A. Contents

The clinical record shall include:

1. pertinent past and current findings;
2. plan of treatment;
3. appropriate identifying information;
4. name of physician;
5. drug, dietary, treatment, and activity orders;
6. signed and dated clinical and progress notes (clinical notes are written the day service is rendered and incorporated no less often than weekly);
7. copies of summary reports as requested by the physician;
8. a discharge statement.

B. Record Review Period

The medical plan of treatment should be reviewed by the attending physician and agency staff as often as the severity of the patient's condition requires, but no less than once every 60 days.

C. Transfer of Records

Proper mechanisms for the timely transfer of clinical record information upon request from duly authorized persons and organizations.

D. Storage/Retention

Records shall be maintained by the agency for a period of at least three years following the date of discharge and shall be safeguarded against loss or unauthorized use.

E. Protection of Records

Each agency shall establish policies and procedures to govern the use and removal of records and determine the conditions for release of information in accordance with statutory provisions pertaining to confidentiality. Patient's written consent is required for release of information not authorized by law.

Part 3—Agencies Providing Exclusively Home Health Aides Services to Patients Consistent with Section (2) of the Home Health Agency Definition

Section 65.8—Governing Authority/Administration

A. Written Bylaws for Service/Management

The governing body or other legal authority shall

organize agency services to ensure quality patient care. An organizational chart with a written description of the organization, authorities, responsibilities, accountabilities, and relationships shall be maintained which shall include, but not limited to:

1. A description of each type of home health aide service offered;
2. Policies and procedures pertaining to these services;
3. A description of the system for the maintenance of patient records.

B. Director

There shall be a director of the home health agency who shall have responsibility for providing administrative direction to the program at all times and for carrying out the policies and procedures of the agency. The authority, duties, and responsibilities of the director shall be defined in writing and shall include at least:

1. organizing and administering the home health agency;
2. Operating the agency through authorization of expenditures;
3. Maintaining agency compliance with applicable laws and regulations;
4. Preparing and submitting required reports.

A qualified person shall be authorized to act in the absence of the director.

C. Supervision on o Home Health Aide Services

The director shall appoint a qualified employee as a "services director" to provide general supervision and direction of the home health aide services offered by the home health agency. The services director shall be available at all times during operating hours of the home health agency and shall participate in all activities related to the services provided, including the qualifications of personnel as related to their assigned duties. In his absence, he shall appoint a similarly qualified designee.

D. Written Agreements for Purchase of Services

The home health agency shall establish a written contractual arrangement for the provision of all services which are not provided directly by the agency. At a minimum, the contract shall:

1. Designate the home health aide services which are to be provided (services provided are to be within the scope and limitation set forth in the plan of treatment and may not be altered in type, amount, frequency, or duration, except in the case of adverse reaction or via mutual agreement, by the home health agency and agency/individual under contract);
2. Describe how the contracted personnel are to be supervised;
3. Describe how home health aide services will be controlled, coordinated, and evaluated by the home health agency;

4. Describe the procedure for submitting progress notes, scheduling of visits, and periodic patient evaluations;

5. Specify the charges for specific home health aide services provided under contract;

6. Specify that only the contracting home health agency shall bill for services provided under these written agreements and collect the applicable deductible or co-insurance payments pertaining to those contracted services;

7. Specify the period of time that the contract shall be in effect and how frequently it shall be reviewed. The contract shall be reviewed at least annually and renewed when necessary;

8. Insure that personnel and home health aide services contracted meet the requirements specified in these regulations for home health agency personnel and home health aide services, including personnel, qualifications, physical examinations, functions, supervision, orientation, and in-service education;

9. Provide for the acceptance of patients for home health aide services only by the parent agency. Patients may not be admitted for home health aide services by a contracted individual without prior review of the case and acceptance of the patient by the home health agency in accordance with agency policies.

E. Written Personnel Policies

The home health agency shall have written policies on qualifications, responsibilities, and requirements for employment for each classification of personnel.

The policies of the home health agency shall, at a minimum, provide for:

1. wage and salary schedules;
2. eligibility for vacation, sick leave, and other fringe benefits;
3. in-service training and orientation of all personnel to the objectives, policies, and functions of the agency;
4. job descriptions for each classification of personnel.

The policies of the home health agency shall be reviewed annually and revised as necessary.

F. Staff Training Plan

An inservice educational program shall be provided on an ongoing basis, which shall include an orientation program for staff personnel employed by the agency and a continuing program for the development and improvement of skills of such personnel. The inservice program shall be geared to the needs of the sick, the handicapped, and the aged and include patient care procedures, agency policies, prevention and control of infection, confidentiality of patient information, rights of patients, and other related areas of patient care.

Records of attendance and subjects of programs for the previous year shall be available for review at the time of

inspection.

G. Policies Which Control the Exposure of Patients and Staff to Persons with Communicable Diseases

Minimum requirements for employee physical examination:

1. Each person, including volunteers, who is involved in the care of patients shall have a screening test for tuberculosis as a prerequisite to employment. Either a negative intradermal skin test or a chest x-ray showing no evidence of active tuberculosis within the 90-days prior to employment shall satisfy this requirement;

2. A report of this test shall be on file at the agency of employment.

No person having a communicable disease shall be permitted to give care or service. All reportable communicable diseases shall be reported to the county Health Officer.

The home health agency shall have a written procedure to be followed in the event that a communicable disease episode occurs. It is the responsibility of the agency to:

1. See that necessary precautions are taken;
2. All rules of the State Board of Health are followed so that there is minimum danger of transmission to the patients under its care. This responsibility includes staff personnel as well as patients.

H. Rights of Patients/Clients

The home health agency must establish written policies regarding the rights and responsibilities of patients, and these policies and procedures are to be made available to patient/family or patient/guardian. The rights of patients shall be consistent with Title 16 and 31 of the Delaware Code and the State Division of Public Health Regulations regarding Patient's Rights.

I. Program Review and Evaluation

The home health agency shall establish policies and procedures for self-evaluation of its programs.

The home health agency shall review its written policies at least annually, and revise them as necessary. The results of this review shall be presented, in writing, to the governing body.

Section 65.9 – Patient Care Management

A. Admission, Transfer and Discharge Policies

The agency shall have written policies covering the scope and limitation of home health aide services. The policies established by the agency shall include conditions for admission, transfer, discharge, and continuing care of clients.

B. Patient Plan of Treatment and Review

A written home health aide care plan shall be developed with the appropriate supervisor for each home care patient. The patient care plan shall include reference to at least the following:

1. types of aide services and frequency of services

to be provided, including any diet, procedures, and transportation required;

2. functional limitations of the patient;

3. activities permitted;

4. safety measures required to protect the patient from injury.

C. Coordination of Primary Patient Services

All personnel within the same agency providing services maintain liaison through the home health aide supervisor to assure that their efforts effectively complement one another and support the objective outlined in the plan of treatment.

Section 65.10 – Patient Services

A. Home Health Aides/Duties. Supervision

Home health aides are selected, trained, and assigned under appropriate supervision to provide primarily personal care duties for the patient.

B. Home Health Aides/Training

Training Requirements for Home Health Aides. Aides shall be offered a quarterly, structured program of training. The time allotted for training shall be sufficient to foster safe and skillful services to the patient. During the course of a year, the agency training program must include at a minimum:

1. the role of the home health aide as a member of the professional health services team;
2. instruction and supervised practice in personal care services of the sick at home, with major attention being given to personal hygiene and activities of daily living;
3. instruction in how to assist patients to achieve maximum self-reliance through re-learning and modifying activities of daily living;
4. principles of good nutrition;
5. meal planning, food purchasing, and preparation of meals, including special diets;
6. general information on the processes of growth, development, and aging;
7. information on the emotional and physical problems accompanying illness;
8. principles and practices in maintaining a clean, healthy, and safe environment as well as a pleasant one that encourages morale building and self-help;
9. items requiring referral to the nurse or supervisor in the home health agency, including changes in the patient's condition or family situation;
10. recordkeeping, when applicable;
11. policies and objectives of the agency;
12. information concerning the duties and responsibilities of a home health aide;
13. ethical behavior, confidentiality of information, and patient's rights.

Section 65.11 – Patient Service Records

A. Contents

~~A patient service record is maintained in accordance with accepted standards and contains:~~

~~1. Home health aide services request data to include: data received, patient's name/address/telephone number, relative/contact person (where applicable), living arrangements, personal data age/height/weight/sex, physical data hearing/vision/speech/other impairments, diagnosis/history, home health aide activities, and documentation for scheduling/estimated duration of service;~~

~~2. Home health aide services date to include: date service provided, hours of service provided, home health aides name, types of activities provided, and observations/problems/comments;~~

~~3. A home health aide service discharge statement.~~

B. Record Review Period

~~The plan of treatment should be reviewed by the home health aide's supervisor on a regular basis with a supervisory visit made to the patient at least quarterly. A report of the supervisory visit should be kept with the patient's service record.~~

C. Transfer of Records

~~Proper mechanisms for the timely transfer of patient service record information upon request from duly authorized persons and organizations.~~

D. Storage/Retention

~~Records shall be maintained by the agency for a period of at least three years following the date of discharge and shall be safeguarded against loss or unauthorized use.~~

E. Protection of Records

~~Each agency shall establish policies and procedures to govern the use and removal of records and determine the conditions for release of information in accordance with statutory provisions pertaining to confidentiality. Patient's written consent is required for release of information not authorized by law.~~

Proposed Delaware Regulations for Home Health Agencies

February 15, 1986

Revised [DATE]

Title 16 - Health and Safety

Part I, Chapter 1, Subchapter II, Section 122(3)o.
Powers and Duties of the Department of Health and Social Services

Establish standards for public health quality assurance in the operation of home health agency programs and regulate the public health practice of such programs.

Section 65.0 Purpose

The regulations for Home Health Agencies apply to any program that provides health care and/or personal care services as described in these regulations to patients in their place of residence (excluding residents of hospitals and nursing facilities). The term home health agency shall not be used as a part of the name of any agency or organization in this State, unless it has been so classified by the Delaware Department of Health and Social Services.

These rules and regulations have been prepared for the purpose of establishing a criterion for minimum standards for the licensure of home health agencies in Delaware that is consistent with current trends in patient care practices. By necessity, they are of a regulatory nature but are considered to be practical minimal design and operational standards for these agencies. It is expected, however, that home health agencies will exceed these minimum requirements and that they will not be dependent upon future revisions in these standards as a necessary prerequisite for improved services.

PART I**Definitions and Licensure Procedures**

(All home health agencies must comply with Part I of these regulations)

Section 65.1 Definitions

65.1.01 Activities of Daily Living - the tasks for self-care which are performed either independently, with supervision, or with assistance. Activities of daily living include ambulating, transferring, grooming, bathing, dressing, eating, and toileting.

65.1.02 Aide/Assistant/Technician – see Home Health Aide (65.1.17).

65.1.03 Audiologist – an individual who is licensed to practice audiology pursuant to DE Code, Title 24, Chapter 37 and who offers such services to the public under any title or description of services incorporating the words "audiologist," "hearing clinician," "hearing therapist," "aural rehabilitator" or any other similar title or description of service.

65.1.04 Audiology Aide – an individual who is certified by the Council of Accreditation of Occupational Hearing Conservationists pursuant to DE Code, Title 24, Chapter 37 and who performs services only under the direct supervision of an audiologist licensed in this State.

65.1.05 Branch Office – a separately licensed office within the State which is located within fifty miles of the parent agency and shares administrative/supervisory functions with the parent. The branch maintains patient and employee records while patients and employees are active with the agency.

65.1.06 Bylaws – a set of rules adopted by a home health agency for governing the agency's operation.

65.1.07 Caregivers – those individuals employed by or under contract to a Home Health Agency to provide personal care services and/or health care services to patients.

65.1.08 Change of Ownership (CHOW) – a change in the legal structure by which the agency is owned and operated (see 65.2.08).

65.1.09 Clinical Director - shall be a physician or a registered nurse who is sufficiently qualified to provide general supervision and direction of the skilled services offered by the home health agency.

65.1.10 Companion – a person who provides social interaction for an individual in her/his place of residence. A companion may not provide hands-on personal care to the individual. A companion may provide such services as cooking, housekeeping, errands, etc.

65.1.11 Contractor – an entity or individual providing services for the agency that does not meet the definition of employee.

65.1.12 Department - the Delaware Department of Health and Social Services.

65.1.13 Dietitian – an individual who engages in the provision of nutrition services pursuant to DE Code, Title 24, Chapter 38. The terms nutritionist and dietitian are used interchangeably.

65.1.14 Director - a job-descriptive term used to identify the individual appointed by the governing body to act on its behalf in the overall management of the home health agency. Job titles may include administrator, superintendent, director, executive director, president, vice-president, and executive vice-president.

65.1.15 Governing Body or Other Legal Authority - the individual, partnership, agency, group, or corporation designated to assume full legal responsibility for the policy determination, management, operation, and financial liability of the home health agency.

65.1.16 Home Health Agency (HHA) - is any business entity or subdivision thereof, whether public or private, proprietary or not-for-profit, which provides home health care services (65.19). Home Health Agencies shall provide:

A. Two or more home health care services, one of which must be either licensed nursing services or home health aide services; or

B. Home health aide services exclusively which shall include, but not be limited to:

1. Feeding;
2. Bathing;
3. Dressing;
4. Grooming; and,
5. Incidental household services.

65.1.17 Home Health Aide - a non-licensed person who provides personal care and home health aide services to an individual in their place of residence and:

A Has at least one year of practical experience in a hospital, nursing home, or home care setting; or

B. Has satisfactorily completed an appropriate home care course which includes the training requirements contained within these regulations; or

C. Is a student nurse pursuing a degree in nursing who has completed the clinical practicum portion of their training.

65.1.18 Home Health Aide Services – services that do not require the judgment and skills of a licensed nurse or other professional. The services may include but are not limited to activities of daily living (65.1.01), supervision of self-administered medication, helping with prescribed exercises, reporting changes in patient's condition. Home health aide services do not include solely companion or homemaker services.

65.1.19 Home Health Care Services - include but are not limited to the following:

- A. Licensed nursing services;
- B. Physical therapy services;
- C. Speech therapy services;
- D. Audiology services;
- E. Occupational therapy services;
- F. Nutritional services;
- G. Social services; or,
- H. Home health aide services.

65.1.20 Homemaker – a person who performs household chores for an individual in her/his place of residence. Household chores may include but are not necessarily limited to housekeeping, meal preparation, and shopping. A homemaker may not provide hands-on personal care to the individual.

65.1.21 Immediate Jeopardy – a crisis situation in which the health and safety of patients is at risk. It is a deficient practice which indicates an inability to furnish safe care and services.

65.1.22 Licensed Clinical Social Worker – an individual licensed pursuant to DE Code, Title 24, Chapter 39.

65.1.23 Nurse - an individual who is currently licensed to practice nursing pursuant to DE Code, Title 24, Chapter 19.

65.1.24 Nursing Services - those procedures commonly employed in providing for the physical, emotional and rehabilitation needs of functionally impaired individuals which require technical skills and knowledge beyond that which the untrained person possesses, including, but not limited to, such procedures as: irrigations; catheterization; application of dressings; supervision of special diets; objective observation of changes in patient condition as a means of determining required nursing care and the need for further medical diagnosis and treatment; special procedures contributing to rehabilitation; administration of medication and carrying out treatments prescribed by a physician or an Advanced Practice Nurse in accordance with the Rules and Regulations related to the law Regulating the Practice of

Nursing in Delaware which involve a like level of complexity and skill in administration.

65.1.25 Occupational Therapist - an individual who is currently licensed to practice occupational therapy pursuant to DE Code, Title 24, Chapter 20 and who offers such services to the public under any title incorporating the words "occupational therapy," "occupational therapist" or any similar title or description of occupational therapy services.

65.1.26 Occupational Therapist Assistant – an individual licensed to assist in the practice of occupational therapy pursuant to DE Code, Title 24, Chapter 20, under the supervision of an occupational therapist.

65.1.27 Office – the physical location in which the business of the home health agency is conducted and in which the records of personnel, contractors and patients of the agency are stored. The office shall be located in the State of Delaware.

65.1.28 Parent Agency - an agency located within the State that develops and maintains administrative/supervisory control of branch offices. The parent agency is separately licensed from the branch(es) and must be located within fifty miles of any branch.

65.1.29 Patient – the individual (client, consumer, or other designation used) receiving home health care services as defined in this chapter.

65.1.30 Patient Record - a written account of all services provided a patient by the home health agency, as well as other pertinent information necessary to provide care.

65.1.31 Personal Care Services – see Home Health Aide Services (65.1.18).

65.1.32 Physical Therapist - an individual who is currently licensed to practice physical therapy pursuant to DE Code, Title 24, Chapter 26.

65.1.33 Physical Therapist Assistant – an individual who assists licensed physical therapists pursuant to DE Code, Title 24, Chapter 26.

65.1.34 Physician - a person currently licensed as such by DE Code, Title 24, Chapter 17.

65.1.35 Plan of Care – a written plan that specifies scope, frequency and duration of services.

65.1.36 Plan of Correction – a home health agency's written response to findings of regulatory non-compliance. Plans must adhere to the format specified by the licensing agency, must include acceptable timeframes in which deficiencies will be corrected and must be approved by the licensing agency.

65.1.37 Professional – a person currently licensed in the State as a registered nurse, physician, physical therapist, occupational therapist, speech therapist, dentist, dietitian, social worker, respiratory care practitioner or psychologist.

65.1.38 Professional Therapy – those services provided by a licensed professional in one of the following areas: physical therapy, occupational therapy, speech therapy,

audiology, or nutrition.

65.1.39 Representative - a person acting on behalf of the patient under Delaware law.

65.1.40 Skilled Services – those services provided directly by a licensed professional for the purpose of promoting, maintaining, or restoring the health of an individual or to minimize the effects of injury, illness, or disability. Such services must be ordered by a physician.

65.1.41 Speech/Language Pathologist - an individual who is currently licensed pursuant to DE Code, Title 24, Chapter 37 and who offers such services to the public under any title or description of services incorporating the words "speech/language pathologist," "speech pathologist," "language pathologist," "speech and/or language therapist," "speech and/or language correctionist," "speech and/or language clinician," "voice therapist," "communicologist," "aphasiologist" or any other similar title or description of service.

65.1.42 Speech Pathology Aide – an individual who meets minimum qualifications pursuant to DE Code, Title 24, Chapter 37, which permit such an aide to assist speech/language pathologists in their professional endeavors, but only while under the direct supervision of a licensed speech/language pathologist.

65.1.43 Supervision of Services – authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity.

Section 65.2 Licensing Requirements And Procedures

65.2.01 No person shall establish, conduct or maintain in this State any home health agency without first obtaining a license from the Department.

65.2.02 A separate license shall be required for each office maintained by a home health agency.

65.2.03 A license is not transferable from person to person or from one location to another.

65.2.04 The license shall be posted in a conspicuous place on the licensed premises.

65.2.05 Application Process

A. All persons or entities applying for a license shall submit a written letter of intent to the Department describing the services to be offered by the agency and requesting a licensure application from the Department.

1. The issuance of an application form is in no way a guarantee that the completed application will be accepted or that a license will be issued by the Department.

2. Patients shall not be admitted to an agency until a license has been issued.

3. Applicants shall not hold themselves out to the public as being an agency until a license has been issued.

B. Applicants shall submit to the Department the

following information:

1. The names, addresses and types of facilities owned or managed by the applicant.
2. Identity of:
 - a. Each officer and director of the corporation if the entity is organized as a corporation;
 - b. Each general partner or managing member if the entity is organized as an unincorporated entity;
 - c. The governing body if the entity is government operated;
 - d. Proof of not-for-profit status if claiming tax-exempt status; and,
 - e. Any officers/directors, partners, or managing members, or members of a governing body who have a financial interest of five percent (5%) or more in a licensee's operation or related businesses.
3. Disclosure of any officer, director, partner, employee, managing member, or member of the governing body with a felony criminal record;
4. Name of the individual (director/administrator/etc.) who is responsible for the management of the home health agency;
5. Policy and procedure manuals;
6. A list of management personnel, including qualifications;
7. A plan for providing continuing education and training for agency personnel or independent contractors during the first year of operation; and,
8. Any other information required by the Department.

65.2.06 Issuance of Licenses

A. Probationary License:

1. A probationary license shall be granted for a period of ninety (90) days to all home health agencies:
 - a. Which have completed the application process and whose policies and procedures have demonstrated willingness to comply with the rules and regulations pertaining to home health licensure; or,
 - b. Which have experienced a change of ownership (CHOW) and have completed the application process demonstrating a willingness to continue to comply with the rules and regulations pertaining to home health licensure; and,
 - c. Pending an on-site survey during the first ninety (90) days of operation.
2. A probationary license will permit an agency to establish a patient caseload and hire caregivers.
3. A probationary license may not be renewed. A home health agency, at the time of an initial on-site survey, must meet the definition of a home health agency as contained within these regulations and must be in operation and caring for patients.
4. Home health agencies which, at the time

of an on-site survey, do not meet the definition of a home health agency or which are not in substantial compliance with these regulations will not be granted a license.

B. Provisional License:

1. A provisional license shall be granted, for a period of less than one year, to all home health agencies:
 - a. Which are not in substantial compliance with these rules and regulations; or,
 - b. Which fail to renew a license within the timeframe prescribed by these regulations; or,
2. The Department shall designate the conditions and the time period under which a provisional license is issued.
3. A provisional license may not be renewed unless a Plan of Correction has been approved by the Department and implemented by the home health agency.
4. A license will not be granted after the provisional licensure period to any agency that is not in substantial compliance with these rules and regulations.

C. License:

1. A license shall be granted, for a period of one year (12 months) to all home health agencies which are and remain in substantial compliance with these rules and regulations.
2. A license shall be effective for a twelve-month period following date of issue and shall expire one year following such date, unless it is: modified to a provisional, suspended or revoked, or surrendered prior to the expiration date.
3. Home health agencies must apply for licensure at least thirty (30) days prior to the expiration date of the license.
4. Home health agencies which have not been inspected/surveyed during a licensure year may apply for and be issued a new license until an inspection/survey is completed.
5. A license may not be issued to a home health agency which is not in substantial compliance with these regulations and/or whose deficient practices present an immediate threat to the health and safety of its patients.

65.2.07 Licensure Action

A. The Department may deny an application for, may issue an order to suspend, may suspend, or may revoke a license issued under this chapter or may suspend admissions for good cause, including but not limited to the following:

1. Violation of any of the provisions of these rules and regulations;
2. Failure to submit a reasonable timetable for correction of deficiencies;
3. Failure, by the holder of a provisional license, to correct deficiencies in accordance with a timetable submitted by the applicant and agreed upon by the

Department:

4. The existence of a pattern of serious cyclical deficiencies which extends over a period of two or more years;

5. Conduct or practices detrimental to the welfare of the patients;

6. Incompetence, negligence, or misconduct in operating the home health agency or in providing services to individuals;

7. Mistreating or abusing individuals cared for by the home health agency;

8. Serious violation of statutes relating to Medical Assistance or Medicare reimbursement for those agencies which participate in those programs; or,

9. Refusal to allow the Department access to the agency to conduct inspections/surveys/investigations as deemed necessary by the Department.

B. Order to Suspend a License

1. The Department may immediately suspend a license upon issuance of a written suspension order if the health, safety, or well being of the patients is in immediate jeopardy or imminent danger. The order shall state the reason(s) for the suspension. Reasons to immediately suspend a license shall include but are not limited to:

a. Deficient practices which present a threat to the health and safety of patients.

b. Fraud or deceit in obtaining a license.

c. Permitting, aiding, abetting or tolerating the commission of any illegal act by the agency or any of its representatives.

d. Failure to follow established policies and procedures resulting in abuse, neglect, mistreatment, financial exploitation, an unsafe environment or a violation of Delaware Code.

2. Within ten (10) working days of the issuance of the suspension order, the Department shall hold a hearing with the licensee, if requested by the licensee, unless, prior to such hearing, the conditions upon which the suspension were based have been corrected and a new license issued.

C. Before any license issued under this chapter is suspended (except as authorized by 65.2.07 B) or revoked or before admissions are suspended:

1. The Department shall give ten (10) calendar days written notice to the holder of the license, during which he/she may appeal for a hearing before the Secretary of the Department or her/his designee.

2. A licensee desiring a hearing before the Secretary of the Department or her/his designee must submit a written appeal to the Department. The written appeal must be received by the Department within ten (10) calendar days of the licensee's receipt of the notice of adverse action.

D. Renewal of License after Suspension

If and when the conditions upon which the suspension of a license are based have been corrected and after a proper inspection has been made, a new license may be granted.

E. Application for License After Termination of Rights to Provide Services as a Home Health Agency

1. Termination of rights to provide services as a home health agency occurs secondary to:

a. Revocation of a license or

b. Voluntary surrender of a license in avoidance of revocation action.

2. Termination of rights to provide services extends to:

a. Agency;

b. Owner(s);

c. Officers/Directors, _____ partners, managing members, or members of a governing body who have a financial interest of five percent (5%) or more in the home health agency; and/or

d. Corporation officers.

3. The application for license after termination of rights to provide services as a home health agency shall follow the procedure for initial licensure application.

4. In addition to the licensure application, the home health agency must also submit and obtain approval of a detailed plan regarding how the agency intends to correct the deficient practices that lead to the original termination action. Submission of evidence supporting compliance with the plan and cooperation with Department monitoring during probationary and provisional licensure status is required for reinstatement to full licensure status.

5. Upon successful completion of the probationary period, the home health agency will be granted a provisional license for a period no less than one (1) year but no greater than (2) years. The provisional period will be identified by the Department after having considered the circumstances that created the original action for license revocation.

6. A license will be granted to the home health agency after the provisional licensure period if:

a. the agency has remained in substantial compliance with these rules and regulations and

b. the agency fulfilled the expectations of the detailed plan of activities that was created to address the deficient practices that gave rise to the license termination action.

7. A license will not be granted after the probationary or provisional licensure period to any agency that is not in substantial compliance with these rules and regulations.

F. Disciplinary Action

1. The Department may request the Superior Court to impose a civil penalty of not more than \$10,000 for

a violation of these regulations. Each day a violation continues constitutes a separate violation.

2. In lieu of seeking a civil penalty, the Department, in its discretion, may impose an administrative penalty of not more than \$10,000 for a violation of these regulations. Each day a violation continues constitutes a separate violation.

3. In determining the amount of any civil or administrative penalty imposed, the Court or the Department shall consider the following factors:

a. The seriousness of the violation, including the nature, circumstances, extent and gravity of the violation and the threat or potential threat to the health or safety of a patient(s);

b. The history of violations committed by the person or the person's affiliate(s), employee(s), or controlling person(s);

c. The efforts made by the agency to correct the violation(s);

d. The culpability of the person or persons who commit the violation(s);

e. Any misrepresentation made to the Department; and,

f. Any other matter that affects the health, safety or welfare of a patient(s).

65.2.08 Change of Ownership

A. A proposed CHOW must be reported to the Department a minimum of thirty (30) days prior to the change. The new agency must complete the steps outlined within these regulations in order to be licensed.

B. A change of ownership occurs whenever the ultimate legal authority for the responsibility of the agency's operation is transferred.

C. Transactions constituting a change of ownership include but are not limited to:

1. Transfer of the agency's legal title;

2. Lease of the agency's operations;

3. Dissolution of any partnership that owns, or owns a controlling interest in, the agency;

4. One partnership is replaced by another through the removal, addition, or substitution of a partner;

5. Removal of the general partner, or general partners, if the agency is owned by a limited partnership;

6. Merger of an agency owner (a corporation) into another corporation where, after the merger, the owner's shares of capital stock are cancelled; or

7. The consolidation of a corporate agency owner with one or more corporations.

D. Transactions which do not constitute a change of ownership include, but are not limited to, the following:

1. Changes in the membership of a corporate board of directors or board of trustees;

2. Two or more corporations merge and the originally licensed corporation survives;

3. Changes in the membership of a non-profit corporation; or,

4. Corporate stock transfers or sales.

65.2.09 Fees

Fees shall be in accordance with DE Code, Title 16, Part I, Chapter 1, Subchapter II, Section 122 (3) o. (See Attachment A).

65.2.10 Inspection

A representative of the Department shall periodically inspect every home health agency for which a license has been issued under this chapter. Inspections by authorized representatives of the Department may occur at any time and may be scheduled or unannounced.

65.2.11 Notice to Patients

The home health agency shall notify each patient or the patient's authorized representative, the patient's attending physician, and any third-party payers at least thirty days before the voluntary surrender of its license, or as directed under an order of denial, revocation, or suspension of license issued by the Department.

65.2.12 Exclusions from Licensure

A. Those individuals who contract directly with a patient to provide services for that individual patient. The patient pays the individual contractor for services rendered and neither the patient nor the individual pays an agency on a periodic basis.

B. Those agencies that provide only durable medical equipment and supplies for in-home use.

C. Those agencies that provide staff to licensed home health agencies, such as temporary employment/staffing agencies.

1. Temporary employment/staffing agencies may not provide services under direct agreements with patients.

2. Temporary employment/staffing agencies must be contractually bound to perform services under the contracting providers' direction and supervision.

3. Temporary staff working for a licensed provider must meet the requirements of these regulations.

D. Any visiting nurse service or home health service conducted by and for those who rely upon spiritual means through prayer alone for healing in accordance with the tenets and practices of a registered church or religious denomination.

E. An agency which solely provides services as defined in DE Code, Title 16, Chapter 94.

F. An agency that provides companion (65.1.10) or homemaker (65.1.20) services exclusively and does not provide personal care services to patients.

PART II**General Requirements**

(All home health agencies must comply with Part II of these regulations)

SECTION 65.3 GENERAL REQUIREMENTS

65.3.01 The home health agency shall neither knowingly admit, nor continue to care for, patients whose needs cannot be met by the program.

65.3.02 All records maintained by the home health agency shall at all times be open to inspection by the authorized representatives of the Department.

65.3.03 No policies shall be adopted by the home health agency which are in conflict with these regulations.

65.3.04 The home health agency shall establish written policies regarding the rights and responsibilities of patients, and these policies and procedures shall be made available to authorized representatives of the Department.

65.3.05 The home health agency shall establish policies and procedures that address the handling and documentation of incidents, accidents, and medical emergencies. Reports of these events shall be kept on file at the agency.

65.3.06 The home health agency shall establish policies which control the exposure of patients and staff to persons with communicable diseases and which require reporting of all reportable communicable diseases to the Department.

65.3.07 A procedure, approved by the Department and including the patients and families right to report concerns/complaints to the Department at a telephone number established for that purpose, shall be established to enable patients and their families or representatives, if any, to have their concerns addressed without fear of reprisal.

65.3.08 The home health agency shall advise the Department in writing within fifteen (15) days following any change in the designation of the director/administrator or other administrative personnel within the agency.

65.3.09 The home health agency may not establish separate offices without first contacting and receiving approval from the Department.

65.3.10 The home health agency may contract for services to be provided to its patients. Individuals providing services under contract must meet the same requirements for referral as those persons employed directly by the agency.

65.3.11 The director or clinical director shall be available at all times during the operating hours of the home health agency.

65.3.12 There shall be a policy describing the procedure to be followed in the event that the home health agency is not able to provide services scheduled for any particular day or time. This policy shall include at a minimum:

A. The procedure for contacting the patient prior to the missed visit;

B. The procedure for attempts to find a substitute

caregiver; and,

C. Documentation of the missed visit, patient contact, and attempts to find a substitute caregiver.

65.3.13 The home health agency shall advise the Department in writing at least thirty (30) days prior to any change in office location.

65.3.14 The home health agency must permit photocopying of any records or other information by, or on behalf of authorized representatives of the Department, as necessary to determine or verify compliance with these regulations.

SECTION 65.4 ADMINISTRATION**65.4.01 Written Bylaws**

A. The governing body or other legal authority shall organize agency services to ensure quality patient care.

B. There shall be an organizational chart describing the organization authorities, responsibilities, accountabilities and relationships.

C. There shall be a description of each type of service offered.

D. There shall be written policies and procedures pertaining to each service offered.

E. There shall be a description of the system for maintenance of patient records.

F. Bylaws shall be reviewed annually by the governing body and so dated. Revisions shall be completed as necessary.

65.4.02 Director

A. There shall be a full-time agency director.

B. The director must have training and experience in health services administration and at least one (1) year of supervisory or administrative experience in related health programs.

C. The director shall have full authority and responsibility to plan, staff, direct, and implement the programs and manage the affairs of the agency.

D. The authority, duties, and responsibilities of the director shall be defined in writing and shall include but not be limited to:

1. Interpretation and execution of the policies of the home health agency;

2. Program planning, budgeting, management and evaluation;

3. Maintenance of the agency's compliance with licensure regulations and standards;

4. Preparation and submission of required reports; and,

5. Distribution of a written plan for the delegation of administrative responsibilities and functions in the absence of the director.

65.4.03 Home Health Aides

A. All home health aides must meet the minimum criteria established in 65.1.17.

B. All home health aides must complete an orientation/training program which meets the requirements contained within these regulations.

C. All home health aides must pass a competency evaluation test prior to providing care to patients.

D. It is the responsibility of the home health agency to ensure that home health aides are proficient to carry out the care assigned in a safe, effective, and efficient manner.

65.4.04 All home health agency services must be supervised by a registered nurse. Supervision of services must be accomplished and documented at least every ninety (90) days.

65.4.05 Purchase of Service

A. The home health agency shall establish a written contractual arrangement for the provision of all services which are not provided directly by the agency.

B. The home health agency maintains responsibility for all services provided to the patient.

C. Services provided by the home health agency through arrangements with a contractor agency or individuals shall be set forth in a written contract which clearly specifies:

1. That the patient's contract for care is with the home health agency;

2. The services to be provided by the contractor;

3. The necessity to conform to all home health agency policies;

4. The procedure for submitting clinical and progress notes, scheduling visits, periodic patient evaluation, and determining charges and reimbursement;

5. The procedure for annual assurance of clinical competence of all individuals utilized under contract;

6. The procedure for supervision of services of the contracted individuals;

7. That all payments by the patient for services rendered shall be made directly to the agency or its billing representative and no payments shall be made to or in the name of contractors/subcontractors of the agency;

8. That patients are accepted only by the home health agency. Patients may not be admitted for services by a contracted individual without prior review of the case and acceptance of the patient by the home health agency in accordance with agency policies; and,

9. That the written contractual arrangement must contain a renewal clause or be renewed annually.

65.4.06 Written Policies

A. The home health agency shall have written policies regarding qualifications, responsibilities, and requirements for employment/referral for each job classification.

B. The written policies shall include but not be

limited to:

1. Pre-employment/referral requirements;

2. Position descriptions;

3. Orientation policy and procedure for all employees and contractors which shall include but not be limited to review of the following:

a. Organizational structure of the agency;

b. Agency patient care policies and procedures;

c. Philosophy of patient care;

d. Description of patient population and geographic location served;

e. Patient rights;

f. Agency personnel and/or administrative policies;

g. Job description; and,

h. Applicable state regulations governing the delivery of home health care services.

Documentation of orientation must include the date(s), content, and name and title of the person providing the orientation;

4. Inservice education policy; and

5. Annual performance review and competency testing policy and procedure.

C. Policies shall be reviewed and dated annually and revised as necessary.

65.4.07 For all individuals employed directly, the agency shall maintain individual personnel records which shall contain at least:

A. Written verification of compliance with pre-employment requirements;

B. Documentation of clinical competence;

C. Evidence of current professional licensure, registration, or certification as appropriate;

D. Educational preparation and work history;

E. Written performance evaluations (annually);

and,

F. A letter of appointment specifying conditions of employment.

65.4.08 For all individual contractors, the agency shall maintain individual records which shall contain at least:

A. Written verification of compliance with referral requirements;

B. Documentation of clinical competence;

C. Evidence of current business license, AND current licensure, registration, or certification as appropriate;

D. Educational preparation and work history;

E. Written performance reviews (annually); and,

F. A signed contract specifying conditions of referral.

65.4.09 Records of each employee/contractor shall be kept current and available upon request by authorized representatives of the Department.

65.4.10 For individuals utilized via contract with another agency, the home health agency shall obtain, upon request, any such records as required by the Department.

65.4.11 Home health agencies must comply with the following employment practices:

A. Special employment practices relating to health care and child care facilities:

1. DE Code, Title 19, Part I, Chapter 7, §708.

2. DE Code, Title 11, Part V, Chapter 85, Subchapter V, §8563.

3. DE Code, Title 11, Part V, Chapter 85, Subchapter V, §8564.

4. Regulations regarding same as promulgated by the Department of Labor.

B. Special employment practices relating to home health agencies and private residences:

1. DE Code, Title 16, Part II, Chapter 11, Subchapter V, §1145.

2. DE Code, Title 16, Part II, Chapter 11, Subchapter V, §1146.

3. Regulations regarding same as promulgated by the Department.

65.4.12 Minimum requirements for tuberculosis (TB) testing are those currently recommended by the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services. Testing must be completed prior to an employee/contractor providing care and annually thereafter.

A. No person found to have active TB in an infectious stage shall be permitted to give care or service to patients.

B. Any person having a positive skin test but a negative X-ray must complete a statement annually attesting that they have experienced no symptoms which may indicate active TB infection.

C. A report of all TB test results and all attestation statements shall be on file at the home health agency.

65.4.13 All new employees/contractors shall be required to have a physical examination prior to providing care. A copy of the physical examination shall be maintained in individual files.

65.4.14 Home health aide orientation and training requirements:

A. Home health aides shall attend at least twelve (12) hours annually of staff development activities which shall consist of in-service training programs, workshops, or conferences related to home health care or specific needs of patients.

B. The time allotted for training shall be sufficient to foster safe and skillful services to the patient.

C. The home health agency orientation and training program must include at a minimum:

1. The role of the home health aide as a member of the professional health services team;

2. Instruction and supervised practice in home health aide services;

3. Instruction in how to assist patients to achieve maximum self-reliance through re-learning and modifying activities of daily living;

4. Principles of good nutrition;

5. Meal planning, food purchasing, and preparation of meals, including special diets;

6. General information on the processes of growth, development, and aging;

7. Information on the emotional and physical problems accompanying illness or aging;

8. Principles and practices in maintaining a clean, healthy, pleasant and safe environment that encourage morale building and self-help;

9. Items requiring referral to the nurse or supervisor in the home health agency, including changes in the patient's condition or family situation;

10. Observation, reporting, and documentation of patient status;

11. Policies and objectives of the agency;

12. Information concerning the duties and responsibilities of a home health aide;

13. Confidentiality of patient information;

14. Patient rights;

15. Principles of infection control;

16. Verbal/non-verbal communication skills;

and,

17. Principles of body mechanics.

SECTION 65.5 PATIENT CARE MANAGEMENT

65.5.01 Admission

A. The home health agency shall have written policies governing referrals received, admission of patients to agency services, delivery of such services and discharge of patients.

B. The admission policies shall be discussed with each patient entering the program, and their representative, if any.

C. The home health agency shall only admit those individuals whose needs can be met by the agency.

D. There shall be a written agreement between the patient and the home health agency. The agreement shall:

1. Specify the services to be provided by the agency, including but not limited to: scheduled days, transportation agreements as appropriate, emergency procedures and conditions for discharge and appeal;

2. Specify the procedure to be followed when the agency is not able to keep a scheduled patient visit;

3. Specify financial arrangements;

a. Home health agencies shall utilize written financial agreements between the agency and the patient. These agreements shall minimally include:

i. Description of services purchased

and the associated cost;

ii. Acceptable method of payment(s) for these services; and

iii. Outline of the billing procedures.

b. All payments by the patient for services rendered shall be made directly to the agency or its billing representative and no payments shall be made to or in the name of individual employees/contractors/subcontractors of the agency.

4. Be signed by the patient, if (s)he is able, and representative, if any, and the representative of the home health agency;

5. Be given to the patient and representative, if any, and a copy shall be kept at the agency in the patient record; and,

6. Be reviewed and updated as necessary to reflect any change in the services or the financial arrangements.

65.5.02 Assessment

A. An initial assessment of the patient must be performed by a registered nurse (or other appropriate licensed health care professional for therapy services).

B. The initial assessment must be performed in the patient's residence prior to or at the time that home health services are initially provided to the patient. The assessment must determine whether the agency has the ability to provide the necessary services in a safe manner.

C. The assessment shall include at a minimum a description of the patient's:

1. Physical condition, including ability to perform activities of daily living, such as ambulating, eating, toileting, and sensory limitations such as sight, hearing, and speech;

2. Social situation, including living arrangements and the availability of family and community support; and,

3. Mental status, including any cognitive impairment and known psychiatric, emotional, and behavioral problems.

D. Patient reassessments and monitoring occur at regular intervals based upon the patient's condition and needs, but no less often than every ninety (90) days. A registered nurse must participate in the reassessment and monitoring of the patient.

E. A reassessment shall be conducted when the needs of the patient change which indicate a revision to the plan of care is needed.

F. The initial assessment and reassessments shall become a permanent part of the patient's record.

65.5.03 Plan of Care

A. The home health agency must provide services in accordance with a written plan of care developed under the supervision of a registered nurse (See 65.11.01 for plan of care requirements for agencies providing skilled services).

B. A plan of care is developed on admission based upon the initial assessment of the patient.

C. The plan of care is reviewed no less often than every ninety (90) days and revised as necessary based on the reassessment performed by the registered nurse (or qualified professional of the appropriate discipline).

D. All personnel and/or independent contractors providing services as documented in the plan of care maintain liaison to assure that their efforts effectively complement one another and support the objective(s) outlined in the plan of care.

65.5.04 Records and Reports

A. There shall be a separate record maintained at the home health agency for each patient which shall contain:

1. Admission record: Including patient's name, birth date, home address, identification numbers, such as social security, Medicaid, Medicare, date of admission; physician's name, address and telephone number; names, addresses and telephone numbers of family members, friends, or other designated people to be contacted in the event of illness or an emergency;

2. Referral Form (application and enrollment forms);

3. Assessment (initial and reassessments);

4. Individual plan of care (initial and reviews) and revisions;

5. Progress notes, chronological and timely;

6. Advance health-care directive form that complies with DE Code, Title 16, Part II, Chapter 25, a statement that a copy of the advance health-care directive form has been requested, or a statement that none has been signed;

7. A copy of the written agreement between the patient and the home health agency including any updates made to the original reflecting changes in services or arrangements;

8. Written acknowledgment that the patient or the patient's representative has been fully informed of the patient's rights; and,

9. A discharge summary.

B. Home health aide notes must contain the following information:

1. Date(s) on which service(s) are provided;

2. Hour(s) of service(s) provided;

3. Type(s) of activity provided; and,

4. Observations/problems/comments.

C. All notes written in the patient's record must be signed and dated on the day that the service is rendered.

D. All notes must be incorporated into the patient's record no less often than weekly.

E. All patients' records shall be maintained in accordance with professional standards.

F. All patient records shall be available for review by authorized representatives of the Department and to

legally authorized persons; otherwise such records shall be held confidential. The consent of the patient or her/his representative if the patient is incapable of making decisions shall be obtained before any personal information is released from her/his records as authorized by these regulations or Delaware law.

G. Computerized patient records must be printed by the agency as requested by authorized representatives of the Department.

H. The home health agency records shall be retained in a retrievable form until destroyed.

1. Records of adults (18 years of age and older) shall be retained for a minimum of six (6) years after the last date of service before being destroyed.

2. Records of minors (less than 18 years of age) shall be retained for a minimum of six (6) years after the patient reaches eighteen (18) years of age.

3. All records must be disposed of by shredding, burning, or other similar protective measure in order to preserve the patients' rights of confidentiality.

4. Documentation of record destruction must be maintained by the home health agency.

I. Records shall be protected from loss, damage, and unauthorized use.

J. All notes and reports in the patient's record shall be legibly written in ink (or typewritten), dated and signed by the recording person with her/his full name and title.

K. The home health agency must develop acceptable policies for authentication of any computerized records.

L. The agency must have written policies regarding the use and removal of records and the conditions for release of information. The patient's written consent must be required for release of information not authorized by law.

M. Report of Major Adverse Incidents

1. The home health agency must report all major adverse incidents involving a patient to the Department (Office of Health Facilities Licensing and Certification) in addition to other reporting requirements required by law.

2. A major adverse incident includes but is not limited to:

a. Suspected abuse, neglect, mistreatment, financial exploitation, solicitation or harassment;

b. An accident that causes injury to a patient;

c. A medication error with the potential to result in adverse health outcomes for the patient; or

d. The death of a patient.

3. Major adverse incidents must be reported within five (5) calendar days of occurrence or within five (5)

calendar days of the date that the agency first became aware of the incident.

65.5.05 Discharge

A. The patient and her/his representative, if any, shall be informed of and participate in discharge planning.

B. The home health agency shall develop a written plan of discharge which includes a summary of services provided and outlines the services needed by the patient upon discharge.

C. When discharging a patient who does not wish to be discharged, a minimum of two (2) weeks notice will be provided to permit the patient to obtain an alternate service provider. Exceptions to the two (2) week notice provision would include:

1. The discharge of patients when care goals have been met.

2. The discharge of patients when care needs undergo a change which necessitates transfer to a higher level of care and for whom a new discharge plan needs to be developed.

3. The discharge of patients when there is documented non-compliance with the plan of care or the admission agreement (including, but not limited to, non-payment of justified charges).

4. The discharge of patients when activities or circumstances in the home jeopardize the welfare and safety of the home health agency staff.

SECTION 65.6 PATIENT RIGHTS

65.6.01 The home health agency shall establish and implement policies and procedures regarding the rights of patients.

65.6.02 The home health agency must provide the patient with a written notice of the patient's rights during the initial assessment visit or before initiation of care.

65.6.03 Each patient shall have the right to be treated with courtesy, consideration, respect, and dignity.

65.6.04 Each patient shall have the right to be encouraged and supported in maintaining one's independence to the extent that conditions and circumstances permit, and to be involved in a program of services designed to promote personal independence.

65.6.05 Each patient shall have the right to self-determination and choice, including the opportunity to participate in developing one's plan of care.

65.6.06 Each patient shall have the right to privacy and confidentiality.

65.6.07 Each patient shall have the right to be protected from abuse, neglect, mistreatment, financial exploitation, solicitation and harassment.

65.6.08 Each patient shall have the right to voice grievances without discrimination or reprisal.

65.6.09 Each patient shall have the right to be fully informed, as evidenced by the patient's written

acknowledgment of these rights, and of all rules and regulations regarding patient conduct and responsibilities.

65.6.10 Each patient shall have the right to be fully informed, at the time of admission into the program, of services and activities available and related charges.

65.6.11 Each patient shall have the right to be served by individuals who are properly trained and competent to perform their duties.

65.6.12 Each patient shall have the right to refuse care and to be informed of possible health consequences of such refusal.

SECTION 65.7 QUALITY IMPROVEMENT

65.7.01 Each home health agency shall develop and implement a documented ongoing quality improvement program. The program shall include at a minimum:

A. An internal monitoring process that tracks performance measures;

B. A review of the program's goals and objectives at least annually;

C. A review of the grievance/complaint process;

D. A review of all patient deaths;

E. A review of all medication errors;

F. A review of actions taken to address identified issues; and

G. A process to monitor the satisfaction of the patients and/or their representatives with the program.

SECTION 65.8 INSURANCE AND BONDING

65.8.01 A. The home health agency shall have appropriate insurance coverage in force to compensate patients for injuries and losses resulting from services provided by the agency.

