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# Delaware Register of Regulations

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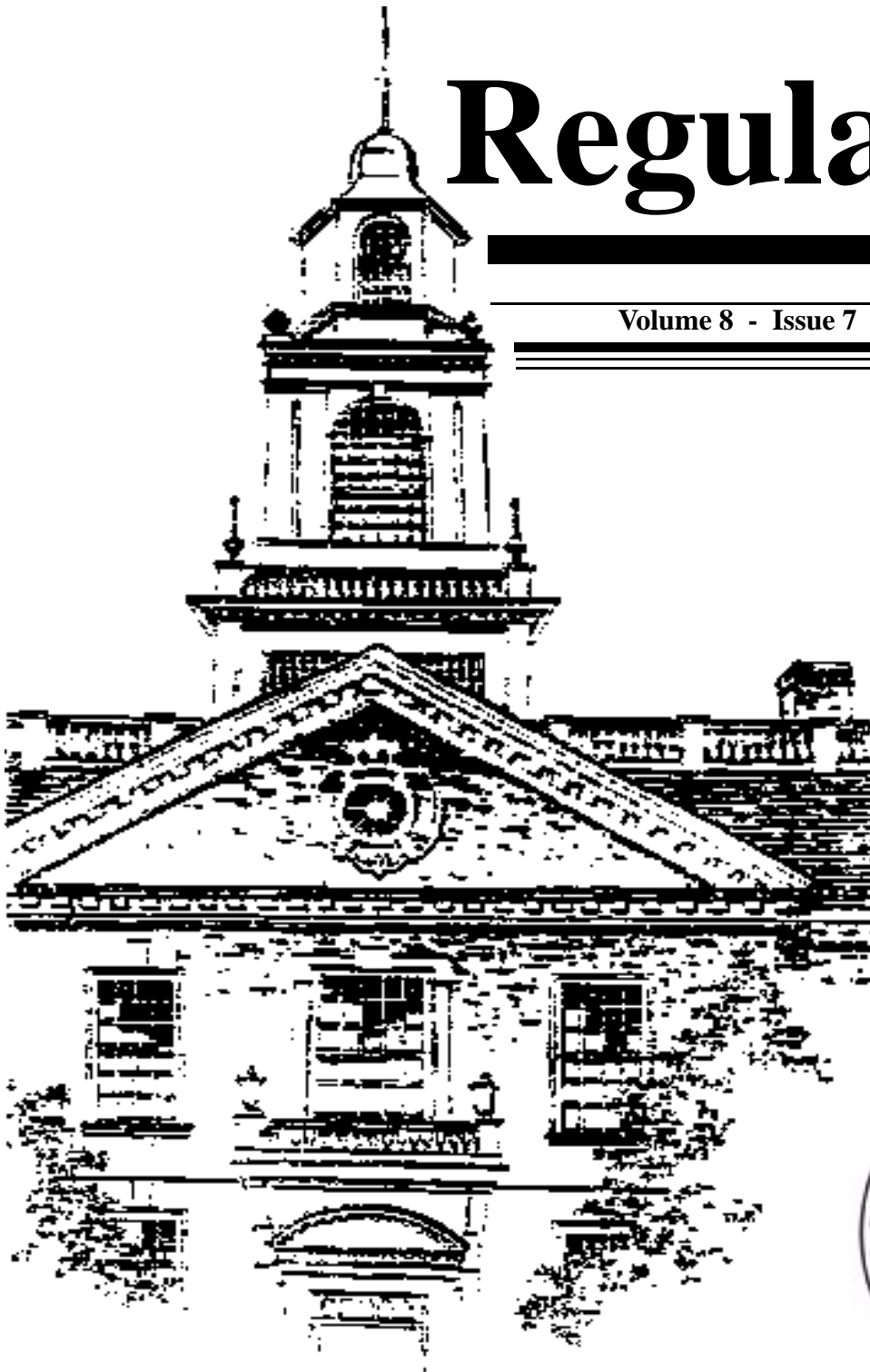
Issue Date: January 1, 2005

Volume 8 - Issue 7

Pages 935 - 1046

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Proposed

Final

Governor

Appointments

General Notices

Calendar of Events &

Hearing Notices



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 December 15, 2004.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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### CITATION TO THE DELAWARE REGISTER

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

**8 DE Reg. 757-772 (12/01/04)**

Refers to Volume 8, pages 757-772 of the *Delaware Register* issued on December 1, 2004.

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other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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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.

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*.

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## CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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ISSUE DATE	CLOSING DATE	CLOSING TIME
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.
JUNE 1	MAY 15	4:30 P.M.

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## 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 ACCOUNTANCY**

Statutory Authority: 24 Delaware Code  
Section 105 (1), (24 **Del.C.** §105(1))  
24 **DE Admin. Code** 100

**PUBLIC NOTICE**

The Delaware Board of Accountancy in accordance with 24 **Del.C.** §105(a)(1) has proposed changes to its rules and regulations as mandated by SB 229. The proposal identifies crimes that are substantially related to the practice of accountancy.

A public hearing will be held on February 16, 2005 at 9:00 a.m. in the second floor conference room B 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 Accountancy, 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.

**15.0 Crimes substantially related to the practice of accountancy:**

15.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of accountancy in the State of Delaware without regard to the place of conviction:

15.1.1 Aggravated menacing. 11 **Del.C.** §602 (b)

15.1.2 Reckless endangering in the first degree.

11 **Del.C.** §604

15.1.3 Abuse of a pregnant female in the second degree. 11 **Del.C.** §605.

15.1.4 Abuse of a pregnant female in the first degree. 11 **Del.C.** §606.

15.1.5 Assault in the second degree. 11 **Del.C.**

§612

15.1.6 Assault in the first degree. 11 **Del.C.** §613.

15.1.7 Assault by abuse or neglect. 11 **Del.C.**

§615.

15.1.8 Gang participation. 11 **Del.C.** §616.

15.1.9 Terroristic threatening; felony. 11 **Del.C.** §621(a) and (b).

15.1.10 Unlawfully administering controlled substance or counterfeit substance or narcotic drugs. 11 **Del.C.** §626.

15.1.11 Murder by abuse or neglect in the second degree. 11 **Del.C.** §633

15.1.12 Murder by abuse or neglect in the first degree. 11 **Del.C.** §634.

15.1.13 Murder in the second degree. 11 **Del.C.**

§635.

15.1.14 Murder in the first degree. 11 **Del.C.** §636.

- 15.1.15 Promoting suicide. 11 Del.C. §645.
- 15.1.16 Unlawful sexual contact in the second degree. 11 Del.C. §768.
- 15.1.17 Unlawful sexual contact in the first degree. 11 Del.C. §769.
- 15.1.18 Rape in the fourth degree. 11 Del.C. §770.
- 15.1.19 Rape in the third degree. 11 Del.C. §771.
- 15.1.20 Rape in the second degree. 11 Del.C. §772.
- 15.1.21 Rape in the first degree. 11 Del.C. §773.
- 15.1.22 Sexual extortion. 11 Del.C. §776.
- 15.1.23 Continuous sexual abuse of a child. 11 Del.C. §778.
- 15.1.24 Dangerous crime against a child. 11 Del.C. §779.
- 15.1.25 Unlawful imprisonment in the first degree. 11 Del.C. §782.
- 15.1.26 Kidnapping in the second degree. 11 Del.C. §783.
- 15.1.27 Kidnapping in the first degree. 11 Del.C. §783A.
- 15.1.28 Arson in the second degree. 11 Del.C. §802.
- 15.1.29 Arson in the first degree. 11 Del.C. §803.
- 15.1.30 Burglary in the third degree. 11 Del.C. §824.
- 15.1.31 Burglary in the second degree. 11 Del.C. §825.
- 15.1.32 Burglary in the first degree. 11 Del.C. §826.
- 15.1.33 Possession of burglar's tools or instruments facilitating theft. 11 Del.C. §828.
- 15.1.34 Robbery in the second degree. 11 Del.C. §831.
- 15.1.35 Robbery in the first degree. 11 Del.C. §832.
- 15.1.36 Carjacking in the second degree. 11 Del.C. §835.
- 15.1.37 Carjacking in the first degree. 11 Del.C. §836.
- 15.1.38 Shoplifting; felony. 11 Del.C. §840.
- 15.1.39 Use of illegitimate retail sales receipt or Universal Product Code Label; felony. 11 Del.C. §840A.
- 15.1.40 Theft. 11 Del.C. §841.
- 15.1.41 Theft; lost or mislaid property; mistaken delivery. 11 Del.C. §842.
- 15.1.42 Theft; false pretense. 11 Del.C. §843.
- 15.1.43 Theft; false promise. 11 Del.C. §844.
- 15.1.44 Theft of services. 11 Del.C. §845.
- 15.1.45 Extortion. 11 Del.C. §846.
- 15.1.46 Misapplication of property; felony. 11 Del.C. §848.
- 15.1.47 Receiving stolen property. 11 Del.C. §851.
- 15.1.48 Identity theft. 11 Del.C. §854.
- 15.1.49 Forgery. 11 Del.C. §861.
- 15.1.50 Possession of forgery devices. 11 Del.C. §862.
- 15.1.51 Falsifying business records. 11 Del.C. §871.
- 15.1.52 Tampering with public records in the second degree. 11 Del.C. §873.
- 15.1.53 Tampering with public records in the first degree. 11 Del.C. §876.
- 15.1.54 Offering a false instrument for filing. 11 Del.C. §877.
- 15.1.55 Issuing a false certificate. 11 Del.C. §878.
- 15.1.56 Defrauding secured creditors. 11 Del.C. §891.
- 15.1.57 Fraud in insolvency. 11 Del.C. §892.
- 15.1.58 Interference with levied-upon property. 11 Del.C. §893.
- 15.1.59 Issuing a bad check; felony. 11 Del.C. §900.
- 15.1.60 Unlawful use of credit card; felony. 11 Del.C. §903.
- 15.1.61 Reencoder and scanning devices. 11 Del.C. §903A.
- 15.1.62 Deceptive business practices. 11 Del.C. §906.
- 15.1.63 Criminal impersonation. 11 Del.C. §907.
- 15.1.64 Criminal impersonation, accident related. 11 Del.C. §907A.
- 15.1.65 Criminal impersonation of a police officer. 11 Del.C. §907B.
- 15.1.66 Unlawfully concealing a will. 11 Del.C. §908.
- 15.1.67 Securing execution of documents by deception. 11 Del.C. §909.
- 15.1.68 Debt adjusting. 11 Del.C. §910.
- 15.1.69 Fraudulent conveyance of public lands. 11 Del.C. §911.
- 15.1.70 Fraudulent receipt of public lands. 11 Del.C. §912.
- 15.1.71 Insurance fraud. 11 Del.C. §913.
- 15.1.72 Health care fraud. 11 Del.C. §913A.
- 15.1.73 Home improvement fraud. 11 Del.C. §916.
- 15.1.74 New home construction fraud. 11 Del.C. §917.
- 15.1.75 Unauthorized access. 11 Del.C. §932.
- 15.1.76 Theft of computer services. 11 Del.C. §933.
- 15.1.77 Interruption of computer services. 11 Del.C. §934.
- 15.1.78 Misuse of computer system information. 11 Del.C. §935.
- 15.1.79 Destruction of computer equipment. 11 Del.C. §936.

- 15.1.80 Unrequested or unauthorized electronic mail or use of network or software to cause same. 11 **Del.C.** §937.
- 15.1.81 Failure to promptly cease electronic communication upon request. 11 **Del.C.** §938.
- 15.1.82 Dealing in children. 11 **Del.C.** §1100.
- 15.1.83 Sexual exploitation of a child. 11 **Del.C.** §1108.
- 15.1.84 Unlawfully dealing in child pornography. 11 **Del.C.** §1109.
- 15.1.85 Possession of child pornography. 11 **Del.C.** §1111.
- 15.1.86 Sexual offenders; prohibitions from school zones. 11 **Del.C.** §1112.
- 15.1.87 Sexual solicitation of a child. 11 **Del.C.** §1112A.
- 15.1.88 Criminal non-support and aggravated criminal non-support. 11 **Del.C.** §1113.
- 15.1.89 Bribery; felony. 11 **Del.C.** §1201
- 15.1.90 Receiving a bribe; felony. 11 **Del.C.** §1203.
- 15.1.91 Giving unlawful gratuities. 11 **Del.C.** §1205.
- 15.1.92 Receiving unlawful gratuities. 11 **Del.C.** §1206.
- 15.1.93 Improper influence. 11 **Del.C.** §1207.
- 15.1.94 Official misconduct. 11 **Del.C.** §1211.
- 15.1.95 Profiteering. 11 **Del.C.** §1212.
- 15.1.96 Perjury in the second degree. 11 **Del.C.** §1222.
- 15.1.97 Perjury in the first degree. 11 **Del.C.** §1223.
- 15.1.98 Making a false written statement. 11 **Del.C.** §1233.
- 15.1.99 Terroristic threatening of public officials or public servants; felony. 11 **Del.C.** §1240.
- 15.1.100 Hindering prosecution; felony. 11 **Del.C.** §1244.
- 15.1.101 Falsely reporting an incident; felony. 11 **Del.C.** §1245.
- 15.1.102 Promoting prison contraband; felony. 11 **Del.C.** §1256.
- 15.1.103 Bribing a witness. 11 **Del.C.** §1261.
- 15.1.104 Bribe receiving by a witness. 11 **Del.C.** §1262.
- 15.1.105 Tampering with a witness. 11 **Del.C.** §1263.
- 15.1.106 Interfering with child witness. 11 **Del.C.** §1263A.
- 15.1.107 Bribing a juror. 11 **Del.C.** §1264.
- 15.1.108 Bribe receiving by a juror. 11 **Del.C.** §1265.
- 15.1.109 Tampering with a juror. 11 **Del.C.** §1266.
- 15.1.110 Misconduct by a juror. 11 **Del.C.** §1267.
- 15.1.111 Tampering with physical evidence. 11 **Del.C.** §1269.
- 15.1.112 Unlawful grand jury disclosure. 11 **Del.C.** §1273.
- 15.1.113 Hate crimes; felony. 11 **Del.C.** §1304.
- 15.1.114 Stalking; felony. 11 **Del.C.** §1312A.
- 15.1.115 Violation of privacy; felony. 11 **Del.C.** §1335.
- 15.1.116 Bombs, incendiary devices, Molotov cocktails and explosive devices. 11 **Del.C.** §1338.
- 15.1.117 Adulteration. 11 **Del.C.** §1339.
- 15.1.118 Possessing a destructive weapon. 11 **Del.C.** §1444.
- 15.1.119 Unlawfully dealing with a dangerous weapon; felony. 11 **Del.C.** §1445.
- 15.1.120 Possession of a deadly weapon during commission of a felony. 11 **Del.C.** §1447.
- 15.1.121 Possession of a firearm during commission of a felony. 11 **Del.C.** §1447A.
- 15.1.122 Possession and purchase of deadly weapons by persons prohibited. 11 **Del.C.** §1448.
- 15.1.123 Engaging in a firearms transaction on behalf of another. 11 **Del.C.** §1455.
- 15.1.123 Organized Crime and Racketeering. 11 **Del.C.** §1504.
- 15.1.125 Victim or Witness Intimidation 11 **Del.C.** §3532 & 3533.
- 15.1.126 Financial exploitation of residents or patients; felony 16 **Del.C.** §1136 (b).
- 15.1.127 Prohibited acts A under the Uniform Controlled Substances Act. 16 **Del.C.** §4751(a), (b) and (c).
- 15.1.128 Prohibited acts B under the Uniform Controlled Substances Act. 16 **Del.C.** §4752(a) and (b).
- 15.1.129 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3,4-methylenedioxymethamphetamine (MDMA). 16 **Del.C.** §4753A (a)(1)-(9).
- 15.1.130 Prohibited acts under the Uniform Controlled Substances Act. 16 **Del.C.** §4756(a)(1)-(5) and (b).
- 15.1.131 Distribution to persons under 21 years of age. 16 **Del.C.** §4761.
- 15.1.132 Distribution, delivery, or possession of controlled substance within 1,000 feet of school property. 16 **Del.C.** §4767
- 15.1.133 Drug paraphernalia; felony. 16 **Del.C.** §4771 (b) and (c) [manufacture and sale, delivery to a minor].
- 15.1.134 Attempt to evade or defeat tax. 30 **Del.C.** §571.
- 15.1.135 Failure to collect or pay over tax. 30

**Del.C. §572.**

15.1.136 Failure to file return, supply information or pay tax. 30 Del.C. §573.

15.1.137 Fraud and false statements. 30 Del.C. §574.

15.1.138 Misdemeanors [tax related]. 30 Del.C. §576.

15.1.139 Obtaining benefit under false representation; felony. 31 Del.C. §1003.

15.1.140 Reports, statements and documents; felony. 31 Del.C. §1004.

15.1.141 Kickback schemes and solicitations. 31 Del.C. §1005.

15.1.142 Conversion of payment. 31 Del.C. §1006.

15.1.143 Violations of the Securities Act. 6 Del.C. §7322.

15.1.144 Attempt to Intimidate. 11 Del.C. §3534.

15.1.145 Alteration, Theft or Destruction of Will. 12 Del.C. §210.

15.1.146 Financial exploitation of infirm adult; felony. 31 Del.C. §3913.

15.2 Crimes substantially related to the practice of accountancy shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

**\*Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Accountancy is available at:**

**<http://www.professionallicensing.state.de.us/boards/accountancy/index.shtml>**

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**DIVISION OF PROFESSIONAL REGULATION  
BOARD OF LANDSCAPE ARCHITECTURE**

Statutory Authority: 24 Delaware Code,  
Section 205 (24 Del.C. §205)

**24 DE Admin Code 200**

**PUBLIC NOTICE**

The Delaware Board of Landscape Architecture in accordance with 24 Del.C. §205 has proposed changes to its rules and regulations. The first proposed rule change, in accordance with 29 Del.C. §10113(b)(5), is to conform application requirements for certificate of authorization to changes in the law as amended by HB 211. The second proposed rule change is to clarify the requirements for

processing continuing education requirements in Rule 7.1.2. The third proposed rule change, as mandated by SB 229, identifies crimes that are substantially related to the provision of landscape architecture services.

A public hearing will be held on March 9, 2005 in the second floor conference room B 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 Landscape Architecture, 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.

**200 Board of Landscape Architecture**

**1.0 Filing of Applications for Written Examination**

1.1 Persons seeking licensure pursuant to 24 Del.C. §206 shall submit an application for written examination on a form prescribed by the Board to the Board's office at the Division of Professional Regulation (the "Division") along with the application fee established by the Division. Applicants for written examination shall be filed in such office of the Board no later than twelve (12) weeks prior to the opening date of the examination.

1.2 Applicants seeking licensure pursuant to 24 Del.C. §206(a)(1) shall have graduated from a school or college of landscape architecture approved or accredited by the national Council of Landscape Architectural Registration Boards, the American Society of Landscape Architects Landscape Architectural Accreditation Board, or other legitimate national association of landscape architects.

1.3 For purposes of 24 Del.C. §206(a)(3), courses in landscape architecture shall have been taken at a school or college of landscape architecture approved or accredited by the national Council of Landscape Architectural Registration Boards, the American Society of Landscape Architects Landscape Architectural Accreditation Board, or other legitimate national association of landscape architects.

1.4 Each applicant must submit documentary evidence, as more fully described on the application form, to show the Board that the applicant is clearly eligible to sit for the examination under 24 Del.C. §206.

1.5 The Board shall not consider an application for written examination until all items described in paragraphs 1.1 and 1.2 of this Rule have been submitted to the Board's office.

1.6 The Board reserves the right to retain as a permanent part of the application any or all documents

submitted.

1.7 The examination shall be the Council of Landscape Architectural Registration Board's ("CLARB") current uniform national examination. CLARB establishes a passing score for each uniform national examination.

Statutory Authority: 24 Del.C. §§206, 207

**5 DE Reg. 821 (10/01/01)**

## 2.0 Filing of Applications for Reciprocity

2.1 Persons seeking licensure pursuant to 24 Del.C. §208, shall submit payment of the fee established by the Division and an application on a form prescribed by the Board which shall include proof of licensure and good standing in each state or territory of current licensure, and on what basis the license was obtained therein, including the date licensure was granted. Letters of good standing must also be provided for each state or jurisdiction in which the applicant was ever previously licensed.

2.2 The Board shall not consider an application for licensure by reciprocity until all items described in 24 Del.C. §208 and paragraph 2.1 of this Rule have been submitted to the Board's office.

2.3 A passing exam score for purposes of reciprocity shall be the passing score set by CLARB, or the passing score accepted by the Delaware Board, for the year in which the exam was taken.

Statutory Authority: 24 Del.C. §208.

## 3.0 Filing of Applications for Certificate of Authorization

~~Corporations or partnerships seeking a certificate of authorization pursuant to 24 Del. C. §212 shall submit an application on a form prescribed by the Board. Such application shall include the (a) names and addresses of all officers and members of the corporation, or officers and partners of the partnership, and (b) the name of a corporate officer in the case of a corporation, or the name of a partner in the case of a partnership, who is licensed to practice landscape architecture in this State and who shall be responsible for services in the practice of landscape architecture on behalf of the corporation or partnership.~~

~~Statutory Authority: 24 Del.C. §212.~~

A business entity desiring a certificate of authorization pursuant to 24 Del.C. Section 212 shall file with the Board an application, on forms provided by the Board, listing relevant information, including the names and addresses of officers, partners, members, managers or principals of the business entity and also of the individual(s) duly licensed to practice landscape architecture in this State who shall be in responsible charge of the landscape architecture in compliance with 24 Del.C. Section 212(b)(1), and any other information required by the Board, accompanied by the appropriate fee. A certificate of authorization shall be renewed biennially in such manner as is determined by the

Division, and upon payment of the appropriate fee and submission of a renewal form provided by the Division. In the event there should be a change in the information provided in the application for a certificate of authorization, notification of such change shall be provided to the Board in writing within thirty (30) days of the effective date of such change.

## 4.0 Licenses

Only one license shall be issued to a licensed landscape architect, except for a duplicate issued to replace a lost or destroyed license.

## 5.0 Seal

### 5.1 Technical Requirements

5.1.1 For the purpose of signing and sealing drawings, specifications, contract documents, plans, reports and other documents (hereinafter collectively referred to as "drawings"), each landscape architect shall provide him or herself with an individual seal of design and size as approved by the Board to be used as hereinafter directed on documents prepared by him or her or under his/her direct supervision for use in the State of Delaware.

5.1.2 The application of the seal impression or rubber stamp to the first sheet of the bound sheets of the drawings (with index of drawings included), title page of specifications, and other drawings and contract documents shall constitute the licensed landscape architect's stamp.