65.8.02 B. The following types and minimum amounts of coverage shall be in force at all times:

1. Blanket malpractice insurance for all professional employees/contractors:

a. \$1 million per incident; and,

b. \$3 million aggregate.

2. General liability insurance covering personal property damages, bodily injury, liable, and slander:

a. \$1 million comprehensive general liability per occurrence; and,

b. \$500,000 single limit coverage.

3. Performance bond of \$50,000 for those agencies utilizing only independent contractors as caregivers.

SECTION 65.9 SEVERABILITY

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

PART III

Agencies Providing Two or More Home Health Care Services, One of Which Must be Either Licensed Nursing Services or Home Health Aide Services
(Such home health agencies must comply with Parts I, II, & III of these regulations)

SECTION 65.10 ADMINISTRATION

65.10.01 Professional Advisory Group

A. The home health agency must have an advisory group of professionals to include:

1. At least one physician;

2. One registered nurse (preferably with home health and/or public health experience); and,

3. Representatives from other professional disciplines.

B. One member of the advisory group must be neither an owner nor an employee of the home health agency.

C. The advisory group is responsible for the annual review of the home health agency policies governing scope of services offered, admission and discharge policies, medical supervision and plans of treatment, emergency care, patient records, and program evaluations. Based upon this review, the advisory group will make recommendations for additions, revisions, or deletions to policies and programs to the governing body.

65.10.02 Supervision of Clinical Services

A. The director shall appoint a full-time employee as the clinical director.

B. The clinical director shall:

1. Be a physician or a registered nurse with at least one year of home health and administrative/supervisory experience;

2. Be available at all times during operating hours of the home health agency; and,

3. Participate in all activities related to the professional services provided, including the qualifications of personnel and/or independent contractors as related to their assigned duties.

C. In the absence of the clinical director, an equally qualified designee must be appointed.

65.10.03 Program Review and Evaluation

A. The home health agency shall review its written policies at least annually, and revise them as necessary. The results of this review shall be presented, in writing, to the professional advisory group and to the governing body.

SECTION 65.11 PATIENT CARE MANAGEMENT

65.11.01 Plan of Care

A. A written patient plan of care shall be established by the physician and developed in consultation

with a registered nurse or qualified professional of the appropriate discipline.

B. The patient plan of care shall include reference to at least the following:

1. All pertinent diagnoses;
2. Prognosis, including short-term and long-term objectives of treatment;
3. Types of services (such as nursing, other therapeutic, and/or support services), frequency of services to be provided, medications, diet, treatments, procedures, equipment, and transportation required;
4. Functional limitations of the patient;
5. Activities permitted;
6. Safety measures required to protect the patient from injury; and,
7. Sociopsychological needs of the patient.

C. The plan of care must be reviewed by the attending physician and a registered nurse or other qualified professional of the appropriate discipline as often as the severity of the patient's condition requires, but at least every sixty (60) days.

D. The home health agency must have policies and procedures describing the method to obtain and incorporate the licensed independent practitioner's orders into the plan of care.

E. The home health agency shall promptly alert the attending physician to any changes in the patient's condition that suggest a need to alter the plan of care.

F. The home health agency shall consider benefits versus risks of treatment as well as patient choice and independence in the development and subsequent revisions of the plan of care.

65.11.02 Medication and Treatment Management

A. Medication shall not be administered to a patient unless prescribed by a licensed practitioner with independent prescriptive authority as provided by Delaware Code.

B. All home health agencies shall have an up-to-date drug reference manual/compendium which lists drug actions, interactions, and side effects.

C. All medication administered to patients by the home health agency shall be ordered in writing, dated and signed by the prescribing licensed practitioner. All prescription medications shall be properly labeled in accordance with DE Code, Title 24, Chapter 25, Subchapter III, §2536. The label shall contain the following information:

1. The prescription number;
2. The date such drugs were originally dispensed to the patient;
3. The patient's full name;
4. The brand or established name and strength of the drug to the extent that it can be measured;

5. The physician's directions as found on the prescription;

6. The physician's name; and,

7. The name and address of the dispensing pharmacy or physician.

D. Appropriately licensed individuals must immediately record, sign, and date verbal orders for medications and treatments. The signature of the licensed practitioner ordering the medications or treatments must be obtained as soon as possible.

E. Medications and treatments may be self-administered or, when administered by the home health agency, shall be administered in accordance with all State and Federal laws, including the State of Delaware Board of Professional Regulation's requirements. Those patients who, upon admission, are incapable of self-administration or who become incapable of self-administration shall have their medications/treatments administered according to the requirements of the Board of Professional Regulation, when such medications/treatments are administered by the home health agency.

F. The home health agency shall maintain a record of all medication and treatments administered to a patient indicating time of day, type of medication/treatment, dose, route of self-administration/administration, by whom given and any reactions noted.

65.11.03 Patient Services

A. Nursing

1. Services are provided by registered and licensed practical nurses.

2. The home health agency must maintain verification of current licensure as required by the Delaware Board of Nursing.

3. Services must be provided in accordance with the written plan of care and acceptable standards of practice.

4. Services are provided under the supervision and direction of the clinical director.

B. Professional Therapy

1. Services are provided by, or under the supervision of, the appropriate professional therapist (physical therapy, occupational therapy, speech therapy, audiology, nutrition).

2. The home health agency must maintain verification of current licensure/registration as required by the Delaware Board of Professional Regulation.

3. Services must be provided in accordance with the written plan of care and acceptable standards of practice.

4. Services are provided under the supervision and direction of the clinical director.

C. Social Services

1. Social services, when provided, are given by a qualified social worker and in accordance with the plan

of care.

D. Home Health Aide Services

1. Services are provided under the supervision and direction of the clinical director or the appropriate qualified professional.

2. On-site professional supervisory visits are required for all patients receiving home health aide services.

a. When patients are receiving home health aide services as well as another skilled service, a registered nurse (or another professional therapist) must make an on-site supervisory visit to the patient's home no less frequently than every two (2) weeks.

b. When home health aide services are being provided in the absence of a skilled service, a registered nurse must make an on-site supervisory visit to the patient's home (while the home health aide is providing care) no less frequently than every sixty (60) days.

E. A home health agency providing more than one service to a single patient is responsible for coordination of those services to assure that the services effectively compliment one another and support the objectives in the plan of care.

65.11.04 Patient Record

A. In addition to those requirements outlined in 65.5.04, the separate record maintained at the home health agency for each patient shall contain:

1. Medication orders;

2. Nutrition orders;

3. Treatment orders;

4. Activity orders;

5. Clinical notes, signed and dated on the day services are rendered and incorporated into the record no less often than weekly; and,

6. Copies of any summary reports requested by the physician.

65.11.05 A written summary report for each patient must be sent to the attending physician no less frequently than every sixty (60) days.

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

**Independent Therapist Provider for Physical Therapy
and Related Services**

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 and the Delaware Medicaid/Medical Assistance Program (DMAP) Provider Manual to establish methods and procedures relating to the utilization of, and payment for physical therapy, occupation therapy, and speech/language pathology services by independent therapist providers. Specific details of provider participation, criteria and methodology for provider reimbursement, recipient eligibility, and amount, duration and scope of services covered are included in the provider manual.

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 19720-0906 by December 31, 2003.

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 Regulation

This notice is being given to provide information of public interest with respect to the intent of DSS to submit to the Centers for Medicare and Medicaid Services (CMS) an amendment to the Title XIX Medicaid State Plan and to amend the DMAP Provider Manual. This regulation will allow independent therapists (physical therapists, occupational therapists, and speech/language pathologists) to bill DMAP directly for their services.

DSS PROPOSED REGULATION #03-37a

NEW:

Independent Therapist Provider Specific Policy Manual

DISCLAIMER: Health care services are provided to the majority of Medicaid clients through a Managed Care Organization (MCO). Services provided by therapists are included in the MCO benefits package. All Medicaid clients who are enrolled with an MCO must receive therapy services through the MCO. The MCO may require prior authorization for services. Providers must follow the guidelines for prior authorization as determined by the

client's MCO.

This manual reflects the policies as they relate to Medicaid clients who are exempt from managed care coverage. A list of clients exempt from managed care coverage is found in the Managed Care Section of the General Policy Manual.

1.0 General Information

1.1 Applicability

1.1.1 This manual contains policies and procedures to be utilized by therapists who shall include the following provider types:

- Physical Therapist
- Occupational Therapist
- Speech/language Pathologist

1.1.2 All rules and regulations in the General Policy and referenced in the provider contract are applicable to these providers.

1.1.3 All therapy services must be medically necessary and ordered by a physician or other licensed practitioner of the healing arts within the scope of his or her practice under State law.

1.1.4 Group practices may enroll in the Delaware Medical Assistance Program (DMAP) and use their provider identification number to bill. However, individual therapists who are members of the group must also have individual contracts and individual DMAP provider numbers. The therapist's number must be used to identify the provider performing the service on the claim form submitted by the enrolled group.

1.1.5 Therapists who bill the DMAP for services provided to eligible Medicaid clients are required to verify that they actually rendered the service which is being billed. The following are the documentation requirements to verify the identity of the performing provider:

1.1.5.1 A therapist in a solo practice is not required to sign or initial medical records. However, a therapist who is a substitute or who is covering for a therapist in a solo practice is required to initial the medical record of the Medicaid client for whom services have been provided.

1.1.5.2 A performing therapist in a group practice is required to initial the entry in the client's medical record at the time of service. Any system that a particular office may have in place that identifies the performing provider for each service will be acceptable.

1.1.5.3 Therapists enrolled with the DMAP must countersign the services performed by the associate/assistant they oversee or supervise.

2.0 Physical Therapy Services

2.1 Definition of Physical Therapy

2.1.1 Physical therapy (PT) restores functions, improves mobility, relieves pain, and prevents or limits

permanent physical disabilities of patient suffering from injuries or disease.

2.1.2 PT often includes exercise for patients who have been immobilized and lack flexibility, strength, or endurance. Patients are encouraged to use their own muscles to further increase flexibility and range of motion before finally advancing to other exercises improving strength, balance, coordination, and endurance.

2.1.3 PT may include the use of electrical stimulation, hot packs or cold compresses, and ultrasounds to relieve pain and reduce swelling. Traction or deep-tissue massage may be used to relieve pain.

2.1.4 Physical therapists teach patients to use assistive and adaptive devices such as crutches, prostheses, and wheelchairs. They may also show patients exercises to do at home to expedite their recovery.

2.2 Coverage Requirements

2.2.1 The patient must be under the care of a physician. There must be evidence in the clinical record maintained by the therapist that the patient has been seen by the physician at least every 30 days.

2.2.2 The therapy must be furnished under a written plan of treatment established by the physician or therapist caring for the patient (i.e., written either by the physician who makes the plan available to the therapist or by the therapist). The plan must be established before treatment is started. The plan must be signed by the physician or therapist and incorporated into the therapist's permanent record for the patient.

2.2.2.1 The plan must include:

- Diagnosis
- Specific statements of long and short-term goals
- A reasonable estimate of when the goals will be reached
- The specific modalities/procedures to be used in treatment
- The frequency of treatment

2.2.2.2 All changes made to the plan of treatment must be made in writing and signed by the physician or therapist. Oral changes given by the attending physician must be recorded in the patient's record and signed by the therapist receiving the orders. The physician may change the plan of treatment established by the therapist, but the therapist may not alter a plan of treatment established by a physician.

2.2.2.3 The plan must be reviewed by the physician, in consultation with the therapist at such intervals as the severity of the patient's condition requires, but at least every 30 days. Each review of the plan should contain the initials of the physician and the date of review.

2.2.3 The physical therapy must be reasonable and necessary to the treatment of the individual's illness or injury. To be considered reasonable and necessary the

following conditions must be met:

2.2.3.1 The services must be considered under accepted standards of medical practice to be specific and effective treatment for the individual's condition.

2.2.3.2 The physical therapy is performed to restore the individual's level of function that has been lost or reduced by illness or injury.

2.2.3.3 The physical therapy services must be a level of complexity and sophistication or the condition of the patient must be such that services required can be safely and effectively performed only by a qualified physical therapist or under his or her supervision. Services which do not require the performance or supervision of a physical therapist are not considered reasonable or necessary.

2.2.4 The following are the most common physical therapy modalities and procedures used in the treatment of patients and are covered services if certain conditions are met:

2.2.4.1 Hot packs, Hydrocollator, Infra-Red Treatments, Paraffin Baths and Whirlpool Baths - These types of therapy will be covered in cases when the skills, knowledge and judgement of a physical therapist is required or where the patient's condition is complicated by circulatory deficiency, areas of desensitization, open wounds, or other complications.

2.2.4.2 Gait Training - Gait evaluation and training requires the skills of a qualified physical therapist. The service is furnished to patients whose ability to walk has been impaired by neurological, muscular, or a skeletal abnormality. Gait training is provided with the expectation that it will significantly improve the patient's ability to walk.

2.2.4.3 Ultrasound, Shortwave, and Microwave Diathermy Treatments - Modalities must be performed by or under the supervision of a qualified physical therapist.

2.2.4.4 Range of Motion Tests - Range of motion tests must be performed by a qualified physical therapist.

2.2.4.5 Therapeutic Exercises - Therapeutic exercises must be performed by or under the supervision of a qualified physical therapist. The exercises must be part of the active treatment of a specific disease or injury which has resulted in a loss or restriction of mobility.

2.3 Services Not Covered

2.3.1 Physical therapy services that are not covered include, but are not limited, to:

2.3.1.1 Services related to the general good and welfare of the individual, e.g., general exercises to promote overall fitness and flexibility and activities to provide diversion or general motivation, do not constitute physical therapy

2.3.1.2 Physical therapy services that do not require the skills or supervision of a qualified physical therapist are not considered reasonable and necessary and

therefore, will not be covered.

2.4 Limitations

2.4.1 The amount, frequency, and duration of the PT services must be reasonable and necessary. Refer to Coverage Requirements section for reasonable and necessary conditions that must be met.

2.4.2 DMAP does not reimburse individual therapists directly for PT services provided to nursing home residents. The nursing facility is responsible for providing PT service to residents either directly or through contractual arrangement.

2.4.3 Independent physical therapy services are limited to services provided in the therapist's office or client's home. The patients treated are the therapist's own patients and the therapist collects a fee for the services rendered.

3.0 Occupational Therapy Services

3.1 Definition of Occupational Therapy

3.1.1 Occupational therapy (OT) involves treatment of the physically disabled by means of constructive activities designed to promote the restoration of an individual's ability to perform required daily living tasks and those required by the person's particular occupational role.

3.1.2 OT helps individuals develop, recover, or maintain daily living and work skills as well as improve basic motor functions and reasoning abilities and helps to compensate for permanent loss of function.

3.1.3 Occupational therapists work with individuals who have conditions that are mentally, physically, developmentally, or emotionally disabling to improve their ability to perform tasks in their daily living and working environments.

3.1.3.1 Occupational therapists assist individuals in performing activities of all types, ranging from using a computer, to caring for daily needs such as dressing, cooking, and eating. Physical exercises may be used to increase strength and dexterity, while paper and pencil exercises may be chosen to improve visual acuity and the ability to recognize or comprehend pattern. An individual with short-term memory loss, for instance, might be encouraged to make lists to aid recall. A person with coordination problems might be assigned exercises to improve hand-eye coordination.

3.1.3.2 Occupational therapists instruct individuals with permanent functional disabilities, such as spinal cord injuries, cerebral palsy, or muscular dystrophy, in the use of adaptive equipment such as wheelchairs, splints, and aids for eating and dressing. An occupational therapist may make special equipment needed at home or at work. They also develop computer-aided adaptive equipment and teach individuals with severe limitation how to use it. This equipment enables the individual to communicate better and

to control other aspects of their environment.

3.1.3.3 Occupational therapists in mental health settings treat individuals who are mentally ill, mentally retarded, or emotionally disturbed. To treat these problems, therapists choose activities that help people learn to cope with daily life. Activities include time management skills, budgeting, shopping, homemaking, and use of public transportation. They may also work with individuals who are dealing with alcoholism, drug abuse, depression, eating disorders, or stress related disorders.

3.2 Coverage Requirements

3.2.1 The patient must be under the care of a physician. There must be evidence in the clinical record maintained by the therapist that the patient has seen the physician at least every 30 days.

3.2.2 The service must be appropriate for the treatment of the individual's illness or injury.

3.2.3 The services provided must be restorative or for the purpose of designing and teaching a program for the individual to conduct at home.

3.2.4 The therapy must be furnished under a written plan of treatment established by the physician caring for the patient. The plan must be established (written either by the physician who makes the plan available to the therapist or by the therapist) before treatment begins. The plan must be signed by the physician or therapist and incorporated into the therapist's permanent record for the patient.

3.2.4.1 The plan must include:

- Diagnosis
- Specific statements of long and short-term goals
- A reasonable estimate of when the goals will be reached
- The specific modalities/procedures to be used in treatment
- The frequency of treatment

3.2.4.2 All changes to the plan must be made in writing and signed by the physician. Oral changes given by the attending physician must be recorded in the patient's record and signed by the therapist receiving the orders. The physician may change the plan of treatment established by the therapist, but the therapist may not alter a plan of treatment established by a physician.

3.2.4.3 The plan must be reviewed by the physician, in consultation with the therapist as such intervals as the severity of the patient's condition's requires, but at least every 30 days. Each review of the plan should contain the initials of the physician and the date of review.

3.2.5 The occupational therapy must be reasonable and necessary to the treatment of the individual's illness or injury. To be considered reasonable and necessary the following conditions must be met:

3.2.5.1 The services must be considered

under accepted standards of medical practice to be specific and effective treatment for the individual's condition.

3.2.5.2 The occupational therapy is performed to restore the individual's level of function that has been lost or reduced by illness or injury.

3.2.5.3 The occupational therapy services must be a level of complexity and sophistication or the condition of the patient must be such that services required can be safely and effectively performed only by a qualified physical therapist or under his or her supervision. Services which do not require the performance or supervision of a physical therapist are not considered reasonable or necessary.

3.3 Services Not Covered

3.3.1 Occupational therapy services include but are not limited to OT services which are not intended to improve functions are not covered by the DMAP.

3.4 Limitations

3.4.1 The amount, frequency, and duration of the OT services must be reasonable and necessary. Refer to Coverage Requirements section for reasonable and necessary conditions that must be met.

3.4.2 Independent occupational therapy services are limited to services provided in the therapist's office or client's home. The patients treated are the therapist's own patients and the therapist collects a fee for the services rendered.

3.4.3 The services rendered under occupational therapy shall not be duplicated by physical therapy.

3.4.4 DMAP does not reimburse individual therapists directly for OT services provided to nursing home residents. The nursing facility is responsible for providing OT services to residents either directly or through contractual arrangement.

4.0 Speech/Language Pathology Services

4.1 Definition of Speech/Language Therapy

4.1.1 Speech/language pathology services include assessing, diagnosing, treating, and helping to prevent speech, language, cognitive, communication, voice, swallowing, fluency, and other related disorders.

4.1.2 Speech/language pathologists work with people who:

4.1.2.1 have cognitive communication impairments, such as attention, memory, and problem solving disorders;

4.1.2.2 have speech rhythm and fluency problems, such as stuttering;

4.1.2.3 cannot make speech sounds or cannot make them clearly;

4.1.2.4 have oral motor problems causing eating and swallowing difficulties.

4.1.3 Speech and language problems can result from a variety of conditions including hearing loss, brain

injury or deterioration, cerebral palsy, stroke, cleft palate, voice pathology, mental retardation, or emotional disorders. Problems can be congenital, developmental, or acquired. Speech/language pathologists use written and oral tests, as well as special instruments, to diagnose the nature and extent of impairment and to record and analyze speech, language, and swallowing irregularities. For individuals with little or no speech capability, speech/language pathologists may select augmentative or alternative communication methods, including automated devices and sign language, and teach their use. Speech/language pathologists teach individuals how to make sounds, improve their voices, or increase their language skills to communicate more effectively. They help patients develop, or recover, reliable communication skills so patients can fulfill their educational, vocational, and social roles.

4.2 Coverage Requirements

4.2.1 The therapy must be furnished under a written plan of treatment established by the physician or therapist caring for the patient (i.e., written either by the physician who makes the plan available to the therapist or by the therapist). The plan must be established before treatment is started. The plan must be signed by the physician or therapist and incorporated into the therapist's permanent record for the patient.

4.2.1.1 The plan must include:

- Diagnosis
- Specific statements of long and short-term goals
- A reasonable estimate of when the goals will be reached
- The specific modalities/procedures to be used in treatment
- The frequency of treatment

4.2.2 The pathologist shall complete an in-depth assessment of particular areas that may to problematic. The assessment may include clinical observations and standardized tests. The areas assessed in-depth depend upon what the screening procedures suggest that the "presenting problem" is. If language development appears to be delayed, then the assessment will focus on language areas. If fluency is an issue, then the therapist will evaluate fluency. Some individuals may require detailed speech/language pathology assessments across several areas (i.e., speech AND language AND fluency). The speech/language pathologist views the assessment information in conjunction with the results of testing conducted by other professionals (psychologist, medical practitioners, audiologists, etc.).

4.2.3 Speech/language pathology services must be reasonable and necessary to the treatment of the individual's illness or injury. To be considered reasonable and necessary, the following conditions must be met:

4.2.3.1 The services must be considered under accepted standards of practice to be a specific and

effective treatment for the patient's condition:

4.2.3.2 The services must be of such a level of complexity and sophistication, or the patient's condition must be such that the services required can be safely and effectively performed only by or under the supervision of a qualified speech pathologist.

4.2.3.3 The amount, frequency, and duration of the services must be reasonable under accepted standards of practice guidelines as developed by the State chapter of the American Speech/Language/Hearing Association.

4.3 Services Not Covered

4.3.1 Speech/language therapy services not covered include but are not limited to services provided to:

4.3.1.1 individuals with voice quality problems, such as inappropriate pitch or harsh voice and/or;

4.3.1.2 individuals who wish to improve their communication skills by modifying an accent.

4.4 Limitations

4.4.1 DMAP does not reimburse individual therapists directly for speech/language therapy services provided to nursing home residents. The nursing facility is responsible for providing speech/language therapy services to residents either directly or through contractual arrangement.

4.4.2 The amount, frequency, and duration of the speech/language therapy services must be reasonable and necessary. Refer to Coverage Requirements section for reasonable and necessary conditions that must be met.

4.4.3 Independent speech/language pathology services are limited to services provided in the therapist's office or client's home. The patients treated are the therapist's own patients and the therapist collects a fee for the services rendered.

5.0 Reimbursement for Therapy Services

5.1 Methodology

5.1.1 Physical and occupational therapists and speech/language pathologists who are individually enrolled with the DMAP are reimbursed at a set rate using HCPCS procedure codes. Reimbursement rates shall be based on the Medicare Relative Value (RVU).

5.1.2 All necessary supplies and equipment used by the therapist in the course of treatment are included in the reimbursement visit and cannot be billed separately.

5.1.3 Services provided by an occupational therapy assistant, physical therapy assistant, and a speech/language pathology assistant are included in the reimbursement to the qualified therapist/pathologist.

6.0 Billing Information

6.1 Codes

6.1.1 When billing for PT, OT and Speech/

language pathology services providers shall use the appropriate Physical Medicine and Rehabilitation CPT procedure codes and specify the diagnosis with accurate ICD-9-CM codes..

6.1.2 When billing for services provided by a physical therapist, it will be necessary to specify the diagnosis that is being treated. For billing purposes, it is necessary to include the medical diagnosis that may differ from the impairment-based diagnosis described in *The Guide to Physical Therapist Practice Patient/Client Management Model*.

**DSS PROPOSED REGULATION #03-37b
REVISION:**

ATTACHMENT 3.1-A
Page 4

State DELAWARE

**AMOUNT, DURATION AND SCOPE OF MEDICAL
AND REMEDIAL CARE AND SERVICES PROVIDED
TO THE CATEGORICALLY NEEDY**

11. Physical therapy and related services.

a. Physical therapy.

Provided: No limitations With limitations*
 Not provided.

b. Occupational therapy.

Provided: No limitations With limitations*
 Not provided.

c. Services for individuals with speech, hearing, and language disorders (provided by or under the supervision of a speech pathologist or audiologist).

Provided: No limitations With limitations*
 Not provided.

*Limitations indicated on Attachment 3.1-A, Page 4 Addendum

**DSS PROPOSED REGULATION #03-37c
REVISION:**

ATTACHMENT 3.1-A
Page 4 Addendum

State DELAWARE

**AMOUNT, DURATION AND SCOPE OF MEDICAL
AND REMEDIAL CARE AND SERVICES PROVIDED
TO THE CATEGORICALLY NEEDY**

9. Clinic Services

Clinic services are limited to the following:

- medical or rehabilitation clinics (including Mental Health clinics which require certification by the ~~Division of Alcohol, Drug Abuse and Mental Health (DADAMH)~~ Division of Substance Abuse and Mental Health (DSAMH) as part of the Single State Agency for Medicaid) and
- State Licensed Free Standing Surgical Centers (FSSCs) which equate to Federally defined Ambulatory surgical Centers (ACs) using related policies for ACSs described in Sections 2265 and 2266 of the Medicare Carriers Manual.

10. Dental clinic services are available only to EPSDT eligibles.

11. Physical therapy and related services are limited to the following:

a. Physical therapy (PT) services are limited to the amount, frequency, and duration of the PT services and must be reasonable and necessary. DMAP does not reimburse individual therapists directly for PT services provided to nursing home residents. The nursing facility is responsible for providing PT service to residents either directly or through contractual arrangement. Independent physical therapy services are limited to services provided in the therapist's office or client's home. The patients treated are the therapist's own patients and the therapist collects a fee for the services rendered.

b. Occupational therapy (OT) services are limited to the amount, frequency, and duration of the OT services and must be reasonable and necessary. Independent occupational therapy services are limited to services provided in the therapist's office or client's home. The patients treated are the therapist's own patients and the therapist collects a fee for the services rendered. The services rendered under occupational therapy shall not be duplicated by physical therapy. DMAP does not reimburse individual therapists directly for OT services provided to nursing home residents. The nursing facility is responsible for providing OT services to residents either directly or through contractual arrangement.

c. Speech/Language Pathology Services are limited to the amount, frequency, and duration of the speech/language therapy services and must be reasonable and necessary. Independent speech/language pathology services are limited to services provided in the therapist's office or client's home. The patients treated are the therapist's own patients and the

therapist collects a fee for the services rendered. DMAP does not reimburse individual therapists directly for speech/language therapy services provided to nursing home residents. The nursing facility is responsible for providing speech/language therapy services to residents either directly or through contractual arrangement.

DSS PROPOSED REGULATION #03-37d**NEW:**

ATTACHMENT 4.19-B

Page 21

State DELAWARE**METHODS AND STANDARDS FOR ESTABLISHING
PAYMENT RATES – PHYSICAL THERAPY AND
RELATED SERVICES**

Physical therapy and related services are reimbursed as follows:

Physical and occupational therapists and speech/language pathologists who are individually enrolled with the DMAP are reimbursed at a set rate using HCPCS procedure codes. Reimbursement rates shall be based on the Medicare Relative Value (RVU).

All necessary supplies and equipment used by the therapist in the course of treatment are included in the reimbursement visit and cannot be billed separately.

Services provided by an occupational therapy assistant, physical therapy assistant, and a speech/language pathology assistant are included in the reimbursement to the qualified therapist/pathologist.

When billing for PT, OT and Speech/language pathology services providers shall use the appropriate Physical Medicine and Rehabilitation CPT procedure codes and specify the diagnosis with accurate ICD-9-CM codes.

When billing for services provided by a physical therapist, providers must specify the diagnosis that is being treated. For billing purposes, providers must include the medical diagnosis that may differ from the impairment-based diagnosis described in *The Guide to Physical Therapist Practice Patient/Client Management Model*.

DIVISION OF SOCIAL SERVICESStatutory Authority: 31 Delaware Code,
Section 107 (31 Del.C. 107)**PUBLIC NOTICE****Medicaid/Medical Assistance Programs
Reproposed Regulation
Client Cost Sharing for Pharmaceutical Services**

NOTE: THE NOVEMBER 2003 ISSUE OF THE REGISTER INADVERTENTLY CONTAINED ERRORS IN THE TEXT OF THE PUBLIC NOTICE RELATING TO THE EFFECTIVE DATE AND THE COLLECTION OF COPAYMENTS. THE REPROPOSED VERSION IS PUBLISHED BELOW AND REFLECTS THE POLICY AS THE DIVISION OF SOCIAL SERVICES INTENDED.

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 issues these repropoed regulations to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) to establish the provisions relating to imposing and collecting copayments for pharmaceutical services from Medicaid/Medical Assistance clients.

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 19720-0906 by December 31, 2003.

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 The Repropoed Regulation – Pharmacy
Services Co-payment Policy**

On July 1, 2003, DSS published for public comment a proposal to amend its client cost-sharing regulations for pharmacy services. In response to that request, comments were submitted that resulted in changes being made to the original proposal, primarily to add clarifying language regarding collection of copayments. Because of the substantive nature of these additional changes, DSS is now republishing the proposal for public comment pursuant to 29

Del.C. §§10115 and 10118. The changes are enumerated below and are derived from (i) comments made by the general public during the public comment period on the original proposal; and from, (ii) clarifications and other improvements noted by DSS staff during subsequent review.

The changes to the regulation are being presented in *italicized* font in order to facilitate review of the proposal in light of the reproposal:

- All clients, other than those specifically excluded, are liable for sharing the cost of Medicaid covered prescription drugs. Medicaid clients are required to pay a specific pharmacy co-pay amount for each prescription filled at a pharmacy participating in the Medicaid program.
- In accordance with 42 CFR §447.54, the pharmacy co-pay amount is based on the Medicaid fee for the drug being dispensed. The co-pay amounts imposed are as follows:

<u>Medicaid Fee</u>	<u>Co-Pay Amount</u>
\$10.00 or less	\$.50
\$10.01-\$25.00	\$1.00
\$25.01-\$50.00	\$2.00
\$50.01 or more	\$3.00

- Cumulative Maximum [42 CFR §447.54(d)]. Not applicable, there is no maximum.
- In accordance with Social Security Act §1916 and 42 CFR §447.53, copayments are not imposed upon categorically needy individuals for the following:
 - Services furnished to individuals under 21 years of age;
 - Services furnished to pregnant women;
 - Services furnished to any individual who is an inpatient in a hospital, long-term care facility, or other medical institution;
 - Emergency services;
 - Family Planning services; and,
 - Services furnished to individuals receiving hospice care.
- *The pharmacy will be advised via the Point-of-Sale System regarding the client's liability for the drug co-pay and the amount of the co-pay. When a client advises a pharmacy of an inability to pay the applicable co-pay amount at the time the prescription is filled, the pharmacy cannot refuse to fill the prescription and must dispense the drug as prescribed [42 CFR §447.53(e)].*
- The client will remain liable for reimbursement of the co-pay amount and will be responsible for paying the pharmacy when financially able.
- Medicaid will not pay the co-pay amount to the pharmacy where a client declares an inability to pay. Provider payment will continue to be that sum

which is the Medicaid fee minus the applicable client copay amount.

The proposed amendment applies to Medicaid clients and shall be effective on and after *January 10, 2004*.

Specific cost sharing requirements are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

Summary Of Comments Received With Agency Response

DSS received comments from the following organizations: the Governor's Advisory Council for Exceptional Citizens (GACEC), the Delaware Developmental Disabilities Council (DDDC), and the State Council for Persons with Disabilities (SCPD), the National Association of Chain Drug Stores (NACDS); as well as from the CMS and one individual.

A summary of all the comments from all sources follows:

- House Bill No. 184 would have precluded or limited adoption of Medicaid co-pays if enacted.
- There is a minor error in the co-pay chart on p. 23. The State chart should reflect that a prescription fee equal to or less than \$10.00 correlates with a \$.50 copay.
- The Federal regulation [42 CFR §447.53] recites as follows:
 - a) No provider may deny services, to an individual who is liable for the services, on account of the individual's inability to pay the cost sharing.
- The proposed regulations undermine Olmstead implementation because persons in institutions are exempt from the co-pays while persons in the community must pay them.
- The state should adopt a "cumulative maximum co-pay" for high pharmacy users [42 CFR §447.54(d)].
- Since pharmacy providers have no way of knowing whether a Medicaid recipient is truly unable to pay a copayment, the Medicaid program should make that decision.
- Repeated refusals to pay the copayment should be grounds for denial of services to the Medicaid recipient.
- The Department should amend the regulations to provide that DMAP will reimburse pharmacy providers for uncollected copayments under a federal waiver of 42 CFR §447.57(a), prohibiting states from reimbursing providers for uncollected cost-sharing.
- Recipients should receive information from the Department about this new copayment and their obligation to pay the copayment.

- Provide that the state will give periodic notice to recipients that they must demonstrate to the state an inability to pay before federal refusal of service provisions can be applied.
- Allow pharmacy providers to treat Medicaid recipients who have past due copayments as they would any other patient who has past due debts.

***Agency Response:** As a consequence of the public comments received and on advice from CMS, DSS is publishing a revision to the proposed regulations. DSS will send Medicaid recipients a letter informing them of this new pharmacy copayment requirement prior to implementation, currently proposed for January 10, 2004.*

DSS REPROPOSED REGULATION #03-40a

Revision: OMB No.: 0938-
State/Territory: DELAWARE

Citation 4.18 Recipient Cost Sharing and Similar
42 CFR 447.51 Charges
through 447.58

- 1916 (a) and (b)**
of the Act
- (a) Unless a waiver under 42 CFR 431.55(g) applies deductibles, coinsurance rates, and copayments do not exceed the maximum allowable charges under 42 CFR 447.54.
 - (b) Except as specified in items 4.18 (b) (4), (5) and (6) below, with respect to individuals covered as categorically needy or as qualified Medicare beneficiaries (as defined in section 1905 (p) (1) of the Act under the plan:
 - (1) No enrollment fee, premium, or similar charge is imposed under the plan.
 - (2) No deductible, coinsurance, copayment, or similar charge is imposed under the plan for the following:
 - (i) Services to individuals under age 18, or under--
 - Age 19
 - Age 20
 - Age 21
 - Reasonable categories of individuals who are age 18 or older, but under age 21, to whom charges apply are listed below, if applicable.
 - (ii) Services to pregnant women related to the

1916 of the Act,
P.L. 99-272,
(Section 9505)

- pregnancy or any other medical condition that may complicate the pregnancy.
- (iii) All services furnished to pregnant women.
 - Not applicable. Charges apply for services to pregnant women unrelated to the pregnancy.
- (iv) Services furnished to any individual who is an inpatient in a hospital, long-term care facility, or other medical institution, if the individual is required, as a condition of receiving services in the institution, to spend for medical care costs all but a minimal amount of his or her income required for personal needs.
- (v) Emergency services if the services meet the requirements in 42 CFR 447.53 (b) (4).
- (vi) Family planning services and supplies furnished to individuals of childbearing age.
- (vii) Services furnished by a health maintenance organization in which the individual is enrolled.
- (viii) Services furnished to an individual receiving hospice care, as defined in section 1905 (o) of the Act.
- (3) Unless a waiver under 42 CFR 431.55 (g) applies, nominal deductible, coinsurance, copayment, or similar charges are imposed for services that are not excluded from such charges under item (b) (2) above.
 - Not applicable. No such charges are imposed.
 - (i) For any service, no more

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than one type of charge is imposed.

(ii) Charges apply to services furnished to the following age groups:

- 18 or older
- 19 or older
- 20 or older
- 21 or older

Charges apply to services furnished to the following reasonable categories of individuals listed below who are 18 years of age or older but under age 21.

(iii) For the categorically needy and qualified Medicare beneficiaries, **ATTACHMENT 4.18-A** specifies the:

- A. Service(s) for which a charge(s) is applied;
- B. Nature of the charge imposed on each service;
- C. Amount(s) of and basis for determining the charge(s);
- D. Method used to collect the charge(s);
- E. Basis for determining whether an individual is unable to pay the charge and the means by which such an individual is identified to providers;
- F. Procedures for implementing and enforcing the exclusions from cost sharing contained in 42

CFR 447.53 (b); and

G. Cumulative maximum that applies to all deductible, coinsurance or copayment charges imposed on a specified time period.

Not applicable. There is no maximum.

Citation 4.18 (b)(4) A monthly premium is imposed on pregnant women and infants who are covered under section 1902 (a) (10) (A) (ii) (IX) of the Act and whose income equals or exceeds 150 percent of the Federal poverty level applicable to a family of the size involved. The requirements of section 1916 (c) of the Act are met. **ATTACHMENT 4.18-D** specifies the method the State uses for determining the premium and the criteria for determining what constitutes undue hardship for waiving payment of premiums by recipients.

1902 (a) (52) and 1925 (b) of the Act (5) For families receiving extended benefits during a second 6-month period section 1925 of the Act, a monthly premium is imposed *in accordance* with sections 1925 (b) (4) and (5) of the Act.

1916 (d) of the Act (6) A monthly premium, set on a sliding scale, imposed on qualified disabled and working individuals who are covered under section 1902 (a) (10) (E) (ii) of the Act and whose income exceeds 150 percent (but does not exceed 200 percent) of the Federal poverty level applicable to a family of the size involved. The requirements of section 1916 (d) of the Act are met. **ATTACHMENT 4.18-E** Specifies the methods and standards the State uses for determining the premium.

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DSS REPROPOSED REGULATIONS #03-40c

NEW STATE PLAN PAGE

Revision:

ATTACHMENT 4.18-A

Page 1

OMB NO.: 093-0193

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT**STATE: DELAWARE**

A. The following charges are imposed on the categorically needy for services other than those provided under section 1905 (1) through (5) and (7) of the Act:

Service	Type of Charge			Amount and Basis for Determination
	Deductible	Coinsurance	Copayment	
<u>Pharmacy</u>	<u>-0-</u>	<u>-0-</u>	<u>X</u>	<u>This co-pay is effective January 1, 2004 and is based on the nominal ranges specified in 42 CFR 447.54(a)(3), based on the State fee for the service.</u>

B. The method used to collect cost sharing charges for categorically needy individuals:

Providers are responsible for collecting the cost sharing charges from individuals.

The agency reimburses providers the full Medicaid rate for services and collects the cost sharing charges from individuals.

C. The basis for determining whether an individual is unable to pay the charge, and the means by which such an individual is identified to providers, is described below:

The Pharmacy (Pharmacist) Provider will be advised via the Point-of-Sale System regarding the client's liability for the drug co-pay and the amount of the co-pay. When a client advises a pharmacy of an inability to pay the applicable co-pay amount at the time the first prescription is filled, the pharmacy cannot refuse to fill the prescription and must dispense the drug as prescribed.

The client will remain liable for reimbursement of the co-pay amount and will be responsible for paying the pharmacy when financially able. Medicaid will not pay the co-pay amount to the pharmacy where a client declares an inability to pay. Provider payment will continue to be that sum which is the Medicaid fee minus the applicable client copay amount.

D. The procedures for implementing and enforcing the exclusions from cost sharing contained in 42 CFR 447.53 (b) are described below:

Exclusions from cost sharing requirements are programmed into the Medicaid Management Information System and the Point-of-Sale (POS) System.

Pharmacy Providers have been informed about applicable service and amount; and, the prohibition of service denial if client is unable to meet the co-pay amount by the following methods: (1) provider manuals, which are distributed to all providers; and (2) provider newsletters.

Copayment requirements are set forth in provider manuals, which are distributed, to all providers. The billing instructions are updated and transmitted to providers via the Provider Newsletter. These instructions have been incorporated in the billing instruction section of the provider manuals, which are given to all providers.

E. Cumulative maximums on charges:

State policy does not provide maximums.

Cumulative maximums have been established as described below:

DSS REPROPOSED REGULATIONS #03-40c

DEPARTMENT OF SAFETY & HOMELAND SECURITY

Statutory Authority: 21 Delaware Code,
Section 302, 2733(a)(4)
(21 Del.C. §§302, 2733(a)(4))

14960 Cost Sharing

Section 1902(a)(14) of the Social Security Act permits states to require certain recipients to share some of the costs of Medicaid by imposing upon them such payments as enrollment fees, premiums, deductibles, coinsurance, co-payments or similar cost sharing charges.

14960.1 Co-Payment Requirement

Effective October 1, 2003, a nominal co-payment will be imposed for generic and brand name prescription drugs as well as over-the-counter drugs prescribed by a practitioner.

The co-payment is based upon the cost of the drug as follows:

<u>Medicaid Payment for the Drug</u>	<u>Co-payment</u>
<u>\$10.00 or less</u>	<u>\$.50</u>
<u>\$10.01 to \$25.00</u>	<u>\$1.00</u>
<u>\$25.01 to \$50.00</u>	<u>\$2.00</u>
<u>\$50.01 or more</u>	<u>\$3.00</u>

The co-payment is imposed for each drug that is prescribed and dispensed.

14960.2 Exclusions from Co-payment Requirement

The following individuals and services are excluded from the co-payment requirement:

- a. individuals under age 21
- b. pregnant women including the postpartum period
- c. individuals eligible for nursing home care
- d. emergency services
- e. family planning services and supplies
- f. hospice services

14960.3 Inability to Pay

The pharmacy provider may not refuse to dispense the prescription(s) subject to the co-payment requirement on account of the individual's inability to pay the co-payment amount. When a recipient indicates that he or she is unable to meet the co-payment requirement, the pharmacy provider must dispense the initial prescription(s). Medicaid reimbursement for the prescription(s) will be the Medicaid fee minus the applicable co-payment amount.

The recipient remains liable for the co-payment amount and is responsible for paying the pharmacy when financially able. The pharmacy provider is permitted to pursue reimbursement of the co-pay from the recipient.

Public Notice

Notice is hereby given that the Secretary of the Department of Safety and Homeland Security, formerly the Secretary of the Department of Public Safety, in accordance with House Bill 43 of the 142nd General Assembly proposes to adopt Regulations. These Regulations will regulate the posting of credit on the driving record of individuals convicted of specified moving traffic violations in which all passengers of the vehicle are wearing seat belts at the time of arrest. The seat belt credit is to be considered when determining license suspensions based upon the Division of Motor Vehicles' point system. A public hearing will be held on Tuesday, December 23, 2003 at 11:00a.m. in the second floor main conference room (rm. 205) of the Safety and Homeland Security Building, 303 Transportation Circle, Dover, DE. The Secretary of Safety and Homeland Security will receive and consider input in writing from any person on the proposed regulations. Any written comments should be submitted to the Department of Safety and Homeland Security, in care of William G. Bush, IV, at P.O. Box 818, Dover, DE 19903-0818 on or before Tuesday, December 23, 2003. Anyone wishing to obtain a copy of the proposed regulations may do so by sending a written request to the Department of Safety and Homeland Security, P.O. Box 818, Dover, DE 19903-0818. This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

Notice

Amend Policy Regulation Number 45, Part IV, paragraph 1, by adding a new section (d) to read as follows:

- (d) A motor vehicle licensee shall have a one point credit entered on their driving record under the Division of Motor Vehicle Point System if a driver is convicted of a violation of 21 Del. C. § 4176(a) or 21 Del. C. §4176(b) and at the time of arrest for that conviction all passengers including the driver of the vehicle were wearing seat belts. This credit shall remain on a driving record for a 1-year period. If a motor vehicle licensee has more than one conviction of 21 Del. C. § 4176(a) or 21 Del. C. §4176(b) during this one year period, where at the time of arrest all passengers including the

driver were wearing a seatbelt, the motor vehicle licensee shall not receive an additional one point credit on their driving record for each conviction. However, the one point credit on the driving record shall be extended for one year from the date of the last conviction.

Amend Policy Regulation Number 45, Part IV, paragraph 1(c) to add the designation “and (d)” following the designation (b) in the first sentence.

**POLICY REGULATION NUMBER 45
CONCERNING Driver Improvement Problem
Driver Program**

I. AUTHORITY

The authority to promulgate this regulation is 21 **Del.C.** Section 302, 21 **Del.C.** Section 2733(a)(4) and 29 **Del.C.** Section 10115.

II. PURPOSE

The Highway Safety Program Standard for Driver Licensing, as adopted by the National Highway Traffic Safety Administration, requires each state to have a Driver Improvement Program to identify problem drivers and take actions to reduce the frequency of their involvement in traffic accidents and violations. The Driver Improvement Problem Driver Program is designed to identify problem drivers, to change the problem driver’s behavior by providing information and training opportunities and, if necessary, to progressively impose sanctions as more convictions/points are accumulated on the driving record. The goal of the program is crash prevention. The steps in the program are geared to the seriousness of the driving record.

The Division of Motor Vehicles’ Driver Improvement staff uses these policy guidelines to initiate program requirements and impose license suspensions.

III. APPLICABILITY

This policy regulation interprets the following sections found in Title 21: Section 2722, Section 2733(b), (e), (j), Section 2755, Section 2756, Section 4166(d), (j), Section 4169, Section 4175, 4175a, Section 4172(a), (b), Section 4172A, Section 6702, and Section 8101.

IV. SUBSTANCE OF POLICY

1. Point System. The Division of Motor Vehicles shall identify problem drivers, educate and impose driver license sanctions based upon a point system. Violations will be assessed points based up the following:

Violations

Speeding 1-9 miles per hour over posted limit	2
Speeding 10-14 miles per hour over posted limit	4
Speeding 15-19 miles per hour over posted limit	5
Speeding 20 or more miles per hour over posted limit	5*
*May result in additional actions including suspension	
Passing a Stopped School Bus	6
Reckless Driving	6
Aggressive Driving	6
Disregarding Stop Sign or Red Light	3
Moving violation contained in Chapters 27, 41 or 42 of Title 21	2

Point Credits

a. A licensee who is convicted of a speeding violation from 1 – 14 miles per hour over the posted speed limit will not be assessed points for the first violation within any three (3) year period provided the ticket is paid through the voluntary assessment center.

b. Completion of the Defensive Driving Course (DDC), recognized by the Division of Motor Vehicles and approved by the Insurance Commissioner’s Office will be entered on the licensee’s driving record. The licensee shall have a 3-point credit entered on their driving record following satisfactory completion of the course. The licensee is responsible for enrollment scheduling and the payment of all fees associated with this course. DDC credit is effective on the date of course completion. DDC credit will not be applied retroactively once an action item is in effect.

c. The point credits listed in paragraph (b) and (d) shall not be considered when determining the eligibility of a school bus operator. To determine the point level for a school bus operator or applicant, use full point value, not calculated points, for the previous 3-year period.

(d) A motor vehicle licensee shall have a one point credit entered on their driving record under the Division of Motor Vehicle Point System if a driver is convicted of a violation of 21 Del. C. § 4176(a) or 21 Del. C. §4176(b) and at the time of arrest for that conviction all passengers including the driver of the vehicle were wearing seat belts. This credit shall remain on a driving record for a 1-year period. If a motor vehicle licensee has more than one conviction of 21 Del. C. § 4176(a) or 21 Del. C. §4176(b) during this one year period, where at the time of arrest all passengers including the driver were wearing a seatbelt, the motor vehicle licensee shall not receive an additional one point credit on their driving record for each conviction. However, the one point credit on the driving record shall be

extended for one year from the date of the last conviction.

2. Driver Improvement Problem Driver Program. A driver enters the Driver Improvement Problem Driver Program when they accumulate 8 calculated points based upon their driving record for the previous two years. At that time an advisory letter is sent to the driver. Studies show that early intervention with inexpensive actions reduce accidents and improve driving behavior.

Convictions received from other jurisdictions are posted to the Delaware driving record. The points will be assessed on these violations as though the offense was committed in this State in accordance with the Driver’s License Compact.

“The Aggressive Driving Committee, in accordance with Policy Regulation 90, must certify all behavior modification/attitudinal driving courses. The committee has the authority to designate alternative courses to comply with the requirements of Policy Regulation 45.”

The actions listed below occur as calculated points are accumulated during any 24-month period. The 24-month period is computed based upon the date of the offense and “slides” forward based upon that date. The driving record will record the actions taken. The Driver Improvement Section will conduct a record review at each step in the process and schedule interviews as necessary. The action items may be processed automatically without an interview. When the calculated points fall between the threshold limits, use the action items specified in the lower level. (Example: If the driver accumulates 9 points before any action is taken, send out an advisory letter as required when they accumulate 8 points.) If the driver accumulates 12 points before the advisory letter is sent, use the action item listed for drivers with 12 points.

Calculated Points	<u>Action Items</u>
8	Division of Motor Vehicles advisory letter is mailed to the driver. DDC credits will not impact the issuance of an advisory letter.
12	Driver must complete an approved “behavior modification/attitudinal driving course” within 90 days after notification (unless extended by the Division). Failure to comply or upon preference of the driver, a mandatory 2 month suspension will be imposed in lieu of the program.
14	Mandatory 4 month license suspension. To become eligible for reinstatement, the driver must complete or have completed a behavior modification / attitudinal driving course” within the previous

- 2 years.
- 16 Mandatory 6 month license suspension. To become eligible for reinstatement, the driver must complete or have completed a “behavior modification/attitudinal driving course” within the previous 2 years.
- 18 Mandatory 8 month license suspension. To become eligible for reinstatement, the driver must complete or have completed a “behavior modification/attitudinal driving course” within the previous 2 years.
- 20 Mandatory 10 month license suspension. To become eligible for reinstatement, the driver must complete or have completed a “behavior modification/attitudinal driving course” within the previous 2 years.
- 22 Mandatory 12 month license suspension. To become eligible for reinstatement, the driver must complete or have completed a “behavior modification/attitudinal driving course” within the previous 2 years.

3. Serious Speeding Violations. The Division of Motor Vehicles considers all speeding violations 20 miles per hour (MPH) or more above the posted speed limit to be a serious speeding violation that identifies the driver as a problem driver. The following actions will be taken:

- a. When a driver is convicted of a single speeding violation for driving 20-24 MPH over the posted limit and accumulated less than 12 calculated points, the Driver Improvement staff will review their driving record and send the driver an advisory letter.
- b. When convicted of driving 25 MPH over the posted limit, the driver’s license will be suspended for a mandatory period of 1 month. The suspension period will be increased by one month for each additional 5 MPH over the initial 25 MPH threshold. Note: The driver may elect to attend the “behavior modification/attitudinal driving course” in lieu of a license suspension if they were driving 25-29 MPH over the posted limit.
- c. Anyone convicted of driving 50 MPH or more over the posted speed or driving 100 MPH or more shall be suspended for a period of one year. The driver is not eligible for an occupational license during the first three months of the suspension period.

- 4. Additional Sanctions Imposed by Statue or Policy:
 - a. Passing a stopped school bus in violation of 21

Del.C. Section 4166(d). For the first offense, one-month driver's license suspension. For the second offense, six months suspension. For the third or more offenses, suspend the driver's license for twelve months.

b. Driving in violation of a license restriction per 21 **Del.C.** Section 2722. For the first offense, send an advisory letter. Suspend the driver's license for one month for subsequent offenses.

c. Speed exhibition violation per 21 **Del.C.** Section 4172(a)(d). One-month suspension for the first offense and one-year driver's license suspension for subsequent offenses.

d. Spinning wheels violation per 21 **Del.C.** Section 4172(b). Send an advisory letter for the first offense. Suspend the driver's license for one year for second and subsequent offenses.

e. Malicious mischief violations per 21 **Del.C.** Section 4172A. One-month driver's license suspension for the first offense. One-year suspension for the second and subsequent offenses.

f. Knowingly permit an unlicensed person to operate a vehicle violation per 21 **Del. C.** Section 2755. Send an advisory letter for the first offense. Three-month driver's license suspension for the second and subsequent offenses.

g. Driving without consent of the owner violation per 21 **Del.C.** Section 6702. One month driver's license suspension for the first offense and three month's suspension for the second and subsequent offenses.

h. Driving during suspension or revocation violations per 21 **Del.C.** Section 2756. A conviction for driving during suspension or revocation shall extend the period of the suspension or revocation for a like period. No driving authority will be permitted during the balance of the initial suspension or revocation period and the extended period. Any driving authority previously issued by the Division must be surrendered.

Note: For violations to be considered a subsequent offense, the violations must be under the same subsection and cannot be a combination of violations such as Sections 4172(a) and Section 4172(b). To be considered a second or subsequent offense, the convictions must be within the previous three years.

5. Occupational License. In the event of a suspension of a driver's license pursuant to this policy regulation, the Division may issue an occupational license during the period of suspension if the applicant stipulates the suspension has created an extreme hardship. However, no such occupational license shall be issued if the applicant has two previous suspensions under the policy regulation within the previous 3 years, or if the suspension is for physical and/or mental disability, or if the license is revoked for convictions of any crimes specified in Section 2732 of Title 21 even though it causes an extreme hardship. Any driver convicted

of operating a motor vehicle in violation of the restrictions imposed by the occupational license shall immediately extend the suspension period for an additional like period and shall direct the driver to surrender their occupational license. No more than one occupational license under this policy shall be issued within any 12-month period.

Drivers suspended under this program are ineligible for an occupational license for one month. If the calculated point level reaches 15 or more points in a 24-month period, an occupational license will not be issued until the calculated points are less than 15 points.

6. Calculated Points. For the purposes of this Policy Regulation, calculated points are credited at full point value for the first twelve months from the date of the violation. After the initial 12 months have expired, the calculated points will be credited at (1/2) point value for the next 12 months. The Division will only take action based upon convictions accumulated within the 24-month period following the date of the offense.

7. Moving Violations. Those violations contained in 21 **Del.C.** Chapters 27, Chapter 41 and Chapter 42, excluding those violations that require mandatory suspension or revocation actions. Multiple violations occurring within a 24-hour period shall be considered individual violations for the purposes of this policy regulation.

8. Advisory Letter. The Division will send an advisory letter to those drivers who accumulate 8 calculated points or when convicted of speeding 20-24 MPH over the posted limit. The purpose of the advisory letter is to express our concern about the operator's driving habits and their impact upon highway safety. The letter will inform the driver about the Driver Improvement Problem Driver Program. An advisory letter may be sent for both point accumulations and excessive speed violations.

9. Record Review. The goal of the record review is to assess any problems the driver may have and require a course of action. The record review may result in a driver improvement interview/counseling session, medical or vision examination, knowledge and/or skills testing, restricted license, license suspension or the surrender of a license.

10. Interviews. The Driver Improvement staff may schedule the driver to attend an interview based upon the record review. The licensee may request an interview with a Driver Improvement Officer or staff member when notified of pending action against them. The following issues are open to discussion:

The driver may request an additional 90 days to complete a mandatory attendance at the "behavior modification/attitudinal driving course" or they may request a license suspension in lieu of attending the program. Any further delays in completing the program must be approved by the Driver Improvement Manager or the Chief of Driver

Services.

The driver can present evidence that the convictions on their driving record belong to another driver. If proven, the convictions will be removed.

If the violation on record is under appeal by the court, the driver must submit a copy of the appeal bond and the violation will be removed from the driving record. If applicable, the suspension action resulting from this violation be removed from the driving record.

The Driver Improvement staff may require the driver to complete a medical or vision examination, pass a knowledge or skill test or restrict their driving privileges based upon the results of the interview.

11. This policy regulation shall have no effect on the revocation actions, medical qualifications or requirements, or suspension action required by statute unrelated to this policy.

V. SEVERABILITY

If any part of this Rule is held to be unconstitutional or otherwise contrary to law by a court of competent jurisdiction, said portion shall be severed and the remaining portions of this rule shall remain in full force and effect under Delaware law.

VI. EFFECTIVE DATE

The following regulations shall be effective 10 days from the date the order is signed and it is published in its final form in the Register of Regulations in accordance with 29 Del.C. Section 10118(e).

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
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF MEDICAL PRACTICE
RESPIRATORY CARE PRACTICE
ADVISORY COUNCIL**

24 DE Admin. Code 1770
Statutory Authority: 24 Delaware Code,
Section 1770B(e) (24 **Del.C.** §1770B(e))

ORDER

IN THE MATTER OF THE |
ADOPTION OF REGULATIONS |
GOVERNING |
ADMINISTRATION OF |
SEDATION AND ANALGESIA |
BY RESPIRATORY CARE |
PRACTITIONERS |

Pursuant to 29 **Del.C.** Ch. 101 and 24 **Del.C.** §1770B(e)(5), the Respiratory Care Practice Advisory Council ("Council") which functions under the auspices of the Delaware Board of Medical Practice ("Board") gave notice of its intent to consider adoption of regulations to address and govern the administration of sedation and analgesia by licensed respiratory care practitioners in the State of Delaware.

A public hearing was held upon due public notice beginning at 1:00 P.M. on October 21, 2003 to receive oral public comment and consider any written comments which had been timely filed concerning the proposed regulations as set forth in the version of the Regulations published for public review and comment in the Delaware Register of Regulations.

SUMMARY OF EVIDENCE

At the public hearing, the Respiratory Care Practice Advisory Council introduced evidence of the publication of the notice of the proposed Rule Making in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101, including proof of publication of the notice of the public hearing in the Delaware State News newspaper and the News Journal newspaper, as well as the publication of the proposed regulations and the notice of the hearing in the Register of Regulations of the State of Delaware.

John D'Angelo, RRT, Chairman of the Respiratory Care Practice Advisory Council, presented a brief introduction concerning the subject matter encompassed by the proposed Regulations and discussed the practical need for such regulations and the statutory authority for the Board to adopt and promulgate them subject to the approval of the Board of Medical Practice of the State of Delaware. Gayle Franzolino, the Executive Director of the Board of Medical Practice read a position statement concerning the proposed Regulations. The position statement noted that the proposed Regulations delineate the roles, responsibilities, training and

competency associated with the safe provision of sedation and analgesia medications by Respiratory Care Practitioners.

Written comments were received and considered from the Accreditation Association for Ambulatory Health Care (AAAHC) which suggested changes to proposed Sections 12.3.2 and 12.3.2.1.4 to recognize other accrediting bodies including the AAAHC by changing Joint Commission on Accreditation of Healthcare Organizations (JCAHO) to read "facilities accredited by a nationally recognized accrediting body approved by federal regulations."

Written Comments were also received and considered from David C. Shelledy, PhD, RRT, President of the Association for Respiratory Care and from the Delaware Society for Respiratory Care (DSRC) supporting the proposed Rules and Regulations governing the administration of sedation and analgesia by Respiratory Care Practitioners.

Written comments were also received from the Delaware Association of Nurse Anesthetists which opposed the adoption of the proposed Regulations raising issues of risk management vs. patient safety and concern over limitations on practice settings for Respiratory Therapist.

FINDING OF FACT AND CONCLUSIONS

The Council finds that there are respiratory care practitioners in the state of Delaware who are administering medications which induce sedation and analgesia and that it is appropriate to develop Rules and Regulations establishing certain minimum standards for such practices. The Council also concludes that it is appropriate at this time to withdraw the proposed Regulations for further review and consideration to afford the Council the opportunity to give full consideration to the filed comments and concerns and to consider the development of a revised proposal after appropriate further consideration.

ORDER

NOW, THEREFORE, the Respiratory Care Practice Advisory Council, by the affirmative vote of the undersigned members, hereby withdraws the proposed Rules and Regulations which were originally published in the Delaware Register of Regulations on October 1, 2003 at Volume 7, Issue 4, Pages 384 and 385.

This Order of Withdrawal shall be published in the Delaware Register of Regulations and shall be effective ten (10) days after such publication.

BY ORDER OF THE RESPIRATORY CARE PRACTICE ADVISORY COUNCIL this 18th day of November, 2003.

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code,
Section 209(a) (26 Del.C. §209(a))

ORDER 6298

IN THE MATTER OF THE
CONSIDERATION OF RULES,
STANDARDS, AND INDICES
TO ENSURE RELIABLE
ELECTRICAL SERVICE BY
ELECTRIC DISTRIBUTION
COMPANIES (OPENED
SEPTEMBER 26, 2000)

PSC REGULATION
DOCKET NO. 50

AND NOW, this 4th day of November, A.D. 2003;

WHEREAS, in PSC Order No. 5552 (Sept. 26, 2000), the Commission opened this rulemaking proceeding to address its concern with the need to ensure the continued reliability of the State's electric distribution systems. Staff prepared Proposed Rules, which the Commission issued as Proposed Rules in PSC Order No. 5704 (Apr. 24, 2001), and assigned them to a Hearing Examiner in order to hold a formal hearing and to prepare a report on the comments;

AND WHEREAS, after a duly noticed hearing and a series of comments by the participants, the Commission's Staff submitted on June 6, 2003 a version of the Proposed Rules. After an opportunity to comment, no participant opposed the June 6, 2003 version. Because of the passage of time and the changes the June 6, 2003 version made to the Proposed Rules, the Hearing Examiner forwarded the June 6, 2003 version of the Proposed Rules to the Commission with the recommendation that the Commission publish them as new Proposed Rules and withdraw the prior Proposed Rules;

AND WHEREAS, in PSC Order No. 6217 (July 23, 2003), the Commission promulgated the June 6, 2003 version as Proposed Rules and withdrew the prior Proposed Rules. Notice of the Proposed Rules was published in *The News Journal* and the *Delaware State News* newspapers, and in the September 1, 2003 *Delaware Register of Regulations*;

AND WHEREAS, the Commission has received and considered the Report of Hearing Examiner Robert P. Haynes, dated October 8, 2003. The Hearing Examiner, after holding a duly noticed formal hearing on September 20, 2003, recommended adoption of the Proposed Rules issued pursuant to PSC Order No. 6217 as Final Rules because they are reasonable, adequately supported by the record, and are not opposed by any participant;

AND WHEREAS, no party filed exceptions to the Report of the Hearing Examiner;

AND WHEREAS, we act, upon a hearing on this date, and find and conclude that the Report of the Hearing Examiner should be adopted and the Proposed Rules

promulgated as Final Rules to be effective ten days after their publication in the *Delaware Register of Regulations*.

Now, therefore, **IT IS ORDERED:**

1. That, upon a hearing and by and in accordance with the affirmative vote of a majority of the Commissioners, the Commission hereby adopts as its decision the October 8, 2003 Report of the Hearing Examiner, appended to the original hereof as Attachment "A", which report recommends adoption of the Proposed Rules, as previously published pursuant to PSC Order No. 6217, as Final Rules.

2. That the Proposed Rules, as published pursuant to PSC Order No. 6217, be approved as Final Rules, and that the Secretary is directed to send this Order to the Delaware Registrar of Regulations for publication in the next possible issue of the *Delaware Register of Regulations*.

3. That the Final Rules shall go into effect ten days after their publication in the *Delaware Register of Regulation*.

4. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Arnetta McRae, Chair
 Joshua M. Twilley, Vice Chair
 Joann T. Conaway, Commissioner
 Jaymes B. Lester, Commissioner
 Donald J. Puglisi, Commissioner

ATTEST:

Karen J. Nickerson, Secretary

A T T A C H M E N T "A"

REPORT OF THE HEARING EXAMINER

DATED:11/21/03, ROBERT P. HAYNES
 HEARING EXAMINER

Robert P. Haynes, duly appointed Hearing Examiner in this Docket pursuant to 26 Del. C. §502 and 29 Del. C. Ch. 101, by Commission Order No. 5704, issued April 24, 2001, reports to the Commission as follows:

I. PROCEDURAL HISTORY

1. The Commission opened this rulemaking proceeding in Order No. 5552, issued September 26, 2000, in which it raised its concern with the need to ensure the continued reliability of the electric distribution system. The Commission's concern was the result of Docket No. 99-328's

investigation into the rolling blackouts that occurred in Delmarva Power & Light Company's ("DP&L") service area on July 6, 1999. The investigation in Docket No. 99-328 culminated in Order No. 5480, issued June 20, 2000, in which the Commission directed its Staff to submit a specific proposal concerning how issues of electric service reliability could be addressed most expeditiously. Order No. 5480 at Ordering 17.

2. On August 24, 2000, the Commission Staff submitted a memorandum in Docket No. 99-328 that identified various issues surrounding electric reliability, and suggested that the Commission undertake a collaborative process over the next three months prior to any formal regulatory action by the Commission. In Order No. 5552, the Commission adopted Staff's suggestion, opened this regulation docket, and directed Staff to submit within ninety days¹ a report concerning Staff's view of the need for Commission action to ensure continued reliable electric service in Delaware.

3. On April 24, 2001, the Commission in Order No. 5704 promulgated proposed rules based upon the rules that Staff recommended in its report. The Commission created two procedures, Tracks 'A' and 'B,' to consider the issues, with Track A assigned to this Hearing Examiner to consider the proposed rules under an expedited procedural schedule.

4. The Commission published notice of the proposed rules on May 9, 2001 in *The News Journal* and *Delaware State News* newspapers, and the proposed rules were published in the June 1, 2001 *Delaware Register of Regulations*. Pursuant to the public notice, all comments were to be submitted by July 6, 2001, and DP&L, Delaware Electric Cooperative, Inc. ("DEC"), Division of the Public Advocate ("DPA"), the Department of Natural Resources and Environmental Control, and PJM Interconnection, Inc. submitted comments.

5. In Order No. 5766, issued July 24, 2001, the Commission approved Staff's request to modify the Commission's expedited procedural schedule. The new procedural schedule was based upon Staff's interest in addressing reliability issues in the DP&L merger application pending in PSC Docket No. 01-194, and pending federal electric reliability legislation. In Order No. 5941, issued April 16, 2002, the Commission approved the merger application, including a settlement agreement designed to result in improved electric service reliability.

6. As a result of the comments submitted, Staff submitted revisions to the proposed rules in December 2002. On February 11, 2003, I approved a revised procedural schedule, which provided the opportunity for additional

1. In Order No. 5594, issued December 5, 2001, the Commission approved Staff's request to extend the submission of its report to March 27, 2001.

comments concerning Staff's revisions. DP&L, DEC, and Delaware Energy Users Group ("DEUG") submitted comments on Staff's revisions.

7. A duly noticed public hearing was held on April 2, 2003. At the hearing, Staff presented Janis Dillard, Commission Regulatory Policy Administrator, Robert Howatt, Commission Public Utilities Analyst, John Stutz, Vice-President of the Tellus Institute, and Peter Lanzalotta, Principal of Lanzalotta & Associates, LLC. DP&L presented Jerry A. Elliott, Vice-President of Transmission and Distribution Reliability for Conectiv Power Delivery, d/b/a DP&L, and Grant Davies of Davies Consulting, Inc. DEC presented Kenneth Ellers, P.E, DEC's Manager of Engineering. DP&L, Staff and DEC submitted hearing exhibits into the record. In addition to the hearing exhibits, the record contains the written submissions from all the participants.

8. At the conclusion of the hearing, I requested that the participants further attempt to reach an agreement on the proposed rules. On June 6, 2003, Staff submitted its revised proposed rules, and all participants were provided the opportunity to comment on Staff's June 6, 2003 version. No participant filed comments opposing Staff's June 6, 2003 version of the proposed rules.

9. In a June 27, 2003 letter, I referred the June 6, 2003 version of the proposed rules to the Commission with the recommendation that they be published pursuant to the Administrative Procedures Act ("APA"), 29 Del C. §10100 *et seq.*²

10. In Order No. 6217, issued July 23, 2003, the Commission promulgated the June 6, 2003 version as its proposed rules and withdrew the prior proposed rules. Notice of the proposed rules was published in *The News Journal*, the *Delaware State News* newspapers, and the *Delaware Register of Regulations*. The notice required any comments to be submitted by an October 3, 2003 deadline. A duly noticed hearing was held September 22, 2003 in the Commission's offices, and representatives of DP&L, DPA, Staff, and DEC appeared. Staff presented Mr. Howatt to briefly explain the latest revised proposed rules. No additional comments were submitted.

11. The record contains 545 pages of transcripts and the filings contained in the Commission's files in this proceeding. This report will review the record only insofar as it pertains to the proposed rules promulgated in Order No. 6217 because Order No. 6217 withdrew the proposed rules that were the subject of the prior comments, which also were

2. Although the Commission delegated to the Hearing Examiner the authority to publish proposed regulations, the APA explicitly requires Commission action to approve the publication of any proposed rules, particularly when there has been over a year since they were last published.

submitted before the participants reached an agreement on the June 6, 2003 version.

II. DISCUSSION

12. I find that the proposed rules, as set forth in Order No. 6217 and attached hereto as Appendix "A," are reasonable and adequately supported. Consequently, I recommend that the Commission adopt the proposed rules as regulations. The proposed rules reflect a consensus among the participants, who represent all the major parties in the Commission's regulated electric proceedings.

13. The underlying premise for the proposed rules was described as "getting what you measure," that is, the utilities will seek to achieve the goal that is determined by what is measured by the rules. The proposed rules seek to measure reliability based upon specific performance standards for DP&L and DEC. The proposed rules recognize that perfect reliability is not obtainable, but that a reasonable level of service should be provided to reduce outages and minimize their duration to the extent reasonably possible. Thus, the proposed rules measure service reliability based upon performance standards that were developed from the distinct operating characteristics of DP&L and DEC.

14. The performance standards were based upon DP&L's and DEC's pre-restructuring levels of performance, as adjusted for a 1.75 standard deviation for data variability and the change to a computerized record keeping known as an outage management system ("OMS"). The interim standards in the proposed rules are acceptable to both utilities, and are based upon recognized industry indices, namely, the System Average Interruption Frequency Index ("SAIFI") and the Customer Average Interruption Duration Index ("CAIDI").

15. Under the proposed rules' performance standards, DP&L would have a SAIFI of 2.3 times, or a customer average outage of 2.3 times per reporting period. DP&L's CAIDI standard would be 141 minutes, which means that an average outage would last 141 minutes. DEC's SAIFI would be 4.6 times and its CAIDI would be 173 minutes. The proposed rules' reporting periods are annually and a rolling three-year average. Both utilities will have an average 'Forced Outage Rate' limit of one percent of a facility's time in operation. These standards are interim and shall apply through 2005. I find that the performance standards are reasonable, particularly as the utilities accepted them.

16. The proposed rules' performance standards are expressly not to be used to penalize the utilities for any non-compliance. I agree that this is prudent since there are many uncertainties in the change from a manual reporting system to an OMS, as discussed later in this report. The proposed rules also remove from the performance standards' calculations any outage data from a "major event," as defined by the industry. Again, this is appropriate insofar as a major event could distort the data, which is designed to

measure reliability under normal operations. Information on major event outages will still be reported to the Commission.

17. The proposed rules will require the utilities to submit annually a Planning and Studies Report and a Performance Report. These reports are to detail the utilities' plans to improve their performance and how they performed in the historic reporting periods. In addition, the utilities are to notify the Commission of a major event within thirty-six hours and submit a Major Event Report within fifteen days afterwards. A major event is defined by the accepted industry standard definition set forth in The Institute of Electrical and Electronics Engineers, Inc. ("I.E.E.E") Standard 1366.

18. In addition, the proposed rules will require that the electric utilities install an outage management system ("OMS"), which is defined "as a software system that provides database information to effectively manage service interruptions and minimize customer outage times." The record indicates that DP&L has an OMS that already is in operation; while DEC's OMS should be in operation by the time the proposed rules go into effect as regulations.

19. The OMS required by the proposed rules will improve the situation where the utilities previously may only have been able to guess the duration of and how many customers were affected by a particular outage. DEC witness Mr. Ellers illustrated the impact of the change from a system based upon each service person's judgment to a central system that uses a computerized tracking system in the following testimony:

But to give you insight on how it works, we can show you our old method and our new method. But in looking at our old method, I would like to give you an example of a customer outage by the old method versus the new, and show you the differences. Two a.m. in the morning, our dispatch gets a phone call. Customer has an outage. Tries to reach a serviceman at 2:30. Finally, dispatches a service man to go to the site. Service man arrives at 3:15. Looks around the site. Has two poles down. Finds the cause. Corrects it. Goes back and closes a fuse out. On the trouble ticket, they wrote down 2:30 as the starting outage when they dispatched the service man. It was closed in and energized at four 17 o'clock. So, then, the serviceman, [estimates that] [i]t looks like 15 customers down this road. He writes down 15 customers. We have 1,350 minutes of outage. Now, on OMS. The call starts at two o'clock. So, the system starts clicking at two o'clock. We go through the same exact procedure. Closes in the fuse at four o'clock. And we have a two-hour outage. The system now looks at all of the customers affected. There were, actually, 45 customers down the road. We had a couple of taps.

Development down there. We now have 5,400 minutes of outage versus 1,350. So, for us, that is a big difference.

Tr. 376-78.

20. The above illustrates the problems that may ensue from the more precise information to be provided by an OMS, and highlights the need to move carefully in establishing standards based upon older, less precise records that were largely estimates by servicepersons.

21. The proposed rules also will impose a duty to promptly restore service after an outage, and supplement the inherent and vague duty to provide "safe, adequate and reliable" service obligation of the electric utilities. Under the proposed rules, a two-hour or less response time will be required to respond to an outage under normal conditions.

22. The proposed rules have a penalty provision in Part M to ensure compliance, but, as noted above, the penalties apply to the submission of reports and not to the performance standards.

23. The proposed regulations represent a consensus among the participants after a series of modifications and refinements as a result of several rounds of comments and two hearings. I recommend approval of the proposed rules as regulations in order to allow the Commission to receive additional and improved information on outages. The proposed rules are a good start down the road of improved customer service and better reliability, particularly the requirement for an OMS.

III. RECOMMENDATION

24. Based upon the record developed, and for the reasons set forth above, I recommend that the proposed rules that were published in the September 2003 *Delaware Register of Regulations*, a copy of which is in Appendix 'A' hereto, be adopted as final rules because they are reasonable, adequately supported by the record, and are not opposed by any participant.

Respectively submitted,
Robert P. Haynes
Hearing Examiner

DATED: 11/21/03

***Please note that no changes were made to the regulation as originally proposed and published in the September 2003 issue of the Register at page 243 (7 DE Reg. 243). Therefore, the final regulation is not being republished. Please refer to the September 2003 issue of the Register or contact the Public Service Commission.**

DEPARTMENT OF AGRICULTURE**THOROUGHBRED RACING COMMISSION**

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

ORDER

Pursuant to 29 Del.C. §10118 and 3 Del.C. §10103, the Delaware Thoroughbred Racing Commission issues this Order adopting proposed amendments to the Commission Rules. Following notice and a public hearing held on October 22, 2003, the Commission makes the following findings and conclusions:

SUMMARY OF EVIDENCE

1. The Commission posted public notice of the proposed amendments in the October 1, 2003 Register of Regulations and for two consecutive weeks in the Delaware Capital Review and the Delaware State News. The proposed amendments to the Commission's Rules are as follows: i) amend Rule 6.02 to enact a new subsection (e) providing that all owners must first secure the services of a licensed trainer before entering a horse; and ii) amend Rule 15.12 to enact a new subsection c. prohibiting Intermittent Hypoxic Treatment by External Device.

2. The Commission held a public hearing on October 22, 2003. At the public hearing, Racing Secretary Sam Abbey asked whether the proposed change to Rule 6.02(e) would have to be in the condition book. Steward Jack Houghton stated the rule change should be in the condition book. Mr. Houghton stated that the proposed Rule 6.02(e) would require an owner to secure a trainer before entering a horse to race. Mr. Houghton did not think there should be a requirement that the owner have a written agreement with the trainer before entering a horse. The Commission received no written comments from the public during the comment period from October 1, 2003 through October 30, 2003.

FINDINGS OF FACT AND CONCLUSIONS

3. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing on the proposed amendments to the Commission's Rules.

4. The Commission finds that the proposed amendments to the Commission's Rules are necessary for the agency to achieve its statutory duty to effectively regulate thoroughbred racing under 3 Del.C. §10103. The Commission concludes that the proposed amendments to the Rules should be adopted in the proposed form. The Commission adopts the proposed amendments to

Commission Rules 6.02(e) and 15.12c.

5. The effective date of this Order shall be ten (10) days from the publication of this order in the Register of Regulations on December 1, 2003. A copy of the enacted Rule amendments is attached as Exhibit #1 to this Order.

IT IS SO ORDERED this 5th day of November, 2003

Bernard Daney, Chairman
Duncan Patterson, Commissioner
H. James Decker, Commissioner
Edward Stegemeier, Commissioner

Exhibit #1 -Adopted Rule Changes for Thoroughbred Racing Commission**6.02 Requirements for Owner's Registration**

In addition to satisfying the requirements applicable to Permittee, et al., imposed by Part 2 of these Rules, in order to be eligible for registration as an Owner, a person also:

- (a) Must be an individual 18 years of age or older.
- (b) All Owners and Trainers shall carry workmen's compensation insurance covering all their employees. This paragraph is intended to include all individuals employed by Owners and Trainers in the training and racing of horses.
- (c) Must own or have under lease a horse eligible to race and be prepared to prove such upon call of the Stewards.
- (d) Must not engage in any activity directly or indirectly involving the racing performance of horses on Licensee's grounds owned and trained by others.

1. The Commission or its designee may deny, suspend or revoke an Owner's registration for the spouse, or any member of the immediate family or household, of a person ineligible to be registered as an Owner, unless there is a showing by the applicant or registered Owner, and the Commission so finds, that his participation in racing as an Owner will in no way circumvent the intent of this Rule by permitting a person, under the control or direction of a person ineligible for an Owner's registration, to serve in effect as the alter ego of such ineligible person.

2. A registered Owner or Trainer may personally serve as a Farrier or Jockey for horses he owns or are registered in his care, provided he has received from the Stewards a certification of his fitness as a competent Farrier or Jockey.

(e) All owners must first secure the services of a Trainer licensed by the Commission before any horse owned by the individual or a partnership may be entered to race at a meet licensed by the Commission.

15.12 Prohibited Practices:

The following conduct shall be prohibited for all licensees:

- a. The possession and/or use of a drug, substance, or

medication, specified below, on the premises of a licensed racetrack under the jurisdiction of the Commission for which a recognized analytical method has not been developed to detect and confirm the administration of such substance including but not limited to erythropoietin, darbepoietin, and perfluorocarbon emulsions; or the use of which may endanger the health and welfare of the horse or endanger the safety of the rider; or the use of which may adversely affect the integrity of racing.

b. The possession and/or use of a drug, substance, or medication on the premises of a facility under the jurisdiction of the regulatory body that has not been approved by the United States Food and Drug Administration (FDA) for use in the United States.

c. The practice, administration, or application of Intermittent Hypoxic Treatment by External Device which is performed on the premises of a facility under the jurisdiction of the Commission, and which may endanger the health, safety, and welfare of the horse or endanger the safety of the jockey, or the use of which may adversely affect the integrity of racing. Intermittent Hypoxic Treatment is the administration of hypoxic gas to a horse for the purpose of enhancing aerobic metabolism by simulating training at a high altitude.

DEPARTMENT OF EDUCATION

14 DE Admin. Code 255

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

REGULATORY IMPLEMENTING ORDER

876 Possession, Use or Distribution of Drugs and Alcohol

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend regulation 876 Possession, Use or Distribution of Drugs and Alcohol. The number of the regulation has been changed to 612 (from 876) which will place the regulation in the Discipline Section (600) of the regulations instead of in the Health and Safety Section (800).

The amendment removes the reference to an unauthorized beeper or communication devise from 1.3 and from 3.10 as it relates to searching a student’s motor vehicle. The words “diet pills” were added to the examples in the definition of Drug-Like Substances. The section about a program of intervention and assistance, 3.6 has been shortened to require the existence of such a program but not to mandate the specific elements of the program. In 3.2, the

statement concerning children with disabilities has been updated and in all of 3.0 the term “Relative Caregiver” has been added to the references to parents and legal guardians. In 3.7.1 and 3.7.3, the words “alternative school setting” has been changed to the words “alternative setting” and a change has been made in the penalty for a second offence in 3.7.2.

In the new 3.11 (was 3.12), auto-injectable epinephrine has been added to the asthmatic quick relief inhaler as a medication (drug) that students may possess in school under very controlled conditions Section 4.0 has been deleted.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on September 23, 2003 in the form hereto attached as *Exhibit “A”*. Comments were received from the State Council for Persons with Disabilities, the Governors Advisory Council for Exceptional Citizens and H.E.R.O.I.N. HURTS INC. The comments addressed some editing errors which have been corrected and also the need to reference tobacco and tobacco products as drug like substances. This concern has been addressed by referring to regulation 877 Tobacco Policy at the end of the definition of drug like substances. Concerns were also expressed about eliminating the specific requirements for a program of intervention and assistance. Due to expressed concerns about over-regulation and unfunded mandates, the Department will proceed with the amendment as proposed and regulate only that “a program of assistance for students with counseling and referral services” be part of local district policies. The regulations of the Department will no longer dictate the details of such a program.

II. Findings of Facts

The Secretary finds that it is appropriate to amend this regulation in order update the regulation and to better meet student needs. The amendments add the term Relative Caregiver where appropriate, add the words diet pills to examples of drug like substances, change the words alternative school setting to alternative setting, permit districts to design their own program of assistance for students who abuse drugs and alcohol and allow students to carry auto-injectable epinephrine in school pursuant to a prescription or written direction by a state licensed health care practitioner.

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** §612 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 20, 2003. 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 20th day of November 2003.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 20th day of November, 2003

STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President

Jean W. Allen, Vice President

Richard M. Farmer, Jr.

Mary B. Graham, Esquire

Valarie Pepper

Dennis J. Savage

Dr. Claibourne D. Smith

Exhibit B

876 612 Possession, Use or Distribution of Drugs and Alcohol

1.0 The following policy on the possession, use, or distribution of drugs and alcohol shall apply to all public school districts.

1.1 The possession, use and/or distribution of alcohol, a drug, a drug-like substance, a look-alike substance and/or drug paraphernalia are wrong and harmful to students and are prohibited within the school environment.

1.2 Student lockers are the property of the school and may be subjected to search at any time with or without reasonable suspicion.

1.3 Student motor vehicle use to and in the school environment is a privilege which may be extended by school districts to students in exchange for their cooperation in the maintenance of a safe school atmosphere. Reasonable suspicion of a student's use, possession or distribution of alcohol, a drug, a drug-like substance, a look-alike substance or drug paraphernalia, ~~or of a student's possession of an~~

~~unauthorized electronic beeper or other communication device~~ in the school environment, may result in the student being asked to open an automobile in the school environment to permit school authorities to look for such items. Failure to open any part of the motor vehicle on the request of school authorities may result in the police being called to conduct a search, and will result in loss of the privilege to bring the vehicle on campus.

1.4 All alcohol, drugs, drug-like substances, look-alike substances and/or drug paraphernalia found in a student's possession shall be turned over to the principal or designee, and be made available, in the case of a medical emergency, for identification. All substances shall be sealed and documented, and, in the case of substances covered by 16 **Del.C.** Ch. 47, turned over to police as potential evidence.

2.0 The following definitions shall apply to this policy and will be used in all district policies.

"**Alcohol**" shall mean alcohol or any alcoholic liquor capable of being consumed by a human being, as defined in 4 **Del.C.** §101 including alcohol, spirits, wine and beer.

"**Distribute,**" "**distributing**" or "**distribution**" shall mean the transfer or attempted transfer of alcohol, a drug, a look-alike substance, a drug-like substance, or drug paraphernalia to any other person with or without the exchange of money or other valuable consideration.

"**Drug**" shall mean any controlled substance or counterfeit substance as defined in 16 **Del.C.** §4701 including, for example, narcotic drugs such as heroin or cocaine, amphetamines, anabolic steroids, and marijuana, and shall include any prescription substance which has been given to or prescribed for a person other than the student in whose possession it is found.

"**Drug-like substance**" shall mean any noncontrolled and/or nonprescription substance capable of producing a change in behavior or altering a state of mind or feeling, including, for example, some over-the-counter cough medicines, certain types of glue, caffeine pills [**and diet pills. The definition of drug-like substance does not include tobacco or tobacco products which are governed by regulation 877 Tobacco Policy.**]

"**Drug paraphernalia**" shall mean all equipment, products and materials as defined in 16 **Del.C.** §4701 including, for example, roach clips, miniature cocaine spoons and containers for packaging drugs.

"**Expulsion**" shall mean exclusion from school for a period determined by the local district not to exceed the total number of student days. The process for readmission shall be determined by the local district.

"**Look-alike substance**" shall mean any noncontrolled substance which is packaged so as to appear to be, or about which a student makes an express or implied representation that the substance is, a drug or a noncontrolled substance capable of producing a change in behavior or altering a state

of mind or feeling. See 16 Del.C. §4752A.

"**Nonprescription medication**" shall mean any over-the-counter medication; some of these medications may be a "drug-like substance."

"**Possess,**" "**possessing,**" or "**possession**" shall mean that a student has on the student's person, in the student's belongings, or under the student's reasonable control by placement of and knowledge of the whereabouts of, alcohol, a drug, a look-alike substance, a drug-like substance or drug paraphernalia.

"**Prescription drugs**" shall mean any substance obtained directly from or pursuant to a valid prescription or order of a practitioner, as defined in 16 Del.C. §4701(24), while acting in the course of his or her professional practice, and which is specifically intended for the student in whose possession it is found.

"**School environment**" shall mean within or on school property, and/or at school sanctioned or supervised activities, including, for example, on school grounds, on school buses, at functions held on school grounds, at extra-curricular activities held on and off school grounds, on field trips and at functions held at the school in the evening.

"**Use**" shall mean that a student is reasonably known to have ingested, smoked or otherwise assimilated alcohol, a drug or a drug-like substance, or is reasonably found to be under the influence of such a substance.

3.0 Each school district shall have a policy on file and update it periodically. The policy shall include, as a minimum the following:

3.1 A system of notification of each student and of his/her parent, guardian or Relative Caregiver at the beginning of the school year, ~~and whenever a student enters or re-enters enrolls or re-enrolls in the school during the school year~~ of the state and district policies and regulations. **[In addition a system for the notification of each student and his/her parent, guardian or Relative Caregiver whenever a student enrolls or re-enrolls during the school year of the state and district policies and regulations.]**

3.2 ~~A statement that it is anticipated that the state and district policies shall apply to all students, except that with respect to handicapped students, the federal law will be followed, and a determination of whether the violation of the alcohol and drug policy was due to the student's handicapping condition will be made prior to any discipline or change or placement in connection with the policy. A statement that state and district for charter school policies shall apply to all students, except that with respect to children with disabilities, applicable federal and state laws will be followed.~~

3.3 A written policy which sets out procedures for reporting incidents to police authorities, parents, guardians or Relative Caregivers and to the Department of Education, ~~and/or parents are to be contacted and how confidentiality is~~

~~to be maintained. while maintaining confidentiality.~~

3.4 A written policy on how evidence is to be kept, stored and documented, so that the chain of custody is clearly established prior to giving such evidence over to the police.

3.5 A written policy on search and seizure.

~~3.6 A program of intervention and assistance, which includes:~~

~~3.6.1 Having in each school building at least one person to whom staff can refer students to receive initial counseling and to obtain information on counseling/treatment services available to the student, on the student's rights, if any, to those services, and on the confidentiality which the student can expect~~

~~3.6.2 A written statement, available to be given to students or their parents, on what resources are available in the school environment and in the community for counseling and for drug and/or alcohol treatment~~

~~3.6.3 A system which ensures that all staff members are aware of resources in and referral procedures within the school environment, and encourage students to seek support and assistance~~

~~3.6.4 A system which encourages or requires that a student with alcohol or drug problems be assessed to determine the extent of alcohol or drug involvement and that the student receive the appropriate level of counseling or treatment needed~~

~~3.6.5 A policy of notification of the conditions under which the district will provide or pay for alcohol and/or drug counseling/treatment and/or testing, and the extent to which the cost of such services must be borne by the student~~

3.6 A program of assistance for students with counseling and referral to services as needed.

3.7 A discipline policy which contains, at a minimum, the following penalties for infractions of state and district drug policies.

3.7.1 Use/Impairment: For a first offense, if a student is found to be only impaired and not in violation of any other policies, he/she ~~will~~ **shall** be suspended for up to 10 days, or placed in an alternative school setting for up to 10 days, depending upon the degree of impairment, the nature of the substance used, and other aggravating or mitigating factors. For a second or subsequent offense, a student may be expelled or placed in an alternative school setting for the rest of the school year.

3.7.2 Possession of alcohol, a drug, a drug-like substance, and/or a look-alike substance, in an amount typical for personal use, and/or drug paraphernalia: For a first offense, the student ~~will~~ **shall** be suspended for 5-10 days, ~~or placed in an alternative school setting for 5-10 days.~~ For a second or subsequent offense, a student may be expelled for the rest of the school year or placed in an alternative setting for the rest of the school year.

3.7.3 Possession of a quantity of alcohol, a drug,

a drug-like substance, a look-alike substance and/or drug paraphernalia in an amount which exceeds an amount typical for personal use, and/or distribution of the above named substances or paraphernalia: the student ~~[will shall]~~ be suspended for 10 days, or placed in an alternative school setting for 10 days. Depending on the nature of the substance, the quantity of the substance and/or other aggravating or mitigating factors, the student also may be expelled.

3.8 A policy in cases involving a drug-like substance or a look-alike substance for establishing that the student intended to use, possess or distribute the substance as a drug.

3.9 A policy which establishes how prescription and non-prescription drugs shall be handled in the school environment and when they will be considered unauthorized and subject to these state and local policies.

~~3.10 A policy which sets penalties for the unauthorized possession of communication devices.~~

~~3.11~~ 3.10 A policy which sets out the conditions for return after expulsion for alcohol or drug infractions.

~~3.12~~ 3.11 Notwithstanding any of the foregoing to the contrary, all policies adopted by public school districts relating to the possession or use of drugs shall permit a student's discretionary use and possession of an asthmatic quick relief inhaler ("Inhaler") and /or auto-injectable epinephrine with individual prescription label; provided, nevertheless, that the student uses the inhaler and/or auto-injectable epinephrine pursuant to prescription or written direction from a state licensed health care practitioner; a copy of which shall be provided to the school district; and further provided that the parent(s) or legal custodian(s) of such student provide the school district with written authorization for the student to possess and use the inhaler and/or auto-injectable epinephrine at such student's discretion, together with a form of release satisfactory to the school district releasing the school district and its employees from any and all liability resulting or arising from the student's discretionary use and possession of the inhaler and/or auto-injectable epinephrine and further provided that the school nurse may impose reasonable limitations or restrictions upon the student's use and possession of the inhaler and/or auto-injectable epinephrine based upon the student's age, level of maturity, behavior, or other relevant considerations.

(For students who use prescribed asthmatic quick relief inhalers and/or auto-injectable epinephrine, see regulation 826 ~~Administration of Prescription Medications~~ 817 Administration of Medications and Treatments)

~~4.0 The policy shall include the designation of a district committee composed of teachers, parents, school nurses, and community leaders. Any revisions in the local school district policy will be submitted to the Department of Education for review and approval.~~

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

REGULATORY IMPLEMENTING ORDER

1051 DIAA Senior High School Interscholastic Athletics

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend Section 1.0 of regulation 1051 DIAA Senior High School Interscholastic Athletics. The amendment is necessary in order to add parts 1.2.4 and 1.2.4.1 that address sports participation of students attending the Sterck School both full time and part time. The amendment identifies the schools at which the full time and the part time students will participate in sports. This issue was addressed previously as an interpretation of the regulations. This amendment places the participation in sports by Sterck students in parts 1.2.4 and 1.2.4.1 of the regulations.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on September 23, 2003, in the form hereto attached as *Exhibit "A"*. Comments were received from the State Council for Persons with Disabilities and the Governors Advisory Council for Exceptional Citizens concerning the issue that students attending special schools other than the Sterck School may wish to engage in sports not available at the special school. The Department had decided to go forward with the changes as recommended concerning the Sterck School. These changes simply put in regulation a practice that was agreed to by the schools involved and was previously listed in the DIAA Handbook as an interpretation of the eligibility rules of DIAA. The Department recognizes the merit of the concerns expressed in the written comments and will consider the issue when considering amendments to the DIAA regulations to be brought back to the State Board of Education in March 2004. The amended regulations presented in March will be simplified and reformatted and will also include any substantive regulation changes for the 2004-2005 school year.

II. Findings of Facts

The Secretary finds that it is appropriate to amend this regulation in order to put a previous agreement with the Sterck School and Christina High School into regulation. The schools have been operating as per this amendment to the regulation for a number of years.

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** §1051 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 20, 2003. 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 20th day of November 2003.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

APPROVED this 20th day of November, 2003

STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President

Jean W. Allen, Vice President

Richard M. Farmer, Jr.

Mary B. Graham, Esquire

Valarie Pepper

Dennis J. Savage

Dr. Claibourne D. Smith

1051 DIAA Senior High School Interscholastic Athletics**1.0 Eligibility**

No student shall represent a school in an interscholastic scrimmage or contest if he/she does not meet the following requirements:

1.1 Age

1.1.1 Students who become 19 years of age on or after June 15 shall be eligible for all sports during the school year provided all other eligibility requirements are met. Students who have attained the age of 19 prior to June 15 shall be ineligible for all sports.

1.1.2 In determining the age of a contestant, the birth date as entered on the birth record of the Bureau of Vital Statistics shall be required and shall be so certified on all eligibility lists.

1.1.3 Requests for waiver of the age requirement shall be considered only for participation on an unofficial, non-scoring basis in non-contact or non-collision sports.

1.2 Enrollment and Attendance

1.2.1 A student must be legally enrolled in the high school which he/she represents in order to participate in a practice, scrimmage or contest.

1.2.2 A student must be in regular attendance prior to the 11th school day of the academic year.

1.2.2.1 A student who enters school on or after the 11th school day of the academic year shall not be eligible to participate for ninety (90) school days.

1.2.3 A shared-time student who attends two (2) different schools during the regular school day shall be eligible to participate only at his/her home school.

1.2.3.1 A student's home school shall be the school at which he/she is receiving instruction in the core academic areas and at which he/she is satisfying the majority of his/her graduation requirements.

1.2.3.2 A shared-time student shall not be eligible to participate at the school at which he/she is receiving only specialized educational instruction; e.g., vocational training.

1.2.4 A student who attends the Sterck School shall participate in interscholastic athletics at the Sterck School. If the Sterck School does not sponsor a particular sport, Sterck students shall be eligible to participate in interscholastic athletics at the Christiana High School, the high school in closest proximity to the Sterck School.