5.1.3 The seal to be used by a licensee of the Board shall be of the embossing type or a rubber stamp, and have two (2) concentric circles. The outside circle measures across the center 1 13/16 inches. The inner circle shall contain only the words "NO." and "State of Delaware." At the bottom the words "Registered Landscape Architect" reading counterclockwise, and at the top the name of the licensee.

5.1.4 An impression of the seal is to be submitted to the Board to be included in the licensee's records.

### 5.2 Use of the Seal

5.2.1 A landscape architect shall not sign or seal drawings unless they were prepared by him/her or under his/her direct supervision.

5.2.2 "Supervision" for purposes of signing and/or sealing drawings shall mean direct supervision, involving responsible control over and detailed professional knowledge of the contents of the drawings throughout their preparation. Reviewing, or reviewing and correcting, drawings after they have been prepared by others does not constitute the exercise of responsible control because the reviewer has neither control over, nor detailed professional knowledge of, the content of such drawings throughout their preparation.

5.2.3 The seal appearing on any drawings shall

be prima facie evidence that said drawings were prepared by or under the direct supervision of the individual who signed and/or sealed the drawings. Signing or sealing of drawings prepared by another shall be a representation by the registered landscape architect that he/she has detailed professional knowledge of and vouches for the contents of the drawings.

Statutory Authority: 24 Del.C. §205(a)(1); 212(a).

## **6.0 Renewal of Licenses**

6.1 Each application for license renewal or request for inactive status shall be submitted on or before the expiration date of the current licensing period. However, a practitioner may still renew his or her license within 60 days following the license renewal date upon payment of a late fee set by the Division. Upon the expiration of 60 days following the license renewal date an unrenewed license shall be deemed lapsed and the practitioner must reapply pursuant to the terms of 24 Del.C. §210(b).

6.2 It shall be the responsibility of all licensees to keep the Board and the Division informed of any change in name, home or business address.

Statutory Authority: 24 Del.C. §210.

## **7.0 Continuing Education as a Condition of Biennial Renewal**

7.1 General Statement: Each licensee shall be required to meet the continuing education requirements of these guidelines for professional development as a condition for license renewal. Continuing education obtained by a licensee should maintain, improve or expand skills and knowledge obtained prior to initial licensure, or develop new and relevant skills and knowledge.

7.1.1 In order for a licensee to qualify for license renewal as a landscape architect in Delaware, the licensee must have completed 20 hours of continuing education acceptable to the Board within the previous two years, or be granted an extension by the Board for reasons of hardship. Such continuing education shall be obtained by active participation in courses, seminars, sessions, programs or self-directed activities approved by the Board.

7.1.1.1 For purposes of seminar or classroom continuing education, one hour of acceptable continuing education shall mean 60 minutes of instruction.

7.1.2 ~~To be acceptable for credit toward this requirement, all courses, seminars, sessions, programs or self-directed activities shall be submitted to the Board. The Board shall recommend any course, seminar, session or program for continuing education credit that meets the criteria in sub-paragraph 7.1.2.1 below. All courses, seminars, sessions and programs are acceptable for continuing education credit if sponsored by organizations listed in Rule 7.1.3. All other continuing education credits will be reviewed at the time of renewal. All self-directed~~

activities for continuing education credit allowed by Rule 7.6 must be pre-approved and submitted by the licensee 60 days prior to the activity on the form provided in Rules 7.3 and 7.4.

7.1.2.1 Each course, seminar, session, program, or self-directed activity to be recommended for approval by the Board shall have a direct relationship to the practice of landscape architecture as defined in the Delaware Code and contain elements which will assist licensees to provide for the health, safety and welfare of the citizens of Delaware served by Delaware licensed landscape architects.

### **5 DE Reg. 446 (8/1/01)**

7.1.3 Continuing Education courses offered or sponsored by the following organizations will be automatically deemed to qualify for continuing education credit:

7.1.3.1 American Society of Landscape Architects (National and local/chapter levels)

7.1.3.2 Council of Landscape Architectural Registration

7.1.4 Erroneous or false information attested to by the licensee shall constitute grounds for denial of license renewal.

7.2 Effective Date: The Board shall commence requiring continuing education as a condition of renewal of a license for the license year commencing on February 1, 1995. The licensee shall be required to successfully complete twenty (20) hours of continuing education within the previous two calendar years (example: February 1, 1993 through January 31, 1995).

7.3 For licensing periods beginning February 1, 2001 and thereafter, documentation as required by Rule 7.4 of all continuing education hours must be submitted to the Board on or before November 1 of the year preceding the biennial renewal date of the licenses. A license shall not be renewed until the Board has approved twenty (20) hours of continuing education classes as provided in Rule 7.1 or has granted an extension of time for reasons of hardship.

7.4 Reporting: The licensee shall submit a completed Verification of Continuing Education Form provided by the Division of Professional Regulation to the Board.

7.4.1 Each licensee must retain copies of all supporting materials documenting proof of continuing education compliance for submission to the Board upon request. Supporting materials include a syllabus, agenda, itinerary or brochure published by the sponsor of the activity and a document showing proof of attendance (i.e., certificate, a signed letter from the sponsor attesting to attendance, report of passing test score). The Board reserves its right to request additional information and/or documentation to verify continuing education compliance.

7.5 Hardship: The Board will consider any reasonable special request from individual licensees for continuing education credits and procedures. The Board may, in

individual cases involving physical disability, illness, or extenuating circumstances, grant an extension, not to exceed two (2) years, of time within which continuing education requirements must be completed. In cases of physical disability or illness, the Board reserves the right to require a letter from a physician attesting to the licensee's physical condition. No extension of time shall be granted unless the licensee submits a written request to the Board prior to the expiration of the license.

**7.6 Self-directed Activities:** For renewal periods beginning February 1, 2001, the following rules regarding self-directed activity shall apply. The Board will have the authority to allow self-directed activities to fulfill the continuing education requirements of the licensees. However, these activities must result in a book draft, published article, delivered paper, workshop, symposium, or public address within the two (2) year reporting period. Self-directed activities must advance the practitioner's knowledge of the field and be beyond the practitioner's normal work duties. Instructors will not be granted CE credit for studies customarily associated with their usual university or college instruction teaching loads.

**7.6.1** The Board may, upon request, review and approve credit for self-directed activities in a given biennial licensing period. A licensee must obtain pre-approval of the Board prior to undertaking the self-directed activity in order to assure continuing education credit for the activity. Any self-directed activity submitted for approval must include a written proposal outlining the scope of the activity, the number of continuing education hours requested, the anticipated completion date(s), the role of the licensee in the case of multiple participants and whether any part of the self-directed activity has ever been previously approved or submitted for credit by the same licensee. Determination of credit will be made by the Board upon review of the completed final project.

**7.7 Exemptions:** New licensees by way of uniform national examination or by way of reciprocity shall be exempt from the continuing education requirements set forth herein for their first renewal period.

Statutory Authority: 24 **Del.C.** §205(12).

**5 DE Reg. 446 (8/1/01)**

## **8.0 Inactive Status**

**8.1** A licensee may, upon written request to the Board, place his/her license on inactive status.

**8.2** A licensee who has been granted inactive status and who wishes to re-enter the practice of landscape architecture, shall submit a written request to the Board along with a prorated renewal fee and proof of completion of twenty (20) hours of continuing education during the period of inactive status.

**8.3** Licensees on inactive status shall renew their inactive status by notification to the Division of Professional

Regulation at the time of biennial license renewal.

Statutory Authority: 24 **Del.C.** §210(c).

## **9.0 Disciplinary Proceedings and Hearings**

**9.1** Disciplinary proceedings against any licensee may be initiated by an aggrieved person by submitting a complaint in writing to the Director of the Division of Professional Regulation as specified in 29 **Del.C.** §8807(h)(1)-(3).

**9.1.1** A copy of the written complaint shall be forwarded to the administrative assistant for the Board. At the next regularly scheduled Board meeting, a contact person for the Board shall be appointed and a copy of the written complaint given to that person.

**9.1.2** The contact person appointed by the Board shall maintain strict confidentiality with respect to the contents of the complaint and shall not discuss the matter with other Board members or with the public. The contact person shall maintain contact with the investigator or deputy attorney general assigned to the case regarding the progress of the investigation.

**9.1.3** In the instance when the case is being closed by the Division, the contact person shall report the facts and conclusions to the Board without revealing the identities of the parties involved. No vote of the Board is necessary to close the case.

**9.1.4** If a hearing before the Board has been requested by the Deputy Attorney General, a copy of these Rules and Regulations shall be provided to the respondent upon request. The notice of hearing shall fully comply with 29 **Del.C. Sec.** 10122 and 10131 pertaining to the requirements of the notice of proceedings. All notices shall be sent to the respondent's address as reflected in the Board's records.

**9.1.5** At any disciplinary hearing, the respondent shall have the right to appear in person or be represented by counsel, or both. The Respondent shall have the right to produce evidence and witnesses on his or her behalf and to cross examine witnesses. The Respondent shall be entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of documents on his or her behalf.

**9.1.6** No less than 10 days prior to the date set for a disciplinary hearing, the Department of Justice and the respondent shall submit to the Board and to each other, a list of the witnesses they intend to call at the hearing. Witnesses not listed shall be permitted to testify only upon a showing of reasonable cause for such omission.

**9.1.7** If the respondent fails to appear at a disciplinary hearing after receiving the notice required by 29 **Del.C.** §10122 and 10131, the Board may proceed to hear and determine the validity of the charges against the respondent.

Statutory authority: 24 **Del.C.** §§213 and 215; 29 **Del.C.**



§§10111, 10122 and 10131

9.2 Hearing procedures

9.2.1 The Board may administer oaths, take testimony, hear proofs and receive exhibits into evidence at any hearing. All testimony at any hearing shall be under oath.

9.2.2 Strict rules of evidence shall not apply. All evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs shall be admitted.

9.2.3 An attorney representing a party in a hearing or matter before the Board shall notify the Board of the representation in writing as soon as practicable.

9.2.4 Requests for postponements of any matter scheduled before the Board shall be submitted to the Board's office in writing no less than three (3) days before the date scheduled for the hearing. Absent a showing of exceptional hardship, there shall be a maximum of one postponement allowed to each party to any hearing.

9.2.5 A complaint shall be deemed to "have merit" and the Board may impose disciplinary sanctions against the licensee if a majority of the members of the Board find, by a preponderance of the evidence, that the respondent has committed the act(s) of which he or she is accused and that those act(s) constitute grounds for discipline pursuant to 24 Del.C. §213.

Statutory authority: 24 Del.C. §§205(7)(8); 213, 214, 215.

**10.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals**

10.1 If the report is received by the chairperson of the regulatory Board, that chairperson 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 chairperson of the regulatory Board, or that chairperson's designate or designates.

10.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 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.

10.3 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 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

10.4 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 chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation 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 chairperson of the participating Board or that chairperson'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 chairperson of the participating Board.

10.5 Failure to cooperate fully with the participating Board chairperson or that chairperson'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 participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in section 10.8.

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

10.6.1 Entry of the regulated professional into a treatment program approved by the participating 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.

10.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson'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 chairperson of the participating Board or that chairperson'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.

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

10.6.4 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 subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating 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.

10.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson 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.

10.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

10.7 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.

10.8 The participating Board's chairperson, 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.

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

10.10 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 participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

10.11 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 nondisciplinary matter.

10.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

## **11.0 Crimes substantially related to the practice of architecture**

11.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of landscape architecture in the State of Delaware without regard to the place of conviction:

11.1.1 Conspiracy in the first degree. 11 Del.C. §513.

11.1.2 Aggravated Menacing. 11 Del.C. §602(b).

11.1.3 Reckless endangering in the first degree. 11 Del.C. §604.

11.1.4 Abuse of a pregnant female in the second degree. 11 Del.C. §605.

11.1.5 Abuse of a pregnant female in the first degree. 11 Del.C. §606.

11.1.6 Assault in the second degree. 11 Del.C. §612.

11.1.7 Assault in the first degree. 11 Del.C. §613

11.1.8 Terroristic threatening; felony. 11 Del.C. §621

11.1.9 Vehicular homicide in the first degree. 11 Del.C. §630A.

11.1.10 Murder by abuse or neglect in the second degree. 11 Del.C. §633.

11.1.11 Murder by abuse or neglect in the first degree. 11 Del.C. §634.

11.1.12 Murder in the second degree. 11 Del.C. §635.

11.1.13 Murder in the first degree. 11 Del.C. §636.

11.1.14 Unlawful sexual contact in the second degree. 11 Del.C. §768.

11.1.15 Unlawful sexual contact in the first degree. 11 Del.C. §769.

11.1.16 Rape in the fourth degree. 11 Del.C. §770.

11.1.17 Rape in the third degree. 11 Del.C. §771.

11.1.18 Rape in the second degree. 11 Del.C. §772.

11.1.19 Rape in the first degree. 11 Del.C. §773.

11.1.20 Sexual extortion. 11 Del.C. §776.

11.1.21 Continuous sexual abuse of a child. 11

Del.C. §778.  
11.1.22 Female genital mutilation. 11 Del.C. §780.  
11.1.23 Unlawful imprisonment in the first degree.  
11 Del.C. §782.  
11.1.24 Kidnapping in the second degree. 11  
Del.C. §783.  
11.1.25 Kidnapping in the first degree. 11 Del.C.  
§783A.  
11.1.26 Arson in the second degree. 11 Del.C.  
§802.  
11.1.27 Arson in the first degree. 11 Del.C. §803.  
11.1.28 Burglary in the second degree. 11 Del.C.  
§825.  
11.1.29 Burglary in the first degree. 11 Del.C.  
§826  
11.1.30 Robbery in the second degree. 11 Del.C.  
§831.  
11.1.31 Robbery in the first degree. 11 Del.C.  
§832.  
11.1.32 Carjacking in the second degree. 11 Del.C.  
§835.  
11.1.33 Carjacking in the first degree. 11 Del.C.  
§836.  
11.1.34 Theft 11 Del.C. §841  
11.1.35 Theft; false pretenses 11 Del.C. §843  
11.1.36 Extortion. 11 Del.C. §846.  
11.1.37 Identity theft. 11 Del.C. §854.  
11.1.38 Forgery. 11 Del.C. §861.  
11.1.39 Tampering with public records in the first  
degree. 11 Del.C. §876.  
11.1.40 Issuing a false certificate 11 Del.C. §878.  
11.1.41 Bribery 11 Del.C. §881.  
11.1.42 Receiving a bribe 11 Del.C. §882.  
11.1.43 Criminal impersonation of a police officer.  
11 Del.C. §907B.  
11.1.44 Insurance fraud 11 Del.C. §913.  
11.1.45 Dealing in children. 11 Del.C. §1100.  
11.1.46 Endangering the welfare of a child. 11  
Del.C. §1102.  
11.1.47 Sexual exploitation of a child. 11 Del.C.  
§1108.  
11.1.48 Unlawfully dealing in child pornography.  
11 Del.C. §1109.  
11.1.49 Possession of child pornography. 11  
Del.C. § 1111.  
11.1.50 Felony Bribery. 11 Del.C. §1201.  
11.1.51 Felony Receiving a Bribe. 11 Del.C.  
§1203.  
11.1.52 Perjury in the second degree. 11 Del.C.  
§1222.  
11.1.53 Perjury in the first degree. 11 Del.C.  
§1223.  
11.1.54 Terroristic threatening of public officials  
or public servants. 11 Del.C. §1240.

11.1.55 Unlawfully dealing with a dangerous  
weapon. 11 Del.C. §1445.  
11.1.56 Possession of a deadly weapon during  
commission of a felony. 11 Del.C. §1447.  
11.1.57 Possession of a firearm during  
commission of a felony. 11 Del.C. §1447A.  
11.1.58 Possession and purchase of deadly  
weapons by persons prohibited. 11 Del.C. §1448.  
11.1.59 Removing a firearm from the possession  
of a law enforcement officer. 11 Del.C. §1458.  
11.1.60 Criminal Penalties, Organized Crime and  
Racketeering. 11 Del.C. §1504.  
11.1.61 Victim or Witness intimidation. 11 Del.C.  
§§3532 & 3533.  
11.2 Crimes substantially related to the practice of  
landscape architecture shall be deemed to include any crimes  
under any federal law, state law, or valid town, city or  
county ordinance, that are substantially similar to the crimes  
identified in this rule.

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**DIVISION OF PROFESSIONAL REGULATION**  
**BOARD OF ARCHITECTURE**

Statutory Authority: 24 Delaware Code,  
Section 205 (24 Del.C. §306)  
24 DE Admin Code 300

**PUBLIC NOTICE**

The Delaware Board of Architecture in accordance with 24 Del.C. §306 has proposed changes to its rules and regulations as mandated by SB 229. The proposal identifies crimes that are substantially related to the provision of architectural services.

A public hearing will be held on February 2, 2005 at 10:15 a.m. in the second floor conference room B 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 Architecture, 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.

**10.0 Crimes substantially related to the practice of architecture**

**10.1 Conviction of any of the following crimes, or**

of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of architecture in the State of Delaware without regard to the place of conviction:

10.1.1 Criminal solicitation in the second degree. 11 Del.C. §502

10.1.2 Criminal solicitation in the first degree. 11 Del.C. §503.

10.1.3 Conspiracy in the first degree. 11 Del.C. §513.

10.1.4 Aggravated Menacing. 11 Del.C. §602(b).

10.1.5 Reckless endangering in the first degree. 11 Del.C. §604.

10.1.6 Abuse of a pregnant female in the second degree. 11 Del.C. §605.

10.1.7 Abuse of a pregnant female in the first degree. 11 Del.C. §606.

10.1.8 Assault in the third degree. 11 Del.C. §611

10.1.9 Assault in the second degree. 11 Del.C. §612.

10.1.10 Assault in the first degree. 11 Del.C. §613.

10.1.11 Terroristic threatening; felony. 11 Del.C. §621.

10.1.12 Vehicular assault in the first degree 11 Del.C. §629.

10.1.13 Vehicular homicide in the first degree 11 Del.C. §630A.

10.1.14 Murder by abuse or neglect in the second degree. 11 Del.C. §633.

10.1.15 Murder by abuse or neglect in the first degree. 11 Del.C. §634.

10.1.16 Murder in the second degree. 11 Del.C. §635

10.1.17 Murder in the first degree. 11 Del.C. §636.

10.1.18 Unlawful sexual contact in the second degree. 11 Del.C. §768.

10.1.19 Unlawful sexual contact in the first degree. 11 Del.C. §769.

10.1.20 Rape in the fourth degree. 11 Del.C. §770.

10.1.21 Rape in the third degree. 11 Del.C. §771.

10.1.22 Rape in the second degree. 11 Del.C. §772.

10.1.23 Rape in the first degree. 11 Del.C. §773

10.1.24 Sexual extortion. 11 Del.C. §776.

10.1.25 Continuous sexual abuse of a child. 11 Del.C. §778.

10.1.26 Female genital mutilation. 11 Del.C. §780.

10.1.27 Unlawful imprisonment in the first degree. 11 Del.C. §782.

10.1.28 Kidnapping in the second degree. 11 Del.C. §783.

10.1.29 Kidnapping in the first degree. 11 Del.C. §783A.

10.1.30 Arson in the third degree. 11 Del.C. §801

10.1.31 Arson in the second degree. 11 Del.C.

§802.

10.1.32 Arson in the first degree. 11 Del.C. §803.

10.1.33 Burglary in the third degree 11 Del.C.

§824

10.1.34 Burglary in the second degree. 11 Del.C.

§825.

10.1.35 Burglary in the first degree. 11 Del.C.

§826

10.1.36 Robbery in the second degree. 11 Del.C.

§831.

10.1.37 Robbery in the first degree. 11 Del.C.

§832.

10.1.38 Carjacking in the second degree. 11 Del.C. §835.

10.1.39 Carjacking in the first degree. 11 Del.C. §836.

10.1.40 Theft 11 Del.C. §841.

10.1.41 Theft; false pretenses 11 Del.C. §843

10.1.42 Extortion. 11 Del.C. §846.

10.1.43 Identity theft. 11 Del.C. §854.

10.1.44 Forgery. 11 Del.C. §861.

10.1.45 Tampering with public records in the first degree. 11 Del.C. §876.

10.1.46 Issuing a false certificate 11 Del.C. §878

10.1.47 Bribery 11 Del.C. §881

10.1.48 Receiving a bribe 11 Del.C. §882

10.1.49 Criminal impersonation of a police officer. 11 Del.C. §907B.

10.1.50 Insurance fraud 11 Del.C. §913

10.1.51 Dealing in children. 11 Del.C. §1100

10.1.52 Endangering the welfare of a child. 11 Del.C. §1102.

10.1.53 Sexual exploitation of a child. 11 Del.C. §1108.

10.1.54 Unlawfully dealing in child pornography. 11 Del.C. §1109.

10.1.55 Possession of child pornography. 11 Del.C. §1111.

10.1.56 Felony Bribery 11 Del.C. §1201

10.1.57 Felony Receiving a Bribe 11 Del.C. §1203

10.1.58 Perjury in the second degree. 11 Del.C. §1222.

10.1.59 Perjury in the first degree. 11 Del.C. §1223.

10.1.60 Terroristic threatening of public officials or public servants. 11 Del.C. §1240.

10.1.61 Unlawfully dealing with a dangerous weapon. 11 Del.C. §1445.

10.1.62 Possession of a deadly weapon during

commission of a felony. 11 **Del.C.** §1447.

10.1.63 Possession of a firearm during commission of a felony. 11 **Del.C.** §1447A

10.1.64 Possession and purchase of deadly weapons by persons prohibited. 11 **Del.C.** §1448.

10.1.65 Giving a firearm to person prohibited. 11 **Del.C.** §1454.

10.1.66 Engaging in a firearms transaction on behalf of another. 11 **Del.C.** §1455.

10.1.67 Possession of a weapon in a Safe School and Recreation Zone; class D, E, or F Felony. 11 **Del.C.** §1457.

10.1.68 Removing a firearm from the possession of a law enforcement officer. 11 **Del.C.** §1458.

10.1.69 Criminal Penalties, Organized Crime and Racketeering. 11 **Del.C.** §1504.

10.1.70 Victim or Witness intimidation. 11 **Del.C.** §§ 3532 & 3533.

10.2 Crimes substantially related to the practice of architecture shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

**\*Please Note: As the rest of the sections were not amended, they are not being published. A complete set of the rules and regulations for the Board of Architecture is available at:**

**<http://www.professionallicensing.state.de.us/boards/architects/index.shtml>**

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**DIVISION OF PROFESSIONAL REGULATION  
BOARD OF PODIATRY**

Statutory Authority: 24 Delaware Code,  
Section 506 (24 **Del.C.** §506(a))  
24 **DE Admin Code** 506

**PUBLIC NOTICE**

The Delaware Board of Podiatry, in accordance with 24 **Del.C.** §506(a)(1) has proposed changes to its rules and regulations as mandated by Senate Bill No.229 (74 **Del. Laws** c. 262) The proposal changes list the crimes that are substantially related to the provision of Podiatry

A public hearing will be held at 5:00 p.m. February 17, 2005 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 Board, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904.