1.2.4.1 Notwithstanding 1.2.3 and 1.2.4 above, a shared time student who attends the Sterck School and a mainstream high school during the regular school day shall participate in interscholastic athletics at the Sterck School. If the Sterck School does not sponsor a particular sport, the shared-time student shall be eligible to participate in interscholastic athletics only at the mainstream high school.

1.2.45 A student who is participating in the Delaware School Choice Program, as authorized by 14 Del. C. Ch. 4, is obligated to attend the choice school for a minimum of two (2) years unless the students custodial parent(s) or legal guardian(s) relocate to a different school district or the student fails to meet the academic requirements of the choice school. If a student attends a choice school for less than two (2) years and subsequently returns to his/her home school, the student must receive a release from the "choice district" in order to legally enroll at his/her home school. Without a release, the student would not be eligible legally enrolled and consequently would be

ineligible to participate in interscholastic athletics (see 1.4.8).

1.2.56 A student may not participate in a practice, scrimmage, or contest during the time a suspension, either in-school or out-of-school, is in effect or during the time he/she is assigned to an alternative school for disciplinary reasons.

1.2.67 A student must be legally in attendance at school in order to participate in a practice, scrimmage, or contest except when excused by proper school authorities.

1.2.67.1 A student who is not legally in attendance at school due to illness or injury shall not be permitted to participate in a practice, scrimmage, or contest on that day.

1.2.78 Failure to complete a semester or absence for one or more semesters for reasons other than personal illness or injury shall render a student ineligible for ninety (90) school days from the date of his/her reentry to school.

1.2.89 An ineligible student who practices in violation of 1.2.1 or 1.2.6 shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of days.

1.3 Residence

1.3.1 A student must be living with his/her custodial parent(s) or court appointed legal guardian(s) in the attendance zone of the school which he/she attends in order to be eligible for interscholastic athletics in that school. In cases of joint custody, the custodial parent shall be the parent with actual physical placement as determined by court action.

1.3.1.1 Maintaining multiple residences in order to circumvent this requirement shall render the student ineligible.

1.3.1.2 A student who, pursuant to established school board policy or administrative procedure, remains in a school he/she has been attending after his/her legal residence changes to the attendance zone of a different school in the same school district, may exercise, prior to the first official student day of the subsequent academic year, a one time election to remain at his/her current school and thereby not lose athletic eligibility.

1.3.1.2.1 However, if a student chooses to remain at his/her current school and then transfers to the school in his/her new attendance zone on or after the first official student day of the subsequent academic year, he/she shall be ineligible, for ninety (90) school days.

1.3.1.3 If a student changes residence to a different attendance zone after the start of the last marking period and, pursuant to established school board policy or administrative procedure, is granted permission to continue attending his/her present school, the student shall retain his/her athletic eligibility in that school for the remainder of the school year provided all other eligibility requirements are met.

1.3.1.4 A student shall be permitted to complete his/her senior year at the school he/she is attending and remain eligible even though a change of legal residence to the attendance zone of another school has occurred. This provision shall refer to any change of legal residence that occurs after the completion of the student's junior year.

1.3.1.5 A student may be residing outside of the attendance zone of the school which he/she attends if the student is participating in the Delaware School Choice Program as authorized by 14 *Del. C.*, Ch. 4.

1.3.1.6 A student who is a non-resident of Delaware shall be eligible at a public, vocational-technical, or charter school if, in accordance with 14 *Del. C.*, § 607, his/her custodial parent or court appointed legal guardian is a full-time employee of that district.

1.3.1.7 Notwithstanding 1.3.1, a student shall be eligible at a public or vocational-technical school if he/she enrolls in accordance with 14 *Del. C.* §202(f), the Caregivers' School Authorization.

1.3.1.7.1 An exception would be a student whose relative caregiver does not provide the documentation required by the Caregivers' School Authorization (proof of relation and proof of full-time care) but is permitted to register on the basis of a petition for the transfer of guardianship. A student who registers on the basis of a petition for the transfer of guardianship is not eligible to scrimmage or compete until the relative Caregivers has provided the aforementioned required documentation or has received a signed court order designating him/her as the student's legal guardian.

1.3.2 Notwithstanding 1.4, a student who reaches the age of majority (18), leaves his/her parents' place of residency and jurisdiction thereof, and moves to another attendance zone to continue his/her high school education shall be ineligible to participate in athletics for 90 school days commencing with the first day of official attendance. This provision shall not apply to a student participating in the Delaware School Choice Program, as authorized by 14 *Del. C.* Ch. 4, provided the student's choice application was properly submitted prior to the his/her change of residence.

1.4 Transfer

1.4.1 A student who has not previously participated in interscholastic athletics (previous participation is defined as having practiced, scrimmaged, or competed in grades 9 through 12 except as specified in 5.2) is released by a proper school authority from a sending school, has completed the registration process at the receiving school, and is pursuing an approved course of study shall be eligible immediately upon registration provided he/she meets all other DIAA eligibility requirements.

1.4.2 If a student has previously participated in interscholastic athletics, he/she shall be ineligible for a period of ninety (90) school days commencing with the first

day of official attendance in the receiving school unless one of the following exceptions applies:

1.4.2.1 The transfer is within a school district and is approved by the district's superintendent pursuant to established school board policy or administrative procedure. This provision shall not apply to a student who transfers to his/her home school from a "choice school" within the district and who has not completed the two-year attendance requirement unless he/she satisfies the conditions stipulated in 1.4.2.5.1 through 1.4.2.5.4. This provision shall also not apply to a student who transfers from a "choice school" to another "choice school" within the district (see 1.4.7.1).

1.4.2.2 The transfer is caused by court action, court action being an order from a court of law affecting legally committed students.

1.4.2.2.1 In the case of a transfer of guardianship/custody, the transfer shall be the result of a court order signed by a judge, commissioner, or master of a court of competent jurisdiction. A petition for the transfer of guardianship/custody, an affidavit, (except as permitted by 1.4.2.3), or a notarized statement signed by the affected parties shall not be sufficient to render the student eligible to participate in interscholastic athletics.

1.4.2.3 The transfer is in accordance with 14 Del.C. §202(f), the Caregivers School Authorization.

1.4.2.3.1 An exception would be a student whose relative Caregivers does not provide the documentation required by the Caregivers' School Authorization (proof of relation and proof of full-time care) but is permitted to register on the basis of a petition for the transfer of guardianship. A student who registers on the basis of a petition for the transfer of guardianship is not eligible to scrimmage or compete until the relative Caregivers has provided the aforementioned required documentation or has received a signed court order designating him/her as the student's legal guardian.

1.4.2.4 The transfer is the result of a change in residence by the custodial parent(s) or court appointed legal guardian(s) from the attendance zone of the sending school to the attendance zone of the receiving school. A change in residence has occurred when all occupancy of the previous residence has ended.

1.4.2.4.1 A student who transfers from a public, private, vocational-technical, charter, or choice school to another public, private, vocational-technical, charter, or choice school shall be eligible in the receiving school immediately, except as prohibited by 1.4.10.1, when the custodial parent(s) or court appointed legal guardian(s) has established a new legal residence in another public school attendance zone different from the one in which the custodial parent(s) or court appointed legal guardian(s) resided for attendance in the sending school. In the case of a transfer to a public or vocational-technical school, the new legal residence must be in the attendance zone of the

receiving school.

1.4.2.5 The transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year provided:

1.4.2.5.1 The student has completed the registration process at the receiving school prior to the first official student day of the academic year. The first official student day shall be defined as the first day on which students in any grade in that school are required to be in attendance.

1.4.2.5.2 The student has not attended class, excluding summer school, or participated in a scrimmage or contest at the sending school since the close of the previous academic year.

1.4.2.5.3 The student's legal residence is located in the attendance zone of the receiving school.

1.4.2.5.4 All other DIAA eligibility requirements have been met.

1.4.3 Promotion or administrative assignment to the ninth grade from a school whose terminal point is the eighth grade, or to the tenth grade from a junior high school whose terminal point is the ninth grade, shall not constitute a transfer. Students so promoted or administratively assigned shall be eligible.

1.4.4 If a waiver of the ninety (90) school day ineligibility clause is requested due to a desired change in the program of study or financial hardship, the parent(s) or court appointed legal guardian(s) is responsible for providing documentation to the DIAA Board of Directors to support the request. Documentation should include the following:

1.4.4.1 Change in program of study (a multi-year, hierarchical sequence of courses with a common theme or subject matter leading to a specific outcome).

1.4.4.1.1 Student schedule card.

1.4.4.1.2 Student transcript.

1.4.4.1.3 Current course descriptions from both the sending and receiving schools.

1.4.4.1.4 Statement from the principal of the sending school indicating that a significant part of the student's desired program of study will not be offered and that it will place the student at a definite disadvantage to delay transfer until the end of the current school year.

1.4.4.1.5 Statement from the principal of both the sending and receiving schools that the student is not transferring primarily for athletic advantage as defined in 1.4.6.1 through 1.4.6.4.

1.4.4.2 Financial hardship

1.4.4.2.1 Proof of extreme financial hardship caused by significant and unexpected reduction in income and/or increase in expenses.

1.4.4.2.2 Statement from the principal of both the sending and receiving schools that the student is not transferring primarily for athletic advantage as defined in

1.4.6.1 through 1.4.6.4.

1.4.5 In cases of joint custody when a primary residence is established, a change in a student's primary residence without court action subjects the student to the ninety (90) school day ineligibility clause.

1.4.6 A change of custody or guardianship for athletic advantage shall render a student ineligible under the ninety (90) school day ineligibility clause if the primary reason for his/her transfer is one of the following:

1.4.6.1 To seek a superior team.

1.4.6.2 To seek a team more compatible with his/her abilities.

1.4.6.3 Dissatisfaction with the philosophy, policies, methods, or actions of a coach or administrator pertaining to interscholastic athletics.

1.4.6.4 To avoid disciplinary action imposed by the sending school related to or affecting interscholastic athletic participation.

1.4.7 A student who transfers from a public, private, vocational-technical, or charter school to a school of choice, as authorized by 14 Del.C., Ch. 4, shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year and the student satisfies the conditions stipulated in 1.4.2.5.1, 1.4.2.5.2, and 1.4.2.5.4.

1.4.7.1 A student who transfers from a school of choice to another school of choice shall be ineligible to participate in interscholastic athletics during his/ her first year of attendance at the receiving school unless the receiving school sponsors a sport(s) not sponsored by the sending school in which case the student shall be eligible to participate in that sport(s) only.

1.4.8 A student who transfers from a school of choice to either a private school or, after completing his/her two-year commitment, to a public, vocational technical, or charter school shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year and the student satisfies the conditions stipulated in 1.4.2.5.1 through 1.4.2.5.4.

1.4.9 If a student transfers with fewer than ninety (90) school days left in the academic year, he/she shall be ineligible for the remainder of the school year but shall be eligible beginning with the subsequent fall sports season provided he/she is in compliance with all other eligibility requirements.

1.5 Amateur

1.5.1 A student may not participate in an interscholastic sport unless he/she is considered an amateur in that sport. A student forfeits his/her amateur status if he/she does any of the following:

1.5.1.1 Knowingly plays on or against a professional team.

1.5.1.2 Expenses to attend a professional tryout, or receives financial assistance in any form from a professional sports organization.

1.5.1.3 Enters competition under an assumed name. The surname and given name used by any player in his/her first game of interscholastic competition shall be used during the remainder of the student's interscholastic career. Any change in spelling or use of another name shall be regarded as an attempt to evade this rule unless the change has been properly certified by the player to the principal of the school.

1.5.1.4 Receives remuneration of any kind or accepts reimbursement for expenses in excess of the actual and necessary costs of transportation, meals, and lodging for participating in a team or individual competition or an instructional camp or clinic. Reimbursement for the aforementioned expenses is permitted only if all of the participants receive the same benefit.

1.5.1.5 Receives cash or a cash equivalent (savings bond, certificate of deposit, etc.), merchandise (except as permitted by 26.5) or a merchandise discount, (except for discount arranged by school for part of team uniform) a reduction or waiver of fees, a gift certificate, or other valuable consideration as a result of his/her participation in an organized competition or instructional camp/clinic.

1.5.1.5.1 Accepting an event program and/or a complimentary item(s) (t-shirt, hat, equipment bag, etc.) that is inscribed with a reference to the event, has an aggregate retail value of no more than \$50.00, and is provided to all of the participants, shall not jeopardize his/her amateur status.

1.5.1.6 Sells or pawns awards received.

1.5.1.7 Uses his/her athletic status to promote or endorse a commercial product or service in a newsprint, radio, or television advertisement or personal appearance.

1.5.2 Accepting compensation for teaching lessons, coaching, or officiating shall not jeopardize his/her amateur status.

1.5.3 A student who forfeits his/her amateur status under the provisions of this rule is ineligible to participate at the interscholastic level in the sport in which the violation occurred. He/she may be reinstated after a period of up to 180 school days provided that during the suspension, he/she complies with all of the provisions of this rule. The suspension shall date from the time of the last offense.

*** PLEASE NOTE: AS THE REST OF THE SECTIONS WERE NOT AMENDED THEY ARE NOT BEING PUBLISHED AT THIS TIME.**

PROFESSIONAL STANDARDS BOARD**Regulatory Implementing Order
Amendment Standard Certificate Regulations**

321 CERTIFICATION AGRICULTURE TEACHER
322 CERTIFICATION BUSINESS EDUCATION
TEACHER
325 CERTIFICATION ENGLISH TEACHER
328 CERTIFICATION FOREIGN LANGUAGE
TEACHER COMPREHENSIVE
329 CERTIFICATION FOREIGN LANGUAGE
SECONDARY
330 CERTIFICATION FOREIGN LANGUAGE
TEACHER ELEMENTARY
335 CERTIFICATION MATHEMATICS TEACHER
337 CERTIFICATION BILINGUAL TEACHER
(SPANISH) SECONDARY
338 CERTIFICATION SOCIAL STUDIES TEACHER
343 CERTIFICATION ART TEACHER
COMPREHENSIVE
344 CERTIFICATION ART TEACHER
ELEMENTARY
345 CERTIFICATION ART TEACHER SECONDARY
346 CERTIFICATION HEALTH EDUCATION
TEACHER
348 MUSIC TEACHER COMPREHENSIVE
349 MUSIC TEACHER ELEMENTARY
350 CERTIFICATION MUSIC TEACHER
SECONDARY
351 CERTIFICATION PHYSICAL EDUCATION
TEACHER COMPREHENSIVE
352 CERTIFICATION PHYSICAL EDUCATION
TEACHER ELEMENTARY
353 CERTIFICATION PHYSICAL EDUCATION
TEACHER SECONDARY
354 CERTIFICATION READING SPECIALIST
355 CERTIFICATION EARLY CARE AND
EDUCATION TEACHER
356 CERTIFICATION PRIMARY TEACHER
(GRADES K-4)
357 CERTIFICATION MIDDLE LEVEL TEACHER
(GRADES 5-8)
358 CERTIFICATION BILINGUAL TEACHER
(SPANISH) PRIMARY/MIDDLE LEVEL
361 CERTIFICATION TEACHER EXCEPTIONAL
CHILDREN SPECIAL EDUCATION/ELEMENTARY
362 CERTIFICATION TEACHER EXCEPTIONAL
CHILDREN SPECIAL EDUCATION/SECONDARY
375 CERTIFICATION COUNSELOR –
ELEMENTARY SCHOOL
376 CERTIFICATION COUNSELOR – SECONDARY
SCHOOL
1526 CERTIFICATION ENGLISH TO SPEAKERS OF

OTHER LANGUAGES

1540 CERTIFICATE SCIENCE TEACHER
1541 STANDARD CERTIFICATE MATHEMATICS
TEACHER MIDDLE LEVEL
1542 STANDARD CERTIFICATE SCIENCE
TEACHER MIDDLE LEVEL

**I. Summary Of The Evidence And Information
Submitted**

The Professional Standards Board, in cooperation and collaboration with the Department of Education seeks the approval of the State Board of Education to adopt the following standard certificate regulations.

II. Synopsis Of Subject Matter Of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulations listed below:

321 Certification Agriculture Teacher
322 Certification Business Education Teacher
325 Certification English Teacher
328 Certification Foreign Language Teacher
Comprehensive
329 Certification Foreign Language Secondary
330 Certification Foreign Language Teacher
Elementary
335 Certification Mathematics Teacher
337 Certification Bilingual Teacher (Spanish)
Secondary
338 Certification Social Studies Teacher
343 Certification Art Teacher Comprehensive
344 Certification Art Teacher Elementary
345 Certification Art Teacher Secondary
346 Certification Heath Education Teacher
348 Music Teacher Comprehensive
349 Music Teacher Elementary
350 Certification Music Teacher Secondary
351 Certification Physical Education Teacher
Comprehensive
352 Certification Physical Education Teacher
Elementary
353 Certification Physical Education Teacher
Secondary
354 Certification Reading Specialist
355 Certification Early Care and Education Teacher
356 Certification Primary Teacher (Grades K-4)
357 Certification Middle Level Teacher (Grades 5-8)
358 Certification Bilingual Teacher (Spanish) Primary
middle Level
361 Certification Teacher Exceptional Children Special

	Education/elementary
362	Certification Teacher Exceptional Children Special Education/secondary
375	Certification Counselor – Elementary School
376	Certification Counselor – Secondary School
1526	Certification English to Speakers of Other Languages
1540	Certificate Science Teacher
1541	Standard Certificate – Mathematics Teacher – Middle Level
1542	Standard Certificate – Science Teacher – Middle Level

The regulations concern the requirements for standard certificates for educational personnel. It is necessary to amend these regulations due to changes in statute regarding the licensure and certification of educators.

Changes in statute in 2000 and again in 2003 necessitated major changes in the licensure and certification system for educators. All educators must have an initial, continuing or advanced license, as well as a standard certificate, which delineates the area in which an educator may practice. A standard certificate is issued to an educator who holds a license and who has acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students. Educators who have graduated from an educator preparation program offered by a Delaware higher education institution approved by the Department, who have achieved a passing score of a PRAXIS II examination, who have obtained National Board for Professional Teaching Standards certification, or who hold a current and valid certificate from another state in the area in which the standard certificate is sought are granted a standard certificate. It is necessary to amend the existing requirements for standard certificates to reflect these changes and to provide an interim set of requirements for individuals who are in the process of acquiring the necessary content knowledge or pedagogy under the regulations that are currently in place. Individuals currently working toward a standard certificate in a given area must have ample opportunity to complete the requirements and notice that such requirements will change effective June 30, 2006.

Notice of the proposed adoption of the regulation was published in the News Journal and the Delaware State News on September 30, 2003 in the form hereto attached as Exhibit A. The notice invited written comments. No written comment has been received.

II. Findings Of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to adopt these regulations to comply with changes in statute regarding the

certification of educators.

III. Decision To Adopt The Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulations. Therefore, pursuant to 14 Del.C. §1205(b), the regulations attached hereto as Exhibit "B" are hereby amended. The regulations hereby amended shall be in effect from the effective date of this order as set forth in Section V. below. through June 30, 2006 only.

IV. Text And Citation

The text of the regulations adopted shall be in the form attached hereto as Exhibit "B", and said regulations shall be cited as 14 DE Admin. Code §1521, 1522, 1525, 1528, 1529, 1533, 1534, 1537, 1539, 1543, 1544, 1545, 1546, 1548, 1549, 1545, 1551, 1552, 1553, 1554, 1555, 1556, 1557, 1558, 1561, 1562, 1575, 1576, 1526, 1540, 1541, and 1542 in the *Regulations of the Department of Education*.

V. Effective Date Of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 76TH DAY OF NOVEMBER, 2003.

Harold Roberts, Chair
Sharon Brittingham
Heath Chasanov
Patricia Clements
Edward Czerwinski
Karen Gordon
Barbara Grogg
Bruce Harter

Leslie Holden
Carla Lawson
Mary Mirabeau
John Pallace
Karen Schilling Ross
Carol Vukelich
Geraldine A. Williams

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED This 20th Day Of November, 2003

STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President
Jean W. Allen, Vice President
Richard M. Farmer, Jr.

Mary B. Graham, Esquire
Valarie Pepper
Dennis J. Savage
Dr. Claibourne D. Smith

***Please note that no changes were made to the regulation as originally proposed and published in the October 2003 issue of the Register at page 414 (7 DE Reg. 414). Therefore, the final regulation is not being republished. Please refer to the October 2003 issue of the Register or contact the Professional Standards Board.**

PROFESSIONAL STANDARDS BOARD

Regulatory Implementing Order

**REPEAL OF CERTIFICATION REGULATIONS 333,
339, 377, 378, AND 392**

**I. Summary Of The Evidence And Information
Submitted**

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to repeal regulations 333, 339, 377, 378, and 392 from the *Regulations of the Department of Education*. All regulations listed concern the requirements for certification of educational personnel. As part of a continuing effort to reduce the number of regulations which govern virtually every aspect of State government, it is recommended that the above-referenced regulations be repealed. The incidence of issuance of certificates pursuant to these regulations is extremely low, and all individuals are eligible to hold other certificates. One teacher holds a certificate as a teacher of journalism. Six individuals hold certificates or endorsements as teachers of speech. This certificate covers teachers of public speaking and does not apply to speech pathologists. Two individuals hold certificates as human relations specialists. No individuals hold certificates as an intern. All areas are incorporated into other standard certificates. Regulation 392 Middle Level Certification, was effectively eliminated by the passage of HB 88. There remains certification for middle level teacher (grades 5-8) and middle level (grades 7-8) teachers of science and mathematics.

Notice of the proposed repeal of the regulations was published in the News Journal and Delaware State News on September 30, 2003, in the form hereto attached as Exhibit "A". The notice invited written comments. No written comment has been received.

II. Findings Of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to repeal these regulations as the incidence of issuance of certificates pursuant to these regulations is extremely low, and all individuals are eligible to hold other certificates.

III. Decision To Repeal The Regulations

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude the identified regulations should be repealed. Therefore, pursuant to 14 Del. C. §1203 and § 1205(b), the regulations attached hereto as Exhibit "B" are hereby repealed.

IV. Text And Citation

The text of the regulations 333, 339, 377, 378, and 392, attached hereto as Exhibit "B" are repealed, and said regulations shall be deleted from the *Regulations of the Department of Education*.

V. Effective Date Of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

APPROVED BY THE PROFESSIONAL
STANDARDS BOARD THE 6TH DAY OF NOVEMBER,
2003

Harold Roberts, Chair
Sharon Brittingham
Heath Chasanov
Patricia Clements
Edward Czerwinski
Karen Gordon
Barbara Grogg
Bruce Harter

Leslie Holden
Carla Lawson
Mary Mirabeau
John Pallace
Karen Schilling Ross
Carol Vukelich
Geraldine A. Williams

FOR IMPLEMENTATION BY THE DEPARTMENT
OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED This 20th Day Of November,
2003

STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President
Jean W. Allen, Vice President
Richard M. Farmer, Jr.
Mary B. Graham, Esquire
Valarie Pepper
Dennis J. Savage

Dr. Claibourne D. Smith

333 Certification Journalism Teacher

Effective July 1, 1993

1.0 —The following shall be required for the Standard License in grades 9-12 and is valid in grades 5-8 in a middle level school:

1.1 Bachelor's degree from an accredited college and;

1.2 Completion of an approved program as a teacher of Journalism;

2.0 —The following shall be required for the Standard Endorsement for teachers with 3 or fewer classes of Journalism:

2.1 A Standard Delaware License in a secondary content area and;

2.2 A minimum of 15 semester hours from the following areas of Journalism: Fundamentals of Journalism, Advanced Written Composition, News Writing/Editing, Technical and Scientific Writing/Editing, Media Technology, Reporting for Publications, Feature/Magazine Writing, Copy Editing and Layout, History and Ethics of Journalism, and/or Methods of Teaching Writing or Composition.

3.0 —Licenses that may be issued for this position include Standard and Standard/Endorsement.

3.1 The Limited Standard license may be issued upon request of a Delaware public school district for a teacher employed for this position who meets the standards set forth in 2.3 of regulation 301 General Regulations for Certification of Professional Public School Personnel.

339 Certification Speech Teacher

Effective July 1, 1993

1.0 The following shall be required for the standard license in grades 9-12 and is valid grades 5-8 in a middle school:

1.1 Bachelor's degree from an accredited college and;

1.2 Completion of an approved program as a Teacher of Speech;

2.0 The following shall be required for the Standard Endorsement (for teachers with 3 or fewer classes of speech)

2.1 A Standard Delaware License in a secondary content area; and

2.2 A minimum of 15 semester hours from the following areas of Speech: Fundamentals of Speech, Discussion, Argumentation and Debate, Oral Interpretation, Speech Correction, Voice and Speech, Public Speaking, Rhetoric, and/or Methods of Teaching Speech.

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

3.1 The Limited Standard license may be issued

upon request of a Delaware public school district for a teacher employed for this position who meets the standards set forth in 2.3 of regulation 301 General Regulations for Certification of Professional Public School Personnel.

377 Certification Human Relations Specialist

Effective July 1, 1993

1.0 The following shall be required for the Standard License

1.1 Bachelor's degree from a regionally accredited college and;

1.2 Three years of appropriate experience in education, social work, community education, or human relations and;

1.3 Specialized Professional Preparation

1.3.1 Completion of a program in the educational specialty of Human Relations or;

1.3.2 Completion of a degree program in Teacher Education, or other appropriate area such as Community Education, Social and/or Behavioral Science, and coursework/workshops totaling fifteen (15) semester hours to include:

1.3.2.1 Human Relations Training (Workshops/Coursework for Human Relations Trainers that include experiential design, facilitative skills, and workshop implementation) and at least three other areas from those below: Group Dynamics or Group Process Skills, Multicultural Education/Race Relations; Sex Equity and Disability Issues, Interpersonal Communications/Cross-Cultural Communication Skills, Community or Public Relations Affective Education, Humanizing the Curriculum or School Climate and Self Concept Development

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 who meets the requirements listed below and who is employed as a Human Relations Specialist to allow for the completion of the requirements for the Standard License as listed in 1.0.

2.1.1 Bachelor's degree from an accredited college and;

2.1.2 Three years of appropriate experience in education, social work, community education, or human relations and;

2.1.3 Completion of a degree program in teacher education, or other appropriate area such as community education, social and/or behavioral science and;

2.1.4 Workshops/Coursework for Human Relations Trainers that include experiential design, facilitative skills, and workshop implementation.

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

PROFESSIONAL STANDARDS BOARD**378 Certification Intern**

Effective July 1, 1993

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

~~1.1 The appropriate Intern License (Teacher Intern, Guidance Intern, Administrative Intern, etc.) shall be required for all persons employed in the schools and working under an internship program from an accredited college or university, or arranged by the Department of Education. This License also may be issued at the request of a local school district Superintendent for an individual who will serve a supervised internship in lieu of student teaching or under a program approved by the Department of Education.~~

~~1.2 The License shall be issued to the applicant for the period of time designated by the supervising institution or the Department of Education, and agreed upon by the local school district. The maximum length of the License, without re-evaluation, shall be one year.~~

~~1.3 The qualifications and prerequisites will be those determined by the supervising college/university or by the Department of Education, when they are the supervising institution.~~

~~1.4 The License shall be issued only after the sponsoring institution or local district has filed the appropriate credentials with the Office of Certification. These credentials shall include the same as are required for any other applicant for certification. In addition, a description of the intern program, including the proposed college supervisory program shall be submitted when the Department of Education is not the supervising institution. The Office of Certification must approve the outlined intern program and the supervision provided, before the License will be granted.~~

392 Middle Level Certification

~~1.0 By September 1998, all beginning and newly employed teachers, administrators and counselors who work in middle level programs shall hold either a middle level endorsement or certificate. This endorsement and/or certificate intends that the middle level educator has knowledge of the middle level curriculum and instructional strategies as well as an understanding of the nature and needs of young adolescent students.~~

Regulatory Implementing Order**REGULATION 363 STANDARD CERTIFICATE –
CERTIFICATION EXCEPTIONAL CHILDREN
TEACHER GIFTED AND TALENTED STUDENTS****I. Summary Of The Evidence And Information
Submitted**

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend regulation 363 Certification Exceptional Children Teacher Gifted and Talented Students. The regulation concerns the requirements for certification of educational personnel. It is necessary to amend this regulation to comply with changes in statute regarding the licensure and certification of educators. The amended regulation will be renumbered 1563 to reflect its movement to the Professional Standards Board portion of the Department of Education regulations.

Changes in statute in 2000 and again in 2003 necessitated major changes in the licensure and

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on September 30, 2003, in the form hereto attached as Exhibit "A". The notice invited written comments. Written comment endorsing the proposed regulation was received from the Governor's Advisory Council for Exceptional Citizens.

II. Findings Of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute regarding the licensure and certification of educators.

III. Decision To Adopt The Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 Del.C. §1205(b), the regulation attached hereto as Exhibit "B" is hereby adopted. 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 shall be in the form attached hereto as Exhibit "B", and said regulation shall be

cited as 14 **DE Admin. Code** §1563 in the *Regulations of the Department of Education*.

V. Effective Date Of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 6TH DAY OF NOVEMBER, 2003

Harold Roberts, Chair	Bruce Harter
Sharon Brittingham	Leslie Holden
Heath Chasanov	Carla Lawson
Patricia Clements	Mary Mirabeau
Edward Czerwinski	John Pallace
Karen Gordon	Karen Schilling Ross
Barbara Grogg	Carol Vukelich
Geraldine A. Williams	

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED This 20th Day Of November, 2003

STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President
 Jean W. Allen, Vice President
 Richard M. Farmer, Jr.
 Mary B. Graham, Esquire
 Valarie Pepper
 Dennis J. Savage
 Dr. Claibourne D. Smith

363 Certification Exceptional Children Teacher Gifted/Talented (Effective July 1, 1993)

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

~~1.1 Bachelor's degree from an accredited college and,~~

~~1.2 Professional Education~~

~~1.2.1 Completion of an approved teacher education program in the area of endorsement and two years of successful, full-time teaching experience or,~~

~~1.2.2 Specific Requirements for Gifted and Talented Elementary~~

~~1.2.2.1 A current Standard or Professional Status Delaware License in Elementary Education~~

~~1.2.2.2 One semester course, Introduction/ Education of Exceptional Children~~

~~1.2.3 Specific Requirements for Gifted and Talented Secondary~~

~~1.2.3.1 A current Standard or Professional Status Delaware License in a secondary content area~~

~~1.2.3.2 One semester course, Introduction/ Education of Exceptional Children and,~~

~~1.2.4 Fifteen semester hours in Gifted Education as specified below:~~

~~1.2.4.1 Nine semester hours as follows:~~

~~1.2.4.1.1 Research/Nature and Needs of Gifted/Talented Students~~

~~1.2.4.1.2 Methods/Curriculum for Gifted/Talented~~

~~1.2.4.1.3 Identification, Diagnosis and Assessment of Gifted/Talented Students.~~

~~1.2.4.2 Six semester hours Gifted/Talented Electives from the following: Counseling of the Gifted/Talented, Creative Studies, Psychology and Education of the Gifted/Talented, Learning Theory, Social and Psychological Development, Adolescent/Child Psychology, Computer Education/Programming, Advanced Curriculum Design, Tests and Measurements and,~~

~~1.2.4.3 A minimum of two years of successful, full-time experience as a fully certified elementary or secondary teacher.~~

~~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 who meets the requirements listed below and who is employed as a teacher of gifted/talented, to allow for the completion of the requirements for the Standard License as listed in 1.0.~~

~~2.2 Requirements of 1.1, 1.2 and 1.3.~~

~~2.3 Standard Elementary or Secondary Teaching License and,~~

~~2.3.1 Specialized preparation~~

~~2.3.1.1 Six semester hours selected from the following areas: Survey/Introduction to Exceptional Children, Methods/Curriculum in the Specific Area of Endorsement, Identification, Diagnosis, and Assessment of Exceptional Children in the Specific Area of Endorsement, Review and Research of Survey course in the specific area of endorsement.~~

~~3.0 Present Gifted/Talented Teachers Protected~~

~~3.1 Those teachers authorized prior to date of State Board of Education adoption (8/18/83) to teach classes for Gifted/Talented children on the basis of a standard elementary or secondary teaching License and who have the recommendation of the school district superintendent shall be authorized to continue in such a teaching assignment in the district where the assignment was authorized.~~

~~Authorization to teach in this circumstance does not constitute a License transferable to any other school district.~~

~~4.0 Licenses that may be issued for this position include Standard and Limited Standard.~~

1563 Standard Certificate – Teacher of Gifted and Talented Students

1.0 Content: This regulation shall apply to the requirements for a standard certificate, pursuant to 14 Del.C., § 1220 (a), for a teacher of gifted and talented students in programs that are identified as specific to students who have been identified as gifted and talented through assessments and other criteria set forth by local school districts.

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“Department” means the Delaware Department of Education.

“License” means a credential which authorizes the holder to engage in the practice for which the license is used.

“Standard certificate” means a credential issued to certify that an educator has the prescribed knowledge, skill and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

3.0 In accordance with 14 Del.C. §1220(a), the Department shall issue a standard certificate as a Teacher of Gifted and Talented Students to an applicant who holds a valid Delaware initial, continuing, or advanced license; or limited standard, standard or professional status certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

3.1 Bachelor's degree in education or a content area from a regionally accredited college/university; and,

3.2 A minimum of three years of teaching experience at any pK-12 level; and,

3.3 Completion of course work in [each of] the following areas:

3.2.1 Foundations of giftedness, including cultural and socioeconomic equity;

3.2.2 Curriculum design and instructional strategies for gifted students;

3.2.3 Psychology of gifted students; and

3.2.4 Creative and critical thinking skills.

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

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

ORDER

Nature Of The Proceedings:

Delaware Health and Social Services (“Department”) / Division of Social Services (DSS) initiated proceedings to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM). Current state plan provision required Medicaid to make payments to long term care facilities to ensure a bed is reserved for a Medicaid recipient who is temporarily absent from the long-term care facility due to hospitalization or leave of absence. Bed reservation payments are limited to fourteen (14) days per hospitalization in any 30-day period. Notice is given to provide information of public interest with respect to the intent of DSS to amend the Division of Social Services Manual (DSSM) and to submit to the Centers for Medicare and Medicaid Services (CMS) an amendment to the Title XIX Medicaid State Plan to reduce "bed hold days" from fourteen (14) to seven (7) days per hospitalization in any 30-day period. 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 July 2003 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2003 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The following public comments were received on the current proposal to amend Title XIX of the Medicaid State Plan to reduce "bed-hold days" from fourteen (14) days to seven (7) days per hospitalization in any 30-day period. DSS received comments on the policy from nine (9) organizations and twenty-three (23) individuals. A sample of the comments follows:

- Implementation of the revised policy means that approximately one-third of all nursing facility patients who enter the hospital will not be assured

of being readmitted to their nursing facility when they are ready to be discharged from the hospital. Losing their current bed will be traumatic for this fragile population

- Given low reimbursement rates, nursing homes have an incentive to "prompt" such persons to leave the facility.
- The reduction of the Medicaid bed-hold days will stimulate a domino effect in the health care arena and ultimately impact on the quality of care delivered to all Delawareans. If there is no space available, it is likely the resident would have to stay in the hospital unnecessarily while his or her family seeks out another appropriate facility.
- Because of the shortage of beds, nursing homes will be unable to hold open a resident's bed past the "bed-hold" requirement, as there will be tremendous pressure to fill the space with a resident who is able to pay for the nursing home services.

Agency Response: DSS carefully considered each comment received. The current policy provides for up to 14 days of hospitalization in each 30 day period as well as 18-days leave of absence per calendar year. Compared with other states, Delaware Medicaid's policy has been very generous. Even with the proposed reduction, the allowable bed hold days policy is generous compared with what is in place in many states. DSS thanks the individuals and organizations who commented.

Findings Of Fact:

The Department finds that the proposed changes as set forth in the July 2003 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual as it relates to bed-hold days in long-term care facilities is adopted and shall be

Vincent P. Meconi, Secretary, DHSS, 11/14/2003

DSS FINAL ORDER REGULATIONS #03-41a

REVISION:

STATE PLAN UNDER TITLE XIX UNDER THE SOCIAL SECURITY ACT ESTABLISHMENT AND MAINTENANCE OF STATE AND FEDERAL STANDARDS STATE OF DELAWARE

Standards for Payment of Reserved Beds During Absence from Long-Term Care Facilities

Payment will be made for reserving beds in long-term care facilities for recipients during their temporary absence for the following purposes:

1. For periods of hospitalization for acute conditions up to ~~14~~ 7 days per hospitalization in any 30-day period.
2. For leaves of absence up to 18 days per calendar year as provided for in the recipient's plan of care.
3. The 18-day leave of absence may be waived as follows:

If a recipient's physical condition is being negatively impacted by their emotional need to be in a family setting, prior approval may be obtained for a waiver of the 18-day leave of absence limitation (for other than acute care hospitalization) from the Title XIX Medical Consultant in order to allow the patient more time to visit with their family, as long as such absences are provided for in the recipient's written plan of care.

To obtain approval, a written request must be submitted by the nursing home to the Nursing Home Coordinator and must include:

1. reason for the request
2. medical summary
3. statement from the nursing home's medical director regarding the medical necessity of the patient being absent from the home in excess of 18 days per year.
4. anticipated frequency of absence.

The number of days waived must fall within a six-month period.

Any request for a waiver after the six-month limit must be resubmitted and approved for payment to be continued.

DSS FINAL ORDER REGULATION #03-41b

REVISION:

Division of Social Services Manual (DSSM)

DSSM 20650 Temporary Absence from Nursing Home for Hospitalization

If a recipient is hospitalized for a short period of time and is expected to return to the facility, payment to the facility may continue for a period of not more than ~~14~~ seven (7) days provided the nursing home agrees to hold the bed for the resident. Medicaid reimbursement is available for no more than ~~14~~ seven (7) days within any 30-day period. The 30-day count begins with the first day of hospitalization. If payments are suspended because the recipient remains hospitalized more than ~~14~~ seven (7) days and the 30 count

expires, a new 30 day count starts with readmission to the nursing home.

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code,
Sections 311, 1111, 1113, 2929
(18 Del.C. §§311, 1111, 1113, 2929)

ORDER

A public hearing was held on October 30, 2003 to receive comments on proposed Regulation 1213 relating to the adoption of the 2001 Commissioners' Standard Ordinary ("CSO") Mortality Table. By my order of October 27, 2003, Kathy S. Gravell was appointed hearing officer to receive comments and testimony on the proposed regulation. Public notice of the hearings and publication of proposed Regulation 1213 in the Register of Regulations and two newspapers of general circulation was in conformity with Delaware law.

SUMMARY OF THE EVIDENCE AND THE INFORMATION SUBMITTED

I have reviewed the FINAL REPORT AND RECOMMENDATION OF THE HEARING OFFICER dated November 6, 2003 and incorporate it herein by reference. Mortality tables are estimates of the probability that an individual of a particular status will or will not die within the next year. The 2001 Commissioners' Standard Ordinary ("CSO") Mortality Table was prepared for the NAIC by the Society of Actuaries and the American Academy of Actuaries. The proposed table is the first update since the adoption of separate tables for mixed gender and smokers in 1980 which relied on mortality data from 1970-75. It reflects the changes in life expectancy and will provide a more reliable and accurate basis upon which to determine rates for life and annuity products. It is presumed that the use of this table will lead to lower rates for many insurance consumers as well as allow Delaware domiciled companies to be competitive with insurers domiciled in other jurisdictions having the same table.

The written statements in support of the regulation reflect industry support for the tables. The only person attending the hearing supported the regulation on behalf of the ACLI. There was no opposition to the proposed regulation. The Bureau of Examination Rehabilitation and Guaranty of the Delaware Insurance Department supports the adoption of this regulation.

FINDINGS OF FACT

Based on the adoption of the new table by the NAIC, the oral and written comment in favor of the regulation and the total lack of opposition to the regulation, I find that there is substantial evidence in favor of the adoption of the regulation and the 2001 CSO Mortality Table as published in the October 1, 2003 issue of the Register of Regulations.

DECISION AND EFFECTIVE DATE

I hereby adopt Regulation 1213 to be effective on January 1, 2004 in the form attached hereto.

TEXT AND CITATION

The text of proposed Regulation 1213 appears in the Register of Regulations Vol. 7, Issue 4, pages 444 *et seq.*, October 1, 2003.

DATED: November 6, 2003
Donna Lee H. Williams
Insurance Commissioner

REGULATION 1213
RECOGNITION OF THE 2001 CSO MORTALITY
TABLE FOR USE IN DETERMINING MINIMUM
RESERVE LIABILITIES
AND NONFORFEITURE BENEFITS

- 1.0 Authority
- 2.0 Purpose
- 3.0 Definitions
- 4.0 2001 CSO Mortality Table
- 5.0 Conditions
- 6.0 Applicability of the 2001 CSO Mortality Table to Regulation 1212
- 7.0 Gender-Blended Tables
- 8.0 Separability
- 9.0 Effective Date

1.0 Authority

1.1 This regulation is promulgated by the Commissioner of Insurance pursuant to 18 Del.C. §§311, 1111, 1113, 2929 and 29 Del.C. Chapter 101.

2.0 Purpose

2.1 The purpose of this Regulation is to recognize, permit and prescribe the use of the 2001 Commissioners Standard Ordinary (CSO) Mortality Table in accordance with 18 Del.C. §§ 1111, 1113 and 2929.

3.0 Definitions

3.1 "2001 CSO Mortality Table" means that mortality

table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002. The 2001 CSO Mortality Table is included in the *Proceedings of the NAIC (2nd Quarter 2002)*. Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables.

3.2 "**2001 CSO Mortality Table (F)**" means that mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table.

3.3 "**2001 CSO Mortality Table (M)**" means that mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table.

3.4 "**Composite mortality tables**" means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.

3.5 "**Smoker and nonsmoker mortality tables**" means mortality tables with separate rates of mortality for smokers and nonsmokers.

4.0 2001 CSO Mortality Table

4.1 At the election of the company for any one or more specified plans of insurance and subject to the conditions stated in this regulation, the 2001 CSO Mortality Table may be used as the minimum standard for policies issued on or after January 1, 2004 and before the date specified in section 4.2 to which 18 **Del.C.** §§ 1111, 1113(b)(1)a.3, and 2929(g)(8)f and Regulation 1212 sections 5.1 and 5.2 are applicable. If the company elects to use the 2001 CSO Mortality Table, it shall do so for both valuation and nonforfeiture purposes.

4.2 Subject to the conditions stated in this regulation, the 2001 CSO Mortality Table shall be used in determining minimum standards for policies issued on and after January 1, 2009, to which 18 **Del.C.** §§ 1111, 1113(b)(1)a.3 and 2929(g)(8)f and Regulation 1212 sections 5.1 and 5.2 are applicable.

5.0 Conditions

5.1 For each plan of insurance with separate rates for smokers and nonsmokers an insurer may use:

5.1.1 Composite mortality tables to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits;

5.1.2 Smoker and nonsmoker mortality tables to determine the valuation net premiums and additional minimum reserves, if any, required by 18 **Del.C.** §§1111 and

1113 and use composite mortality tables to determine the basic minimum reserves, minimum cash surrender values and amounts of paid-up nonforfeiture benefits; or

5.1.3 Smoker and nonsmoker mortality to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits.

5.2 For plans of insurance without separate rates for smokers and nonsmokers the composite mortality tables shall be used.

5.3 For the purpose of determining minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits, the 2001 CSO Mortality Table may, at the option of the company for each plan of insurance, be used in its ultimate or select and ultimate form, subject to the restrictions of section 6 hereof and Regulation 1212 relative to use of the select and ultimate form.

5.4 When the 2001 CSO Mortality Table is the minimum reserve standard for any plan for a company, the actuarial opinion in the annual statement filed with the commissioner shall be based on an asset adequacy analysis as specified in 18 **Del.C.** §1111(c). A commissioner may exempt a company from this requirement if it only does business in this state and in no other state.

6.0 Applicability of the 2001 CSO Mortality Table to Regulation 1212

6.1 The 2001 CSO Mortality Table may be used in applying Regulation 1212 in the following manner, subject to the transition dates for use of the 2001 CSO Mortality Table in section 4 of this regulation (unless otherwise noted, the references in this section are to Regulation 1212):

6.1.1 Section 3.2.2.2: The net level reserve premium is based on the ultimate mortality rates in the 2001 CSO Mortality Table.

6.1.2 Section 4.1.2: All calculations are made using the 2001 CSO Mortality Rate, and, if elected, the optional minimum mortality standard for deficiency reserves stipulated in section 6.1.4 of this regulation. The value of " $q_{x+k+t-1}$ " is the valuation mortality rate for deficiency reserves in policy year $k+t$, but using the unmodified select mortality rates if modified select mortality rates are used in the computation of deficiency reserves.

6.1.3 Section 5.1: The 2001 CSO Mortality Table is the minimum standard for basic reserves.

6.1.4 Section 5.2: The 2001 CSO Mortality Table is the minimum standard for deficiency reserves. If select mortality rates are used, they may be multiplied by X percent for durations in the first segment, subject to the conditions specified in sections 5.2.3.1 through 5.2.3.9. In demonstrating compliance with those conditions, the demonstrations may not combine the results of tests that utilize the 1980 CSO Mortality Table with those tests that utilize the 2001 CSO Mortality Table, unless the

combination is explicitly required by regulation or necessary to be in compliance with relevant Actuarial Standards of Practice.

6.1.5 Section 4.1.9: The valuation mortality table used in determining the tabular cost of insurance shall be the ultimate mortality rates in the 2001 CSO Mortality Table.

6.1.6 Section 6.5.4: The calculations specified in section 6.5 shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

6.1.7 Section 6.6.4: The calculations specified in section 6.6 shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

6.1.8 Section 6.7.2: The calculations specified in section 6.7 shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

6.1.9 Section 7.1.1.2: The one-year valuation premium shall be calculated using the ultimate mortality rates in the 2001 CSO Mortality Table.

6.2 Nothing in this section shall be construed to expand the applicability of Regulation 1212 to include life insurance policies exempted under section 3.2 of Regulation 1212.

7.0 Gender-Blended Tables

7.1 For any ordinary life insurance policy delivered or issued for delivery in this state on and after January 1, 2004, that utilizes the same premium rates and charges for male and female lives or is issued in circumstances where applicable law does not permit distinctions on the basis of gender, a mortality table that is a blend of the 2001 CSO Mortality Table (M) and the 2001 CSO Mortality Table (F) may, at the option of the company for each plan of insurance, be substituted for the 2001 CSO Mortality Table for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits. No change in minimum valuation standards is implied by this subsection of the regulation.

7.2 The company may choose from among the blended tables developed by the American Academy of Actuaries CSO Task Force and adopted by the NAIC in December 2002.

7.3 It shall not, in and of itself, be a violation of 18 Del C. Chapter 23 for an insurer to issue the same kind of policy of life insurance on both a sex-distinct and sex-neutral basis.

8.0 Separability

If any provision of this regulation or its application to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of the provision to other persons or circumstances shall not be affected.

9.0 Effective Date

The effective date of this regulation is January 1, 2004.

DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code,
Sections §§915(e), (k), and (n); §1920
(7 Del.C. §§915(e), (k), and (n), 1920)

Order No. 2003-F-0054

Summary Of Evidence And Information

Pursuant to due notice in volume 7, issue 3, Delaware Register of Regulations, p. 308 September 1, 2003 the Department of Natural Resources and Environmental Control (the Department) proposed to establish procedures for conducting the first lottery and subsequent lotteries of available commercial gill net permits and authorization for commercial hook and line permits (new Tidal Finfish Regulation 3565), and commercial crab dredge licenses (new Shellfish Regulation 3708). The legislation that created the apprentice program signed into law on May 3, 2001 (Senate Bill 76) did not specify dates for such lotteries to be held, thus leaving this task to DNREC.

A workshop to discuss possible dates for conducting the first lottery was held on November 12, 2002. A public hearing was held on May 28, 2003 to take comments relative to the proposed new regulations. Comments were taken that evening and during the remainder of the comment period which ended May 30, 2003. As a result of comments received, the Department elected to defer the proposed date for the first lottery until after the originally proposed date of July 10, 2003. Consequently the Department issued a new Start Action Notice (2003-13) with the intent to propose a new date for holding the first lottery. A second hearing was held on October 1, 2003 to receive comment on a new proposed date for the first lottery of January 2, 2004.

Findings Of Fact

- Sections 915(e), (k), and (n) and 1920 of 7 Delaware Code authorizes the Department to administer the commercial fishing apprentice program and to conduct lotteries for available commercial fishing licenses for qualified applicants. A qualified applicant is defined in the above cited sections of 7 Delaware Code as someone who has been a participant in the apprentice program for a minimum of two years and has completed and documented the required 150 days of apprenticeship activity and has filed his or her reports with the Department in a timely fashion.

- The Department originally proposed that the first such lottery be held on the day the new regulations went into effect (as early as July 10, 2003) and that subsequent lotteries be held the first working day in January each year as long as one or more licenses were available.
- Public opinion at the hearing held on May 28, 2003 was divided among those who supported the Department's proposal for conducting the first hearing on July 10, 2003 and those who felt the first lottery should not be held before the first working day in January in keeping with the Department's policy of conducting the horseshoe crab dredge lottery that same day.
- Those who supported holding the first lottery in January felt that there had been insufficient notice provided to potential participants when the legislation passed on May 3, 2001 that created the apprentice program. These same people contend that they would have signed up sooner for the apprentice program had they known about the passage of the enabling legislation. Available records indicate there was a mailing to potential participants notifying them of the opportunity of signing up for the apprentice program, but there is no way to verify who actually received this notification.
- There are two crab dredge, three commercial gill net and 23 commercial hook and line permits available at this time for the first lottery.
- If the first lottery is delayed until the first working day in January, potentially 12 people would qualify to participate in the lottery versus eight if the lottery had been held on July 10.

Conclusions

I have reached the following conclusions:

- Holding the first lottery on January 2, 2004 would be inclusive rather than exclusive in that potentially 12 people could qualify to participate rather than eight people.
- There is a precedent for holding lotteries for available commercial fishing licenses in January since the horseshoe crab dredge lottery is held the first working day in January each year.
- Based on testimony presented at the hearing there appears to be a risk that some watermen did not find out immediately that the opportunity for the apprentice program had become available. Others may not have appreciated the possible significance of any delay in signing up to participate in the apprentice program. Still others may have assumed the apprentice lottery would be held in January in keeping with the horseshoe crab dredge lottery.
- Therefore I have concluded that it would be fairest to hold the first lottery the first working day in January 2004. By not delaying the first lottery beyond January 2, 2004, the commercial fishermen who signed up for the apprentice program within eight months of the passage of the enabling legislation would have an opportunity of participating in a drawing for available commercial fishing licenses. To require these fishermen to wait any longer would not be in the best interests of these original 12 participants and would just cause more delays in their full participation in Delaware's commercial fishing industry.

ORDER

It is hereby ordered this 27th of October in the year 2003 that the Department of Natural Resources and Environmental Control will conduct the first lottery for available commercial fishing licenses on January 2, 2004 with subsequent lotteries to be conducted annually on the first working day in January thereafter.

John A. Hughes, Secretary,
Department of Natural Resources
and Environmental Control

Tidal Finfish Regulation 3565, License Lotteries For Apprentices.

The first lottery for available commercial gill net permits and authorization for commercial hook and line permits shall be held on January 2, 2004; with subsequent lotteries to be held annually the first working day in January of each year, as long as one or more licenses are available. Participants in the lotteries shall include current participants in the apprentice program who have completed the required and properly documented 150 days of commercial fishing activities over no less than a 2-year period dating from the specific date the applicant filed their application with the Department as an apprentice, according to the provisions of 7 Del.C. §915(e), (k), and (n).

Shellfish Regulation 3708.

The first lottery for available commercial crab dredge, conch pot, and conch dredge licenses shall be held on January 2, 2004; with subsequent lotteries to be held annually the first working day in January of each year, as long as one or more licenses are available. Participants in the lotteries shall include current participants in the apprentice program who have completed the required and properly documented 150 days of commercial fishing activities over no less than a 2-year period dating from the

specific date the applicant filed their application with the Department as an apprentice, according to the provisions of 7 Del.C. §1920.

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)

ORDER

The Delaware Department of Services for Children, Youth and Their Families, Division of Family Services requested public comment on revisions to the “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.”

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 (DFS) 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, child care, and public school employers for employment purposes. The statute requires the DFS to give notice of its intention to substantiate a person for abuse or neglect and enter the person on the Child Protection Registry. If the person timely responds to the notice and requests a hearing in Family Court, DFS must file a Petition for Substantiation in the Family Court, which holds a hearing and makes the final decision on whether the person abused or neglected a child, and, if so, the designated Child Protection Level for the incident of abuse or neglect. Finally, the Division of Family Services classifies unsubstantiated cases on its internal system utilizing two categories: Unsubstantiated – No Evidence and Unsubstantiated with Concern. The revisions are intended to clarify the current definitions of acts of abuse and neglect. In addition, new definitions have been added to provide a broader differentiation between the levels.

A request for public comment on the proposed revisions to the Regulations was placed in the Legal Notices Classified Sections of the *News Journal* and *Delaware State News* on September 28, 2003 and October 1, 2003. The comments

had to be postmarked by October 30, 2003. Written comments were received by mail and fax to Linda M. Shannon, Program Manager, Intake and Investigation, Division of Family Services.

Summary of the Evidence and Information Submitted:

Four separate written documents were provided by the Delaware Disabilities Council, the State Council for Persons with Disabilities, the Governor’s Advisory Council for Exceptional Children, and Grassroots Citizens for Children. The recommendations from the first three sources were nearly identical and all are summarized in Issues 1 through 8 below. Information submitted with the comments included a newspaper article about fetal rights and a fact sheet about Shaken Baby Syndrome. Issues 9 and 10 reflect the input from Grassroots Citizens for Children.

Issue 1: The definition of “parent/caretaker” could be improved by clarifying its application to “persons with special responsibility of care.” This would eliminate any indecision concerning application of the Registry standards to foster parents, guardians, babysitters, relative caregivers, etc.

Issue 2: Sections 7.1.2 and 8.1.7 dealing with emotional abuse are overbroad in “threatening to inflict physical or emotional harm.” While spanking is not a preferred discipline modality, it is not considered unjustifiable force. The Division should consider defining or clarifying the scope of harm or using a modifier such as “undue physical or emotional harm.”

Issue 3: Section 7.1.2 characterizes isolated incidents as culpable emotional abuse. Almost all parents would be guilty of child abuse using this standard. The Regulations should not encompass occasional negative comments to a youth.

Issue 4: The definitions in Sections 7.1.4 “Mild Physical Neglect” and 8.1.6 “Moderate Physical Neglect” are identical. This was also an issue for Grassroots Citizens for Children.

Issue 5: Sections 7.1.4 and 8.1.5 (content intended for 8.1.6) incorporate findings related to pre-natal substance abuse. Comments questioned if the revisions should have stated “has” for “does not have” in the last section of each section. The larger issue that was raised concerned imposing child neglect culpability on a mother for conduct (e.g., substance abuse) preceding the birth of a child while ignoring similar forms of inadequate pre-natal care. It was also felt the definition was “fraught with problematic ethical, religious, and legal implications.” For example, the definition imposes sanctions for conduct against a fetus (would include abortion).

Issue 6: Sections 7.1.3 and 8.1.8 equate child witnessing of domestic violence with neglect. It was

recommended that clarification be added that the perpetrator, not the adult victim, be the focus of this standard.

Issue 7: The 24 hour standard in Section 8.1.2 is too long for some special needs children such as those with Down's Syndrome.

Issue 8: Section 10. 2.18 (content intended for 10.1.19) requires "an impact injury" to be actionable. It was recommended that "impact injury" be deleted since it is covered in Sections 10.1.2 and 10.1.9.

Issue 9: Regarding Section 8.1.8 "Severe Emotional Neglect", the benchmark for this category should be "substantial harm to the child's sense of well-being and safety." It was felt that people who cause substantial harm or fail to protect their children from experiencing substantial harm should not be caring for other people's children.

Issue 10: Clarification was requested about Sections 8.1.4 and 9.1.7 involving "Lock in/Out." It was suggested that the Regulations reflect prolonged lock ins/lock outs because a short time locked in a bedroom may be an appropriate form of discipline.

Summary of Findings of Fact With Agency Response:

Issue 1: Revising the definition of parent/caretaker to include "persons with special responsibility of care" would expand the Division's role beyond investigation of intra-familial child abuse and neglect and institutional abuse. The Division currently investigates foster parents, guardians, and relative caregivers, but it is not in the purview and scope of the Division's legal mandate to investigate extra-familial abuse allegedly perpetrated by babysitters, teachers, Boy/Girl Scout leaders, etc.

Issue 2: The Division agrees that a clarifying modifier in Sections 7.1.2 and 8.1.7 dealing with emotional abuse will clarify the scope of harm and has added the word "undue" before physical and emotional harm.

Issue 3: The Division agrees that use of the term "isolated incidents" would be overly broad in Section 7.1.2 regarding emotional abuse and has deleted that term from the definition.

Issue 4: The duplicate definitions were an error. The language in Moderate Physical Neglect in Section 8.1.6 has been modified to distinguish it from Mild Physical Neglect in Section 7.1.4.

Issue 5: The Division agrees with the issues raised related to culpability for conduct preceding childbirth and has deleted references to maternal use of substances during pregnancy in Sections 7.1.4, 8.1.6, and 9.1.11 that deal with Physical Neglect.

Issue 6: All of the described incidents on each of the Levels apply to a substantiated perpetrator of child abuse and neglect, therefore, no revisions are needed to Sections 7.1.3 and 8.1.8 to distinguish the perpetrator and adult victim.

Issue 7: The Division agrees that the 24 hour time standard in Section 8.1.2 may be too long for some children and it has been deleted.

Issue 8: Section 10.1.2 describes "Blunt Force Trauma," Section 10.1.9 describes "Head Trauma," and 10.1.19 describes "Shaken Baby." While Shaken Baby includes an impact injury, an impact injury can occur to a child that is not a baby. The medically diagnosed injuries described in these three sections may occur separately or co-occur. Since Shaken Baby generally applies to infants, the Division would like to capture this data separately.

Issue 9: The proposed published revision to Section 8.1.8 "Severe Emotional Neglect" included the phrase "substantial harm to the child's sense of well-being and safety."

Issue 10: The Division agrees that clarification regarding Sections 8.1.4 and 9.1.7 "Lock In/Lock Out" will differentiate appropriate discipline in the form of a short time out from conduct by a parent/caretaker that is abusive or neglectful. A time qualifier has been added to these sections.

DECISION/ORDER:

The Department finds that the changes made in response to the comments received during the public comment period do not substantially change the nature of the Regulations. Thus, the Regulations, as set forth in the attached version, should be issued in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the Regulations governing the Child Protection Registry are adopted, as herein revised, and shall become effective no less than ten days after publication of the final Regulations in the Delaware Register of Publications.

Cari DeSantis, Secretary, November 13, 2003

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 no less than ten days after publication. The proposed revisions to the regulations become effective no less than ten days after publication of the final order.]~~

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 **"Mild to Moderate Emotional Abuse"** includes, but is not limited to, behaviors by a parent/caretaker toward a child such as ~~[isolated recurrent]~~ incidents of ridiculing, demeaning, making derogatory remarks, cursing, or threatening to inflict physical or emotional harm.

7.1.3 **"Mild to Moderate Emotional Neglect"** means mild to moderate and/or isolated incidents of isolating/shunning, rejecting, or ignoring a child. ~~This~~

category includes inaction by a parent/caretaker or a failure to protect the child that results in little to no harm to the child's sense of well-being and safety. Child witnessing of misdemeanor domestic violence is also at this level.

7.1.4 **"Mild 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 although this failure decreases the child's general well-being, it does not present a threat to the child's safety. The child's general well-being may also be decreased by inaction by a parent/caretaker or a failure to protect the child. ~~[This category includes an infant who tests positive for alcohol or other drugs at birth as a result of maternal usage of substances during pregnancy that were not medically prescribed and the infant does not have apparent medical or physical problems directly attributed by a doctor to the alcohol/drug usage.]~~

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:

7.2.1 violation of compulsory school attendance requirements or truancy,

7.3 An incident of abuse or neglect containing the elements of any crime or offense listed or described in 7.2.1 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 and/or were not extensive (size, quantity, and location) on the child's body.

8.1.2 **"Child Left Alone, Ages 12-17/Disabled Child with Minimal Care Needs"** means a parent/caretaker left the child alone or without a substitute caretaker for an extended period of time ~~[(minimally 24 hours)]~~ and appropriate plans for an emergency have not been made. This category includes a disabled child of any age who requires on-site supervision and protection, but minimal assistance with activities of daily living (e.g., eating, hygiene, toiletry).

8.1.3 **"Lack of Supervision, ages 7 - 11"** means the parent/caretaker of a child ~~is not providing immediate care, thereby ensuring~~ fails to provide immediate

care to ensure the well-being and safety ~~for~~ of 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~~ substance abuse.

8.1.4 **“Lock In/Out, ages 12 – 17”** occurs when a parent/caretaker deliberately locks a child [for a **prolonged period of time**] in a confined area such as a bedroom, closet, and car or locks the child out of the home.

8.1.5 **“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 ~~[although]~~ this failure decreases the child’s safety or general well-being. ~~[; it does not present a threat to the child’s safety. The child’s general well-being may also be decreased by inaction by a parent/caretaker or a failure to protect the child. This category includes an infant who tests positive for alcohol or other drugs at birth as a result of maternal usage of substances during pregnancy that were not medically prescribed and the infant does not have apparent medical or physical problems directly attributed by a medical professional to the alcohol/drug usage. This category includes inaction by a parent/caretaker or a failure to protect the child that results in moderate harm to the child.]~~

8.1.6 **“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 striking with a closed fist and kicking or other actions such as biting and pulling hair by a parent/caretaker of a child that~~ which have not resulted in observable injury to the child.

8.1.7 **“Severe Emotional Abuse”** includes, but is not limited to, behaviors by a parent/caretaker toward a child such as chronically ridiculing, demeaning, making derogatory remarks, cursing, or threatening to inflict physical or emotional harm.

8.1.7.8 **“Severe Emotional Neglect”** includes behaviors by a parent/caretaker such as chronically isolating/shunning, rejecting, or ignoring a child. This category includes inaction by a parent/caretaker or a failure to protect the child that results in substantial harm to the child’s sense of well-being and safety. Child witnessing of felony domestic violence is also included at this level.

8.1.8 **“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:

8.2.1 interference with custody or

8.2.2 indecent exposure in the second degree.

8.3 An incident of abuse or neglect containing the elements of any crime or offense listed or described in 8.2.1 or 8.2.2 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, A 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 such as use of or threatened use of a deadly weapon.

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 injury which causes open wound (cut/laceration). The injury required necessitating medical treatment beyond medical examination and/or was extensive (size, quantity, and locations) on the child’s body. All children under the age of six months are included at this level, regardless of the need for medical treatment beyond medical examination or the extensiveness of the injury. 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/Disabled Child with Moderate Care Needs”** 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.~~ parent/caretaker left the child alone or without a substitute caretaker. This category includes a disabled child of any age who requires on-site supervision and protection, as well as routine assistance with activities of daily living (e.g., eating, hygiene, toiletry).

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 of a child fails to provide immediate care to ensure the well-being and safety for of 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. substance abuse.~~

9.1.7 **“Lock In/Out, Ages [70] – 11”** occurs when a parent/caretaker deliberately locks a child **[for a prolonged period of time]** 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 a lack of appropriate physical and emotional development that threatens the well-being of the child. It can be permanently damaging to the child without being 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. This finding does not include cases governed by 16 Del. C. §913.

9.1.11 **“Serious Severe 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. This category includes inaction by a parent/caretaker or a failure to protect the child that results in severe [physical or sexual abuse of harm to] the child. [This category includes: (1) infants who were born pre term (born at or before 36 weeks) and the pre-maturity is directly attributed by a medical professional to maternal usage of alcohol or drugs that were not prescribed during pregnancy and/or (2) infants who have medical or physical problems which significantly impact vital life functions or physical or intellectual development that is directly attributed by a doctor to maternal usage of alcohol or drugs that were not prescribed during pregnancy. The infants may require special equipment or medical procedures to sustain life.]

9.1.12 **“Verbal Innuendo”** means inappropriate sexualized statements to a child by a parent/caretaker intended to entice or alarm.

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:

- 9.2.1 abandonment of a child,
- 9.2.2 assault in the third degree,
- 9.2.3 indecent exposure in the first degree,

- 9.2.4 menacing,
- 9.2.5 misdemeanor endangering the welfare of a child or an incompetent person.
- 9.2.6 offensive touching,
- 9.2.7 reckless endangering,
- 9.2.8 sexual harassment,
- 9.2.9 terroristic threatening,
- 9.2.10 unlawful administration of drugs or controlled substances, or
- 9.2.11 unlawful imprisonment,

9.3 An incident of abuse or neglect containing the elements of any crime or offense listed or described in 9.2.1 - 9.2.11 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/ Disabled Child with Significant Care Needs”** 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. parent/caretaker left the child alone or without a substitute caretaker. This category includes a disabled child of any age who requires on-site supervision

and protection and whose activities of daily living (e.g., feeding, hygiene, toiletry) must be performed by the parent/caretaker.

10.1.7 6 **“Death”** means a child’s loss of life due to abuse or neglect by parent/caretaker.

10.1.8 7 **“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 8 **“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. Additionally, this category includes situations in which a parent/caretaker teaches, encourages, or instructs a child to engage in illegal behaviors (e.g., shoplifting, burglary, drug dealing, driving without a license).

10.1.10 9 **“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 10 **“Internal Injury”** means a medically diagnosed serious injury within the abdominal or chest area inflicted by a parent/caretaker.

10.1.13 11 **“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. This finding does not include cases governed by 16 Del. C. §913.

10.1.12 “Lock In/Out, Ages 0-6” occurs when a parent/caretaker deliberately locks a child in a confined area such as the bedroom, closet, and car or locks the child out of

the home.

10.1.14 13 **“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 10.1.2, 10.1.9, 10.1.11, 10.1.15, 10.1.18 and 10.1.22.~~

10.1.17 14 **“Poisoning”** means a parent/caretaker ~~non-accidentally~~ intentionally or recklessly 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 15 **“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 16 **“Puncture/Stab”** means a parent/caretaker inflicts injury, piercing the child’s body with a pointed object, which requires medical treatment beyond medical examination.

10.1.17 “Sexual Abuse” means any sexual contact, sexual intercourse, or sexual penetration, as those terms are defined in the Delaware Criminal Code, between a parent/caretaker and a child.

10.1.20 18 **“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. there has been a inflicted head injury which includes shaken baby and an impact injury. It involves some degree of intracranial injury. The most common manifestation is subdural hematoma, but it may include other types of intracranial injuries. There is a risk of serious and permanent brain damage and there may be a significant risk of death. This injury typically involves infants.

10.1.21 19 **“Suffocation”** means a parent/caretaker deliberately interferes with child’s ability to breathe, by strangling/choking, 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:

- 10.2.1 assault in the first degree,
- 10.2.2 assault in the second degree,
- 10.2.3 bestiality,
- 10.2.4 coercion,
- 10.2.5 continuous sexual abuse of a child,
- 10.2.6 criminally negligent homicide,
- 10.2.7 dangerous crime against a child,
- 10.2.8 dealing in children,
- 10.2.9 felony endangering the welfare of a child or an incompetent person,

- 10.2.10 incest,
- 10.2.11 kidnapping,
- 10.2.12 manslaughter,
- 10.2.13 murder,
- 10.2.14 murder by abuse or neglect,
- 10.2.15 possession of child pornography,
- 10.2.16 promoting suicide,
- 10.2.17 rape,
- 10.2.18 sexual exploitation of a child,
- 10.2.19 sexual extortion,
- 10.2.20 sexual solicitation of a child,
- 10.2.21 unlawful dealing with a child,
- 10.2.22 unlawfully dealing in child

pornography,

- 10.2.23 unlawful sexual contact,
- 10.2.24 vehicular assault, or
- 10.2.25 vehicular homicide,

10.3 An incident of abuse or neglect containing the elements of any crime or offense listed or described in 10.2.1 - 10.2.25 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 ~~there is not a preponderance of evidence~~ 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."

DEPARTMENT OF STATE

HUMAN RELATIONS COMMISSION

Statutory Authority: 6 Delaware Code,
Section 4506 (6 Del.C. §4506)

ORDER

A public hearing was held on August 14, 2003 for comment on changes to Rules 10 and 27 of the Equal Accommodations Rules and Regulations of the Human Relations Commission. No verbal comment was received. The written comment is summarized below.

SUMMARY OF THE EVIDENCE AND INFORMATION

Rita Landgraf, Chairperson, State Council for Persons with Disabilities, submitted a memorandum dated July 28, 2003. She recommended that the Commission retain the original language in Rule 10A & B since it is similar to the court rules regarding dismissal. She also suggested language that would give a Panel discretion to entertain argument when considering a application for dismissal. In addition, Ms. Landgraf recommended that there be a provision for advance notice before a case is dismissed for lack of activity or cooperation.

With regard to the proposed change to Rule 27, Ms. Landgraf suggested that the five days to file a application for reconsideration of an order should run from the date of receipt by the party and not from the date of mailing. In the alternative, the period could be expanded to 10 instead of 5 days.

FINDINGS OF FACT BASED ON THE INFORMATION RECEIVED

1. The Commission agrees that language similar to the court rules related to dismissal is desirable for clarity and consistency. The proposed changes to Rule 10A and B are withdrawn.

The suggestion to include the words "without prejudice" in Rule 10A will clarify the ability of a Complainant to re-file after voluntary dismissal.

2. Notice is currently given before a case is closed for lack of cooperation or activity. However, it is desirable to include that requirement in the Rule.

3. Since a Panel may want to consider oral argument in dismissal proceedings, the suggested language -"Unless directed by the Panel based on compelling or unusual circumstances..." - should be included to preserve the discretion of the Panel.

4. A motion for reconsideration should be timely if filed within 5 days of receipt instead of mailing.

DECISION AND EFFECTIVE DATE

The Commission is withdrawing or modifying the previously published changes to Public Accommodations Rules 10 and 27 after considering the public comment. Because the changes included in the Revised Text are procedural and non-substantive, republication is not required. Rules 10 and 27 as modified and set forth above are hereby adopted effective 10 days following publication in the Register of Regulations.

SO ORDERED THIS 13th day of November, 2003.

HUMAN RELATIONS COMMISSION

Calvin H. Christopher, Chairperson	
Dawn Brown	Chok-Fun C. Chui
Wallace R. Dixon	Bernice M. Edwards
Ralph A. Figueroa	Katherine V. Cropper
James E. Gray	Shirley Horowitz
Eleanor M. Kiesel	Mookkan Periyasamy

**1501 Equal Accommodations Regulations Of The State
Human Relations Commission**

Introduction

These Rules and Regulations have been prepared pursuant to the powers granted the Human Relations Commission and are intended to meet the applicable requirements of the Administrative Procedures Act.

These Regulations shall govern individual cases over which the Human Relations Commission and the Division of Human Relations have jurisdiction pursuant to Chapter 45, Title 6 of the Delaware Code, as it may be amended from time to time.

These Regulations refer to "hearings" for case decisions only and are, therefore, to be distinguished from any other public hearings which may be held by the Commission to address general issues of public concern and which are not controlled by these Regulations.

These Rules and Regulations are specific to the processing of complaints of discrimination under the Delaware Equal Accommodations Law. The Commission believes these Rules and Regulations are necessary to ensure the appropriate administration of the Equal Accommodations Law.

These Regulations shall apply to Equal Accommodation causes of action arising under the Delaware Equal Accommodations Law on or after July 1, 1996. Delaware Fair Housing Act actions under Chapter 46, Title 6 of the Delaware Code are not affected by these Regulations.

1.0 Definitions (Formerly Part I)

1.1 The following terms used in these Regulations shall have the same definitions as those terms contained in the Equal Accommodations Law, Chapter 45, Title 6, Section 4502 of the Delaware Code:

A "place of public accommodation"
"Chairperson"
"Commission"
"Complainant"
"Conciliation"
"Conciliation Agreement"
"Discriminatory public accommodation practice"
"Handicap"
"Marital Status"
"Panel"
"Panel Chair"
"Respondent"
"Special Administration Fund"

1.2 As used in these Regulations, the following terms are defined:

Commissioner: A person duly serving as a member of the Commission.

Director: The administrator and head of the Division of Human Relations, or other person duly authorized to act as such.

Office: Any one of the places of business of the Division of Human Relations.

Party or Parties: The Complainant(s) or Respondent(s).

Staff: A person who is employed by the Division of Human Relations of the State of Delaware.

2.0 Commencement of Proceedings (Formerly Rules 3,4,5,6,7)

2.1 (Formerly Rule 1) Any person claiming to be aggrieved by discriminatory public accommodations practices within the jurisdiction of the Commission may file a written complaint with the Commission. Minors shall be represented by a parent, guardian or other responsible adult for the purpose of bringing an action.

2.2 (Formerly Rule 2) The Commission may initiate an investigation into compliance with the Equal Accommodations Law, whether or not a complaint is filed. Such investigations may be initiated by written statement showing justification signed by the Chairperson or by such person as may be authorized by the Commission. In accordance with applicable provisions of the law, and to the extent practicable, the procedures in these Regulations shall apply to Commission-initiated investigations.

2.3 A complaint shall be filed at any one of the places of business of the Division of Human Relations.(Formerly Rule 3)

2.4 (Formerly Rule 4) Complaints made with the Commission through the Division of Human Relations shall

be in writing and deemed to be "filed" when received at the Division in substantially completed form.

2.5 (Formerly Rule 5) All complaints must be filed on a complaint form provided by the Office.

2.6 All complaint forms shall include the following information:

- 2.6.1 the complainant's name and address;
- 2.6.2 the name and location of the place of public accommodation at which the discriminatory public accommodation practice(s) occurred, and the date, time and other details; and
- 2.6.3 if known, the name and address of each Respondent and, if different, the name of the owner, lessee, proprietor, manager or superintendent of the place of public accommodations.

2.6.4 The date of the first occurrence of the alleged discriminatory practice and whether the practice is of a continuing nature.

2.6.5 The signature of the complainant or his/her attorney.

2.7 (Formerly Rule 6) Complainants and Respondents must keep the Division of Human Relations informed of their current addresses and telephone numbers during the pendency of any proceedings.

2.8 (Formerly Rule 7) Service of the complaint shall be made by the Division of Human Relations in accordance with 12.2 (Formerly Rule 30) of these regulations.

3.0 Response to Complaint (Formerly Rule 8)

3.1 Respondent shall file a written response to the complaint, on a form provided by the Division of Human Relations, or a notice of intention to pursue no-fault settlement, within twenty (20) days of receipt of service of the complaint.

3.2 Either of such documents shall be signed by the Respondent or Respondent's attorney and shall be filed at the Office of the Division where the complaint was filed, showing a copy has been served on the Complainant.

4.0 Amending a Complaint (Formerly Rule 9)

4.1 The Complainant(s) may amend a complaint at any time prior to service of the response on the Complainant(s); thereafter, amendment is subject to approval by the Panel Chair or the Chairperson of the Commission.

4.2 Respondent shall serve an answer to any amended complaint within ten (10) days of receipt of service of the amended complaint, whichever is greater, or within the time remaining to respond to the initial complaint.

4.3 Amended complaints and the answers shall be signed by the Party(s) or their attorneys.

5.0 Case Closing Prior to Hearing (Formerly Rule 10)

5.1 Voluntary Termination

5.1.1 ~~[A case may be dismissed by the~~

~~Complainant without order of the Commission by filing a notice of dismissal at any time before service of a response to the complaint or by filing a stipulation of dismissal signed by all parties who have appeared in the case. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a Complainant who has once dismissed a case before the Commission based on or including the same claim. A Complainant who dismisses a case pursuant to this paragraph may refile a complaint within ninety (90) days after the occurrence of the alleged discriminatory public accommodation practice. A case shall be considered to have been closed or voluntarily terminated upon withdrawal of complaint by Complainant with or without prejudice prior to answer by the Respondent. Such withdrawal shall be in writing. However, after answer by Respondent, a complaint may be withdrawn with or without prejudice only with the consent of the Respondent or with approval by the Chairperson or designee to preserve the public interest.]~~

A case may be dismissed by the Complainant without order of the Commission by filing a notice of dismissal at any time before service of a response to the complaint or by filing a stipulation of dismissal signed by all parties who have appeared in the case. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a Complainant who has once dismissed a case before the Commission based on or including the same claim. A Complainant who dismisses a case pursuant to this paragraph **[without prejudice]** may refile a complaint within ninety (90) days after the occurrence of the alleged discriminatory public accommodation practice.

5.1.2 After a Respondent has filed a response to the complaint, a case shall not be dismissed at the Complainant's request except upon order of the Commission and upon such terms and conditions as the Commission deems proper. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

5.1.3 ~~[After a Respondent has filed a response to the complaint, a case shall not be dismissed at the Complainant's request except upon order of the Commission and upon such terms and conditions as the Commission deems proper. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice. A case may be dismissed for lack of activity in the case for more than 1 year. Application shall be made in writing by the Division staff to a Panel or if no Panel has been appointed, then to the Division Director or Chairperson, stating the reason for the proposed closing.]~~

[A case may be dismissed, upon notice of the

Commission, for lack of activity. Application shall be made in writing by the Division staff to a Panel of if no Panel has been appointed, then to the Division Director of Chairperson, stating the reason for the proposed dismissal.]

5.1.4 A case may be dismissed, [upon notice of the Commission] for failure of Complainant to cooperate upon application of the Division staff to the Panel or if no Panel has been appointed, then to the Division Director or Chairperson. Failure to cooperate includes, but is not limited to, failure to keep the Division informed of Complainant's current address.

5.1.5 A case may be dismissed upon written application to the Panel by the Respondent or the Division Director when

5.1.5.1 the Commission does not have jurisdiction to determine the case; or

5.1.5.2 the facts alleged do not state a violation of the law.

5.1.6 An application for dismissal by the Respondent shall show proof of service of the application upon the Complainant. Complainant shall have 10 days after being served to respond to the Respondent and Commission. An application for dismissal by the Division shall show proof of service on all parties and all parties shall have 10 days after being served to respond to the Commission.

5.1.7 A Panel will convene to consider the application for dismissal. [Unless directed by the Panel based on compelling or unusual circumstances, such consideration shall be] without an evidentiary hearing or oral argument. The Panel will consider only the facts in the pleadings. The facts alleged by the claimant will be considered as true for the purpose of the dismissal proceeding.

5.1.8 All notices of case dismissals shall be served on all parties and shall include a statement of the right to appeal, to have the case reopened for good cause shown to the Panel, or if no Panel has been appointed, then to the Division Director or Chairperson.

6.0 Investigation (Formerly Rule 11)

Investigation of the complaint shall be conducted by Staff and shall commence promptly after the filing of the complaint. Investigation may include, without limitation: interviews, questionnaires, fact finding conferences, searching of records, testing, identification of any witnesses, development of statistics, other studies of practices and patterns, or other work to gather relevant evidence.

7.0 Conciliation (Formerly Rules 12, 13 & 14)

7.1 The opportunity to conciliate or settle a case is available at any stage of the complaint process and may include a no-fault settlement offer. The Complainant(s) shall be notified of the opportunity to conciliate when a complaint

is filed, and the Respondent(s) shall be so notified when a complaint is served. Staff shall schedule an informal conciliation conference to be held with the Complainant(s), the Respondent(s) and, if they so choose, attorneys representing them, within thirty (30) days after the receipt of the response to the complaint, unless it is impractical to do so.

7.2 (Formerly Rule 13) Conciliation shall be initiated upon request of any Party, or upon the request or recommendation of Staff or a member of the Commission.

7.3 (Formerly Rule 14) Any agreement achieved by conciliation shall be set forth in writing and shall specify the appropriate relief agreed upon by the Parties. Forms of relief may include, without limitation:

7.3.1 binding arbitration to resolve the dispute;

7.3.2 payment of damages; other monetary relief;

7.3.3 payment to the Special Administration Fund; monitoring of the future activities of Respondent(s);

7.3.4 measures taken to ensure future compliance with the Equal Accommodations Law; and/or such other relief as is agreed upon by the Parties.

7.4 Executed copies of such agreements shall be given to all Parties.

8.0 Hearings (Formerly Rules 15, 16, 17, 18, 19, 20, 21, 22 & 23)

8.1 The purpose of a hearing is:

8.1.1 to hear argument;

8.1.2 where appropriate, to receive evidence and determine facts; and

8.1.3 in all events to render an adjudication in accordance with applicable law.

8.2 If a complaint cannot be resolved through conciliation, as provided in Section 4508(c) of the Delaware Equal Accommodations Law, the Commission shall appoint a Panel to hold a public hearing within 60 days after the expiration of the 120-day period for investigation and conciliation. The deadlines provided in Section 4508(c) and Section 4508(e) may be extended by the Chairperson or the Panel Chair at the request of any Party or Staff upon a showing of good cause.

8.3 The date, time, place and a brief description of the subject matter of the hearing shall be included in the Notice of Hearing sent to all Parties, the Panel and the Attorney General's representative, as well as other information required by the Administrative Procedures Act.

8.4 The Hearing shall be held within the county in which the discriminatory practice is alleged to have occurred.

8.5 A subpoena shall be issued upon written request by any Party, Staff, or a Panel Member. Such requests shall be submitted no later than ten (10) days in advance of the Hearing. Witnesses and documents must be clearly described

in writing. The consequence of failure to request a subpoena in a timely fashion shall be in the discretion of the Panel.

8.6 Subpoenas may be served by Staff, a Commissioner, or by another person who is not a Party and is not less than 18 years of age. The return of service of each subpoena shall be promptly filed at the appropriate Division office.

8.7 No fewer than the majority of the Commissioners appointed to a Panel shall constitute a quorum for all Panel hearings. In the absence of any duly appointed Panel Member, for any reason whatsoever, the Chairperson or designee shall be empowered to make a substitution, without notice to the Parties, provided the Hearing has not yet begun.

8.8 A written list of witnesses a Party intends to call during a panel hearing must be delivered to the office of the Division of Human Relations where the complaint was filed and to all other Parties at least ten (10) days prior to a hearing.

8.8.1 The Panel, in its discretion, may refuse to receive into evidence any testimony of a witness who has not been named on the witness list.

8.9 Copies or photographs of all exhibits, except exhibits intended solely for impeachment, must be delivered to the office of the Division of Human Relations where the complaint was filed and to all other parties at least ten (10) business days prior to the Hearing. The Panel shall consider such exhibits without formal proof unless the parties and the Commission have been notified at least five (5) business days prior to the Hearing that an adverse Party intends to raise an issue concerning the authenticity of the exhibit.

8.9.1 The Panel may refuse to receive into evidence any exhibit, a copy or photographs of which has not been delivered to the Commission and to an adverse Party as provided herein.

8.9.2 Exhibits submitted at Panel Hearings are to be kept by the Commission during the passage of time for judicial review under §4511 of the Delaware Equal Accommodations Law or until all relevant proceedings have been concluded, whichever is later. The exhibits shall then be returned to the Party which submitted such or, at the request of that Party, destroyed.

8.10 Hearings shall be recorded by electronic instrument or court reporter.

8.11 Certain Hearings may address purely legal issues, in which event all Parties or their counsel may, at the discretion of the Panel, have an opportunity to present oral argument.

8.12 In evidentiary hearings, all Parties or their counsel shall be given the opportunity to make a brief opening statement prior to the introduction of any evidence in the case.

8.13 Testimony shall be under oath or affirmation administered by the Panel Chair.

8.14 Staff shall be required to attend the Hearing in

order to assist in the proceedings, or, where appropriate, to be a witness.

8.15 The Panel Chair shall have full authority to control the hearing proceedings, including, but not limited to the authority to call and examine witnesses; to admit or exclude evidence; and to rule upon all motions and objections subject to the following:

8.15.1 Formal rules of evidence need not be strictly followed.

8.15.2 Direct and cross examination shall be preserved and may be conducted by the Parties or their attorney(s), or Panel Members or the Deputy Attorney General representing the panel may question any witness.

8.15.3 Testimony from any person may be allowed at the discretion of the Panel.

8.15.4 Witnesses may be sequestered at the discretion of the Panel Chair upon the request of any Party(ies).

8.15.5 Evidence on the behalf of the Complainant(s) should ordinarily be introduced first, to be followed by the Respondent(s)' evidence, then allowing rebuttal, if any.

8.15.6 The Panel may continue a hearing from day to day or adjourn it to a later date or to a different place by so announcing at the Hearing or by appropriate notice to all Parties.

8.15.7 Following the presentation of the evidence, an opportunity shall be given to each Party to make a closing statement.

8.15.8 The Panel may recall the Parties for further testimony if necessary to reach a decision.

8.16 A written transcript shall be prepared, if and as required, on the written request of any Party, provided that such Party pays for the cost of preparing the transcript. Staff shall coordinate this process under State contract. A deposit may be required. Such recordings and transcripts shall be preserved with the official file record of a case.

9.0 Decision and Orders (Formerly Rules 25, 26, & 27)

9.1 The case decision may be rendered immediately following the Hearing or the Panel may reserve its decision to a later date. Case decisions shall be by a majority vote of the Panel.

9.2 A copy of the Panel's Final Order shall be mailed by certified mail, return receipt requested, delivered by hand or delivered by regular first class mail to the last address which each Party has provided to the Division of Human Relations for the Party or, if the Party is represented, the Party's attorney.

9.3 ~~Any Party, within five(5) business days after receipt of the Final Order, may apply to the Panel for reconsideration, briefly and distinctly stating the grounds therefor. Within five (5) business days after service of such a motion, an opposing Party may serve and file a brief answer~~

~~to each ground asserted in the motion. Any motion or answer filed under this Rule shall be submitted with five (5) copies to the office of the Division of Human Relations where the complaint was filed. The Panel shall promptly convene to consider a motion for reconsideration. The filing of such a motion shall not extend the time for judicial review as set forth in 6 Delaware Code, Section 4511. A copy of the Panel's decision on the motion for reconsideration shall be mailed by certified mail, return receipt requested, delivered by hand, or delivered by regular first class mail to the last address which each Party has provided to the Division of Human Relations for the Party or if the Party is represent to the Party's attorney.~~

Any party within five (5) business days after [mailing receipt] of the Final order may apply to the Panel for reconsideration by briefly and distinctly stating the grounds. The application shall show that it was served on the opposing party. Within five (5) business days after service of such application, the opposing party may serve and file a brief answer to each ground asserted. The Panel shall promptly convene to consider such application for reconsideration. The filing of such application shall extend the time for judicial review under 6 Del. C. §4511.

10.0 Recovery of Attorney's Fees and Expenses (Formerly Rule 28)

10.1 Any Party seeking to recover attorneys' fees and expenses pursuant to Section 4508 (g) or (h) shall, at least five (5) business days prior to the hearing, file at the office of the Division of Human Relations where the complaint was filed, and serve upon the other Parties, a motion and affidavit detailing the time spent--and fees incurred and a reasonable estimate of the fees likely to be incurred after such date through the end of the Hearing. Any objections to the motion shall be presented at the Hearing.

11.0 Miscellaneous Provisions (Formerly Rules 29, 30, 31, 32, 33, & 34)

11.1 Time

11.1.1 In computing any period of time prescribed or allowed, by these Regulations or by order of court or by statute, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or Sunday, legal holiday, in which event the period shall run until the end of the next business day. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and other legal holidays shall be excluded in the computation. As used in this rule, "legal holidays" shall be those days provided by statute or appointed by the Governor or the Chief Justice of the Supreme Court of the State of Delaware.

11.1.2 When, by these Regulations or by a notice

given thereunder or by order of court, an act is required, or allowed to be done, at or within a specified time, the Panel Chair or the Chairperson of the Commission, for good cause shown, may, at any time, in its discretion:

11.1.2.1 with or without motion or notice, order the period enlarged if the request therefore is made before the expiration of the period originally prescribed or as extended by a previous order; or

11.1.2.2 upon a motion made after the expiration of a specified period, permit the act to be done where the failure to act was the result of excusable neglect.

11.1.3 Whenever a Party has the right to do, or is required to do, some act or take some proceeding within a prescribed period after being served, and service is by mail, three (3) days shall be added to the prescribed period.

11.2 Service. Unless otherwise specifically required by the Equal Accommodations Law or these Regulations, service of complaints, answers, other pleadings, motions, requests or notices shall be made according to this Rule.

11.2.1 For the initial complaint and any pleading which brings in a new Party, service shall be made by certified mail, return receipt requested with the return receipt card signed by:

11.2.1.1 the person to be served;

11.2.1.2 a person living with or working in the office of the person to be served; or

11.2.1.3 an agent authorized by appointment or by law to receive service of process.

11.2.2 Alternatively, where appropriate, service may be made in accordance with Superior Court Civil Rule 4(f), or Superior Court Civil Rule 4(h) for service under Title 10, Section 3104.

11.2.3 For documents other than the initial complaint and any document which brings in a new Party, once jurisdiction over a party has been established, service shall be

11.2.3.1 by certified mail, return receipt requested;

11.2.3.2 by hand delivery or first class mail, as evidenced by a certificate of service;

11.2.3.3 by an express mail service, with a receipt showing that the notice was delivered to the express mail service; or

11.2.3.4 by telecopier or facsimile machine with confirmation of the transmission from the sender's machine.

11.2.4 Where a Party is represented by an attorney, service shall be made on the attorney only.

11.3 The Administrative Procedures Act (Chapter 101, Title 29), as it may be amended from time to time, shall provide the method by which these Regulations may be amended.

11.4 These Regulations shall be reviewed

periodically by the Commission, or a designee and the Director of the Division of Human Relations. Any recommendations for revision shall be submitted in writing to the Commission for consideration at a regularly scheduled meeting.

11.5 These Regulations shall be liberally construed in such a manner as to accomplish the purpose of the Equal Accommodations Law.

11.6 Copies of these Regulations shall be available during regular office hours at each of the offices of the Division of Human Relations or, upon request, by mail. A fee established by the Division of Human Relations may be charged for the provision of copies.

MERIT EMPLOYEE RELATIONS BOARD

Statutory Authority: 29 Delaware Code
Section 5914 (29 Del.C. §5914)

IN THE MATTER OF THE |
PROPOSED MODIFICATION | **ORDER**
OF EXISTING MERIT RULES |

BEFORE Brenda Phillips, Chairperson; Dallas Green, John W. Pitts, John F. Schmutz, and Paul R. Houck, Members, constituting a quorum of the Merit Employee Relations Board pursuant to 29 Del.C. §5908(a).³

BACKGROUND

On April 21, 2003, pursuant to 29 Del.C. §5914 and 29 Del.C. ch 101, extensive proposed changes to the Merit Rules of the State of Delaware were transmitted to the Merit Employee Relations Board ("MERB") by the Director of the Office of State Personnel ("Director"). The proposed changes as approved by both the Director and by the Statewide Labor-Management Committee, repealed many existing Merit Rules and substituted in their place new and revised Merit Rules. MERB gave notice that it would consider the proposed changes in the Delaware Register of Regulations, (Volume 7, Issue No. 1, Tuesday July 1, 2002 and Volume 7, Issue No. 4, Wednesday, October 1, 2003) and other publication in accordance with the Administrative Procedures Act, (Board Exhibit No. 1). On October 22, 2003 the MERB held a Public Hearing concerning the proposed Merit Rule changes (both the proposed repeal and the proposed revised Rules) as submitted by the Director.

3. Board member Paul R. Houck was not available for the Board's deliberations on November 6, 2003.

Additionally, MERB also considered timely filed written submissions from interested individuals and groups concerning the proposed Merit Rule changes, and the Board kept the hearing open until October 31, 2003 to consider any written comments which had not arrived by the October 22, 2003 hearing. No such additional comments were received and the Board conducted its deliberations concerning the proposed Rules on November 6, 2003.

Pursuant to 24 Del.C. §5914, changes to the Merit Rules proposed by the Director are to become final after the completion of the public hearing, unless rejected by a majority of the members appointed to the Board. A portion of the changes proposed by the Director included a number of deletions of existing Merit Rules, some of which involved procedural rules for the conduct of hearings before MERB. The Director did not propose any replacement procedural rules and on September 18, 2003 the MERB determined to consider adoption of Rules of Practice and Procedure which, pursuant to 29 Del.C. §10113 may be informally adopted. These procedural Rules were proposed by the MERB so that there would be hearing procedures available contemporaneously with the proposed repeal of certain sections of the Merit Rules as proposed by the Director which had contained similar procedural rules.

SUMMARY OF COMMENTS PRESENTED AT THE PUBLIC HEARING ON OCTOBER 22, 2003

Lisa Blunt-Bradley, the Director of the Office of State Personnel, together with Dr. Dana Jefferson provided a presentation to the Board on behalf of the Statewide Labor-Management Committee. As a part of her presentation Director Bradley presented written material (Board Exhibit No. 9) which provided background on the process leading to the proposal of the revised Merit Rules and their submission to and approval by the Labor-Management Committee as contemplated by 29 Del.C. §5907(3). Director Bradley observed that the background for the revision project began in the mid 1990's and continued into 2003 with the reconstituted Labor-Management Committee. She noted that there were numerous work sessions over the course of many months culminating in the final product which was approved by the full Labor-Management Committee.

Director Bradley described what she viewed as major changes and emphasized that the proposed changes to the Merit Rules were designed using gender neutral language and sought to include existing legal and policy interpretations and budget epilogue language. Additionally, the proposed Rules involved numbering changes and consolidation to make information easier to find including moving the definitions to the end of the document and updating terms (such as "MERB" rather than the former State Personnel Commission).

Director Bradley also alluded to the ongoing project of

designing a Manual which would contain various interpretations and policies developed by the State Personnel Office concerning the Merit Rules for classified service. Dr. Jefferson explained that the Manual is still a work-in-progress.

Michael Begatto, former president of the American Federation of State County and Municipal Employees, and Vice-Chair of the Labor-Management Committee observed that the Committee wanted to make the Merit Rules easier to understand.

Roy S. Shiels, Esquire, opined to the Board that any Procedural Manual developed by the Office of State Personnel should be kept together with the Merit Rules in one book and should be truly available to state employees. Mr. Shiels observed that in some areas such as employee evaluations he perceived potential inconsistencies with other portions of the proposed rules such as those dealing with employee grievances. Mr. Shiels also suggested that further consideration be given to the circumstance of an employee who became ill through no fault of their own. He suggested such individuals be considered for layoff rather than termination of employment. Mr. Shiels indicated that he did not intend to go point by point through the concerns he had expressed in his various written comments to the Board concerning the Merit Rules, (Board Exhibit Nos. 4, 5 and 6) but he was concerned that there was not sufficient employee input into the rule development process. Mr. Shiels suggested the Board consider another hearing at which additional matters could be considered.

Janet A. Wright, Esquire, the attorney for the Delaware State Public Integrity Commission, noted an overlap exists in the rules for Classified State Service and certain of the provisions of the State Code of Conduct. Ms. Wright suggested that references to the State Code of Conduct be included in appropriate areas such as proposed Merit Rule 5.04 and 5.05 dealing with dual employment and in proposed Chapter 15 dealing with outside employment. Ms. Wright suggested that reference should be made to 29 **Del.C.** §5824 regarding dual compensation and to 29 **Del.C.** §5806(b) concerning outside employment and the filing of required disclosures.

Thomas LoFaro, Deputy Director of Employee Relations with the Office of State Personnel, described himself as a long time participant in the process of developing Merit Rules. Mr. LoFaro opined that the process used in the development of the revised Merit Rules as proposed by the Director followed the process contemplated by the General Assembly which he described as representative democracy in action. Mr. LoFaro also testified that statutory changes were reflected in the proposed changes to the relevant Merit Rules and that the proposed changes had been presented to the Labor-Management Committee for review and comment prior to submission to the Board as required by 29 **Del.C.** §5907(3).

Deputy Attorney General Ilona Kirshon, representing the Office of State Personnel, observed that MERB followed the statutory procedures for publishing notice of the consideration of the proposed rule revisions. Also Ms. Kirshon noted the availability of Family Medical Leave Act for employees as reflected in proposed Merit Rule 5.7 and leave without pay in proposed Rule 5.6.

WRITTEN COMMENTS RECEIVED

Roy S. Shiels, Esquire, a Dover attorney with a long history of representing Merit System employees before the Merit Employee Relations Board, and previously before the State Personnel Commission, submitted written comments on the proposed revisions to the Director of the State Personnel Office with copies to the MERB and others. Mr. Shiels' comments, although approximately 10 in number, deal with several subparts for various rules. The Director of State Personnel responded directly to Mr. Shiels on August 6, 2003 (Board Exhibit No.7) noting that she wished to move forward with the proposed revisions as written. The Director indicated in her response to Mr. Shiels that she would discuss his concerns with the chapters involving recruitment and application policies with the Labor-Management Committee for future Merit Rules revisions. The Director disagreed with any proposal to place reinstatement rights in proposed Chapter 11 and noted that budgetary limitations would restrict the suggested changes regarding leveling up of salaries and the use of compensatory and leave time. The Director also noted in her response to Mr. Shiels that her office was working on a Return-to-Work program that would provide injured employees an opportunity to more quickly return to work while ensuring that those employees do not aggravate their injuries. The Director agreed with Mr. Shiels' observations about the inappropriateness of retaliation or harassment of employees and noted that such behavior might be the subject of a grievance under proposed Merit Rule 2.1 which prohibits discrimination in any human resource action based upon, among other things, non-merit factors.

Rule 11 - Layoff Procedures. Mr. Shiels suggests that Rule 11.1 should include bona fide illness and notes that presently employees with illnesses (which prevent them from working) are simply terminated from employment.

DISCUSSION: The Merit Rules in Chapter 11 deal with the termination of employment for reasons unrelated to conduct or performance. The inability of an employee to perform the requirements of their position by virtue of illness, while a situation possibly without fault on the part of the employee is also a performance issue. It is not a situation where, for some reason, the work has become unavailable necessitating a layoff, but is rather a performance issue and a matter which the Director has indicated is to be addressed in a return-to-work program in

development. Additionally, as noted by Ms. Kirshon during the hearing, there are provisions in the proposed Rules for a leave-without-pay status and for the availability of federally mandated leave under the FMLA.

Mr. Shiels suggests that proposed Rule 11.5 require reinstatement at the highest level available of the 3 levels permitted.

DISCUSSION: Merit Rule 11.5 addresses the situation where employees who have been laid off and cannot be placed by way of a hiring preference may be placed in any vacancy for which they qualify in their class or occupational series, which is equal to or no more than 3 pay grades lower than their current paygrade within the layoff field. Requiring placement in the highest paygrade of the 3 available grades would not afford an appropriate level of flexibility. It is to be expected, however, that in most instances where there is a choice available, the position carrying the higher paygrade would normally be offered.

Mr. Shiels suggested that Rule 11.3 should clearly advise laid off employees of rights to reinstatement outside of their counties of employment.

DISCUSSION: The proposed Rule 11.3 provides for 30 days notice to the employees unless an emergency condition exists. Mr. Shiels' suggestion is one which need not be included in the Merit Rule to be effectuated.

Mr. Shiels opined that Rule 11.7 should permit bumping by those laid off of any persons in their class having less seniority. He observed that requiring the most senior to bump the least senior may require the most senior to take a less desirable position than other laid off employees with less seniority.

DISCUSSION: The present Merit Rules also provide for the most senior employee bumping the least senior employee in their present class and then in each succeeding lower class. There is no material change in the existing approach.

Regarding Merit Rule No. 6 - Recruitment and Application policies, Mr. Shiels suggested that Rule 6.1A should include hiring as well as recruiting and advertising. He also suggested that either additional language or other rules be added to provide that if the most qualified applicant is not selected, that a reason for the non-selection be given and an appeal mechanism provided for unsupported reasons.

DISCUSSION: While there is considerable discretion afforded to those with hiring responsibilities, the Merit Rules and the directives promulgated by the State Personnel Office do govern hiring of Merit System employees. The determination of who is the "best qualified" applicant is quite often an area where reasonable people may disagree. It remains the stated policy of the State to search widely and vigorously for the most qualified persons to fill positions in the classified service.

Mr. Shiels raised the policy issue of "leveling up". He asserts that when superior qualifications or recruiting needs

are claimed as a basis for increased pay by an agency, then existing employees should have the right to receive equal pay if they are in the same or an equivalent position. He also suggests that where recruiting needs of the agency are the basis claimed for establishing a higher salary for an employee, then any other employee in the same or equivalent positions should have a right to process a claim for equal pay and receive a decision with reasons stated and supported if such claims are denied.

DISCUSSION: The fundamental principle remains that uniformity in pay should prevail among similarly situated positions. However, this cannot be an absolute for a number of reasons including variations in the job market, and in the abilities of employees. This may be an area which the Director may wish to have further discussion during the second step of the Merit Rule revision process which she discussed with the Board during her presentation on October 22, 2003.

Concerning Employee Performance Review Appeals, Mr. Shiels suggests proposed Merit Rule 13.4 may be inconsistent with 29 Del.C. §5931 because it fails to provide, at a minimum, a two tiered system for resolving employee grievances. He suggests development of a procedure for the resolution of a dispute concerning an unsatisfactory evaluation which has an adverse impact on employee rights and benefits.

DISCUSSION: It should be noted that 29 Del.C. §5931 expressly provides an exception for grievances which are excluded or limited by the Merit Rules. The proposed Rule 13.4 "Review Appeal" provides that the employee shall have the right to discuss any performance review or documentation with the next level of authority and may submit written comments. This limitation would therefore not necessarily be inconsistent with 29 Del.C. §5931.

Mr. Shiels also suggested an additional rule in proposed Chapter 15 to prohibit harassment of employees by managers or by other employees. He suggested that those who are harassed or whose work is interfered with, should have an effective remedy through a grievance or otherwise. He specifically suggested a new Rule 15.1B stating that each employee has a responsibility not to harass or interfere with the work performance of others.

DISCUSSION: An individual whose work is being interfered with by another person has a duty to report the situation to his or her immediate supervisor, or to a higher level supervisor if the harassment is coming from the immediate supervisor. Such behavior by a fellow employee or by a supervisor, if determined to be improper harassment, could amount to misconduct for which disciplinary sanctions could be imposed if appropriate.

Regarding Rule No. 16 - Human Resource Records, Mr. Shiels suggests that master personnel records should be the only HR records kept by agencies and supervisors. He also suggests that Rule 16.2 be clarified to state that employees

have a right to access their own records.

DISCUSSION: The suggestion is not necessary for inclusion in the Merit Rules. There is a right to access for the employee to his or her personnel records under subchapter IV of Title 19.

Concerning the Grievance Procedure Merit Rule 18, Mr. Shiels suggested that Merit Rule 18.4 should probably reference Rule 18.7 rather than 18.6 in referring to Step 2. Also, it appears inconsistent with the proposed 12.9 which appears to allow for alternative direct appeal to both the State Personnel Office and MERB. Mr. Shiels suggests the deletion of proposed Merit Rule 12.9, and also suggests a discovery process with sanctions such as an adverse inference should be available unless the choice of using the Step process remains with the employee for grievance appeal.

DISCUSSION: As noted by the Director's written response, Mr. Shiels is correct in his observation that the reference to 18.7 is the incorrect reference. As to the choice of an appeal forum, it is reasonable that the choice should remain with the employee; however, proposed Merit Rule 12.9 is not at all inconsistent with such a choice.

Mr. Shiels also questioned whether Rule 18.0120 which is proposed for deletion (Absences without authorized leave or tardiness may, at the discretion of the appointing authority, subject the employee to disciplinary action) was covered by Rule 15 as indicated in the proposed rules. He suggested that language be added to Rule 15 to require that, in the absence of a bona fide personnel reason, all employees be treated alike when it comes to sanctions for absence or tardiness so that agency attitudes on this issue are not dictated by the identity of the employee in a specific instance.

DISCUSSION: In fairness to all employees as well as to management, there should be considerable discretion in the manner in which absences and tardiness are addressed. Nevertheless, to the extent that a discipline imposed is out of proportion to that imposed on other employees for similar misconduct, it creates an appearance of arbitrary and capricious behavior which can be the subject of a grievance particularly where the recipient of the excessive punishment has reason to believe that he or she is being singled out for harsher punishment for non-merit factors or other improper discriminatory reasons.

Mr. Shiels also suggested that leave and compensatory time should not be forfeited, but should be carried over in situations where the employee has sought to use the compensatory time, or to take vacation during the year and the request has been denied by the agency. He suggests that Rule 4 and Rule 5 be modified to so provide.

DISCUSSION: The proposed Rules reasonably provide for exceptions to the carryover limitations in the discretion of the Director at the request of the agency.

Mr. Shiels commented that the promotion of less

qualified persons needs to be addressed in proposed Rule 10. This tracks his prior comment regarding the hiring of the "most" qualified individual rather than "any" qualified individual.

DISCUSSION: This suggestion, as with Mr. Shiels' prior observation about hiring the "most" qualified individual, raises issues which he has raised for clients in prior grievances. Is someone who scores higher on a test or a series of tests, or some other ranking, necessarily the "most" qualified to fill a position? Stated differently, at what point, if any, do considerations of personality and the ability to work effectively with others come into play in making hiring or promotion decisions. Can there be situations where the highest ranking person is not necessarily the "best" person for the job? Where the Board has faced these question in the past it has determined that the most qualified person for any particular position is not exclusively the one which is ranked highest on the "Cert" list. The potential for a problem develops when management is unable to effectively articulate the business reasons for the selection of an individual who is not the highest in ranking. Obviously the hiring selection needs to be based on merit factors and management should be able to explain what factors were considered and what formed the basis for the hiring decision. If management is not able to do so with clarity it runs the risk that its proffered reasons will be viewed as a sham and an excuse for the application of improper non-merit factors.

Finally, Mr. Shiels suggested that Rule 10.7B should include language requiring that underfilling of positions consider the ranking and seniority of those eligible to underfill and should have time limitations assigned when the underfilling begins. He opined that underfilling is frequently a prelude to filling a position internally, giving experience credit for the time spent in the underfilled position.

DISCUSSION: Underfilling under Rule 10.7 requires the approval of the Director. The suggestions made by Mr. Shiels go to the exercise of that discretion and do not need to be expressly addressed in the Merit Rules. The Director should insure and document that underfilling is indeed necessary and that it is not being improperly used to pre-select an individual for the position.

On September 30, 2003, Mr. Shiels also filed written comments concerning the Procedural Rules under consideration by the Board. Mr. Shiels supported the adoption of the proposed Procedural Rules and suggested additional consideration be given to a Rule which provided a mechanism for enforcement of Board Orders. Mr. Shiels also suggested that proposed Procedural Rule 4 be modified to indicate that when the Board acts to take jurisdiction of an appeal, that such appeal divests the agency and the office of State personnel from taking any further action without a remand.

The Board declines to make either such changes to the Procedural Rules at this time. The failure of an agency to

comply with a Board Order can be the subject of a further grievance and other relief may also be available by appeal to the Superior Court or other state or federal authorities. The ability of the Office of State Personnel or an agency to modify an action previously taken against an employee who has filed an appeal with the Board should be permitted to promote prompt redress of problems.

FINDINGS AND CONCLUSIONS

Pursuant to 29 Del.C. §5914, the Board, has reviewed the proposed changes to the Merit Rules submitted by the Director, and has found no basis for the rejection of any of the proposed changes. However, the Board is cognizant that there are several areas within the Merit Rules which might benefit from further consideration both by the Director and by the Labor-Management Committee. The Board accepts the representations of the Director that additional consideration is to be given to Merit Rule revisions and the Board would expect that the areas raised in the written comments of Mr. Shiels would be among the areas to be visited in what the Director characterized as "Step 2" of the Merit Rule updating process.

Among the areas appropriate for further discussion is proposed Merit Rule 1.5 which will allow the Director to issue interpretations and policies without requiring explicit Board pre-approval (now required by Rule 1.0300). The Board notes that such interpretations and guidelines should not develop into *de facto* new rules without Board review and approval. However, pursuant to a properly filed grievance, the Board may review an interpretation of the State Personnel Office which is asserted to be inconsistent with the existing Merit Rules. The Director may also wish to pursue with the Attorney General's office the extent to which the Director's guidelines and policy determinations may be subject to the public procedures of the Administrative Procedures Act. As Mr. Shiels noted any such interpretative Manual should be available co-extensively with the Merit Rules and, as was discussed with Ms. Wright, could be a source of references to relevant related statutes such as those found in Chapter 58 of Title 29 as well as other relevant statutes.

Additionally, the issue of "leveling up" of employee pay in certain circumstances is an area where there must be balance between budgetary requirements and the goal of comparable pay rates for comparable positions. Periodically it is appropriate to review the mechanisms for insuring that a proper balance is maintained.

It is also noted that Proposed Merit Rule 5.2H does not expressly provide for retirees to be compensated for unused annual leave, however, there is no express exclusion for such payment although those who resign, die, or are terminated, are expressly include. In a similar omission, appellants in Maintenance Review Appeals before the Board are not

expressly included in Rule 5.5B. However, there is no specific exclusion, and attendance before the Board for such proceedings would seem to be generally accepted and appropriate subject to reasonable operational requirements of the Agency.

Revised Rule 10.3 is now "Exceptional Appointment" and appears to recognize the unique nature of such appointments, and contemplates that the discretion involved will not be abused as an avenue to avoid the hiring or promotion requirements of the Merit Rules.

Additionally, the implementation of proposed Merit Rule No. 12.9 will need to be monitored to be certain that there is no confusion with the appeal rights of a person who has been dismissed, demoted or suspended. The suggestions made by Board member Paul Houck at the October hearing concerning improvements to the appeal form should receive favorable consideration by the Director.

While there are areas for additional review and discussion, the MERB concludes that the Director's proposed revisions to Merit Rules as set forth on the attached Exhibit "A" and the Procedural Rules set forth on attached Exhibit No. B should approved to become effective January 1, 2004 for all matters occurring thereafter.

ORDER

For the foregoing reasons by the unanimous vote of the undersigned members of the Board, the Merit Rules of the State of Delaware are modified by the deletions and additions proposed by the Director and the revised Rules are set forth on the hereto attached Exhibit A and shall take effect as stated above.

The Rules of Practice and Procedure set forth on the hereto attached Exhibit B are adopted informally by the Board pursuant to 29 Del.C. §10113 and may be similarly modified as, and if deemed necessary or appropriate. The effective date of the procedural rules shall be January 1, 2004, the same as set forth above for the Merit Rule revisions.

BY ORDER OF THE BOARD:

Brenda Phillips, Chairperson

Dallas Green, Member John F. Schmutz, Member

John W. Pitts, Member Paul Houck, Member

*** PLEASE NOTE: THE FOLLOWING REGULATION DOES NOT CONFORM TO THE STYLE AS PRESCRIBED BY THE REGISTRAR. FOR INFORMATION CONCERNING ANY CHANGES IN THE REGULATION SUBSEQUENT TO BEING PROPOSED PLEASE CONTACT THE MERIT EMPLOYEES RELATION BOARD.**

STATE OF DELAWARE MERIT RULES
Adopted by the Merit Employee Relations Board
Effective JANUARY 1, 2004

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Chapter 1: INTRODUCTION

1.1 Pursuant to 29 **Del C.** Chapter 59, these rules apply to initial probationary, Merit and limited term employees, except as otherwise specified, and shall continue in effect until such time as they are amended or modified by the Merit Employee Relations Board ("Board;") or are amended, modified or superseded by amendment to 29 **Del. C.** Chapter 59.

1.2 In the event of conflict with the Delaware Code, the Code governs. In the event of conflict with individual agency regulations, these rules take precedence. In the event of conflict with Intergovernmental Merit system Standards, the Standards govern federally funded positions subject to the provisions of the Intergovernmental Personnel Act. Federal laws supersede any conflicting state laws.

1.3 If a subject is covered in whole or in part by a collective bargaining agreement, 29 **Del.C.** Section 5938(d) provides that the Merit Rules shall not apply to such subject matters. These Rules govern in matters of: classification, uniform pay and benefits, examination, rejection of candidates, appointment, paid leave, promotional requirements and standards, and veteran's or resident's preference. Collective bargaining agreements may govern matters of bargaining unit-specific pay and benefits, probation, emergency employment, transfer and promotional selection processes, reinstatement, performance records, layoff, fines, discipline up to and including dismissal,

grievances, work schedules and working conditions.

1.4 The State has the exclusive right to manage its operations and direct employees except as specifically modified by these Rules.

1.5 The Director of State Personnel ("Director") may issue Rule interpretation and application guidelines consistent with these Rules. The Director is authorized to establish committees to make recommendations about Human Resources issues.

CHAPTER 2: NON-DISCRIMINATION

2.1 Discrimination in any human resource action covered by these rules or Merit system law because of race, color, national origin, sex, religion, age, disability, sexual orientation, or other non-merit factors is prohibited.

CHAPTER 3: CLASSIFICATION OF POSITIONS

3.1 The Director shall establish and maintain a method of classifying and reviewing all positions. Positions substantially alike in duties and responsibilities and requiring essentially the same knowledge skills and abilities shall be grouped into the same class and pay grade.

3.1A Class specifications shall contain the title and code identifying the class, give examples of the characteristics and indicate duties and responsibilities that may be assigned to positions of the class and set forth uniform job related minimum qualifications and the knowledge, skills and abilities required to do the work.

3.1B Class specifications shall be mainly descriptive and not restrictive. References to particular characteristics or examples of duties shall not exclude others of similar kind and quality.

3.2 Employees may be required to perform any of the duties described in the class specification, any other duties of a similar kind and difficulty, and any duties of similar or lower classes. Employees may be required to serve in a higher position; however, if such service continues beyond 30 calendar days, the Rules for promotion or temporary promotion shall apply, and they shall be compensated appropriately from the first day of service in the higher position.

3.3 If a significant change is made in the duties and responsibilities of a position, or if there is an alleged position classification or reclassification error, the position shall be reviewed and be reclassified if justified, in accordance with procedures established by the Director consistent with the Budget Act.

3.3A When positions occupied by a Merit employee are reclassified, employees shall not be required to serve a probationary period if they meet the minimum qualifications for the new class, provided they successfully completed an

initial probationary period. No examination shall be required unless that examination is part of the minimum qualifications or is related to employees' physical ability to perform the essential functions of the job.

3.3B Should the incumbent not qualify for the position as reclassified, he/she shall be transferred to a vacant position for which qualified within the classified service. In the event extenuating circumstances exist, the appointing authority may request approval of the Director to retain the incumbent in the position for a reasonable period, in an underfill capacity, pending qualification at the higher level or pending a transfer.

3.3C When a position is reclassified into a Career Ladder, placement of the position incumbent is based on promotional standards approved by the Director. Movement from one level to another within Approved Career Ladders is a promotion, not a reclassification.

CHAPTER 4: PAY PLAN

4.1 Uniform pay schedules based on current legislation will be issued by the Director. Each position classification shall have assigned to it a paygrade for pay purposes. The pay of employees occupying positions in the Classified Service shall follow the published rates set for the assigned paygrades.

4.2 Standard Work Week

The standard work week for full-time employees shall be 37.5 hours or 40 hours as provided in the Budget Act. Employees shall be paid on the appropriate legislated pay scale. Any future changes with Fair Labor Standards Act (FLSA) implications shall be approved by the Director.

4.3 Dual Employment

Employees covered by FLSA shall be permitted to accept additional employment in another State agency with prior written consent of the affected agencies. Overtime eligibility shall be based on the FLSA.

4.3A Compensation Received From Other Sources.

Employees on approved annual leave may receive additional compensation from another State agency or other employer for work performed during normal duty hours. When not on such leave, any additional compensation shall be deducted from employees' normal compensation.

4.4 Starting Rate on Initial Appointment

4.4A. Upon initial appointment, employees shall be paid a salary equal to the minimum for their assigned paygrade, except as hereinafter provided.

4.4B Agencies may approve a starting rate up to 85% of midpoint where applicants' qualifications are clearly over and above those required as minimum by the class specification. Upon agency request, the Director may approve a starting rate higher than the 85th percentile if supported by documentation of the applicant's qualifications.

4.4C Upon agency request, the Director may approve a starting rate above the minimum for the paygrade where a critical shortage of applicants exists. The Director, Budget Director and Controller General may provide that all lower paid, equally qualified employees in the same class within the same geographic area receiving a lower rate shall also have their pay rates set as stated above if their performance is satisfactory.

4.5 Employees who transfer or move to another class which is the same paygrade as the former class shall be paid at the same percentage of midpoint, unless their current salary is below the Selective Market Variation (SMV) range or approved alternative pay plan for the class, in which case their salary shall be increased to the minimum of the SMV range.

4.6 Promotion

Upon promotion, employees shall receive either the minimum salary of the higher pay grade or an increase of 5%, whichever is greater. Agencies may grant a greater increase not to exceed the 85th percentile under the criteria in 4.4B. The Director may approve a greater increase that exceeds the 85th percentile under the criteria in 4.4B.

4.7 Demotion

The rate of pay for employees demoted for reasons other than just cause shall be recommended by the agency for the Director's approval. The rate of pay for employees demoted for just cause shall be set by the agency within the pay range of the lower paygrade.

4.8 Starting Rate On Reinstatement

Reinstated employees shall receive the same salary as at the time of separation plus any general salary increases. Any request for a greater salary shall be made pursuant to 4.4.

4.9 After Military Leave

Employees returning from active military duty leave shall receive the rate of pay which they would have otherwise received but for their military duty leave.

4.10 Pay Rate On Return from Exempt Position

Employees who return from leaves of absence in non-classified positions described in 29 Del. C. Section 5903 (4), (5), (6) and (22) shall receive at least the rate of pay which they would have otherwise received but for such leave of absence. If they return via competition to a position in a higher paygrade than the former Merit position, the provisions of 4.6 shall apply based on their former rate of pay.

4.11 Pay Rates After Hiring Preference

Employees placed as a result of hiring preference shall be paid in accordance with 4.4.

4.12 Pay Rates After Reclassification Or Grade Change

4.12.A Any employee movement to a higher paygrade is a promotion. Any employee movement to a class of the

same paygrade shall be treated in accordance with 4.5. Employees moving to a lower class and/or pay grade shall retain their former pay as long as they remain in that position.

4.12.B Employees in positions reclassified to a lower class not qualifying for Selective Market Variation (SMV) where their former class qualified for a SMV shall retain, for pay purposes, the SMV pay range assigned annually by the State budget process to the former class as long as they remain in that position and the former class continues to qualify for SMV.

4.12.C Employees whose positions were reclassified to classes in lower paygrades and who retain their former paygrade as provided for in 4.12A and 4.12B shall not retain the paygrade upon voluntary transfer or promotion.

4.12.D Employees shall receive the pay increase provided in the Budget Act, unless their latest Performance Review is unsatisfactory. If the unsatisfactory performance has already resulted in a reduction in paygrade, however, they shall receive the pay increase. Employees who are denied such increase shall become eligible for it when, as evidenced by a Performance Review, their performance is no longer rated as unsatisfactory. Such an increase is not retroactive.

4.13 Pay for Overtime Service

4.13A FLSA-covered employees with a standard work week of 37.5 hours who are authorized to perform overtime service shall be paid at 1.5 times their regular rate for each hour worked after 37.5 hours per week. FLSA-covered employees with a standard work week of 40 hours who are authorized to perform overtime service shall be paid at 1.5 times their regular rate for each hour worked after 40 hours. The form of pay, time off or cash, is at agency discretion and shall be agreed to in advance. Only hours worked over 40 hours per week are covered by the overtime provisions of the FLSA. The regular rate of pay shall include all payments (e.g., shift differential, stand-by duty pay and hazardous duty pay). Agencies may assign reasonable periods of overtime to meet operational needs.

4.13B Any authorized service in excess of the standard work week or work schedule allowed by the FLSA shall be overtime service. Employees working flexible schedules shall be paid for overtime service in accordance with that schedule and not the standard schedule of 37.5 or 40 hours per week.

4.13C A workweek is a period of 168 hours during 7 consecutive 24-hour periods.

4.13D Hours worked includes paid leave plus hours actually worked by the employee.

4.13E Employees in FLSA exempted classes authorized to work beyond the standard work week may be paid with equal time off.

4.13F In unusual circumstances of overtime service by employees normally not eligible for overtime pay in cash,

the agency may recommend, for approval by the Director and Budget Director, that such employees be paid at straight time rates.

4.13G Merit compensatory time shall be used within 180 calendar days of accrual or be forfeited. Under extenuating circumstances, the Director may approve exceptions to this rule. FLSA compensatory time may be accrued up to 240 hours of compensatory time-off unless the employee is engaged in work in a public safety activity, an emergency response activity, or a seasonal activity in which case the employee may accrue not more than 480 hours of compensatory time-off. Hours in excess of the 240 hours FLSA maximum shall be paid overtime.

4.13H Agencies may request the Director review the prevailing overtime rates for one or more FLSA exempted classes where external market pressures including excessive turnover rates, recruitment problems and high vacancy rates necessitate that such employees be paid at the rate of 1.5 times the regular rate of pay for any authorized overtime service.

4.14 Compensation for Holidays

4.14.A If the holiday falls on a day employees would not have been scheduled to work, they shall receive equivalent time off on a pro-rated basis.

4.14B Employees eligible for holiday pay and overtime compensation who are authorized to work on a holiday shall be compensated for the hours actually worked on the holiday at 1.5 times and for the holiday on a pro-rata basis. Employees eligible for holiday pay but not normally eligible for overtime compensation required to work on a day observed as a legal holiday shall be credited for the holiday on a pro-rata basis, and may be credited for the hours actually worked on the holiday at straight time, except as otherwise approved by the Director and the Budget Director. Employees' compensation for any additional hours, beyond those for which they are routinely compensated, which have accumulated as a result of working the holiday, may be either in cash or time off or a combination of the two at agency discretion.

4.14C To qualify for pay for a holiday not worked, employees shall be required to be in a paid status, for any portion of the day, on their last scheduled work day prior to the holiday and on their next scheduled work day after the holiday.

4.14D Employees working in 7-day per week functions shall receive holiday pay for hours worked on the actual holiday rather than hours worked on the day observed as the legal holiday.

4.15 Shift Differential Pay

4.15A Shift differential is pay for working inconvenient hours and schedules authorized at the agency's discretion. Shift differential is not authorized for flexible or compressed schedules established at the request of, and for the convenience of, employees even if the requirements of

4.15B are met.

4.15B Employees authorized by agencies to work night shifts which include four or more hours of work between the hours of 6:00 p.m. and 8:00 a.m. the following day shall receive supplemental pay for the entire shift equal to 5% of their paygrade midpoint.

4.15C Agencies may approve employees on a rotating shift schedule to receive shift differential pay during the whole time they are assigned to the rotating shift.

4.15D Shift differential is payable for single shift assignments as well as recurring shift assignments. Employees on fixed night or rotating shifts receive shift differential for all periods of overtime service. For employees not on fixed or rotating shifts, shift differential is payable for entire periods of overtime service once the minimum four hour requirement of 4.16B are met. For purposes of shift differential eligibility, each period of work during employees' regular schedule and each period of overtime service will be considered separately.

4.15E Employees on a fixed night or rotating shift shall continue to receive such adjusted pay while on paid holidays or other authorized leave with pay; provided that the night shift or rotating shift assignment pertains both before and after such leave; and further provided that sick leave of more than five consecutive work days shall terminate the shift differential for the entire period of absence. Agencies may assign employees who are receiving shift differential pay to the day shift for a period of 30 days or less without loss of shift differential.

4.15F An agency may request that the Director review the prevailing shift differential rates for one or more classes where external market pressures including excessive turnover rates, recruitment problems and high vacancy rates necessitate that such employees receive shift differential payments which exceed the amounts provided for in 4.16B.

4.15G Employees authorized and required by agencies to work split shifts shall receive supplemental pay for their entire shift equal to 5% of their paygrade midpoint.

4.16 Call-Back Pay

4.16.A FLSA-covered employees who have left the work site at the end of their scheduled shift and are called back for overtime service shall be paid for such service in accordance with the provisions for overtime pay, provided that minimum total payment is equivalent to four times their regular straight time hourly rate. Employees shall be paid according to this call-back provision or the overtime provision, whichever is greater, not both.

4.16B Social workers providing direct child or adult protective services and the State Emergency Response Team approved by the State Personnel and Budget Directors shall be eligible for call-back pay.

4.17 Stand-by Pay

4.17A FLSA-covered employees assigned to critical public service approved by the Director, and authorized by

agencies to be on-call regularly for emergency services for an average of 64 off-duty hours or more per week, shall receive stand-by pay equal to 5% of their paygrade midpoint while so assigned. Such increased pay shall continue during absences only for paid holidays and sick leave of five successive work days or less occurring during the period of assignment. Any call-back work required during on-call periods shall also be compensated in accordance with 4.16.

4.17B Social workers providing direct child or adult protective services and the State Emergency Response Team approved by the State Personnel and Budget Directors shall be eligible for stand-by pay.

4.18 Hazardous Duty Pay

4.18A Determination as to the positions eligible for hazardous duty pay shall be requested by agencies for the Director's approval. The agency shall notify the Director when a substantive change occurs in the duties or work conditions of any position receiving hazardous duty pay. Compensation shall be set by the State Budget Act.

4.19 Supervisory Pay

Subject to the approval of the Director, the Secretary of the Department of Health & Social Services (DHSS) may grant supplemental pay equal to 5% of the employee's paygrade midpoint to registered nurses employed in DHSS institutions or facilities who are designated as charge nurses or team leaders and are permanently assigned such responsibilities in addition to their regular staff nurse duties. Charge Nurse/Public Health Nurse team leader responsibilities include the daily supervision and coordination of nursing or other patient care activities in a unit, ward, floor, clinic or field setting during a specified shift to ensure quality patient care and continuity of care with other shifts. This supplemental pay is not authorized for employees required to perform charge nurse/team leader functions on a temporary basis consistent with Merit Rule 3.2.

4.20 Computing Overtime Pay

The hourly rate of pay for overtime, holiday and call-back payment purposes includes shift differential, stand-by and hazardous duty pay.

CHAPTER 5: EMPLOYEE BENEFITS

5.1 Holidays

5.1A The following days are legal holidays for employees: New Year's Day; Martin Luther King, Jr. Day; Presidents' Day; Good Friday; Memorial Day; Independence Day; Labor Day; Columbus Day; Veterans' Day; General Election Day; Thanksgiving Day; Day after Thanksgiving; Christmas Day; and Return Day (the second day after the General Election), 3.75 hours for 37.5 hours work week schedule or 4 hours for 40 hour work week schedule for employees who live or work in Sussex County; and any other day or part of proclaimed by the Governor as a holiday.

5.1B When a legal holiday falls on a Saturday, the prior business day shall be the legal holiday. When a legal holiday falls on a Sunday, the next business day shall be the legal holiday. (See 4.13F)

5.2 Annual Leave

5.2A Employees shall accrue annual leave for each month's completed service according to the following schedules:

-less than 10 years

9.5 hours (37.5 hours schedule) 10 hours (40 hour schedule)

-10 to less than 15 years

11.25 hours (37.5 hour schedule) 12 hours (40 hour schedule)

-15 or more years

13.25 hours (37.5 hour schedule) 14 hours (40 hour schedule)

5.2B All leave requests are subject to agency approval, taking into consideration employee requests, operating requirements and seniority, shall be answered as soon as practicable. Leave may not be taken in excess of hours earned. Absences for a fraction of an hour shall be rounded up to .25 hour increments except that within the quarter hour, absences of less than 7 minutes shall be rounded down.

5.2C Accrual continues during absence from work on a legal holiday; on paid leave; on unpaid leave of 30 days or less; and while receiving a salary supplement pursuant to 29 Del. C. 5933 (workers' compensation). Accrual is credited to the employee leave account on the first day of the month following accrual. Accrual shall be on a pro-rata basis.

5.2D Annual leave credit carried into a new calendar year may not exceed 318 hours (37.5 hours schedule) or 336 hours (40 hour schedule). Agencies may request approval from the Director to carry over annual leave in excess of the maximum amount. Upon separation only, employees shall be paid for their accumulated annual leave at their current amount, excluding all supplemental and premium pays.

5.2E Employees covered by practices in effect on or before June 30, 1968, shall continue to earn, accumulate, carry over or be paid at a rate established by those practices, provided they remain in the service of the same employment agency or transfer for reasons beyond their control.

5.2F Employees approved for workers' compensation may request to use accrued annual leave when they are less than fully paid under workers' compensation. Such leave shall be charged as the difference between workers' compensation pay and their regular pay.

5.2G Employees who move from non-classified to classified positions shall be credited with any annual leave for which they were not paid. Employees who move from classified to non-classified positions may transfer accrued annual leave to the extent the receiving agency agrees. Such

employees shall be paid by the former agency for any annual leave the receiving agency refuses to accept.

5.2H If an employee resigns or is terminated for any reason including dismissal, or dies with unused annual leave credit, the employee or his/her estate as applicable, shall be paid in cash for any unused annual leave.

5.3 Sick Leave

5.3A Employees shall accrue sick leave for each completed month's service at the following rate: 9.5 hours (37.5 hour schedule) 10 hours (40 hour schedule)

5.3B Sick leave shall be requested in advance. In instances of unanticipated need to use sick leave, employees must notify their supervisor within the first hour of absence or as soon as practicable or as specified by the agency. Failure to do so or otherwise obtain approval shall result in leave denial. Agencies may require documentation which justifies absences or verifies ability to return to work. Absences for a fraction of an hour shall be rounded up to .25 increments except that within the quarter hour, absences of less than 7 minutes shall be rounded down.

5.3C Accrual continues during absence from work on a legal holiday; on paid leave; on unpaid leave of 30 days or less and while receiving a salary supplement pursuant to 29 Del.C. 5933 (workers' compensation.) Accrual is credited to employee leave accounts on the first day of the month following accrual. Accrual shall be pro-rated.

5.3D Employees shall be paid for accumulated sick leave at their current salary, excluding all supplemental and premium pays, under the following conditions:

- At retirement under the State Pension Law or if laid off without prejudice for lack of work at the rate of 1 hour's pay for each 2 hours of sick leave. The maximum payment is 337.5 hours (37.5 hour weekly schedule) or 360 hours (40 hour weekly schedule).

- At death of the employee, at the rate of 1 hour's pay for each hour of sick leave to the employee's estate. The maximum payment is 675 hours (37.5 hour weekly schedule) or 720 hours (40 hour weekly schedule).

5.3E Employees covered by practices in effect on or before June 30, 1968, shall earn, accumulate, carry over or be paid at a rate established by those practices, provided they remain in the service of the same agency or transfer for reasons beyond their control.

5.3F Upon supervisory approval, which shall not be unreasonably denied, employees may use paid sick leave for the following reasons:

- Employee illness, injury, temporary disability or exposure to contagious disease.

- Employee appointments with doctors, dentists, or other similar practitioners or to accompany the following individuals when their personal attendance is required: employees' spouse or domestic partner; and parent, step-parent or child of the employee, spouse or domestic partner. In exceptional circumstances, agencies

may approve the use of sick leave for someone not specifically listed. Whenever possible, such appointments should be scheduled outside of employee's normal working hours.

- Serious illness or injury of the following individuals when their personal attendance is required: spouse or domestic partner; and parent, step-parent, or child of the employee, spouse or domestic partner. In exceptional circumstances, agencies may approve the use of sick leave for someone not specifically listed.

- Employees approved for workers' compensation may request sick leave when they are less than fully paid under workers' compensation. Such leave shall be charged at the difference between workers' compensation pay and their regular pay.

5.3G Employees may not take sick leave with pay in excess of the hours actually accrued. In extreme cases, agencies may allow employees with more than 5 years service, who have not abused sick leave, to "borrow ahead" up to 112.5 hours (37.5 hour weekly schedule) or 120 hours (40 hour weekly schedule) of sick leave after their sick and annual leave is exhausted.

5.3H Employees who are injured on the job and approved for workers' compensation will not be charged with sick leave for any portion of the day of injury.

5.3I Employees who move from non-classified to classified positions shall be credited with any sick leave for which they were not paid. Employees who move from classified to non-classified positions shall transfer accrued sick leave to the extent the receiving agency agrees.

5.4 Compassionate Leave

5.4A Upon the death of an immediate family member, employees shall be granted 22.5 hours (37.5 hour weekly schedule) or 24 hours (40 hour weekly schedule) leave with pay, on a pro-rata basis normally to be used on consecutive work days. Employees may request agency approval for a person not specified as immediate family.

5.4B Employees shall be granted 7.5 hours (37.5 hour weekly schedule) or 8 hours (40 hour weekly schedule) leave with pay, on a pro-rata basis to attend memorial services or related activity of the following: aunt, uncle, niece, or nephew; brother/sister-in-law; grandparent-in-law; or any other relative or friend living in the employee's household.

5.5 Other Leaves With Pay

5.5A Employees shall be excused from work with pay for the following reasons:

- To attend training camp or special duty on orders as a member of the military reserves of the United States or the National Guard, not to exceed 112.5 hours (37.5 hour weekly schedule) or 120 hours (40 hour weekly schedule), on a pro-rata basis, in any calendar year.

- To train and participate as a member of the United States team in any competition sanctioned by the

United States Olympic Committee, in the capacity of coach, athlete, official, trainer or group leader, not to exceed 90 working days.

5.5B Employees shall be excused from work with pay for the following reasons: however, they shall return to work within a reasonable time after the conclusion of the following activities. Agencies shall, if possible, make shift changes to accommodate non day shift employees for their involvement in the following:

- To appear under subpoena to testify, unless they are one of the parties in the proceeding or the subpoena arises from other employment or volunteer activities.

- To report to serve on a jury.

- To appear on their own behalf before a hearing officer or the Merit Employee Relations Board in a Merit system grievance. Excusal from work with pay is not authorized for preparation of a grievance or consultation with employees' representatives.

- For a scheduled examination or interview for a Classified position in the State.

5.5C Employees may be excused from work with pay, at agency discretion for the following reasons:

- To serve as a delegate to conventions of unions or employee organizations or to engage in similar job related activities, not to exceed 37.5 hours (37.5 hour weekly schedule) or 40 hours (40 hour weekly schedule) on a pro-rata basis in any calendar year.

- To serve as a volunteer on an advisory body or commission or similar group sponsored by local or State government or statewide organization to programs benefitting diverse segments of Delaware citizens.

- To respond to volunteer emergency fire duty, if they are active firefighters or auxiliary members.

- To respond to disaster relief, not to exceed 15 work days, if they are Certified Disaster Service Volunteers of the American Red Cross.

- As part of a recognition program approved by the Director, not to exceed 7.5 hours (37.5 hour weekly schedule) or 8 hours (40 hour weekly schedule) per award. Such leave must be used within 1 year of being awarded and is not subject to cash payments.

5.6 Leave Without Pay

5.6A Employees shall be granted leaves of absence without pay to serve a tour of active duty in the United States military, plus 90 calendar days beyond the end of active duty. When such employees notify the agency of intent to return to work, with evidence of honorable release from military service, they shall be returned to a position in the same or comparable class for which they qualify.

5.6B Employees may be granted leaves of absence without pay at agency discretion for personal reasons up to 1 year. In exceptional circumstances, additional 6 month periods may be granted, but in no case shall continuous leave exceed 2 years. Employees may return to duty before the

expiration of the leave only with agency approval. Employees returning from a leave of absence of 6 months or less shall be returned to the duty assignment previously held. Employees returning from a leave of absence greater than 6 months shall be returned to a position in the same class or comparable class when leave was granted.

5.7 Family and Medical Leave Act (FMLA)

FMLA eligible employees will be provided with FMLA leave in accordance with the Family and Medical Leave Act of 1993. Employees shall be required to use available accrued annual leave and sick leave while on FMLA with the exception of one work week of annual leave and one work week of sick leave, which they may elect to maintain for use upon return to work. Usage of accrued sick leave shall only be in accordance with 5.3.

5.7A FMLA leave shall not be charged to an employee for time missed from work as a result of illness or injury covered by workers' compensation, unless requested by the employee.

5.8 Educational Leave and Assistance

Agencies may approve educational leave without pay. Upon agency request, the Director may approve leave with pay. The purpose of such leave is to permit employees to pursue education or training directly related to State employment which is not available through in-service training.

5.8A Educational reimbursement shall be offered by agencies consistent with their budgetary allowances. Reimbursement will be made only upon submission of evidence of satisfactory completion accompanied by paid receipts. In exceptional circumstances, agencies may pay in advance of course completion. In such case, employees shall reimburse agencies if they do not submit evidence of satisfactory completion. Employees shall reimburse agencies for tuition and paid education leave if they do not submit evidence of satisfactory course completion or if they leave State employment within 6 months of course completion.

5.9 The Director may grant an agency requesting an extended leave of absence to a Classified employee to serve in any nonclassified position described in 29 **Del.C.**, Sec. 5903 (4), (5), (6) and (22). At the end of that appointment, employees shall be returned within 60 days to a position for which they are qualified in the Classified Service, provided that the position is the same paygrade or lower as the position from which they left the Classified Service. They may also return to the Classified Service via the competitive process, in which case they would be considered an in-house candidate for the agency from which they originally received their leave of absence. Pay upon return to the Classified Service is set forth in 4.10.

CHAPTER 6 RECRUITMENT AND APPLICATION POLICIES

6.1 Recruitment

It is the policy of the State of Delaware to search widely and vigorously for the most qualified persons to fill positions in the classified service while providing equal employment opportunity and meeting the objectives of the State of Delaware Affirmative Action Plan.

6.1A Agencies shall recruit and advertise as defined by these regulations and directives promulgated by the State Personnel Office.

6.1B Appointing authorities may post a vacancy for agency employees (intra-agency and/or inter-agency) only or may announce a vacancy publicly as long as agency employees are considered in the filling of the vacancy.

6.2 Examination Announcement

When posting a vacant position, the appointing authority shall post intra-agency vacant positions for a period of at least five (5) working days and inter-agency vacant positions for at least fifteen (15) calendar days before the closing date for receipt of applications. Notices shall contain all pertinent information about the positions being filled.

⊛ When making public announcements of vacant positions, the appointing authority shall announce vacancies in the classified service at least fifteen calendar (15) days before the closing date for receipt of applications. Examination notices shall be given as wide a distribution as the appointing authority determines necessary, in the classified service, in the press, on radio and television and through contact with professional associations, union organizations, civic groups, educational institutions and neighborhood groups. Examination announcements and notices shall contain all pertinent information about the positions being filled.

6.2A As necessary to assure sufficient numbers of qualified applicants, the appointing authority may continue to accept applications after the originally announced closing date provided the closing date is extended and appropriately publicized.

6.2B The appointing authority may also decide to accept applications for certain examinations without any closing date pursuant to the procedures established by the Director.

6.2C The appointing authority may announce a vacancy with selective requirements, provided the justification for such requirement is job-related.

6.3 Applications for Employment

Applications shall be made on a standard form approved by the Director. Such form shall require information concerning the applicant's past employment, education, training and other pertinent qualifications.

6.3A No question on the application form or during

interview shall be so framed as to require information concerning the race, color, religion, national origin, sex, age, or disability of the candidate, except where they are bona fide occupational requirements, or such information is required by law for statistical purposes. No question shall elicit or require information about the individual's political affiliations or beliefs.

6.3B The applications must be signed by the candidate. Any misrepresentation or falsification may result in rejection of application, removal from register, dismissal and disqualification of future applications.

6.3C Each applicant shall receive an acknowledgment of his/her application and general information concerning requirements for placement on lists.

6.4 Rejection of Application

Applications may be rejected if any of the following is established about the applicant:

6.4A The applicant has made false statements or misrepresentations appear on the application.

6.4B Applicant has cheated on an examination or has violated the confidentiality of an examination.

6.4C The applicant is physically, mentally or otherwise unable to perform the duties of the position to which he/she seeks appointment.

6.4D The applicant has failed to comply with the Military Selective Service Act, 50 U.S.C.A. ??451?73 et seq.

6.4E Criminal court convictions which renders the applicant unsuitable for the position for which application is made.

6.4F The applicant is or has been a member of an organization which advocates the overthrow of the government of the United States or the State of Delaware.

6.4G The applicant does not meet the requirements of the merit system law or of these rules.

6.4H The applicant is unavailable.

6.4I The applicant has been separated from any branch of the armed forces under conditions other than honorable.

6.4J The applicant has been dismissed from State service within the preceding three years.

6.4K The applicant fails to meet the minimum qualification as stated in the class specification of position(s) for which applied.

6.5 Notification of Rejection

Whenever an application is rejected, notice of such rejection with statement of reason shall be promptly provided to the applicant. Rejected applicants may appeal to the Director within ten (10) days of the rejection notice. The decision of the Director shall be final.

CHAPTER 7 EXAMINATIONS and REGISTERS

7.1 Objectives of Examinations

The test used in the examination process shall fairly measure the relative capacities of the persons examined to execute the duties and responsibilities of the positions concerned, or, where appropriate, to learn to perform the duties and responsibilities thereof. Achievement, aptitude, other written tests, performance tests, physical agility and medical tests, oral interviews, evaluations of training and experience, reference checks and other tests will be used, singly or in combination, as determined by the Director, and after consultation with the appointing authorities where appropriate. Results of such evaluations shall be the basis for ranking on various eligibility lists.