Persons wishing to submit written comments may forward these to the Board of Podiatry 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.

**Proposed Rules And Regulations**

**AUTHORITY:**

Pursuant to 74 **Del. Laws.** c.262, (Senate Bill No. 229 of the 142nd General Assembly, 2004, as amended), the Board was directed to promulgate regulations specifically identifying those crimes which are substantially related to the practice of podiatry.

**PURPOSE:**

The Board of Podiatry believes that the State of Delaware has a compelling public policy interest in ensuring that its licensed professionals not only have specified levels of educational and professional competence but also possess sufficient character and judgment necessary to practice safely in their chosen fields and to do so in a manner which will not undermine the community's confidence in the expertise and professionalism of the members of the profession. Licensed professionals, particularly those in health care related fields, often come into contact with clients and patients and other members of the public at times when they may be sick, infirmed, or otherwise extremely vulnerable to undue influence or other forms of misuse, fraud and abuse. It is therefore critical that all reasonable steps are taken to determine, to the extent possible, that the regulation of such professionals takes into consideration not only the individual's technical competence but his or her demonstrated propensity to behave in a way that does not expose the client population to risk or diminish legitimate expectations of honest and honorable behavior by such licensed health care professionals. A podiatric physician is expected to be professional, ethical and competent while exhibiting good judgment and compassion.

**9.0 DEFINITIONS** - The following words and terms, when used in this regulation, should have the following meaning unless the context clearly indicates otherwise:

**"conviction"**, unless otherwise defined by specific statute, means a verdict of guilty by whether entered by a judge or jury, or a plea of guilty or a plea of nolo contendere or other similar plea such as a "Robinson" or "Alford" plea unless the individual has been discharged under §4218 of Title 11 of the Delaware Code (probation before judgment) or under §1024 of Title 10 (domestic violence diversion program) or by §4764 of Title 16 ( first offenders controlled substances diversion program).

**“Substantially similar crimes in another State of Jurisdiction”**, shall include all crimes prohibited by or punishable under Title 18 of the United States Code Annotated (U.S.C.A.) such as, but not limited to, Federal Health Care offenses.

9.1 Any crime which involves the use of physical force or violence toward or upon the person of another and shall include by way of example and not of limitation the following crimes set forth in Title 11 of the Delaware Code Annotated:

Assaults and Related Offenses

9.1.1 §601. Offensive touching;

9.1.2 §602. Menacing;

9.1.3 §603. Reckless endangering in the second

degree;

9.1.4 §604. Reckless endangering in the first

degree;

9.1.5 §605. Abuse of a pregnant female in the

second degree;

9.1.6 §606. Abuse of a pregnant female in the

first degree;

9.1.7 §611. Assault in the third degree;

9.1.8 §612. Assault in the second degree;

9.1.9 §613. Assault in the first degree;

9.1.10 §614. Assault on a sports official.

9.1.11 §615. Assault by abuse or neglect;

9.1.12 §621. Terroristic threatening;

9.1.13 §625. Unlawfully administering drugs;

9.1.14 §626. Unlawfully administering controlled

substance or counterfeit substance or narcotic drugs;

9.1.15 §627. Prohibited acts as to substances

releasing vapors or fumes;

9.1.16 §628. Vehicular assault in the second

degree;

9.1.17 §629. Vehicular assault in the first degree;

9.1.18 §630. Vehicular homicide in the second

degree;

9.1.19 §630A. Vehicular homicide in the first

degree;

9.1.20 §631. Criminally negligent homicide;

9.1.21 §632. Manslaughter;

9.1.22 §633. Murder by abuse or neglect in the

second degree;

9.1.23 §634. Murder by abuse or neglect in the

first degree;

9.1.24 §635. Murder in the second degree;

9.1.25 §636. Murder in the first degree;

9.1.26 §645. Promoting suicide.

Abortion and Related Offenses

9.1.27 §651. Abortion;

9.1.28 §653. Issuing abortifacient articles.

Sexual Offenses

9.1.29 §763. Sexual harassment;

9.1.30 §764. Indecent exposure in the second

degree;

9.1.31 §765. Indecent exposure in the first

degree;

9.1.32 §766. Incest;

9.1.33 §767. Unlawful sexual contact in the third

degree;

9.1.34 §768. Unlawful sexual contact in the

second degree;

9.1.35 §769. Unlawful sexual contact in the first

degree;

9.1.36 §770. Rape in the fourth degree;

9.1.37 §771. Rape in the third degree;

9.1.38 §772. Rape in the second degree;

9.1.39 §773. Rape in the first degree;

9.1.40 §776. Sexual extortion;

9.1.41 §777. Bestiality;

9.1.42 §778. Continuous sexual abuse of a child;

9.1.43 §780. Female genital mutilation.

Kidnapping and Related Offenses

9.1.44 §781. Unlawful imprisonment in the

second degree;

9.1.45 §782. Unlawful imprisonment in the first

degree;

9.1.46 §783. Kidnapping in the second degree;

9.1.47 §783A. Kidnapping in the first degree;

9.1.48 §785. Interference with custody;

Coercion

9.1.49 §791. Acts constituting coercion;

9.2 Any crime which involves dishonesty or false, fraudulent or aberrant behavior and shall include by way of example and not of limitation the following crimes listed in Title 11 of the Delaware Code Annotated:

Arson and Related Offenses

9.2.1 §801. Arson in the third degree;

9.2.2 §802. Arson in the second degree;

9.2.3 §803. Arson in the first degree;

9.2.4 §804. Reckless burning or exploding;

9.2.5 §805. Cross or religious symbol burning;

Criminal Trespass and Burglary

9.2.6 §820. Trespassing with intent to peer or peep into a window or door of another;

9.2.7 §821. Criminal trespass in the third

degree;

9.2.8 §822. Criminal trespass in the second

degree;

9.2.9 §823. Criminal trespass in the first degree;

9.2.10 §824. Burglary in the third degree;

9.2.11 §825. Burglary in the second degree;

9.2.12 §826. Burglary in the first degree;

9.2.13 §828. Possession of burglar's tools or

instruments facilitating theft;

Robbery

9.2.14 §831. Robbery in the second degree;

9.2.15 §832. Robbery in the first degree.

- 9.2.16 §835. Carjacking in the second degree;  
9.2.17 §836. Carjacking in the first degree;  
Theft and Related Offenses  
9.2.18 §840. Shoplifting; class G felony;  
9.2.19 §840A. Use of illegitimate retail sales receipt or Universal Product Code Label.  
9.2.20 §841. Theft;  
9.2.21 §842. Theft; lost or mislaid property; mistaken delivery.  
9.2.22 §843. Theft; false pretense.  
9.2.23 §844. Theft; false promise.  
9.2.24 §845. Theft of services.  
9.2.25 §846. Extortion;  
9.2.26 §848. Misapplication of property;  
9.2.27 §849. Theft of rented property;  
9.2.28 §850. Use, possession, manufacture, distribution and sale of unlawful telecommunication and access devices.  
9.2.29 §851. Receiving stolen property;  
9.2.30 §853. Unauthorized use of a vehicle;  
9.2.31 §854. Identity theft;  
9.2.32 §859. Larceny of livestock;  
9.2.33 §860. Possession of shoplifter's tools or instruments facilitating theft;  
Forgery and Related Offenses  
9.2.34 §861. Forgery; class F felony;  
9.2.35 §862. Possession of forgery devices;  
Offenses Involving Falsification of Records  
9.2.36 §871. Falsifying business records;  
9.2.37 §872. Falsifying business records;  
9.2.38 §873. Tampering with public records in the second degree;  
9.2.39 §876. Tampering with public records in the first degree;  
9.2.40 §877. Offering a false instrument for filing;  
9.2.41 §878. Issuing a false certificate;  
Bribery Not Involving Public Servants  
9.2.42 §881. Bribery;  
9.2.43 §882. Bribe receiving;  
Frauds on Creditors  
9.2.44 §891. Defrauding secured creditors;  
9.2.45 §892. Fraud in insolvency;  
9.2.46 §893. Interference with levied-upon property;  
Other Frauds and Cheats  
9.2.47 §900. Issuing a bad check;  
9.2.48 §903. Unlawful use of credit card;  
9.2.49 §903A. Reencoder and scanning devices;  
9.2.50 §906. Deceptive business practices;  
9.2.51 §907. Criminal impersonation;  
9.2.52 §907A. Criminal impersonation, accident related;  
9.2.53 §907B. Criminal impersonation of a police officer;  
9.2.54 §908. Unlawfully concealing a will;  
9.2.55 §909. Securing execution of documents by deception;  
9.2.56 §910. Debt adjusting;  
9.2.57 §911. Fraudulent conveyance of public lands;  
9.2.58 §912. Fraudulent receipt of public lands;  
9.2.59 §913. Insurance fraud;  
9.2.60 §913A. Health care fraud;  
9.2.61 §914. Use of consumer identification information;  
9.2.62 §915. Use of credit card information;  
9.2.63 §915A. Credit and debit card transaction receipts;  
9.2.64 §916. Home improvement fraud;  
9.2.65 §917. New home construction fraud;  
Offenses Relating to Recorded Devices  
9.2.66 §920. Transfer of recorded sounds;  
9.2.67 §921. Sale of transferred recorded sounds;  
9.2.68 §922. Improper labeling;  
Computer Related Offenses  
9.2.69 §932. Unauthorized access.  
9.2.70 §933. Theft of computer services.  
9.2.71 §934. Interruption of computer services.  
9.2.72 §935. Misuse of computer system information.  
9.2.73 §936. Destruction of computer equipment.  
9.2.74 §937. Unrequested or unauthorized electronic mail or use of network or software to cause same.  
9.2.75 §938. Failure to promptly cease electronic communication upon request.  
Offenses Relating to Marriage  
9.2.76 §1001. Bigamy;  
9.2.77 §1003. Bigamous marriage contracted outside the State.  
9.3 Any crime which involves misuse or abuse of children or animals and shall include by way of example and not of limitation the following crimes listed in Title 11 of the Delaware Code Annotated:  
Child Welfare; Sexual Offenses, Animal Offenses  
9.3.1 §1100. Dealing in children;  
9.3.2 §1101. Abandonment of child;  
9.3.3 §1102. Endangering the welfare of a child;  
9.3.4 §1105. Endangering the welfare of an incompetent person;  
9.3.5 §1106. Unlawfully dealing with a child;  
9.3.6 §1107. Endangering children;  
9.3.7 §1108. Sexual exploitation of a child;  
9.3.8 §1109. Unlawfully dealing in child pornography;  
9.3.9 §1111. Possession of child pornography;  
9.3.10 §1112. Sexual offenders; prohibitions

from school zones.

9.3.11 §1112A. Sexual solicitation of a child;

9.3.12 §1113. Criminal non-support and aggravated criminal non-support.