7.2 Eligibility for Examinations

Competitive examinations are open to qualified persons who applied in accordance with the vacancy announcement.

7.3 Ranking of Candidates

Those taking competitive examinations will be ranked on the registers in the order of their final scores for the entire examination.

In the case of ties, dates of application and home of record will be used.

7.4 Scoring Examinations and Qualifying Scores

A candidate's score in a given examination shall be the average of the scores on each competitive part of the examination, weighted as shown in the examination announcement. Failure in one part of the examination may be grounds for declaring such applicants as failing in the entire examination or as disqualified for subsequent parts of an examination.

7.5 Notification of Eligibility

Applicants shall be notified in writing whether or not their name is placed on the register.

7.6 Examination Records

The Director or the appointing authority, as applicable, shall be responsible for the maintenance of all records pertinent to the examination process and program. Applications and other necessary examination records shall be kept for one year while the applicant is on the register and at least one year thereafter. If an appeal is filed, examination records must be maintained for the length of the appeal process. All notices of changes of address shall be filed by eligibles with the appointing authority.

7.7 Inspection of Examination Papers

Candidates shall have the right to inspect their examination papers within ten (10) calendar days after the date on which the official notice of examination results was mailed. This time period may be extended by the Director.

7.7A Inspection of examination papers shall be permitted only during regular business hours and in accordance with procedures established by the Director. The Director will determine what examination papers may be inspected, taking into account such factors as test security, privacy, retesting procedures, and any other pertinent

information.

7.7B Any error in computation or failure to apply uniform rating procedures, if called to the attention of the Director or appointing authority, as appropriate, within ten (10) calendar days after the date on which official notification results of such rating was mailed, shall be corrected.

7.8 Appeal After Examination

Applicants who have taken an examination or been rated by training and experience may appeal to the Director for review of their rating in any part of such examination to assure that uniform and appropriate procedures have been applied fairly. Such appeal must be mailed to the Director within ten (10) calendar days after the date on which notification of such rating was mailed. The decision of the Director shall be final.

7.9 Kinds of Registers

The Director shall provide for the establishment and maintenance of such registers as are necessary for filling positions in the classified service.

7.9A Layoff lists shall contain the names of those who have been reduced in force for reasons of lack of work or funds, or abolition of their positions. The name of any person placed on such register shall remain thereon for one (1) year from the date of separation from the service.

7.9B Registers shall include in rank order of final examination score the names of persons who have passed competitive examinations. Names shall remain on such list not to exceed one (1) year from the date of examination. Previous State employees who have left the classified service in good standing and have within two (2) years requested reinstatement shall have their names placed on registers for the class they previously held.

7.9C Permanent or probationary employees desiring a transfer to another agency in the same class shall be placed on registers without a score for consideration by the appointing authority. All such names shall be equally available for consideration. Employees desiring a transfer to another agency in a different class but same paygrade shall be placed on registers after passing any competitive examination and in rank order of their final examination score.

7.10 Related Registers

If a vacancy exists in a position for a class where there is no appropriate list, a list may be prepared from one or more existing related registers.

7.10A For this purpose, registers shall be used for classes for which the Director or appointing authority, as appropriate, has determined that the minimum qualifications and examinations are similar to, the existing vacancy.

7.11 Notice of Availability

At the time of the examination and as appropriate thereafter, information about availability shall be obtained from each applicant, giving a current address and

conditions under which appointment will be accepted, including areas of the State in which they are available. Whenever an applicant submits a written statement restricting availability, their name may be withheld from all certifications which do not meet the specified conditions.

7.12 Removal of Names from Registers

Names may be removed from registers by the appointing authority for any of the following reasons.

7.12A One of the causes for rejection of applicants specified in 7.0400. Such applicants shall be sent written notification to their last known address.

7.12B The applicant requests in writing that his/her name be removed.

7.12C The applicant fails to respond to a notice of certification mailed to his/her last known address. The name may be restored to the list if a satisfactory explanation is given to the appointing authority for failure to respond.

7.12D When the applicant has declined three offers of consideration or appointment.

7.12E The applicant fails without valid reason to report for interview, testing or work.

CHAPTER 8: CERTIFICATION

8.1 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.

8.2 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 15 or 15% of the eligible candidates, whichever is the greater number.

8.2A 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.

8.2B 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 8.2A, that is, the number of names shall be increased by two (from the base of 15% or 15) for each prior outstanding vacancy being considered from the same employment register.

8.2C Any candidate whose name appears on a certified list may be considered to fill the vacancy for which the list was requested. Should the list be unsatisfactory, it may be returned and subsequent lists may be requested, provided the reasons for rejection accompany the returned list.

8.2D Eligibility lists must be rank ordered in accordance with procedures outlined by the Director. 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 be informed that the list is in alphabetical order.

8.3 Residence

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

8.4 Veteran's Preference

Veterans and disabled veterans, as defined or their unremarried 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.

CHAPTER 9: PROBATION

9.1 After successful completion of an initial, one-year probationary period, the incumbent shall be a Merit employee. Upon the Director's approval, probationary periods may be extended.

9.2 Employees may be dismissed at any time during the initial probationary period. Except where a violation of Chapter 2 is alleged, probationary employees may not appeal the decision.

9.3 Employees in the initial probationary period who move into another classified position must satisfactorily complete the probationary period for the new class but shall become Merit employees at satisfactory completion of probation, for the new class or two years of Merit service, whichever occurs first.

9.4 Merit employees serving a probationary period after promotion who fail to satisfactorily complete the probationary period, may be placed by agencies internally without loss of benefits or agencies may notify the Director who shall decide the matter. If available, the employee may be returned to his/her former position and salary without any loss of benefits.

9.5 Upon reinstatement, employees who left the Merit System shall be required to serve an initial probation period.

CHAPTER 10: OTHER APPOINTMENTS

10.1 Limited Term Appointment

Limited term appointments are permitted when a Merit vacancy exists that is not of a continuing nature, but is projected to exceed 90 days. Such vacancies may be filled for a period of up to 1 year. The Director may approve a longer time period. Established selection procedures shall

be followed for filling the vacancy.

10.1A Merit employees who accept limited term appointments shall be placed in a vacant position comparable to their former class in the present agency at the end of the limited term appointment. If agencies demonstrate that no comparable vacant position exists, employees shall be given hiring preference.

10.1B The period of temporary service in a Classified position immediately prior to a probationary appointment to the same class shall constitute a part of all of the required probationary period if performance has been evaluated on the same basis as is required in 9.2 for the probationary period. In such cases, vacation and sick leave shall accrue retroactively.

10.2 Emergency Appointment

When there is immediate need to prevent stoppage of public business or serious impairment to the public service, and it is not possible to secure such persons from appropriate registers, agencies may make emergency appointments. Such appointments shall not exceed 30 days.

10.3 Exceptional Appointment

The Director shall establish procedures for exceptional employment, which shall occur without competitive examination or a Hiring List. Exceptional appointees shall successfully complete a trial work period, or pass a competitive examination, before being considered for Merit or probationary employment in the Classified Service.

10.4 Promotion

Candidates selected for promotion shall meet the position's minimum qualifications. Vacancies shall be filled by promotion wherever practical and in the best interest of the classified service. Consideration shall be given to qualifications, performance record, seniority, conduct and, where applicable, the results of competitive examinations.

10.5 Demotion

Employees may be placed in a position in a lower paygrade upon voluntarily requesting such action, when subject to layoff, or for just cause, if they meet the minimum qualifications for the lower paygrade position. When agencies agree to employee requests for voluntary demotions, State Personnel may waive job-posting requirements upon written request by the agencies, which justify such action.

10.6 Transfer

To promote the efficiency of the service, unrelated to employee performance, employees may be transferred to another position for which they meet minimum qualifications in the same paygrade within the same agency with or without competition.

10.6A Upon mutual consent between agencies and employees, employees may be transferred from one position to another position in the same paygrade for which they meet minimum qualifications without competition.

10.7 Underfill

10.7A Temporary underfilling is permitted for operational necessity, demotion or other valid reasons with the approval of the Director.

10.7B A position may be underfilled at any level in a Career Ladder in accordance with criteria approved by the Director. The position incumbent may be promoted through the Career Ladder based on the promotional standards.

10.8 Dual Incumbency

With the approval of the Director and the Budget Director, employees may temporarily occupy the same position as a paid primary incumbent.

10.9 To resolve litigation issues, grievances, or disputes between agencies about the placement of employees, the Director may move employees from one position to another position for which they qualify in the same or lower paygrade within the Merit System without competition.

10.10 Agencies shall make every effort, based on organizational needs, to place temporarily disabled employees in alternate duty assignments, subject to medical restrictions, for a period of 90 days. Extensions may be granted contingent upon expectations of employees' release to full duty within a time frame that meets agencies' operational needs. Such requests for extensions shall not be unreasonably denied.

CHAPTER 11: LAYOFF PROCEDURES

11.1 Agencies may choose to lay off Merit employees for legitimate substantiated reasons (e.g. loss of funding, abolishment of the position) unrelated to their conduct or performance.

11.2 The Director shall determine the boundaries of the layoff field.

11.3 Employees who have been identified as layoff candidates shall be given at least 30 days written notification by the agency, unless an emergency condition exists.

11.4 Employees identified as layoff candidates shall be given hiring preference.

11.5 Employees who cannot be placed via hiring preference shall be placed in any vacancy for which they qualify in their class or occupational series, which is equal to or no more than 3 paygrades lower than their current paygrade within the layoff field. Employees may choose to be placed in a vacancy that is more than 3 paygrades lower.

11.6 Employees shall be presumed to exercise bumping rights in their county of employment only, unless they provide notice to the agency authority within 10 calendar days of receiving the layoff notice. Employees may waive their bumping rights.

11.7 If placement is not possible under 11.5, bumping shall begin. Employees may only bump employees having less seniority. Employees, in order of seniority, shall

bump the least senior employee in their present class, and, as necessary, bump the least senior employee in each succeeding lower class until there are no positions within the same occupational series into which employees may bump.

11.7A Career ladder employees shall bump employees within their career ladder who are at the same or lower paygrade and have the least seniority.

CHAPTER 12 EMPLOYEE ACCOUNTABILITY

12.1 Employees shall be held accountable for their conduct. Disciplinary measures up to and including dismissal shall be taken only for just cause. "Just cause" means that management has sufficient reasons for imposing accountability. Just cause requires:

showing that the employee has committed the charged offense; offering specified due process rights specified in this chapter; and imposing a penalty appropriate to the circumstances.

12.2 Employees shall receive a written reprimand where appropriate based on specified misconduct, or where a verbal reprimand has not produced the desired improvement.

12.3 Prior to finalizing a dismissal, suspension, fine or demotion action, the employee shall be notified in writing that such action is being proposed and provided the reasons for the proposed action.

12.4 Employees shall receive written notice of their entitlement to a pre-decision meeting in dismissal, demotion for just cause, fines and suspension cases. If employees desire such a meeting, they shall submit a written request for a meeting to their Agency's designated personnel representative within 15 calendar days from the date of notice. Employees may be suspended without pay during this period provided that a management representative has first reviewed with the employee the basis for the action and provides an opportunity for response. Where employees' continued presence in the workplace would jeopardize others' safety, security, or the public confidence, they may be removed immediately from the workplace without loss of pay.

12.5 The pre-decision meeting shall be held within a reasonable time not to exceed 15 calendar days after the employee has requested the meeting in compliance with ~~15.4~~ 12.4.

12.6 Pre-decision meetings shall be informal meetings to provide employees an opportunity to respond to the proposed action, and offer any reasons why the proposed penalty may not be justified or is too severe.

12.7 Fines of not more than 10 days pay may be imposed, provided they do not cause employees to be paid less than the federal minimum wage as set forth in the Fair Labor Standards Act.

12.8 Adverse documentation shall not be cited by agencies in any action involving a similar subsequent

offense after 2 years, except if employees raise their past work record as a defense or mitigating factor.

12.9 Employees who have been dismissed, demoted or suspended may file an appeal directly with the Director or the MERB within 30 days of such action. Alternatively, such employees may simultaneously file directly with the Director, who must hear the appeal within 30 days. If the employee is not satisfied with the outcome at the Director's level, then the appeal shall continue at the MERB.

CHAPTER 13 PERFORMANCE REVIEW

13.1 Purpose of Performance Review

The Director shall provide for systematic performance review to communicate expectations and responsibilities, recognize achievement, and identify areas for skill development and work performance improvement.

13.2 Changes in Performance

Recognition of effort, accomplishment, improvement or the need for further skill development shall be addressed as needed by verbal discussions, written communication, and/or formal documentation.

13.3 Unsatisfactory Performance

When an employee's work performance is considered unsatisfactory, the performance must be documented in writing, and the specific weaknesses must be made known to the employee. The employee shall be given documented assistance to improve by the designated supervisor. An opportunity for re-evaluation will be provided within a period of 3 to 6 months.

13.4 Review Appeal

The employee shall have the right to discuss any performance review or documentation with the next level of authority and may submit written comments.

CHAPTER 14 EMPLOYEE DEVELOPMENT AND COMMUNICATIONS

14.1 Employee Development

The Director shall encourage and assist the appointing authorities to initiate and develop programs to improve the work effectiveness and morale of the State's employees, including training, safety, health, welfare, recreation, counseling and employee and labor relations.

14.2 Employee Communications

The Director is authorized to publish an employee newspaper, an employee handbook, websites and such other publications as deemed appropriate.

CHAPTER 15 EMPLOYEE RESPONSIBILITIES

15.1 Attendance

Appointing authorities shall be responsible for the attendance of all employees in their agency. No

employee shall be paid unless he/she is at work in accordance with these rules and departmental or agency rules or he/she is on authorized paid leave.

15.1A Every employee is required to report to work on time each day. When because of emergency or sudden illness employees cannot report for work, they shall notify their supervisor within the first hour of absence, or as soon as practical thereafter, giving reason for their absence.

15.2 Outside Employment and Pecuniary Interests

15.2A An employee in the classified service shall not engage in any outside employment or other outside activity incompatible with the proper discharge of the responsibilities of his or her position. It shall be deemed incompatible with such discharge of responsibilities for an employee to accept any fee, compensation, gift, payment of expenses or any other thing of monetary value under circumstances in which acceptance may result in a conflict with his/her public duties.

15.2B An employee in the classified service shall not have a personal interest in any business transaction within his area of influence in State Government nor shall he/she have any private business relationship that may conflict with his/her public duties. This restriction shall not prohibit, however:

15.2C Ownership of corporate stocks and bonds bought and sold on the public market.

15.2D Receipt of bona fide reimbursement for actual travel expense and other necessary subsistence for which government payment or reimbursement is made.

15.2E Participation in the affairs of charitable, religious, non-profit education, public service or civic organizations, or the activities of national or state political parties not prohibited in 15.3.

15.2F Awards for meritorious public contributions given by public service or civic organizations.

15.3 Political Activity

In accordance with 29 Del. C. ?5954, no employee in the classified service shall engage in the following activities:

15.3A "No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person, or for any consideration."

15.3B "No employee in the classified service shall engage in any political activity or solicit any political contribution, assessment or subscription during his hours of employment or while engaged in the business of the State."

15.3C "No person shall induce, directly or indirectly, any employee in the classified service to make any contribution, assessment or subscription to a political party

under the representation, actual or implied, that such assessment, subscription or contribution will have any effect on the employee's employment with the State."

15.3D Any officer or employee in the classified service who violates any of the provisions of this section shall forfeit his office or position, and for one (1) year shall be ineligible for any office or position in the State service. The Director shall investigate any signed written charge that this section on political activity has been violated and shall take whatever steps are necessary to insure compliance with the above.

15.3E Employees in Federally funded programs subject to I.M.S.S. are further restricted in political activity according to provisions of the Hatch Act.

CHAPTER 16: HUMAN RESOURCE RECORDS

16.1 Master Personnel Records

A master personnel record for each employee shall be established and maintained by each agency. The records shall include copies of: application for employment; each Human Resource transaction; attendance and leave records; employee Performance Review documents; grievance records; verification of education and employment and any other records or information considered appropriate. At the discretion of the Director, these records may be either physical (hard) copies or computer-stored data. Personnel records are confidential and shall be maintained as necessary to ensure their confidentiality. These and other employee records shall be readily available for review by the Director or the Director's designee. Unauthorized disclosure of any portion of a State employee's records shall be grounds for dismissal.

16.2 Employee Access to Records

Employees shall have controlled access to their records. After obtaining permission of the appointing authority, employees shall be scheduled to examine their records under the supervision of those charged with maintaining such records.

16.3 Human Resource Transactions

All appointments, separations, and other HR transactions shall be made as specified by the Director.

CHAPTER 17: PAYROLL

17.1 Payroll Change

An agency head or other official may add an employee to the payroll, change his/her salary or status only upon prior execution of the properly completed human resource transactions as specified by the Director.

17.2 Review of Payrolls

No person shall make or approve payment for personal services to any employee in the classified service unless the appropriate documents are certified by the

appropriate State officer to the effect that the individual is an employee in accordance with Delaware Code and these rules.

17.3 Audit

The Director shall conduct such audits of State payrolls and such other investigations as deemed necessary to assure compliance with Delaware Code.

17.31 Any violations shall be called immediately to the attention of the appropriate agency head and to the Budget Director, Auditor of Accounts and State Treasurer.

17.32 Thereafter, no payment shall be made to any employee whose salary rate has been questioned until the rate has been adjusted to the satisfaction of the Director.

17.33 If the Director wrongfully withholds certification of the payroll account of any employee, such employee may take court action to compel the Director to certify such payroll.

17.4 Recovery of Salaries Improperly Paid

In accordance with the provisions of Delaware Code, officials may be held liable for the return of any salaries they wrongfully authorize.

CHAPTER 18: THE GRIEVANCE PROCEDURE

18.1 To promote positive working relationships and better communications, employees and their supervisors shall informally meet and discuss employee claims of Merit Rule or Merit law violations prior to filing a formal grievance. Merit employees have the right to use this grievance procedure free of threats, intimidation or retaliation, and may have union or other representation throughout the process.

18.2A "grievance" means an employee complaint about the application of the Rules or the Merit System law (29 Delaware Code, Chapter 59), which remains unresolved after informal efforts at resolution have been attempted. A grievance shall not deal with the substantive policies embodied in the Merit System law.

18.3 An employee who is in a bargaining unit covered by a collective bargaining agreement shall process any grievance through the grievance procedure outlined in the collective bargaining agreement. However, if the subject of the grievance is non-negotiable pursuant to 29 Del. C, 5938, it shall be processed according to this Chapter.

18.4 Failure of the employing agency to comply with time limits shall automatically move the grievance to the next step unless the parties have a written agreement to delay, or grievants have opposed in writing moving the grievance automatically to the next step. Failure of the grievant to comply with time limits shall void the grievance. The parties may agree to the extension of any time limits or to waive any grievance step. Grievances about demotions for just cause, suspensions or dismissals shall start at Step 2 within 14 calendar days in the manner set forth in 18.7.

18.5 Grievances about promotions are permitted only where it is asserted that (1) the person who has been promoted does not meet the minimum qualifications; (2) there has been a violation of Merit Rule 2.1 or any of the procedural requirements in the Merit Rules; or (3) there has been a gross abuse of discretion in the promotion.

18.6 Step 1: Grievants shall file, within 14 calendar days of the date of the grievance matter or the date they could reasonably be expected to have knowledge of the grievance matter, a written grievance which details the complaint and relief sought with their immediate supervisor. The following shall occur within 14 calendar days of receipt of the grievance: the parties shall meet and discuss the grievance and the Step 1 supervisor shall issue a written reply.

18.7 Step 2: Any appeal shall be filed in writing to the top agency personnel official or representative within 7 calendar days of receipt of the reply. The following shall occur within 30 calendar days of the receipt of the appeal: the designated management official and the employee shall meet and discuss the grievance, and the designated management official shall issue a written response.

18.8 Step 3: Any appeal shall be filed in writing to the State Personnel Director within 14 calendar days of receipt of the Step 2 reply. This appeal shall include copies of the written grievance and responses from the previous steps. The parties and the Director (or designee) may agree to meet and attempt an informal resolution of the grievance, and/or the Director (or designee) shall hear the grievance and issue a written decision with 45 calendar days of the appeal's receipt. The Step 3 decision is final and binding upon agency management.

18.9 If the grievance has not been settled, the grievant may present, within 20 calendar days of receipt of the Step 3 decision or of the date of the informal meeting, whichever is later, a written appeal to the Merit Employee Relations Board (MERB) for final disposition according to 29 Del. C. 5931 and MERB procedures.

18.10 Retroactive remedies shall apply to the grievant only and, for a continuing claim, be limited to 30 calendar days prior to the grievance filing date. Any financial settlement shall be reduced by the amount of the grievant's earnings during the period covered by the settlement regardless of source, excluding part-time income which was received prior to the separation.

18.11 Grievants may attend any meeting held pursuant to this Chapter without loss of pay; provided, however, grievance preparation and investigation time, and any discussion time with their grievance representative shall not be done during employee work time.

State of Delaware positions used to calculate vacation accrual rates. The Director shall establish procedures for calculating this time.

Agency: any board, department, elected office or commission which receives an appropriation in accordance with 29 Del. C., Chapter 59. This definition does not preclude the establishing of exempt positions in organizational units within departments.

Aggregate Service: means total length of employment by the State of Delaware, minus breaks in service.

Appeal: a request for ruling per specified sections of the Merit Rules to the Director or the MERB as appropriate.

Appointing Authority: the official, or designee, who has the authority to make appointments to, or dismiss employees from, the Merit service. (The appointing authority is the Cabinet Secretary of the department or the agency head of those units which are not a part of a larger agency. Only the Cabinet Secretary or agency head may dismiss employees.)

Bumping: an employee identified for layoff may displace an employee in the same class grouping at the same or lower paygrade with less Merit service in the defined layoff field. The employee shall meet the minimum qualifications. Neither (a): limited term appointment employees; nor (b): employees whose performance record contains more than one unsatisfactory appraisal within the past 3 years; shall be eligible to exercise bumping rights.

Career Ladder: a hierarchy of classes within a class series, established and approved by the Director, which permits employee movement along a career path without competition upon meeting all promotional standards.

Casual/Seasonal Employees: employees serving in positions pursuant to Section 5903 (17) of Title 29 of the Delaware Code. Such employees are not covered by the merit rules. Such employees may be covered by collective bargaining agreements and by other State and Federal laws such as the Fair Labor Standards Act, Title VII of the Civil Rights Act, the Family Medical Leave Act, etc.

Class: all Merit positions sufficiently similar in duties, responsibilities and qualification requirements to use the same salary range and title. (Example--Civil Engineer I, Office Manager, Forester)

Classification: the analysis of the duties and responsibilities of a position and its assignment by the Director to a class.

Class Series: a progression of classes in the same line of work reflecting different degrees of responsibility and difficulty of duties. (Example--Management Analyst I, Management Analyst II, Management Analyst III)

Class Specification: a written description of the distinguishing characteristics of all positions in a class, including typical duties and responsibilities and minimum qualifications.

Contractual Employees: employees providing service through a contractual relationship with the State either

Chapter 19: DEFINITIONS

Adjusted Service Date: total length of employment in

directly or via another employing organizing. Contractual employees are not covered by the merit rules.

Demotion: the movement of an employee from a position in a class of a higher paygrade to a position in a class of a lower paygrade through a process other than reclassification.

Director: the Director of State Personnel, appointed pursuant to 29 Del. C., Chapter 59, or designee.

Disability: a physical or mental impairment that substantially limits one or more of the major life activities of an individual, a record of such impairment or being regarded as having such an impairment.

Domestic partner: the person with whom the employee's life is interdependent, with whom the employee maintains a committed relationship and with whom the employee shares a mutual residence.

Employee: any person holding a position in the Classified Service.

Essential Functions: the fundamental job duties of an employment position.

Examination: the process by which applicants are evaluated for a position in the Merit System. An examination may consist of, but is not limited to, oral, written or performance tests, or a rating of the candidate's training and experience.

Exceptional Employment: Employment of individuals with disabilities through special program such as the Agency Aide or Selective Placement Program.

FMLA Eligible Employee: an employee who has at least one year of state service and has been paid for at least 1,250 hours over the 12-month period prior to the first day of the FMLA leave.

FMLA Leave: leave taken in accordance with the provisions of the Family and Medical Leave Act of 1993.

Grievance: Merit employee's claim that these rules or the Merit system statute has been violated. A grievance may not deal with the content of the Rules or the Merit system statute.

Hazardous Duty Pay: uncontrollable circumstances that involve an unusual risk of serious physical injury, impairment to health or death resulting from accidental, negligent or intentional causes. Compensation for Exposure Levels A & B shall be set in the Budget Act. The following two degrees of exposure are recognized

Exposure Level A: Continuing exposure to hazards where the employee's responsibility is to deal with the hazard as a function of assigned duties.

Exposure Level B: Proximate exposure to hazards where it is not the employee's stipulated job duty to deal with the hazard, or occasional exposure to hazards where the employee's responsibility is to deal with the hazard as a function of assigned duties.

The following definitions shall be used to determine eligibility for hazardous duty pay:

Continuing: frequency of exposure is normally more than 50% of employees' working time.

Occasional: frequency of exposure is normally more than 5% but less than 50% of employees' working time.

Uncontrollable: precautions, such as safety and life support equipment, are either impractical to be used continually or are insufficient to assure reasonable safety.

Proximate: the location of employee's work site precludes evacuation as a means of avoiding exposure to serious physical injury, impairment to health or death resulting from accidental, negligent or intentional cause.

Hiring List: the list of finalist candidates eligible to fill a vacant position.

Hiring Preference: special placement for 1 year on a Hiring List for a position at the employees' current paygrade or lower for which the employee meets minimum qualifications. Employees shall be required to pass any written tests if the position is outside their class series. Employees with more than 1 unsatisfactory performance appraisal in the last 3 years shall not be eligible for hiring preference. Hiring preference is granted for one year or until employees are placed in the same class, whichever occurs first.

Human Resource (HR) Action--any employment action including, but not limited to the hiring process, discipline, promotion, compensation, classification, benefits, employee and labor relations.

Immediate Family: the employee's spouse or domestic partner; parent, step-parent or child of the employee, spouse or domestic partner; employee's grandparent or grandchild; employee's sibling; spouse of employee's child; or any minor child for whom the employee has assumed and carried out parental responsibilities.

Layoff Field: specific boundaries, such as Department, Division, section, etc., used to determine parameters of bumping.

Merit Employee: an employee who has satisfactorily completed the initial probationary period for a classified position.

Merit Compensatory Time: for employees in FLSA-covered positions authorized to work a 37.5 hour week means those hours worked between 37.5 and 40 hours per week. For employees in FLSA-covered positions who are authorized to work FLSA approved specialty exemptions, means those hours worked in excess of the employee's regular schedule and less than the FLSA minimum for overtime. For employees in FLSA-exempt positions, means those hours worked beyond the employee's standard work week, either 37.5 or 40 hours.

Merit Factors: include, but are not limited to, consideration of training, experience, knowledge, skill, education, conduct, and performance record of applicants or employees in the classified service.

Merit Service: length of employment by the State of Delaware in classified position(s) minus breaks in service.

Merit System Law: refer to 29 Del. C., Chapter 59.

Minimum Qualifications: minimum entry requirements, including selective requirements, which must be met for an individual to be eligible for appointment to a classified position or to take an examination. These requirements typically include minimum levels or types of education, training or experience or completion of specified examinations. The Director may approve documented equivalencies.

Night Shift: a night shift for these purposes shall be a shift which includes four or more hours of work between the hours of 6:00 p.m. and 8:00 a.m. the following day.

Occupational Series: a group of related classes requiring similar skills and training.

Paygrade: one of the horizontal pay ranges designated on the pay plan consisting of a series of percentage of midpoint columns identifying specific values.

Pay Range: means lowest to highest dollar value assigned to a paygrade.

Preferential requirement: any education, training and/or experience not specifically indicated in the minimum qualifications that are desirable but not required.

Probationary Period: the trial period of employment. Initial probationary period occurs when an employee first enters the Merit service. Promotional-probationary period occurs when a Merit employee is promoted.

Pro-rata Basis: a proportional share based on the percent of full-time at which a position is filled, with a 100% share being the maximum allowable share. A 100% share of a day is 7.5 hours or 8 hours. The calculation of leave shall be rounded up to the nearest quarter hour.

Reassignment: Any movement within the same budgeted position within the same county.

Register: a list of qualified candidates ranked by score or alphabetically (where there are less than 15 qualified applicants) to fill vacant positions in a particular class.

Reinstatement: the rehiring of an individual into the same class within a 2-year period from which the individual left the position in good standing.

Rotating Shift: a change in a work schedule 1.) for at least 2 days in a work week which includes 4 or more hours of work daily, 2.) or that involves different schedules with no more than 30 continuous days on a shift which does not qualify as night shift per 4.16A.

Selective Market Variation (SMV): Selective Market Variation (SMV) is a process used to increase the salary range for job classifications where severe market competition makes it difficult for the State to recruit and retain qualified employees.

Selective Requirement: any education, training and/or experience not specifically indicated in the minimum qualifications of a class specification that are required as

they are considered job related and essential for effective performance in a specific position at time of hire.

Seniority: total length of employment in Classified positions by the State of Delaware. This time shall be adjusted whenever an unpaid leave of absence exceeds 30 calendar days, except in the case of military leave granted in accordance with 5.5A.

Shift Differential Pay: compensation for working inconvenient hours and schedules as authorized at the agency's discretion and described below:

Night Shift: a shift which includes four or more hours of work between the hours of 6:00 p.m. and 8:00 a.m. the following day.

Rotating Shift: a change in a work schedule 1.) for at least two days in a work week which includes 4 or more hours of work daily, or 2.) that involves different schedules with no more than 30 days on a shift which does not qualify as night shift per 4.16 A.

Split Shift: any shift which is broken into two parts with two or more hours between the parts. Employees authorized and required by agencies to work split shifts shall receive supplemental pay for the entire shift equal to 5% of their paygrade midpoint.

Supervisor: a person in a position who, on a regular and continuing basis, plans, assigns, reviews, disciplines, recommends hire, termination and promotion and completes and approves performance plans of two or more classified employees excluding casual, seasonal, and contractual employees.

Transfer: Any movement between positions in the same pay grade as long as the employee meets the minimum qualifications.

Underfill: Filling a position in a lower pay grade than the position is authorized.

Veteran: those individuals who have been honorably separated from the Armed Forces after one of the following events:

-Service between April 6, 1917, to July 2, 1921; or December 7, 1941, to July 1, 1955; or

-Service of more than 180 consecutive days after January 31, 1955, (not counting service under an initial period of active duty for training under the "6 month" Reserve or National Guard programs); or

-Service in a campaign for which a campaign badge has been authorized. (Disabled veterans are those individuals (as above) who have established the present existence of a service-connected disability or who are receiving compensation, disability retirement benefits or pensions by reason of public laws administered by the Veterans' Administration or the Department of Defense, requiring the assignment of a claim number.)

**RULES GOVERNING PRACTICE AND PROCEDURE
BEFORE THE MERIT EMPLOYEE RELATIONS
BOARD OF THE STATE OF DELAWARE**

EFFECTIVE JANUARY 1, 2004

**RULE NO. 1: APPLICABILITY, CONSTRUCTION,
SPECIFIC ORDERS, WAIVER**

(A) These rules govern practice and procedure in all matters before the Merit Employee Relations Board (hereinafter "Board") and shall be liberally construed to secure a just, economical, and reasonably expeditious determination of the issues presented in accordance with the Board's statutory responsibilities.

(B) The Board may for good cause, either upon application or upon its own motion, waive any of these rules of practice and procedure.

**RULE NO. 2: ADDRESS OF THE BOARD; OFFICE
HOURS**

(A) All communications to the Board or the Board's staff shall be addressed to "The Merit Employee Relations Board" at the Margaret M. O'Neill Building, Suite 213, 410 Federal Street, Dover, Delaware 19901, or such other address as the Board may adopt from time to time.

(B) The normal office hours of the Board will be from 8:00 a.m. until 4:30 p.m. each weekday, excepting Saturdays, Sundays, legal holidays, or unless otherwise provided by statute or Executive Order.

RULE NO. 3: DEFINITIONS

(A) All terms defined in the Merit Rules of the State of Delaware applicable to all positions and employees in the classified service shall have the meaning as set forth in said Merit Rules.

(B) "Board" - The Merit Employee Relations Board.

(C) "Board Staff" - All persons employed by the Board or assigned to the Board by another Agency of the State of Delaware.

(D) "Presiding Officer" - The Chair or the next senior Board member in appointment to the Board or a duly designated Hearing Examiner presiding at any Board proceeding.

(E) "Proceeding" - Any undertaking by the Board, upon its own motion, or otherwise, formal or informal, whereby the Board seeks to exercise its statutory authority.

(F) "Shall" - is mandatory.

(G) "Should" and "may" - are permissive.

**RULE NO. 4: THE SECRETARY;
AUTHENTICATIONS; FILINGS
WITH THE BOARD**

(A) The Secretary to the Board shall be the Administrative Assistant employed by the Board or such

other individual as the Board designates from time to time by written order or otherwise. The Secretary shall be responsible for the maintenance and custody of the Board's dockets, files, opinions, orders, rules, forms, and other material filed with the Board.

(B) All papers required to be filed with the Board shall be filed with the Secretary at the Board office within such time limits, if any, as may be fixed by law, rule, or order of the Board. The Secretary shall not file any paper until the fee, if any, required by law or rule shall have been paid.

(C) The Secretary shall mark or cause to be marked on each communication addressed to the Board and on each pleading, brief, or other document filed with the Board, the time and date of receipt by the Board.

(D) Subsequent to the docketing of any matter by the Board, all papers of whatever character offered for filing in the docket by any party, shall show the title and style of the proceeding, the docket number, and the name of the person submitting the paper. The Secretary may, in his or her discretion, reject any paper not so identified.

(E) The Board's date and time stamp shall not be affixed to any document which, in the exclusive and final determination of the Secretary or his or her designee, is not sufficiently legible as received.

(F) All papers filed with the Board shall be approximately 8 ½ inches by 11 inches in size and should be typewritten upon opaque, unglazed white paper. Legibly printed or hand-written papers may be accepted.

(G) Filing with the Board by electronic media such as telephonic facsimile transmission or electronic file transfer may be made subject to Rule (E) above.

**RULE NO. 5: SERVICE OF DOCUMENTS; PROOF
OF SERVICE**

(A) Each person filing an appeal, grievance, pleading, or other document with the Board in any proceeding shall, not later than the time of filing, serve a copy of such document on each party, or other person required to be served by rule, order, or law. An employee shall in all events serve his or her Agency with a copy of any filing with the Board and the Agency shall serve any employee or his or her counsel.

(B) Each party shall accompany any pleading or document filed with the Board with proof of service in accordance with this rule.

**RULE NO. 6: PUBLIC ACCESS TO BOARD
RECORDS**

(A) The Secretary shall make available for public inspection and copying during regular business hours of the Board all public records of the Board as defined in 29 Del. C. §10002(d). Documents pertaining to non-public disciplinary proceedings shall not be made available for public inspection except pursuant to an order of the Board pursuant to 29 Del.

C. §5948.

(B) In the event a public record is in active use or in storage and, therefore, unavailable at the time access is requested, the Secretary shall so inform the person seeking access and make an appointment for the person to examine such record as expeditiously as it may reasonably be made available.

(C) For copying a public record, the Secretary shall charge a fee in accordance with the charges made by other State Agencies as established by the Secretary of the Department of Administrative Services.

RULE NO. 7: EX PARTE COMMUNICATIONS

No member or employee of the Board who will participate in any way in the rendering of a decision on a matter pending before the Board shall, directly or indirectly, discuss or communicate, concerning such matter with any party, except upon notice to and opportunity for all parties to participate. This rule does not apply to communications required for the disposition of *ex parte* matters authorized by law, or to communications, not otherwise prohibited, by and among the members of the Board, Board staff, and Board legal counsel.

RULE NO. 8: TIME

(A) In computing any period of time prescribed or allowed by any rule, order, or notice of the Board, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it falls on a Saturday, Sunday, or a day made a legal holiday by the laws of this State or of the United States, in which event, the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed is less than ten (10) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

(B) For good cause shown the Board or the Presiding Officer may extend any period of time prescribed or allowed by any Board rule, order, or notice.

RULE NO. 9: APPEARANCES

(A) Subject to the Rules of the Delaware Supreme Court, a person may appear before the Board in person or by an attorney or, where permitted by the Court, other lawfully designated representative. If a person is represented by more than one individual, that person must designate a single individual to receive service. With approval of the Presiding Officer or Hearing Examiner, additional persons may be added to the service list in a proceeding before the Board.

(B) The Board may deny, either temporarily or permanently, the privilege of appearing before it to any attorney or other authorized representative who has engaged in illegal, unethical, or improper behavior with respect to a

matter before the Board.

RULE NO. 10: FILING APPEALS

(A) All appeals filed with the Board, whether direct appeals or appeals after one (1) or more of the Steps in the grievance process under the Merit Rules, shall be in writing, shall be signed by the appellant or his or her attorney, and shall include at least the following:

1. A specific identification of the act or omission complained of and the date or dates of occurrence or non-occurrence;

2. The identification of the Merit Rule or Rules alleged to have been violated;

3. A summary of the argument and legal authorities to be presented;

4. Full name, mailing address, and telephone number of the appellant and his or her attorney or lawful representative, if any;

5. The full identification of the appointing authority or other entity whose action or inaction is the subject of the appeal;

6. If applicable, a copy of the written decision(s) from the last step of the grievance process.

(B) Each appeal shall have a section wherein the appellant sets forth a brief summary of the evidence he or she expects to present at hearing, showing that the appeal is timely filed with the Board pursuant to the applicable statutes or Merit Rules, and is otherwise within the jurisdiction of the Board.

RULE NO. 11: SCHEDULING OF MATTERS BEFORE THE BOARD

(A) Matters involving termination of employment, suspension for more than three (3) days, or demotion will normally be allotted one (1) full day for hearing. All other matters will normally be allotted one-half (½) day or less for hearing before the Board. Exceptions to these limitations may be granted by the Board, but only for good cause shown. If any party believes that the presentation of his or her case cannot reasonably be accomplished in one-half (½) of the allotted time or less, then he or she should so notify the Secretary to the Board in writing as soon as possible with a request for additional time setting forth the reasons for such request.

(B) All parties are expected to use stipulations and agreements to establish facts about which there is no reasonable dispute in order to meet the Board's scheduling requirements.

RULE NO. 12: MOTIONS

(A) A party in any Board proceeding may file and serve a motion at any time unless otherwise provided. A written motion shall contain a concise statement of the facts and law which support it and a specific request for relief. Any case

dispositive motion, such as a motion to dismiss, should be filed and served as soon as possible prior to the start of the hearing. A written reply to a case dispositive motion may be filed. No motion may be filed with the Board without proof that a copy of the motion has been served on the non-moving party(ies).

(B) The Board or Presiding Officer may, in his or her discretion, permit oral motions and oral or written responses to be made during a hearing.

RULE NO. 13: PRE-HEARING PROCEDURE

(A) **Conferences.** The Board President or Presiding Officer may, at any time prior to the hearing, direct the parties to appear for a conference or to participate in a teleconference to consider:

(1) Scheduling and the simplification of the issue(s)

(2) The necessity or desirability of amendments to the papers filed or for additional papers to be filed, or for the voluntary exchange of information which will facilitate the prompt and just resolution of the issues;

(3) The possibility of obtaining stipulations as to the admissibility of facts and documents which will avoid unnecessary proof;

(4) The limitation of the number of witnesses and such other matters as may aid in the disposition or expedition of the matter;

(5) The Board President or Presiding Officer may issue such written Orders as may be necessary to address matters arising at the pre-hearing conference.

(B) **Required Document Submission.**

(1) Not less than five (5) days prior to the scheduled hearing date, all parties must submit a type written or legible handwritten summary of the expected testimony of each individual which that party will call as a witness. Such written summary should not exceed two (2) 8 ½ by 11 inch pages for each witness and shall set forth a summary of the facts and opinions to which the witness is expected to testify.

(2) No witness will be permitted to testify unless the written summary of expected testimony has been timely filed or unless such requirement is waived by the Board or Presiding Officer for good cause shown.

RULE NO. 14: PROCEDURES DURING HEARINGS

(A) A verbatim record of the proceedings before the Board or Presiding Officer will be made either electronically or stenographically. The Presiding Officer will open the hearing by naming the parties, stating the nature of the appeal and the relief sought. Three (3) members of the Board will constitute a quorum for all proceedings before the Board, and the vote of a majority of the quorum will control.

(B) All testimony before the Board shall be taken under oath or affirmation. Any probative evidence will be admitted, except that evidence which is irrelevant,

immaterial, or unduly repetitive may be excluded. Technical rules of evidence shall not apply.

(C) In appeals involving disciplinary action, the moving party shall be the appointing authority. In all other appeals the moving party shall be the appellant. The designation of the moving party shall not change the ultimate burden of proof on any issue or matter.

(D) The moving party will be afforded the opportunity to open the hearing with a brief opening statement. Following such statement or the waiver thereof, the opposing party will be permitted the opportunity for a brief opening statement. Thereafter, the moving party shall present evidence in support of its position. Following the opportunity for reasonable cross-examination and questions, if any, by the Board or Presiding Officer, the opposing party will be afforded the opportunity to present evidence which will be subject to cross-examination by the moving party and questions by the Board or Presiding Officer. Further evidentiary presentations may be permitted in the discretion of the Board or Presiding Officer with the party having the burden of proof normally being afforded the final opportunity to present evidence and argument to the Board or the Presiding Officer.

(E) Any party intending to offer written material as exhibits must ensure that there are sufficient copies available for the Board's files (two (2) copies), for each Board member (five (5) copies), and for opposing counsel. The parties are encouraged to agree upon and, where feasible, pre-mark all exhibits and submit the agreed upon materials to the Board as soon as possible before the hearing.

(F) Post hearing submission of briefs or memoranda will be as directed by the Board or Presiding Officer.

RULE NO. 15: POST-HEARING PROCEDURES

(A) Briefs, memoranda, or proposed findings may be filed on behalf of all interested parties only with permission from the Board or Presiding Officer, and shall be filed as directed by the Board or Presiding Officer.

(B) All such filings should be either typewritten or printed and should include a title page showing the name of the Board, the docket number and title of the proceeding, the name of the parties, the date, and the subject of the filing. All briefs should contain a subject index and a table of citations, both with page references, and shall not exceed twenty-five (25) pages in length without prior permission of the Board or Presiding Officer. Briefs must be signed by the party filing them or his or her attorney.

(C) Oral argument at the close of the hearing may be allowed or requested by the Board in appropriate cases. No new evidence will be received during such argument.

**PUBLIC EMPLOYMENT RELATIONS
BOARD**Statutory Authority: 14 Delaware Code,
Section 4006(h)(1) (14 Del.C. §4006(h)(1))IN THE MATTER OF: |
Adoption of Rule and | **ORDER**
Regulation 12.0 |**SUMMARY OF THE EVIDENCE**

Pursuant to 29 Del.C. Ch. 101, the Public Employment Relations Board (“Board”) held a public hearing on November 12, 2003 at 9:00 a.m., in the Conference Room, 3rd Floor, Carvel State Office Building, 820 N. French St., Wilmington, Delaware, for the purpose of receiving public comments on proposed Rule and Regulation 12.0 as an amendment to the Board’s existing Rules and Regulations, in order for the Board to vote to adopt, amend or reject said proposal. The Board proposed Rule and Regulation 12.0, in response to amendments, effective June 24, 2003, to Section 4013(c) of the Public School Employment Relations Act, 14 Del.C. Ch. 40 (“Act”).

Members of the Board present at the hearing were Henry E. Kressman, Chair; R. Robert Currie, Jr., Member; and Elizabeth Maron, Esquire, Member.

Also present were Deborah L. Murray-Sheppard, Principal Assistant to the Board, Cynthia M. Osborne, Paralegal to the Board; Jeffrey M. Taschner, Esquire, General Counsel for the Delaware State Education Association (DSEA); David H. Williams, Esquire, for the Delaware School Boards Association (DSBA); and Laura L. Gerard, Deputy Attorney General, Counsel for the Board.

Written and verbal comments concerning the proposed Rule and Regulation were presented to the Board. Written comments consisted of a letter dated October 29, 2003 (“letter”), from Mr. Taschner on behalf of DSEA. Verbal comments consisted of remarks from Messrs. Taschner and Williams, both of whom were involved with amendments to the Act before they became law.

Mr. Taschner reviewed the contents of his letter to the Board. With respect to paragraph no. 1 of the letter, Mr. Taschner explained that, currently, school district employers provide employees who are hearing impaired with an interpreter at the employer’s cost. As proposed, Rule 12.11(d) would change that practice and impose the cost of an interpreter upon the employee. He suggested the Board consider modifying the proposed Rule 12.11(d) to reflect the current position of employers paying the costs of interpreters for those employees who are hearing impaired.

Mr. Williams indicated that he was not troubled by Mr. Taschner’s suggestion, and explained that paying the costs of an interpreter was not a hardship for an employer. He had no

reason to believe that employers would stop paying for the costs of interpreters.

In response to a question posed by Chair Kressman, Mr. Taschner indicated that employers and employees have been cooperative to date. Mr. Williams explained that interpreters are typically on staff, and the current practice was acceptable to both employers and employees. Mr. Taschner reiterated his suggestion in the event the current practice could change in the future.

By a vote of 2 to 1, the Board modified proposed Rule 12.11(d) by adding the phrase, “unless otherwise agreed to by the parties” at the end of the existing proposed rule. The Board determined this modification was not a substantive change to proposed Rule 12.11(d) so as to require re-proposing the change. 29 Del.C. § 10118.

With respect to paragraph no’s. 2 and 3 of the letter, Mr. Taschner indicated these comments were provided to simply place DSEA’s concerns on the record. Costs and fees for arbitrators should be reasonable. He believed the Act, as amended, afforded the Board with authority to establish a range of arbitrator fees. It was up to the Board to decide whether it would or would not address this issue at the public hearing. Mr. Williams noted the Act provides that the Board, in designating a panel of qualified arbitrators, “[s]hall prefer former judges who served on a Delaware constitutional court or on the United States District Court for the District of Delaware ...,” and mentioned that the Rules and Regulations should not undermine the legislative intent. Mr. Taschner suggested that a sufficient starting point concerning fees would be the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes of the Federal Mediation and Conciliation Service, National Academy of Arbitrators, American Arbitration Association. Mr. Taschner also mentioned the Board should consider modifying proposed Rule 12.13 by adding language, to the effect, that fees of arbitrators would be consistent with fees from the Delaware legal community or in the State of Delaware. He explained that local arbitration fees typically imposed were \$800 to \$1,000 per day; he believed the General Assembly did not intend employers and employees subject to arbitration under the Act to pay arbitration fees of \$300 to \$400 per hour, or \$2,500 per day. Mr. Taschner noted that the issue concerning arbitrator fees, if it arises in the future, may need to be addressed through a legislative change to the Act.

By a vote of 2 to 1, the Board decided not to modify proposed Rule 12.13.