9.3.13 §1114. Body-piercing; tattooing or branding;

9.3.14 §1114A. Tongue-splitting;

9.3.15 §1116. Sale or distribution of tobacco products to minors;

9.3.16 §1117. Notice;

9.3.17 §1119. Distribution of cigarettes through vending machines;

9.3.18 §1120. Distribution of tobacco products;

9.3.19 §1124. Purchase or receipt of tobacco products by minor;

9.3.20 §1325. Cruelty to animals;

9.3.21 §1325A. The unlawful trade in dog or cat by-products;

9.3.22 §1326. Animals; fighting and baiting prohibited;

9.3.23 §1327. Maintaining a dangerous animal;

9.4 Any crime which involves offenses against the public order the commission of which may tend to bring discredit upon the profession and which are thus substantially related to one's fitness to practice such profession and shall include by way of example and not of limitation the following crimes listed in Title 11 of the Delaware Code Annotated:

#### Bribery and Improper Influence

9.4.1 §1201. Bribery;

9.4.2 §1203. Receiving a bribe;

9.4.3 §1205. Giving unlawful gratuities;

9.4.4 §1206. Receiving unlawful gratuities;

9.4.5 §1207. Improper influence;

9.4.6 §1211. Official misconduct;

9.4.7 §1212. Profiteering.

#### Perjury and related offenses

9.4.8 §1221. Perjury in the third degree;

9.4.9 §1222. Perjury in the second degree;

9.4.10 §1223. Perjury in the first degree;

9.4.11 §1233. Making a false written statement;

9.4.12 §1239. Wearing a disguise during the commission of a felony;

9.4.13 §1240. Terroristic threatening of public officials or public servants;

9.4.14 §1241. Refusing to aid a police officer;

9.4.15 §1243. Obstructing fire-fighting operations;

9.4.16 §1244. Hindering prosecution;

9.4.17 §1245. Falsely reporting an incident;

9.4.18 §1246. Compounding a crime;

9.4.19 §1248. Obstructing the control and suppression of rabies;

9.4.20 §1249. Abetting the violation of driver's

license restrictions;

9.4.21 §1250. Offenses against law-enforcement animals;

9.4.22 §1251. Escape in the third degree;

9.4.23 §1252. Escape in the second degree;

9.4.24 §1253. Escape after conviction;

9.4.25 §1254. Assault in a detention facility;

9.4.26 §1257A. Use of an animal to avoid capture;

9.4.27 §1259. Sexual relations in detention facility;

9.4.28 §1260. Misuse of prisoner mail.

Offenses Relating to Judicial and Similar Proceedings

9.4.29 §1261. Bribing a witness;

9.4.30 §1262. Bribe receiving by a witness;

9.4.31 §1263. Tampering with a witness;

9.4.32 §1263A. Interfering with child witness.

9.4.33 §1264. Bribing a juror;

9.4.34 §1265. Bribe receiving by a juror;

9.4.35 §1266. Tampering with a juror;

9.4.36 §1267. Misconduct by a juror;

9.4.37 §1269. Tampering with physical evidence;

9.4.38 §1271. Criminal contempt;

9.4.39 §1271A. Criminal contempt of a domestic violence protective order;

9.4.40 §1273. Unlawful grand jury disclosure.

9.5 Any crime which involves offenses against a public health order and decency which may tend to bring discredit upon the profession, specifically including the below listed crimes from Title 11 of the Delaware Code Annotated which evidence a lack of appropriate concern for the safety and well being of another person or persons in general or sufficiently flawed judgment to call into question the individuals ability to make health care decisions or advise upon health care related matters for other individuals.

#### Disorderly Conduct and Related Offenses

9.5.1 §1301. Disorderly conduct;

9.5.2 §1302. Riot;

9.5.3 §1304. Hate crimes;

9.5.4 §1311. Harassment;

9.5.5 §1312. Aggravated harassment;

9.5.6 §1312A. Stalking;

9.5.7 §1313. Malicious interference with emergency communications;

9.5.8 §1315. Public intoxication;

9.5.9 §1316. Registration of out-of-state liquor

agents;

9.5.10 §1320. Loitering on property of a state-supported school, college or university;

9.5.11 §1321. Loitering

9.5.12 §1322. Criminal nuisance;

9.5.13 §1323. Obstructing public passages;



9.5.14 §1324. Obstructing ingress to or egress from public buildings;

9.5.15 §1331. Desecration;

9.5.16 §1332. Abusing a corpse;

9.5.17 §1333. Trading in human remains and associated funerary objects.

9.5.18 §1335. Violation of privacy;

9.5.19 §1338. Bombs, incendiary devices, Molotov cocktails and explosive devices;

9.5.20 §1339. Adulteration;

9.5.21 §1340. Desecration of burial place.

Offenses Involving Public Indecency

9.5.22 §1341. Lewdness;

9.5.23 §1342. Prostitution;

9.5.24 §1343. Patronizing a prostitute prohibited.

9.5.25 §1351. Promoting prostitution in the third degree;

9.5.26 §1352. Promoting prostitution in the second degree;

9.5.27 §1353. Promoting prostitution in the first degree;

9.5.28 §1355. Permitting prostitution;

Obscenity

9.5.29 §1361. Obscenity; acts constituting;

9.5.30 §1365. Obscene literature harmful to minors;

9.5.31 §1366. Outdoor motion picture theatres;

Offenses Involving Gambling

9.5.32 §1403. Advancing gambling in the first degree;

9.5.33 §1404. Providing premises for gambling;

9.5.34 §1405. Possessing a gambling device; class A misdemeanor.

9.5.35 §1406. Being concerned in interest in keeping any gambling device;

9.5.36 §1407. Engaging in a crap game;

9.5.37 §1411. Unlawfully disseminating gambling information.

9.6 Any crime which involves the illegal possession or the misuse or abuse of narcotics, or other addictive substances and those non-addictive substances with a substantial capacity to impair reason or judgment and shall include by way of example and not of limitation the following crimes listed in Chapter 47 of Title 16 of the Delaware Code Annotated:

9.6.1 §4751. Prohibited acts A;

9.6.2 §4752. Prohibited acts B;

9.6.3 §4752A. Unlawful delivery of noncontrolled substance.

9.6.4 §4753. Prohibited acts C.

9.6.5 §4753A. Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, L.S.D., or designer drugs.

9.6.6 §4754. Prohibited acts D;

9.6.7 §4754A. Possession and delivery of noncontrolled prescription drug.

9.6.8 §4755. Prohibited acts E;

9.6.9 §4756. Prohibited acts;

9.6.10 §4757. Hypodermic syringe or needle; delivering or possessing; disposal; exceptions;

9.6.11 §4758. Keeping drugs in original containers.

9.6.12 §4761. Distribution to persons under 21 years of age;

9.6.13 §4761A. Purchase of drugs from minors;

9.6.14 §4767. Distribution, delivery, or possession of controlled substance within 1,000 feet of school property;

9.6.15 §4768. Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship.

9.7 Any crime which involves the misuse or illegal possession or sale of a deadly weapon or dangerous instrument and shall include by way of example and not of limitation the following crimes listed in Title 11 of the Delaware Code Annotated:

Offenses Involving Deadly Weapons and Dangerous Instruments

9.7.1 §1442. Carrying a concealed deadly weapon;

9.7.2 §1443. Carrying a concealed dangerous instrument;

9.7.3 §1444. Possessing a destructive weapon;

9.7.4 §1445. Unlawfully dealing with a dangerous weapon;

9.7.5 §1446. Unlawfully dealing with a switchblade knife;

9.7.6 §1447. Possession of a deadly weapon during commission of a felony;

9.7.7 §1447A. Possession of a firearm during commission of a felony;

9.7.8 §1448. Possession and purchase of deadly weapons by persons prohibited;

9.7.9 §1448A. Criminal history record checks for sales or firearms;

9.7.10 §1449. Wearing body armor during commission of felony;

9.7.11 §1450. Receiving a stolen firearm;

9.7.12 §1451. Theft of a firearm;

9.7.13 §1452. Unlawfully dealing with knuckles-combination knife;

9.7.14 §1453. Unlawfully dealing with martial arts throwing star;

9.7.15 §1454. Giving a firearm to person prohibited;

9.7.16 §1455. Engaging in a firearms transaction on behalf of another;

- 9.7.17 §1456. Unlawfully permitting a minor access to a firearm;
- 9.7.18 §1457. Possession of a weapon in a Safe School and Recreation Zone;
- 9.7.19 §1458. Removing a firearm from the possession of a law enforcement officer;
- 9.7.20 §1459. Possession of a weapon with a removed, obliterated or altered serial number;
- 9.7.21 §1471. Prohibited acts.  
Offenses Involving Drug Paraphernalia
- 9.7.22 §4774. Penalties.  
Offenses Involving Organized Crime and Racketeering
- 9.7.23 §1504. Criminal Penalties for Organized Crime & Racketeering Offenses Involving Intimidation of Victims or Witnesses
- 9.7.25 §3533. Aggravated act of intimidation, Class D felony
- 9.7.24 §3532. Acts of Intimidation: Class E felony
- Other Crimes
- 9.7.26 Title 3 §1041. Willfully or maliciously starting fires; Carelessly Starting Fires;
- 9.7.27 §1043. Setting fire to woodland; Unseasonable Marsh Burning.
- 9.7.28 Title 4 §901. Offenses carrying penalty of imprisonment for 3 to 6 months;
- 9.7.29 §902. Offenses carrying penalty of fine of \$500 to \$1,000 or imprisonment of 3 to 6 months on failure to pay fine;
- 9.7.30 §903. Offenses carrying penalty of fine of not more than \$100 imprisonment for 1 month on failure to pay fine;
- 9.7.31 §904. Offenses concerning certain persons;
- 9.7.32 §905. Unlicensed manufacture of alcoholic liquor; Possession of still, apparatus, mash, etc., by unlicensed person;
- 9.7.33 §906. Transportation or shipment;
- 9.7.34 §907. Interference with officer or inspector;
- 9.7.35 §908. Failure of licensee to file report;
- 9.7.36 §909. Violation of rules respecting liquor taxes.
- 9.7.37 Title 7 §1717. Unauthorized acts against a service guide or seeing eye dog.
- 9.7.38 Title 11 §2403. Manufacture, possession or sale of intercepting device;
- 9.7.39 §2410. Breaking and entering, etc. to place or remove equipment;
- 9.7.40 §2412. Obstruction, impediment or prevention of interception;
- 9.7.41 §2422. Divulging contents of communications;
- 9.7.42 §3532. Act of intimidation;
- 9.7.43 §3533. Aggravated act of intimidation;
- 9.7.44 §3534. Attempt to intimidate;
- 9.7.45 §8523. Penalties [for violation of reporting provision re: SBI];
- 9.7.46 §8562. Penalties [for failure of child-care provider to obtain information required under §8561 or for those providing false information]
- 9.7.47 §8572. Penalties [for providing false information when seeking employment in a public school]
- 9.7.48 §9016. Filing false claim [under Victims' Compensation Fund].
- 9.7.49 Title 12 §210. Alteration, theft or destruction of Will.
- 9.7.50 Title 16 §1136. Abuse or neglect of a patient or resident of a nursing facility.
- 9.7.51 Title 21 §2118A. Unlawful possession or manufacture of proof of insurance;
- 9.7.52 §2133. Penalties; jurisdiction of justices of the peace.
- 9.7.53 §2315. False statements;
- 9.7.54 §2316. Altering or forging certificate of title, manufacturer's certificate of origin, registration sticker or vehicle I identification plate;
- 9.7.55 §2620. False statements; incorrect or incomplete information;
- 9.7.56 §2703. License to operate a motorcycle, motorbike, etc.;
- 9.7.57 §2710. Issuance of a Level 1 Learner's Permit and Class D operator's license to persons under 18 years of age;
- 9.7.58 §2722. Restricted licenses based on driver's physical limitations;
- 9.7.59 §2751. Unlawful application for or use of license or identification card;
- 9.7.60 §2752. False statements;
- 9.7.61 §2756. Driving vehicle while license is suspended or revoked; penalty;
- 9.7.62 §2760. Duplication, reproduction, altering, or counterfeiting of driver's licenses or identification cards.
- 9.7.63 Title 23 §2302. Operation of a vessel or boat while under the influence of intoxicating liquor and/or drugs;
- 9.7.64 §2305. Penalties; jurisdiction.
- 9.7.65 Title 24 §903. Sale to persons under 21 or intoxicated persons.
- 9.7.66 Title 29 §3107. Motor vehicle safety-responsibility; False statements;
- 9.7.67 §4175A. Reckless driving;
- 9.7.68 §4177. Driving a vehicle while under the influence or with a prohibited alcohol content; evidence; arrests; and penalties.
- 9.7.69 §4177M. Operating a commercial

motor vehicle with a prohibited blood alcohol concentration or while impaired by drugs;

9.7.70 §4183. Parking areas for vehicles being used by persons with disabilities;

9.7.71 §4198J. Bicycling on highways under influence of drugs or alcohol;

9.7.72 §4198O. Operation of electric personal assistive mobility devices (EPAMD);

9.7.73 §4201. Duty of driver involved in accident resulting in property damage or injury;

9.7.74 §4202. Duty of driver involved in accident resulting in injury or death to any person;

9.7.75 §4203. Duty to report accidents; evidence;

9.7.76 §4204. Report of damaged vehicles; cars involved in fatal accidents;

9.7.77 §4604. Possession of motor vehicle master keys, manipulative keys, key-cutting devices, lock picks or lock picking devices and hot wires;

9.7.78 §6420. Odometers penalties;

9.7.79 §6702. Driving vehicle without consent of owner;

9.7.80 §6704. Receiving or transferring stolen vehicle;

9.7.81 §6705. Removed, falsified or unauthorized identification number on vehicle, bicycle or engine; removed or affixed license/registration plate with intent to misrepresent identity;

9.7.82 §6707. Penalty;

9.7.83 §6709. Removal of warranty or certification stickers; vehicle identification plates; confidential vehicle identification numbers;

9.7.84 §6710. Unlawful possession of assigned titles, assigned registration cards, vehicle identification plates and warranty stickers.

9.7.85 Title 30 §571. Attempt to evade or defeat tax;

9.7.86 §572. Failure to collect or pay over tax;

9.7.87 §573. Failure to file return, supply information or pay tax;

9.7.88 §574. Fraud and false statements;

9.7.89 §576. Misdemeanors.

9.7.90 Title 31§1007. Fraudulent acts penalties;

9.7.91 §3913. Welfare violations [knowing or reckless abuse of an infirm adult]

9.8 Any crime which is a violation of Title 24, Chapter 5 as it may be amended from time to time or of any other statute which requires the reporting of a medical situation or condition to state, federal or local authorities or a crime which constitutes a violation of the Podiatric Practice Act of the state in which the conviction occurred or in which the physician is licensed.

9.9 The Board reserves the jurisdiction and authority to

modify this regulation as and if it becomes necessary to either add or delete crimes including such additions as may be required on an emergency basis under 29 Del.C. §10119 to address imminent peril to the public health, safety or welfare.

**\*Please Note: As the rest of the sections were not amended, they are not being published. A complete set of the rules and regulations for the Board of Podiatry is available at:**

**<http://www.professionallicensing.state.de.us/boards/podiatry/index.shtml>**

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**DIVISION OF PROFESSIONAL REGULATION  
REAL ESTATE COMMISSION**

Statutory Authority: 24 Delaware Code,  
Section 2905(a)(1) (24 Del.C. §2905(a)(1))  
24 DE Admin Code 2900

**PUBLIC NOTICE**

The Delaware Real Estate Commission in accordance with 24 Del.C. §2905(a)(1) has proposed changes to its rules and regulations as mandated by SB 229. The proposal identifies crimes that are substantially related to services provided by real estate brokers, salespersons, and appraisers.

A public hearing will be held on February 10, 2005 at 9:00 a.m. 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 Real Estate Commission, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Commission at the above address. The final date to receive written comments will be at the public hearing.

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

**16.0 Crimes Substantially Related To The Practice Of Real Estate Brokers, Salespersons And Appraisers**

**16.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of real estate brokers, salespersons and appraisers in the State of Delaware without regard to the place of conviction:**

**16.1.1 Murder by abuse or neglect in the second degree; class B felony. 11 Del.C. §633.**

- 16.1.2 Murder by abuse or neglect in the first degree; class A felony. 11 Del.C. §634.
- 16.1.3 Murder in the second degree; class A felony. 11 Del.C. §635.
- 16.1.4 Murder in the first degree; class A felony. 11 Del.C. §636.
- 16.1.5 Unlawful sexual contact in the second degree; class G felony. 11 Del.C. §768.
- 16.1.6 Unlawful sexual contact in the first degree; class F felony. 11 Del.C. §769.
- 16.1.7 Rape in the fourth degree; class C felony. 11 Del.C. §770.
- 16.1.8 Rape in the third degree; class B felony. 11 Del.C. §771.
- 16.1.9 Rape in the second degree; class B felony. 11 Del.C. §772.
- 16.1.10 Rape in the first degree; class A felony. 11 Del.C. §773.
- 16.1.11 Continuous sexual abuse of a child; class B felony. 11 Del.C. §778.
- 16.1.12 Dangerous crime against a child; class B felony. 11 Del.C. §779.
- 16.1.13 Kidnapping in the second degree; class C felony. 11 Del.C. §783.
- 16.1.14 Kidnapping in the first degree; class B felony. 11 Del.C. §783A.
- 16.1.15 Arson in the third degree; class G felony. 11 Del.C. §801.
- 16.1.16 Arson in the second degree; class D felony. 11 Del.C. §802.
- 16.1.17 Arson in the first degree; class C felony. 11 Del.C. §803.
- 16.1.18 Burglary in the second degree; class D felony. 11 Del.C. §825.
- 16.1.19 Burglary in the first degree; class C felony; class B felony. 11 Del.C. §826.
- 16.1.20 Robbery in the second degree; class E felony. 11 Del.C. §831.
- 16.1.21 Robbery in the first degree; Class B. 11 Del.C. §832.
- 16.1.22 Carjacking in the first degree; class C felony; class B felony. 11 Del.C. §836.
- 16.1.23 Extortion; class E felony. 11 Del.C. §846.
- 16.1.24 Misapplication of property; class G felony. 11 Del.C. §848.
- 16.1.25 Theft of rented property; class G felony. 11 Del.C. §849.
- 16.1.26 Identity theft; class E felony; class D felony. 11 Del.C. §854.
- 16.1.27 Forgery; class F felony; class G felony. 11 Del.C. §861.
- 16.1.28 Possession of forgery devices; class G felony. 11 Del.C. §862.
- 16.1.29 Tampering with public records in the first degree; class E felony. 11 Del.C. §876.
- 16.1.30 Issuing a false certificate; class G felony. 11 Del.C. §878.
- 16.1.31 Fraudulent conveyance of public lands; class G felony. 11 Del.C. §911.
- 16.1.32 Fraudulent receipt of public lands; class G felony. 11 Del.C. §912.
- 16.1.33 Insurance fraud; class G felony. 11 Del.C. §913.
- 16.1.34 Home improvement fraud; class G felony. 11 Del.C. §916.
- 16.1.35 New home construction fraud; class C felony, class F felony, class G felony. 11 Del.C. §917.
- 16.1.36 Dealing in children; class E felony. 11 Del.C. §1100.
- 16.1.37 Endangering the welfare of a child; class E or G felony. 11 Del.C. §1100.
- 16.1.38 Sexual exploitation of a child; class B felony. 11 Del.C. §1108.
- 16.1.39 Unlawfully dealing in child pornography; class D felony. 11 Del.C. §1109.
- 16.1.40 Possession of child pornography; class F felony. 11 Del.C. §1111.
- 16.1.41 Sexual solicitation of a child; class C felony. 11 Del.C. §1112A.
- 16.1.42 Bribery; class E felony. 11 Del.C. §1201.
- 16.1.43 Receiving a bribe; class E felony. 11 Del.C. §1203.
- 16.1.44 Perjury in the second degree; class F felony. 11 Del.C. §1222.
- 16.1.45 Perjury in the first degree; class D felony. 11 Del.C. §1223.
- 16.1.46 Tampering with physical evidence; class G felony. 11 Del.C. §1269.
- 16.1.47 Hate crimes; class G felony, class F felony, class E felony, class D felony, class C felony, class B felony, class A felony. 11 Del.C. §1304.
- 16.1.48 Possession of a deadly weapon during commission of a felony; class B felony. 11 Del.C. §1447.
- 16.1.49 Possession of a firearm during commission of a felony; class B felony. 11 Del.C. §1447A.
- 16.1.50 Removing a firearm from the possession of a law enforcement officer; class C felony. 11 Del.C. §1458.
- 16.1.51 Organized Crime and Racketeering, Class B Felony. 11 Del.C. §1504.
- 16.1.52 Abuse of patient or resident in nursing home; Class D felony; Class G felony; Class A felony. 16 Del.C. §1136(a).
- 16.1.53 Prohibited acts A; Class B felony. 16 Del.C. §4751.
- 16.1.54 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3,4-

methylenedioxymethamphetamine (MDMA); Class B felony. 16 **Del.C.** §4753A.

16.1.55 Knowing or reckless abuse of an infirm adult; Class D felony; Class E felony; Class G felony; Class A felony. 31 **Del.C.** §3913.

16.2 Crimes substantially related to the practice of real estate brokers, salespersons and appraisers shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

**\*Please Note:** As the rest of the sections were not amended, they are not being published. A complete set of the rules and regulations for the Real Estate Commission is available at:

<http://www.professionallicensing.state.de.us/boards/realstate/index.shtml>

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**DIVISION OF PROFESSIONAL REGULATION  
BOARD OF PROFESSIONAL COUNSELORS OF  
MENTAL HEALTH AND  
CHEMICAL DEPENDENCY PROFESSIONALS**

Statutory Authority: 24 Delaware Code,  
Section 3006(a)(1) (24 **Del.C.** §3006(a)(1))  
24 **DE Admin. Code** 3000

**PUBLIC NOTICE**

The Delaware Board of Professional Counselors of Mental Health and Chemical Dependency Professionals in accordance with 24 **Del.C.** §3006(a)(1) has proposed changes to its rules and regulations as mandated by SB 229. The proposal identifies crimes that are substantially related to the provision of mental health counseling and chemical dependency counseling.

A public hearing will be held on February 4, 2005 at 3:00 p.m. 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 Professional Counselors of Mental Health and Chemical Dependency Professionals, 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.