By a unanimous vote, the Board adopted the remaining provisions of proposed Rule 12.0 as written.

FINDINGS OF FACT

The Board makes the following findings of fact pursuant to 29 Del.C. §10118(b):

1. Pursuant to 14 **Del.C.** §1403, the Board proposed to revise its existing Rules and Regulations, in order to set forth provisions and procedures concerning the administration of binding grievance arbitrations under the Public School Employment Relations Act, 14 **Del.C.** Ch. 40, as amended and which became effective June 24, 2003.

2. Pursuant to 29 **Del.C.** §10115, notice was given to the public that a hearing would be held on November 12, 2003, at 9:00 a.m. in the Conference Room of the Carvel State Office Building, 820 N. French St., Wilmington, Delaware to consider the proposed revisions. Notice of the public hearing was published in the Delaware Register of Regulations dated October 1, 2003 and two Delaware newspapers of general circulation.

3. The notice invited the public to submit written comments regarding the proposed revisions.

4. A hearing was held on November 12, 2003, at which a quorum of the Board was present to hear public comment, deliberate and render a decision.

5. Written comments were received prior to the November 12, 2003 hearing and consisted of one letter, dated October 29, 2003, from the Delaware State Education Association.

6. Two members of the public appeared at the hearing concerning the proposed revisions, Jeffrey M. Taschner, General Counsel for the Delaware State Education Association and David H. Williams, Esquire, for the Delaware School Boards Association.

7. The Board reviewed and discussed the proposed Rule 12.0. Rule 12.0 was proposed to be added to the Board's existing Rules and Regulations in order for the Board to comply with 14 **Del.C.** § 1413(c), amended June 24, 2003, and establish implementing regulations concerning the Board's designation and selection of arbitrators, and the Board's administration of arbitrations that involve disputes submitted to binding grievance arbitration under the Public School Employment Relations Act, 14 **Del.C.** Ch. 40.

8. Based upon the public comments presented, the Board finds that it is appropriate and necessary to modify the proposed Rule 12.11(d) by adding at the end of the paragraph the phrase, "unless otherwise agreed to by the parties." The Board finds that this modification is a nonsubstantive change, that the modification will enable the current position and practice of school district employers and its employees who are hearing impaired concerning payment of interpreter costs to continue, that the meaning of the proposed Rule has not changed with this modification, and that the Board is not required to re-propose the Rule in light of this modification. 29 **Del.C.** § 10118(c).

9. Also, based upon public comments, the Board finds that it will not modify the provisions of Rule 12.13 as proposed, at this time.

10. Finally, the Board finds the remaining proposed provisions of Rule 12.0 serve to update its Rules and

Regulations, in accordance with the requirements imposed upon the Board by the Act, 14 **Del.C.** Ch. 40, as amended and effective June 24, 2003.

TEXT AND CITATION

The text of the Rules and Regulations hereby promulgated are attached hereto and incorporated herein as Exhibit A with the revision to Rule 12.11(d), as set forth above, noted therein.

DECISION AND ORDER

NOW THEREFORE, by vote of the Board, it is the decision and order of the Board that the revised Rules and Regulations, as adopted, are attached hereto and incorporated herein as Exhibit A. It is also the decision and order of the Board that the Rules and Regulations are adopted in the text as it substantively appeared in the Delaware Register of Regulations, attached as Exhibit B, that does not reflect the one nonsubstantive change to Rule 12.11(d) as approved at the public hearing. The effective date of this Order and the Rules and Regulations is ten (10) days after the date the Order is published in its final form in the Delaware Register of Regulations pursuant to 29 **Del.C.** § 10118(g).

IT IS SO ORDERED this 20th day of November, 2003.

STATE OF DELAWARE, PUBLIC EMPLOYMENT RELATIONS BOARD:

Henry E. Kressman, Chair
R. Robert Currie, Jr., Member
Elizabeth Maron, Esquire, Member

12.0 Binding Grievance Arbitration

PERB Arbitration Policy: Administration of Panel

12.1 Scope and Authority

This rule is issued by the Delaware Public Employment Relations Board ("PERB") under Title 14, Public Education, of the Delaware Code, as amended. It applies to all arbitrators listed on the PERB Panel of Arbitrators, to all applicants for listing on the Panel, and to all persons or parties seeking selection of an arbitrator by PERB in connection with disputes which are to be submitted to grievance arbitration.

12.2 Policy

a. For those terms and conditions that are negotiated pursuant to Public School Employment Relations Act (14

Del.C. Chapter 40, as amended 2003), public school employers and the exclusive bargaining representative of public school employees shall negotiate written grievance procedures ending in binding arbitration by means of which bargaining unit employees, through their collective bargaining representatives, may appeal the interpretation or application of any term or terms of an existing collective bargaining agreement. The written grievance procedures shall be included in any agreement entered into between the public school employer and the exclusive bargaining representative, and shall include:

(1) a provision to limit binding arbitration to claims that the terms of the collective bargaining agreement have been violated, misinterpreted, or misapplied;

(2) a provision to prohibit claims relating to the following matters from being processed through binding arbitration:

(i) dismissal or nonrenewal of employees covered by Chapter 14 of Title 14;

(ii) dismissal or nonrenewal of employees not covered by Chapter 14 of Title 14 unless the controlling collective bargaining agreement provides that such matters are subject to binding arbitration;

(iii) Delaware law;

(iv) rules and regulations of the Delaware Department of Education or State Board of Education;

(v) the content of or conclusions reached in employee observations and evaluations unless the controlling collective bargaining agreement for employees not covered by Chapter 14 of Title 14 provides that such matters are subject to binding arbitration;

(vi) federal law;

(vii) rules and regulations of the United States Department of Education;

(viii) policies of the local school board; and

(ix) matters beyond the scope of the public school employer's authority;

(3) a provision to select arbitrators by lottery from a panel of qualified arbitrators designated by the Public Employment Relations Board. In designating the panel, the Public Employment Relations Board shall prefer former judges who served on a Delaware constitutional court or on the United States District Court for the District of Delaware, and shall supplement the panel by adding qualified labor arbitrators;

(4) a provision to empower the Public Employment Relations Board to administer arbitration pursuant to regulations adopted by the Public Employment Relations Board;

(5) a provision to require that disputes relating to whether a matter is arbitrable be ruled upon by the arbitrator prior to hearing the merits of the dispute, and, if the arbitrator determines that the dispute is arbitrable, a provision to require that the same arbitrator schedule a

second day of hearing to hear the merits of the dispute;

(6) a provision to assess against the losing party the arbitrator's fees and expenses incurred in determining whether a dispute is arbitrable;

(7) a provision to require that the arbitrator's fees and expenses incurred in deciding the merits of a dispute be evenly divided between the parties.

12.3 Administrative Responsibilities

a. The Public Employment Relations Board is the final agency authority on all questions concerning the Panel and PERB arbitration procedures.

b. The Executive Director shall maintain a Panel of Arbitrators (the Panel); administer the procedures for binding grievance arbitration under the PSERA and select arbitrators by lottery from the Panel for requesting parties.

c. The Executive Director shall:

(1) Review the qualifications of all applicants for listing on the Panel, interpreting and applying the criteria set forth herein.

(2) Review the status of all persons whose continued eligibility for listing on the Panel has been questioned.

(3) Recommend to the PERB the acceptance or rejection of applicants for listing on the Panel, or the withdrawal of listing on the Panel for any of the reasons set forth in Rule 12.4;

(4) At the request of the PERB, review grievance arbitration policies and procedures and make recommendations regarding such policies and procedures to the PERB.

Panel of Arbitrators: Admission and Retention

12.4 Panel and Status of Members

a. PERB shall designate a Panel of arbitrators consisting of persons who meet the criteria for listing contained in 12.5 and who remain in good standing. The Panel shall include not less than ten arbitrators and may be increased as necessary.

b. Adherence of Standards and Requirements. Persons listed on the Panel shall comply with PERB rules and regulations pertaining to arbitration and with such guidelines and procedures as may be issued by the Executive Director. Arbitrators shall conform to the ethical standards and procedures set forth in the Code of Professional Responsibility for Arbitrators of Labor Management Disputes ("Code of Professional Responsibility"), as approved by the National Academy of Arbitrators, Federal Mediation and Conciliation Service, and the American Arbitration Association.

c. Status of Arbitrators. Persons who are listed on the Panel and are selected to hear arbitration matters do not

become employees of PERB and/or the State of Delaware by virtue of their selection. Following selection, the arbitrator's relationship is solely with the parties to the dispute, except that arbitrators are subject to certain reporting requirements and to standards of conduct as set forth herein.

d. *Role of PERB:* PERB has no power to:

1. Influence, alter, or set aside decisions of arbitrators on the Panel;

2. Compel, deny, or modify payment of compensation to an arbitrator.

e. *Nominations and Panels.* Upon receipt of a written request to arbitrate from parties to a collective bargaining agreement, the Executive Director will select an arbitrator, by lottery, pursuant to Rule 12.10 or 12.16. The selection of an arbitrator does not constitute a determination by PERB that an agreement to arbitrate exists; nor does such action constitute a ruling that the matter in controversy is arbitrable under any agreement.

f. *Rights of Persons Listed on the Panel.* No person shall have any right to be listed or to remain listed on the Panel. PERB retains exclusive authority and responsibility to assure that the needs of the parties using its services are served. To accomplish this purpose, PERB may establish procedures for the selection of Panel arbitrators which include consideration of such factors as background and experience, availability, acceptability, and geographical location. PERB may also establish procedures for the removal from the Panel of those arbitrators who fail to adhere to provisions contained in these rules.

12.5 Listing on the Panel; Criteria for Listing and Retention

Persons seeking to be listed on the Panel must complete and submit an application form which may be obtained from the Executive Director. Upon receipt of an executed application, the Executive Director will review the application, assure that it is complete and make such inquiries as are necessary. The Executive Director will review the completed application under the criteria in this section, and will forward to the PERB his or her recommendation as to whether or not the applicant meets the criteria for listing on the Panel. The PERB shall make all final decisions as to whether an applicant may be listed on the Panel. Each applicant shall be notified in writing of the PERB's decision and the reasons therefore.

a. *General Criteria.* Applicants for the Panel will be listed on the Panel upon a determination that they are experienced, competent, and acceptable in decision-making roles in the resolution of labor relations disputes.

b. *Proof of Qualification.* Qualifications for listing on the Panel may be demonstrated by submission of five (5) arbitration awards prepared by the applicant while serving as an impartial arbitrator of record chosen by the parties to labor disputes arising under collective bargaining

agreements. Experience as a former judge who served on a Delaware constitutional court or on the U.S. District Court for the District of Delaware, or experience in relevant positions in collective bargaining, or as a hearing examiner in labor relations controversies will be considered in lieu of the required awards.

c. *Advocacy.* Any person who at the time of application is an advocate as defined in paragraph (c)(1) of this section, must agree to cease such activity before being recommended for listing on the PERB Panel. Any person who does not divulge his or her advocacy at the time of listing or who becomes an advocate while listed on the Panel, shall be recommended for removal by the Executive Director after the fact of advocacy is revealed.

(1) *Definition of Advocacy.* An advocate is a person who represents employers, labor organizations, or individuals as an agent, employee, attorney, or consultant, in matters of labor relations, including but not limited to the subjects of union representation and recognition matters, collective bargaining, arbitration, unfair labor practices, equal employment opportunity, and other areas generally recognized as constituting labor relations. The definition includes representatives of employers or employees in individual cases or controversies involving worker's compensation, occupational health or safety, minimum wage, or other labor standards matters. This definition of advocate also includes a person who is directly associated with an advocate in a business or professional relationship as, for example, partners or employees of a law firm. Consultants engaged only in joint education or training or other non-adversarial activities will not be deemed as advocates.

d. *Duration of Listing, Retention.* Listing on the Panel shall be by decision of the PERB based upon the recommendations of the Executive Director. The Executive Director may recommend, and the PERB may remove, any person listed on the Panel, for violation of this rule and/or the Code of Professional Responsibility. Notice of cancellation or suspension shall be given to a person listed on the Panel whenever a Panel member:

(1) No longer meets the criteria for admission; (2) Has become an advocate as defined in paragraph (c)(1) of this section;

(3) Has been repeatedly or flagrantly delinquent in submitting awards;

(4) Has refused to make reasonable and periodic reports in a timely manner to PERB, as required in these rules, concerning activities pertaining to arbitration;

(5) Has been the subject of complaints by parties who use PERB services, and the Executive Director after appropriate inquiry, concludes that just cause for cancellation has been shown;

e. The Executive Director may, at his or her discretion, conduct an inquiry into the facts of any proposed

removal from the Panel. An arbitrator listed on the Panel may only be removed after 60-day notice and an opportunity to submit a response or information showing why the listing should not be canceled. The Executive Director may recommend to the PERB whether to remove an arbitrator from the Panel. All determinations to remove an arbitrator from the Panel shall be made by the PERB. Removals may be for a period of up to two (2) years, after which the arbitrator may seek reinstatement.

f. The Executive Director may suspend for a period not to exceed 180 days any person listed on the Panel who has violated any of the criteria in paragraph (d) of this section. Arbitrators shall receive written notice of a suspension. They may appeal a suspension to the PERB. The decision of the PERB shall constitute the final action of the agency.

12.6 Inactive Status

A member of the Panel may request that he or she be put in an inactive status on a temporary basis because of ill health, vacation, schedule, or other reasons.

Procedures for Arbitration Services

12.7 Freedom of Choice

Nothing contained in this part should be construed to limit the rights of parties who use PERB arbitration services to jointly select an arbitrator acceptable to them. Once a request is made to PERB, all parties are subject to the procedures contained in this part.

12.8 Procedures for Requesting an Arbitrator

a. The Office of the Executive Director has been delegated the responsibility for administering all requests for arbitration services. Requests should be addressed to the Delaware Public Employment Relations Board, Arbitration Services, 4th Floor, Carvel State Office Building, 820 N. French Street, Wilmington, Delaware, 19801.

b. Upon receipt of a Request for Arbitration, the Executive Director will select an arbitrator by lottery from the Panel and notify the parties. The parties may request selection of an arbitrator either jointly or unilaterally. Selection of an arbitrator is nothing more than a response to a request. It does not signify the adoption of any position by the PERB regarding the arbitrability of any dispute or the terms of the parties' contract.

c. PERB reserves the right to decline to service any requests from parties with a demonstrated history of non-payment of arbitrator fees or other behavior which constrains the spirit or operation of the arbitration process.

d. The parties are required to use the Request for Arbitrator Form which is included as Attachment M to these Delaware PERB Rules and Regulations and is also available

from Delaware PERB, 4th Floor, Carvel State Office Building, 820 N. French Street, Wilmington, Delaware, 19801, or by calling (302) 577-5070. Requests for Arbitration that do not contain all required information requested on the form may be rejected.

12.9 Arbitrability

a. Disputes relating to whether a matter is arbitrable will be ruled upon by the arbitrator prior to hearing the merits of the dispute. If the arbitrator determines that the dispute is arbitrable, the same arbitrator shall schedule a second day of hearing to hear the merits of the dispute.

b. The losing party shall be responsible for paying the arbitrator's fees and expenses incurred in deciding issues of arbitrability.

12.10 Selection of Arbitrators

a. Upon receipt of a Request for Arbitration, the Executive Director will select an arbitrator from the PERB Panel, by lottery, as required by 14 Del.C. §4013 (c)(3). The Executive Director will contact the randomly selected arbitrator to confirm that the arbitrator has available hearing dates within sixty (60) days. In the event that the arbitrator is not available for hearing within sixty (60) days, the Executive Director shall continue to make random selections by lottery, until an arbitrator is identified with hearing availability within sixty (60) days.

b. Upon confirming the availability of the selected arbitrator, the Executive Director shall make a formal written appointment of the arbitrator, which shall include contact information for the parties. The arbitrator, upon notification of appointment, shall communicate with the parties within 14 days to arrange for preliminary matters, such as the date and place of hearing. If the parties settle a case prior to the hearing, the parties must inform the arbitrator as well as the Executive Director. Consistent failure to follow these procedures may lead to a denial of future PERB arbitration service.

c. All letters issued by the Executive Director appointing an arbitrator will have an assigned PERB case number. All future communications between the parties, the arbitrator and the PERB should refer to this case number. Copies of any correspondence confirming a scheduled hearing should be provided to PERB.

d. The appointment of an arbitrator in no way signifies a determination on arbitrability or an interpretation of the terms and conditions of the collective bargaining agreement. The resolution of such disputes rests solely with the arbitrator.

12.11 Conduct of Hearings

a. The conduct of the arbitration proceeding is under the arbitrator's jurisdiction and control, and the arbitrator's

decision shall be based upon the evidence and testimony presented at the hearing or otherwise incorporated in the record of the proceeding.

b. *Representation:* Any party may be represented in a grievance arbitration proceeding by counsel or other authorized representative.

c. *Stenographic Record:* Any party wishing a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of such arrangement in advance of the hearing. The requesting party or parties shall pay the cost of the record. Whenever a stenographic record is made of a hearing, a copy of the transcript shall be provided to the arbitrator.

d. *Interpreters:* Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service, [unless otherwise agreed to by the parties.]

e. *Attendance at Hearings:* The arbitrator shall have the power to require the sequestration of any witness or witnesses during the testimony of other witnesses. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person.

f. *Witness Expenses:* The expenses of witnesses for either side shall be paid by the party producing such witnesses.

g. *Postponements:* The arbitrator may, for good cause, postpone the hearing upon the request of a party or upon his or her own initiative and shall postpone when all of the parties agree thereto.

h. *Oaths:* The arbitrator may require witnesses to testify under oath administered by any duly qualified person, and, if required by law or requested by either party, shall do so.

i. *Order of proceedings:* A hearing shall be opened by the recording of the date, time, and place of the hearing and the presence of the arbitrator, the parties and counsel, if any; and by the receipt by the arbitrator of the demand and answer, if any, or the submission. Exhibits may, when offered by either party, be received in evidence by the arbitrator. The names of all witnesses and exhibits in the order received shall be made part of the record. The arbitrator may vary the normal procedure under which the initiating party first presents its claim, but in any case shall afford full and equal opportunity to all parties for the presentation of relevant proofs.

j. *Arbitration in the Absence of a Party or Representative:* An arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made solely on the default of a party. The arbitrator shall require the party present to submit such evidence as may be required for the making of an award.

k. *Evidence:* The parties may offer such evidence as is relevant and material to the dispute, and shall produce

such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. An arbitrator may subpoena witnesses and documents independently or upon the request of any party. The arbitrator shall be the judge of the relevance and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of the arbitrator and all of the parties, except where any of the parties is absent in default or has waived the right to be present.

l. *Evidence by Affidavit and Filing of Documents:* The arbitrator may receive and consider the evidence of witnesses by affidavit, giving it only such weight as he or she determines to be proper after consideration of any objection to its admission. All documents that are not filed with the arbitrator at the hearing, but arranged at the hearing or subsequently by agreement of the parties, shall be provided to all parties. All parties shall be afforded opportunity to examine such documents.

m. *Inspection:* Whenever the arbitrator deems it necessary, he or she may make an inspection in connection with the subject matter of the dispute after written notice to the parties, who may, if they so desire, be present at the inspection.

n. *Closing of Hearing:* The arbitrator shall inquire of all parties whether they have any further proof to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the arbitrator shall declare the hearings closed. If briefs or other documents are to be filed, the hearing shall be declared closed as of the final date upon which such documents are received by the arbitrator.

o. *Reopening of Hearing:* The hearing may be reopened for good cause by the arbitrator or on the motion of either party at any time before the award is made. The arbitrator may reopen the hearing and shall have forty-five (45) days from the closing of the reopened hearing record to issue an award.

12.12 Decision and Award

a. Arbitrators shall issue awards no later than forty five (45) days from the date of the closing of the record as determined by the arbitrator, unless otherwise agreed upon by the parties or specified by the collective bargaining agreement or law. However, failure to meet the forty-five (45) day deadline will not invalidate the process or award. Failure to render timely awards reflects upon the performance of an arbitrator and may lead to removal from the PERB Panel.

b. *Form of award:* The award shall be in writing, signed by the arbitrator, and shall be accompanied by an opinion, unless the parties have advised the arbitrator that a written opinion is not necessary.

c. *Award upon Settlement:* If the parties settle their

dispute during the course of the arbitration, the arbitrator may, upon request, set forth the terms of the agreed settlement in the form of an award.

d. Delivery of the Award: Parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail by the arbitrator, addressed to the party at its last known address or to its representative; personal service of the award; or the filing of the award in any other manner that is permitted by law.

e. Expenses: Arbitration expenses incurred in deciding the merits of a dispute, other than the cost of the stenographic record, but including required travelling and other expenses of the arbitrator, as well as the expenses of any witness or the cost of any proof produced at the direct request of the arbitrator, shall be evenly divided between the parties. Arbitration expenses incurred in determining whether a dispute is arbitrable shall be paid by the losing party in accord with section 12.9 (b) herein.

f. The parties should inform the Executive Director whenever an award is unduly delayed. The arbitrator shall notify the Executive Director if and when the arbitrator (1) cannot schedule, hear, and/or render decisions promptly, or (2) learns a dispute has been settled by the parties prior to the decision.

g. Within fifteen (15) days after an award has been issued to the parties, the arbitrator shall advise the Executive Director that the case has been processed to completion.

h. While PERB encourages the publication of arbitration awards, arbitrators should not publicize awards if objected to by one of the parties.

12.13 Fees and Charges of Arbitrators

a. All arbitrators listed on the Panel may charge a per diem and other predetermined fees for services, if the amount of such fees have been provided in advance to PERB. Each arbitrator's maximum per diem and other fees will be sent to the parties when an arbitrator is appointed. The arbitrator shall not change any fee or add charges without giving at least 30 days advance written notice to PERB. Arbitrators with dual business addresses must bill the parties for expenses from the least expensive business address to the hearing site.

b. Arbitrators shall divulge all charges to the parties immediately upon appointment.

c. PERB requests that parties notify the Executive Director of any arbitrator's deviation from the policies expressed in these rules. While PERB does not resolve individual fee disputes, repeated complaints concerning the fees charged by an arbitrator will be brought to the attention of the Executive Director for consideration. Similarly, repeated complaints by arbitrators concerning non-payment of fees by the parties may lead to the denial of services or other actions by the PERB.

12.14 Reports and Biographical Sketches

a. Arbitrators listed on the Panel shall execute and return all documents, forms and reports required by PERB. They shall also keep PERB informed of changes of address, telephone number, availability, and of any business or relationship which involves labor-management relations or which creates or gives the appearance of advocacy as defined in Section 12.5 (c) (1).

b. PERB will provide, upon request, biographical sketches on each person admitted to the Panel from information supplied by applicants. Arbitrators may request revision of biographical information at later dates to reflect changes in fees, the existence of additional charges, or other relevant data. PERB reserves the right to decide and approve the format and content of biographical sketches.

Expedited Arbitration

12.15 Policy.

In an effort to reduce the time and expense of some grievance arbitrations, PERB is offering expedited procedures that may be appropriate in certain cases that do not involve complex or unique issues. Expedited Arbitration is a mutually agreed upon process whereby arbitrator appointments, hearings and awards are acted upon quickly by the parties, PERB, and the arbitrators. The process is streamlined by mandating short deadlines and eliminating requirements for transcripts, briefs and lengthy opinions.

12.16 Procedures for Requesting Expedited Arbitration.

a. With the exception of the specific changes noted in this section, all PERB rules and regulations governing arbitration services shall apply to Expedited Arbitration.

b. Upon receipt of a joint Request for Appointment of an Arbitrator indicating that expedited services are desired by both parties, the Executive Director will appoint an arbitrator using the process defined by section 12.10 above, except that the Executive Director shall establish that the selected arbitrator is available to conduct the arbitration within 30 days.

12.17 Arbitration Process.

a. Once notified of the expedited case appointment by the Executive Director, the arbitrator shall contact the parties within seven (7) calendar days.

b. The parties and the arbitrator must schedule a hearing within 30 days of the appointment date.

c. Absent mutual agreement, all hearings will be concluded within one day. No transcripts of the proceedings will be made and the filing of post-hearing briefs will not be allowed.

d. All awards must be completed within seven (7) working days after the hearing. These awards are to be brief.

concise, and will not require extensive written opinion or research time.

12.18 Proper Use of Expedited Arbitration.

a. PERB reserves the right to cease honoring requests for Expedited Arbitration if a pattern of misuse of this process becomes apparent. Misuse may be indicated by the parties' frequent delaying of the process or referral of inappropriate cases.

b. Arbitrators who exhibit a pattern of unavailability for appointments or who are repeatedly unable to schedule hearings or render awards within established deadlines will, after written warning, be considered ineligible for appointment for this service.

*** PLEASE NOTE: AS THE REST OF THE SECTIONS WERE NOT AMENDED THEY ARE NOT BEING PUBLISHED.**

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Advisory Council on Planning Coordination	Mr. Joseph J. Corrado, Sr.	11/13/2006
	Mr. Randy Marvel	11/13/2006
	Mr. Kenneth P. Murphy	1/6/2006
	Ms. Lori L. Spagnolo	1/6/2006
Advisory Council to the Division of Developmental Disabilities Services	The Honorable Richard D. Comly, Jr.	10/20/2006
	Ms. Jessica L. Haass	7/29/2006
Advisory Council to the Division of Substance Abuse and Mental Health	Mr. John M. Akester	11/7/2006
Appalachian State Low-Level Radioactive Waste Commission	The Honorable Vincent P. Meconi	10/7/2007
	Ms. K. Frieda Fisher-Tyler	10/7/2007
Architectural Accessibility Board	Mr. Wayne Carter	7/29/2007
	Ms. Judy R. Powell	1/14/2006
Authority on Radiation Protection	Frances S. Esposito, M.D.	8/7/2006
	Mr. William L. Holden, III	8/7/2006
	Ms. Sandra J. Moody	8/7/2006
	Rajeshwari Subramanyam, Ph.D.	8/7/2006
Board of Architects	Mr. Alvin W. French	8/5/2006
	Mr. Peter H. Jennings	8/5/2006
	Mr. S. Page Nelson	8/7/2006
Board of Chiropractic	Mr. C. Terry Jackson, II	7/29/2006
	Ms. Pramella D. Kaza	7/29/2006
Board of Clinical Social Work	Maria M. Carroll, Ph.D.	7/29/2006
Board of Cosmetology & Barbering	Mr. Kevin J. Castaldi	8/5/2006
	Mr. Alan L. Lovett	8/5/2006
	Ms. Pamela A. Morrison	8/5/2006
Board of the Delaware Center for Educational Technology	Mr. Henry James Decker	9/9/2006
	Mr. John Doyle	10/8/2006
Board of Dental Examiners	David Williams, D.M.D.	10/8/2006
Board of Directors of the Delaware Civic Center Corporation	Allen Sessoms, Ph.D.	Pleasure of the Governor
Board of Directors of the Delaware Institute of Medical Education & Research	Kathleen Kilroy Bradford, M.D.	10/8/2006
Board of Electrical Examiners	Mr. C. Leroy James	11/12/2006
Board of Examiners for Nursing Home Administrators Board of Examiners in Optometry	Ms. Linda M. Jones	8/5/2006
	Sonja P. Biddle, O.D.	8/5/2006

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
	Carl Maschauer, O.D.	8/5/2006
	Allan S. Tocker, O.D.	8/5/2006
Board of Examiners of Private Investigators & Security Agencies	Mr. Gary Lake	8/7/2006
Board of Medical Practice	Anthony M. Policastro, M.D.	8/5/2006
Board of Nursing	Ms. Wanda Cohee	8/5/2006
	Ms. Irene Washabau	9/14/2004
Board of Pharmacy	Ms. Karen J. Dey	7/1/2006
	Mr. Daniel M. Hauser	7/1/2006
	Mr. John E. Murphy	7/1/2006
Board of Plumbing Examiners	Mr. Brent E. Schrock	8/5/2006
Board of Professional Land Surveyors	Mr. Russel Y. Dolbeare	7/29/2006
Cabinet Committee on State Planning Issues	Mr. Mark T. Brainard, Chair	Pleasure of the Governor
	Ms. Constance C. Holland	Pleasure of the Governor
	Ms. Lee Ann Walling	Pleasure of the Governor
Cash Management Policy Board	Mr. Harold L. Slatcher	9/24/2006
Child Death and Stillbirth Review Commission	Kevin F. Sheahan, M.D.	7/29/2006
Child Placement Review Board	Mr. William L. Murray, Chair	Pleasure of the Governor
Child Placement Review Board Executive Committee	Mr. Rodney J. Bythwood	10/20/2003
	Ms. Eleanor M. Kiesel	10/8/2006
Child Placement Review Board-New Castle	Ms. Christine Adams	7/29/2006
	Ms. Brenda Ewen	7/29/2006
	Ms. Alyson Gauthier	7/29/2006
	Ms. Marion Gibbs	7/29/2006
	Ms. Mildred L. Hamilton	7/29/2006
	Ms. Barbara Higgins	7/29/2006
	Ms. Anne Ocalagan	7/29/2006
	Ms. Susan Schneider	7/29/2006
	Ms. Georgianne Sheehy	7/29/2006
	Mr. Jeff Sterrett	7/29/2006
Child Placement Review Board-Sussex	Mr. Orville D. Basinski	7/29/2006
	Ms. Shirley J. Butler	7/29/2006

GOVERNOR'S APPOINTMENTS

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Child Placement Review Board-Sussex	Ms. Francis L. Henry	7/29/2006
	Ms. Martha Keller	7/29/2006
	Ms. Barbara V. Seth	7/29/2006
	Ms. Nancy Thompson	7/29/2006
Children's Trust Fund Board of Directors	Douglas T. Pearson, Ph.D.	10/20/2006
Commission for the Purchase of Products & Services of the Blind & Other Severely Handicapped Individuals	Ms. Michele A. Mirabella	8/7/2004
	Mr. James T. Case, III	4/23/2005
Commission on Veterans' Affairs	The Honorable Barry B. Newstadt	5/16/2007
	Mr. Richard E. Ennis	10/25/2005
Committee on Employment of People with Disabilities	Mr. Daniel L. Downey, Jr.	8/5/2006
Council on Boiler Safety	Mr. John L. Allen	8/5/2006
	Mr. Gilbert E. Roberts, Jr.	8/5/2006
	Mr. William F. Robbins	10/9/2006
Council on Correction	Mr. Richard E. Small	8/5/2006
Council on Development Finance	Mr. F. Samuel Wilcox, III	8/5/2006
Council on Environmental Control	Mr. Douglas Corey	8/14/2006
	Ms. Lorraine Fleming	8/14/2006
Council on Hispanic Affairs	Mr. Jose Quinones	8/5/2006
Council on Libraries	Mr. Lewis M. Purnell	10/20/2006
	Ms. Barbara Scoglietti	10/20/2006
Council on Real Estate Appraisers	Mr. George Fantini	7/30/2006
Court of Chancery, Vice Chancellor	Mr. Donald F. Parson, Jr.	10/22/2015
Delaware Bicycle Council	Cpl. George A. Heberling	10/20/2006
	Mr. Harry H. Issaacs, Jr.	10/20/2006
	Ms. Laura L. Madara	10/20/2006
	Ms. Lisa M. Moore	10/20/2006
	Mr. Paul A. Stevenson	10/20/2006
	Mr. Calvin W. Weber, Jr.	10/20/2006
Delaware Humanities Council	Joseph E. Johnson, Jr., Ed.D.	10/20/2006
	Ms. Megan T. Mantzavinos	10/20/2006
Delaware Open Space Council	Mr. Harvey G. Marvel, Jr.	10/9/2007
Delaware River Basin Commission, Second Alternate Commissioner	Mr. Kevin C. Donnelly	Pleasure of the Governor

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Delaware River Basin Commission, Third Alternate Commissioner	Mr. Harry W. Otto	Pleasure of the Governor
Delaware State Arts Council	Ms. Dawn M. Ellis Mr. William N. Spiker	8/5/2006 8/5/2006
Developmental Disabilities Council	Mr. Goodwin K. Cobb, III	8/5/2009
Delaware Greenways and Trails Council	Mr. Charles R. Emerson	7/29/2006
Delaware Humanities Council	Mr. Richard A. Givens, II	7/29/2006
Delaware Institute for Veterinary Medical Education, Board of Trustees	Sharon A. Little, DVM Max. L. Sponseller, DVM	7/29/2006 7/29/2006
Delaware Manufactured Home Relocation Authority	Mr. Stevan D. Class Ms. Susan B. Hehman Mr. Jerome S. Heisler, Jr. Ms. Melanie L. Petrosky Mr. William J. Reed Ms. Teresa Rock Mr. Thomas M. Sklencar Mr. Edwin K. Speraw	6/30/2009 6/30/2008 6/30/2008 6/30/2007 6/30/2008 6/30/2007 6/30/2007 6/30/2009
Delaware Perinatal Board	The Honorable Chandlee Johnson Kuhn	Pleasure of the' Governor
Delaware River and Bay Authority	Mr. Gary Patterson	7/1/2008
Delaware Sentencing Accountability Commission	Major Martin Johnson	8/14/2007
Delaware Technical & Community College Board of Trustees	Ms. Mary M. Dudek Mr. Craig T. Eliassen Mr. Norman D. Griffiths	9/24/2006 9/24/2006 9/24/2006
Delmarva Advisory Council	Mr. Stephen T. Masten	Pleasure of the Governor
Dental Hygiene Advisory Committee	Ms. Laurie J. Leary	7/29/2006
Developmental Disabilities Council	Ms. Marcy G. Kempner	10/8/2009
Diamond State Port Corporation Advisory Board	Ms. Beverley Baxter	9/11/2005
Early Childhood Education Task Force	Ms. Glenda Andrus Ms. Crystal Brown	Pleasure of the Governor Pleasure of the Governor

GOVERNOR'S APPOINTMENTS

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Early Childhood Education Task Force	Martha Buell, Ph.D.	Pleasure of the Governor
	Ms. Virginia Burns-Ferrara	Pleasure of the Governor
	Mr. Paul Capodanno	Pleasure of the Governor
	Mr. Paul Carlson	Pleasure of the Governor
	Mr. Esther Graham	Pleasure of the Governor
	Ms. Betty Richardson	Pleasure of the Governor
	Ms. Elizabeth H. Sill	Pleasure of the Governor
	Ms. Linda Zankowski	Pleasure of the Governor
Family Court, Associate Judge	The Honorable Arlene M. Copping	10/17/2015
Farmland Evaluation Advisory Committee	Mr. Willis L. Kirk	7/1/2006
	Ms. Barbara J. Sapp	Pleasure of the Governor
Governor's Advisory Council for Exceptional Citizens	Ms. Theresa A. Hancharick	Pleasure of the Governor
	Ms. Janet S. Milnamow	Pleasure of the Governor
	Ms. Judy A. Smith	Pleasure of the Governor
	Ms. Darlene St. Peter	Pleasure of the Governor
	Ms. Charlyn M. Wilson-Black	Pleasure of the Governor
Governor's Council on Agriculture	Ms. Cheryl Epps	10/9/2006
Governor's Council on Equal Employment Opportunity	Mr. Wallace R. Dixon	Pleasure of the Governor
Health Facilities Authority	Mr. Desmond A. Baker	10/7/2008
	Mr. Richard H. Derrickson	10/7/2008
	Mr. Rolf F. Eriksen	10/7/2008
	Ms. Lisa More	10/7/2008
	Mr. William J. Riddle	10/7/2008
Human Relations Commission	Mr. James E. Gray	10/20/2007
Interagency Coordinating Council	Ms. Elizabeth K. Holmes	8/5/2006
	Ms. Linda K. Nemes	4/11/2005
	Ms. Pamela M. Reuther	8/5/2006

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Judicial Nominating Commission	Mr. Ben Castle Mr. Jose F. Echeverri	10/8/2006 12/27/2005
Justice of the Peace in Kent County	The Honorable Agnes E. Pennella The Honorable Charles M. Stump	10/3/2009 10/6/2009
Justice of the Peace in Sussex County	The Honorable Sheila Gagen Blakely The Honorable Edward G. Davis	10/2/2009 10/12/2009
Kent County Vocational-Technical Board of Education	Ms. Sandra E. Walls	9/28/2008
Magistrate Screening Committee	The Honorable Richard C. Cecil	Pleasure of the Governor
Northeast High Level Radioactive Waste Transportation Task Force	Ms. Janet E. Chomiszak Mr. David S. Hake	Pleasure of the Governor Pleasure of the Governor
Organ and Tissue Donor Awareness Board	Ms. Cynthia E. Derrickson	3/3/2006
Parks and Recreation Council	Mr. Joseph D. Smack	10/9/2006
Pesticide Advisory Committee	Mr. Earl J. Hurd Mr. Francis J. O'Neill, III	7/29/2006 7/29/2006
Recycling Public Advisory Council	Mr. John Blevins Mr. Pasquale S. Canzano Mr. Steven J. Masterson Ms. Patricia Todd	10/8/2006 8/7/2006 10/8/2006 8/7/2006
Riverfront Development Corporation of Delaware, Board of Directors	Mr. Samuel Lee Frankel	Pleasure of the Governor
Selective Service System Local Board	Mr. Keith I. Bowman Mr. Gerard A. Samson	(Nominated for a position as member) (Nominated for a position as member)
State Election Commissioner (Reappointment)	The Honorable Frank B. Calio	9/24/2007
State Emergency Response Commission	Mr. Ralph T. Baker Mr. Alfred F. Johnson, Jr. Ms. Pamela Meitner Mr. John R. Peirce Mr. Steven M. Scruggs	8/5/2005 8/5/2005 8/5/2005 8/5/2005 7/21/2005

GOVERNOR'S APPOINTMENTS

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
State Employee's Charitable Campaign Steering Committee	Ms. Katherine A. Horvath	Pleasure of the Governor
State Fire Prevention Commission	Mr. Jasper Lakey	9/20/2004
Statewide Labor Management Committee	Mr. James G. Cagle	Pleasure of the Governor
Statewide Labor Management Committee	Ms. Margaret M. Failing	Pleasure of the Governor
	Ms. Mary Beth Gzym	Pleasure of the Governor
	Mr. Robert S. Jameson	Pleasure of the Governor
Superior Court in New Castle County-Associate Judge	Ms. Mary Miller Johnston	9/25/2015
United Nations Day, Honorary Chair	The Honorable Harriett Smith Windsor	10/24/2003
Welfare Employment Committee, Chair	Ms. Carvella A. Jackson	Pleasure of the Governor
Wilmington Area Planning Council	Ms. Andrea Kreiner	Pleasure of the Governor
Workforce Investment Board	The Honorable James L. Hutchison	Pleasure of the Governor
	Mr. Romain L. Alexander	Pleasure of the Governor
	Mr. Ronald Walker	Pleasure of the Governor

The following Attorney General Opinions have recently been published. The Opinions are available in full text by visiting the Attorney General website at:

<http://www.state.de.us/attgen/opinion.htm>

OPINION**SUBJECT****2003**

03-IB01	F.O.I.A. Complaint Against New Castle County
03-IB02	F.O.I.A. Complaint Against New Castle County
03-IB04	Effect of Governor's Pardon on the Ownership of Firearms
03-IB05	F.O.I.A. Complaint Against Town of Fenwick Island
03-IB06	F.O.I.A. Complaint Against Town of Fenwick Island
03-IB07	Deduction of Fair Share Fees
03-IB08	Education Requirements for Foreign-Educated Applicants
03-IB11	Freedom of Information Act Complaint Against City of Newark
03-IB12	Reports to the State Bureau of Identification
03-IB13	Freedom of Information Act Complaint Against New Castle County
03-IB14	Request for Attorney General's Opinion
03-IB15	Clarifications of Attorney General Opinion 2003/03-IB08
03-IB16	Complaint against Town of Slaughter Beach
03-IB17	Re: Freedom of Information Act Complaints Against Town of Odessa
03-IB18	Deadly Weapons Dealers Licenses Dear Director Watson
03-IB19	Complaint against Town of Slaughter Beach
03-IB20	Re: Freedom of Information Complaint Against Town of South Bethany
03-IB21	Re: Freedom of Information Act Complaint Against New Castle County
03-IB22	RE: Freedom of Information Act Complaint Against Woodbridge School District
03-IB24	Freedom of Information Act Complaint Against Town of Frederica

DEPARTMENT OF INSURANCE**FORMS AND RATES BULLETIN NO. 27****TITLE INSURANCE FILING REQUIREMENTS**

TO: ALL INSURANCE COMPANIES WRITING
TITLE INSURANCE

FROM: Donna Lee H. Williams, Insurance
Commissioner State of Delaware Insurance
Department

I. Purpose

The Department recognizes the unique nature of title insurance and the manner by which title insurance is sold in Delaware. The purpose of this bulletin is to provide guidance to title rating organizations in making current and future filings on behalf of their member insurers as well as for insurers who are not members of a title rating organization.

II. General Propositions

Title 18 Chapter 25 of the Delaware Code was amended to allow title insurers to form a Delaware rating organization or bureau. The title rating bureau or organization is allowed to operate pursuant to 18 Del.C. § 2511. Forms and Rates Bulletin No. 5, promulgated under the authority of 18 Del.C. §§ 315 and 2501 et, seq., specified the framework under which advisory/rating organizations and participating insurers in advisory/rating organizations will operate in a loss cost system.

Due the unique nature of the title insurance market in Delaware, the Delaware Title Insurance Rate Bureau has requested an exemption from the filing format prescribed in Bulletin No. 5. The Bureau proposes to file a rate manual that includes initial rates to be used with forms and endorsements and, with respect to future filings, that it be allowed to file a rating format that is consistent with the rate making approach used by title insurance rating bureaus in other states that, like Delaware, require property and casualty rating bureaus to submit loss cost filings. Currently, there is no credible historic data, particularly with regard to expenses, that the rating bureau could use in preparing the initial rates.

III. Filing Guidance – Rating Bureau

The Department recognizes the unique nature of title insurance and the difficulties that poses for title rating bureaus and will, therefore, allow an exception to the requirements of using the rating format (loss cost) prescribed in Bulletin No. 5. However, for the same effective date, the Delaware Title Insurance Rate Bureau must have an

approved statistical plan in place. The plan should allow for collection and aggregation of sufficient premium, loss and expense data to enable the Delaware Insurance Department to monitor rate adequacy.

For all Delaware Title Insurance Bureau filings subsequent to the initial filing, aggregated data, including expense data, should be supplied in support of proposed rates.

For individual company filings to adopt the Bureau rates, individual companies should file expense data categorized in a format similar to the bureau's statistical plan. The Delaware Department of Insurance will review the company filings to determine if deviations are warranted.

Applicable fees associated with forms and rates should accompany the filings in accordance with 18 Del.C. § 702.

IV. Filing Guidance – Non Bureau Insurers

All insurers that are not members of the Delaware Title Rating Bureau should file rates and forms with the Department of Insurance as in past years with the applicable fees associated in accordance with 18 Del.C. § 702.

V. Cost of Review

The Delaware Insurance Department utilizes the services of an outside actuarial firm to review its rate filings. The cost associated with the review of aggregated company data filed with the Department will be borne by the Delaware Title Rating Bureau or any insurer not a member of the Bureau.

The contact person at the Delaware Insurance Department is Mr. Darryl Reese. The mailing address is Delaware Insurance Department, 841 Silver Lake Boulevard, Dover, DE 19904-2465.

DATED: November 14, 2003 Donna Lee H. Williams
Insurance Commissioner

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF ELECTRICAL EXAMINERS**

PUBLIC NOTICE

The Delaware Board of Electrical Examiners in accordance with 24 Del.C. §1406(a)(1) has proposed changes to its rules and regulations. The proposed changes provide the standard for electrical services, itemize information necessary on inspection forms, provide that licensees are responsible for any work for which they authorize an inspection, and require inspection agencies to inform the Board of personnel changes.

A public hearing will be held at 10:00 a.m. on, January 6, 2004 in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Electrical Examiners, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

STATE BOARD OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, December 18, 2003 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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

PUBLIC NOTICE

These regulations, "State of Delaware Regulations for Home Health Agencies," replace by recision the current "State of Delaware Regulations for Home Health Agencies" previously adopted on February 15, 1986.

Notice of Public Hearing

The Office of Health Facilities Licensing and Certification, Division of Public Health, Department of Health and Social Services will hold two public hearings to discuss the proposed Delaware Regulations for Home Health Agencies. The first public hearing will be held on December 22, 2003 at 10:00 a.m., in the First Floor Conference Room, Delaware Fire Service Center, 2307 MacArthur Road, New Castle, Delaware 19720 and the second public hearing will be held on December 23, 2003 at 10:00 a.m., in Classroom A, Suite 4F, Public Health Preparedness Section, Blue Hen Corporate Center, 655 S. Bay Road, Dover Delaware 19901.

Copies of the proposed regulations are available for review by calling the following location:

Office of Health Facilities Licensing and Certification
2055 Limestone Road, Suite 200
Wilmington, DE 19808
Telephone: (302) 995-8521

Anyone wishing to present his or her oral comments at this hearing should contact Ms. Vanette Seals at (302) 995-8521 by December 19, 2003. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by December 31, 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

**Independent Therapist Provider for Physical Therapy
and Related Services**

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 and the Delaware Medicaid/Medical Assistance Program (DMAP) Provider Manual to establish methods and procedures relating to the utilization of, and payment for physical therapy, occupation therapy, and speech/language pathology services by independent therapist providers. Specific details of provider participation, criteria and methodology for provider reimbursement, recipient

eligibility, and amount, duration and scope of services covered are included in the provider manual.

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 19720-0906 by December 31, 2003.

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 Regulation

This notice is being given to provide information of public interest with respect to the intent of DSS to submit to the Centers for Medicare and Medicaid Services (CMS) an amendment to the Title XIX Medicaid State Plan and to amend the DMAP Provider Manual. This regulation will allow independent therapists (physical therapists, occupational therapists, and speech/language pathologists) to bill DMAP directly for their services.

Dover, DE 19903-0818 on or before Tuesday, December 23, 2003. Anyone wishing to obtain a copy of the proposed regulations may do so by sending a written request to the Department of Safety and Homeland Security, P.O. Box 818, Dover, DE 19903-0818. This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

Public Notice

Notice is hereby given that the Secretary of the Department of Safety and Homeland Security, formerly the Secretary of the Department of Public Safety, in accordance with House Bill 43 of the 142nd General Assembly proposes to adopt Regulations. These Regulations will regulate the posting of credit on the driving record of individuals convicted of specified moving traffic violations in which all passengers of the vehicle are wearing seat belts at the time of arrest. The seat belt credit is to be considered when determining license suspensions based upon the Division of Motor Vehicles' point system. A public hearing will be held on Tuesday, December 23, 2003 at 11:00a.m. in the second floor main conference room (rm. 205) of the Safety and Homeland Security Building, 303 Transportation Circle, Dover, DE. The Secretary of Safety and Homeland Security will receive and consider input in writing from any person on the proposed regulations. Any written comments should be submitted to the Department of Safety and Homeland Security, in care of William G. Bush, IV, at P.O. Box 818,

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Delaware's lawmaking body, is comprised of a State House of Representatives, whose 41 members are elected for two-year terms, and a State Senate, whose 21 members are elected for four-year terms. Half of the Senate seats are contested in each general election.

COMMITTEE HEARINGS

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