**11.0 Crimes substantially related to the provision of mental health counseling and chemical dependency counseling:**

11.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the provision of mental health counseling and chemical dependency counseling in the State of Delaware without regard to the place of conviction:

11.1.1 Menacing. 11 **Del.C.** §602(a)

11.1.2 Aggravated menacing. 11 **Del.C.** §602(b)

11.1.3 Reckless endangering in the first degree.

11 **Del.C.** §604

11.1.4 Abuse of a pregnant female in the second degree. 11 **Del.C.** §605.

11.1.5 Abuse of a pregnant female in the first degree. 11 **Del.C.** §606.

11.1.6 Assault in the third degree. 11 **Del.C.** §611.

11.1.7 Assault in the second degree. 11 **Del.C.** §612

11.1.8 Assault in the first degree. 11 **Del.C.** §613.

11.1.9 Abuse of a sports official; felony. 11 **Del.C.** §614.

11.1.10 Assault by abuse or neglect. 11 **Del.C.** §615.

11.1.11 Terroristic threatening. 11 **Del.C.** §621(a) and (b).

11.1.12 Unlawfully administering drugs. 11 **Del.C.** §625.

11.1.13 Unlawfully administering controlled substance or counterfeit substance or narcotic drugs. 11 **Del.C.** §626.

11.1.14 Criminally negligent homicide. 11 **Del.C.** §631.

11.1.15 Manslaughter. 11 **Del.C.** §632.

11.1.16 Murder by abuse or neglect in the second degree. 11 **Del.C.** §633

11.1.1 Murder by abuse or neglect in the first degree. 11 **Del.C.** §634.

11.1.18 Murder in the second degree. 11 **Del.C.** §635.

11.1.19 Murder in the first degree. 11 **Del.C.** §636.

11.1.20 Promoting suicide. 11 **Del.C.** §645.

11.1.21 Abortion. 11 **Del.C.** §651.

11.1.22 Self abortion. 11 **Del.C.** §652.

11.1.23 Issuing abortifacient articles. 11 **Del.C.** §653.

11.1.24 Sexual harassment. 11 **Del.C.** §763.

11.1.25 Indecent exposure in the second degree. 11 **Del.C.** §764.

11.1.26 Indecent exposure in the first degree. 11

- Del.C. §765.  
11.1.27 Incest. 11 Del.C. §766.  
11.1.28 Unlawful sexual contact in the third degree. 11 Del.C. §767.  
1.1.29 Unlawful sexual contact in the second degree. 11 Del.C. §768.  
11.1.30 Unlawful sexual contact in the first degree. 11 Del.C. §769.  
11.1.31 Rape in the fourth degree. 11 Del.C. §770.  
11.1.32 Rape in the third degree. 11 Del.C. §771.  
11.1.33 Rape in the second degree. 11 Del.C. §772.  
11.1.34 Rape in the first degree. 11 Del.C. §773.  
11.1.35 Sexual extortion. 11 Del.C. §776.  
11.1.36 Bestiality. 11 Del.C. §777.  
11.1.37 Continuous sexual abuse of a child. 11 Del.C. §778.  
11.1.38 Dangerous crime against a child. 11 Del.C. §779.  
11.1.39 Female genital mutilation. 11 Del.C. §780.  
11.1.40 Unlawful imprisonment in the second degree. 11 Del.C. §781.  
11.1.41 Unlawful imprisonment in the first degree. 11 Del.C. §782.  
11.1.42 Kidnapping in the second degree. 11 Del.C. §783.  
11.1.43 Kidnapping in the first degree. 11 Del.C. §783A.  
11.1.44 Acts constituting coercion. 11 Del.C. §791.  
11.1.45 Arson in the third degree. 11 Del.C. §801.  
11.1.46 Arson in the second degree. 11 Del.C. §802.  
11.1.47 Arson in the first degree. 11 Del.C. §803.  
11.1.48 Cross or religious symbol burning. 11 Del.C. §805.  
11.1.49 Trespassing with intent to peer or peep into a window of another. 11 Del.C. §820.  
11.1.50 Burglary in the third degree. 11 Del.C. §824.  
11.1.51 Burglary in the second degree. 11 Del.C. §825.  
11.1.52 Burglary in the first degree. 11 Del.C. §826.  
11.1.53 Robbery in the second degree. 11 Del.C. §831.  
11.1.54 Robbery in the first degree. 11 Del.C. §832.  
11.1.55 Carjacking in the second degree. 11 Del.C. §835.  
11.1.56 Carjacking in the first degree. 11 Del.C. §836.  
11.1.57 Theft; felony. 11 Del.C. §841.  
11.1.58 Theft; false pretense. 11 Del.C. §843.  
11.1.59 Theft; false promise. 11 Del.C. §844.  
11.1.60 Extortion. 11 Del.C. §846.  
11.1.61 Misapplication of property. 11 Del.C. §848.  
11.1.62 Theft of rented property; felony 11 Del.C. §849.  
11.1.63 Receiving stolen property. 11 Del.C. §851.  
11.1.64 Identity theft. 11 Del.C. §854.  
11.1.65 Forgery. 11 Del.C. §861.  
11.1.66 Possession of forgery devices. 11 Del.C. §862.  
11.1.67 Falsifying business records. 11 Del.C. §871.  
11.1.68 Tampering with public records in the second degree 11 Del.C. §873.  
11.1.69 Tampering with public records in the first degree. 11 Del.C. §876.  
11.1.70 Offering a false instrument for filing. 11 Del.C. §877.  
11.1.71 Issuing a false certificate. 11 Del.C. §878.  
11.1.72 Bribery. 11 Del.C. §881.  
11.1.73 Bribe receiving. 11 Del.C. §882.  
11.1.74 Defrauding secured creditors. 11 Del.C. §891.  
11.1.75 Fraud in insolvency. 11 Del.C. §892.  
11.1.76 Interference with levied-upon property. 11 Del.C. §893.  
11.1.77 Issuing a bad check; felony. 11 Del.C. §900.  
11.1.78 Unlawful use of credit card; felony. 11 Del.C. §903.  
11.1.79 Reencoder and scanning devices. 11 Del.C. §903A.  
11.1.80 Criminal impersonation. 11 Del.C. §907.  
11.1.81 Criminal impersonation, accident related. 11 Del.C. §907A.  
11.1.82 Criminal impersonation of a police officer. 11 Del.C. §907B.  
11.1.83 Unlawfully concealing a will. 11 Del.C. §908.  
11.1.84 Securing execution of documents by deception. 11 Del.C. §909.  
11.1.85 Fraudulent conveyance of public lands. 11 Del.C. §911.  
11.1.86 Fraudulent receipt of public lands. 11 Del.C. §912.  
11.1.87 Insurance fraud. 11 Del.C. §913.  
11.1.88 Health care fraud. 11 Del.C. §913A.  
11.1.89 Home improvement fraud. 11 Del.C. §916.  
11.1.90 New home construction fraud. 11 Del.C. §917.  
11.1.91 Misuse of computer system information. 11 Del.C. §935.

- 11.1.92 Bigamy. 11 Del.C. §1001.
- 11.1.93 Bigamous marriage contracted outside of the State. 11 Del.C. §1002.
- 11.1.94 Dealing in children. 11 Del.C. §1100.
- 11.1.95 Abandonment of child. 11 Del.C. §1101.
- 11.1.96 Endangering the welfare of a child. 11 Del.C. §1102.
- 11.1.97 Endangering the welfare of an incompetent person. 11 Del.C. §1105.
- 11.1.98 Unlawfully dealing with a child. 11 Del.C. §1106.
- 11.1.99 Sexual exploitation of a child. 11 Del.C. §1108.
- 11.1.100 Unlawfully dealing in child pornography. 11 Del.C. §1109.
- 11.1.101 Possession of child pornography. 11 Del.C. §1111.
- 11.1.102 Sexual offenders; prohibitions from school zones. 11 Del.C. §1112.
- 11.1.103 Sexual solicitation of a child. 11 Del.C. §1112A.
- 11.1.104 Criminal non-support and aggravated criminal non-support. 11 Del.C. §1113.
- 11.1.105 Bribery. 11 Del.C. §1201
- 11.1.106 Receiving a bribe; felony. 11 Del.C. §1203.
- 11.1.107 Improper influence. 11 Del.C. §1207.
- 11.1.108 Perjury in the third degree. 11 Del.C. §1221.
- 11.1.109 Perjury in the second degree. 11 Del.C. §1353.
- 11.1.147 Permitting prostitution. 11 Del.C. §1355.
- 11.1.148 Obscenity. 11 Del.C. §1361.
- 11.1.149 Obscene literature harmful to minors. 11 Del.C. §1365.
- 11.1.150 Outdoor motion picture theatres. 11 Del.C. §1366.
- 11.1.151 Possessing a destructive weapon. 11 Del.C. §1444.
- 11.1.152 Unlawfully dealing with a dangerous weapon; felony. 11 Del.C. §1445.
- 11.1.153 Possession of a deadly weapon during commission of a felony. 11 Del.C. §1447.
- 11.1.154 Possession of a firearm during commission of a felony. 11 Del.C. §1447A.
- 11.1.155 Possession and purchase of deadly weapons by persons prohibited. 11 Del.C. §1448.
- 11.1.156 Receiving a stolen firearm. 11 Del.C. §1450.
- 11.1.157 Theft of a firearm. 11 Del.C. §1451.
- 11.1.158 Giving a firearm to person prohibited. 11 Del.C. §1454.
- 11.1.159 Engaging in a firearms transaction on behalf of another. 11 Del.C. §1455.
- 11.1.160 Possession of a weapon in a Safe School and Recreation Zone. 11 Del.C. §1457.
- 11.1.161 Removing a firearm from the possession of a law enforcement officer. 11 Del.C. §1458.
- 11.1.162 Organized Crime and Racketeering. 11 Del.C. §1504.
- 11.1.163 Victim or Witness Intimidation 11 Del.C. §§3532 & 3533.
- 11.1.164 Abuse, neglect, mistreatment or financial exploitation of residents or patients. 16 Del.C. §1136(a), (b) and (c).
- 11.1.165 Prohibited acts A under the Uniform Controlled Substances Act. 16 Del.C. §4751(a), (b) and (c).
- 11.1.166 Unlawful delivery of non controlled substance. 16 Del.C. §4752A.
- 11.1.167 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3,4-methylenedioxymethamphetamine (MDMA). 16 Del.C. §4753A (a)(1)-(9).
- 11.1.168 Prohibited acts under the Uniform Controlled Substances Act. 16 Del.C. §4756(a)(1)-(5) and (b).
- 11.1.169 Distribution to persons under 21 years of age. 16 Del.C. §4761.
- 11.1.170 Purchase of drugs from minors. 16 Del.C. §4761A
- 11.1.171 Distribution, delivery, or possession of controlled substance within 1,000 feet of school property; penalties; defenses. 16 Del.C. §4767
- 11.1.172 Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship. 16 Del.C. §4768
- 11.1.173 Drug paraphernalia-Manufacture and sale; delivery to a minor; felony. 16 Del.C. §§4771 and 4774.
- 11.1.174 Operation of a vessel or boat while under the influence of intoxicating liquor and/or drugs; third and fourth offenses. 23 Del.C. §2302(a) and §2305 (3) and (4).
- 11.1.175 Obtaining benefit under false representation. 31 Del.C. §1003.
- 11.1.176 Reports, statements and documents. 31 Del.C. §1004.
- 11.1.177 Kickback schemes and solicitations. 31 Del.C. §1005.
- 11.1.178 Conversion of payment. 31 Del.C. §1006.
- 11.1.179 Driving a vehicle while under the influence or with a prohibited alcohol content; third and fourth offenses. 21 Del.C. §4177 (3) and (4).
- 11.1.180 Duty of driver involved in accident



resulting in injury or death to any person; felony. 21 **Del.C.** §4202.

11.1.181 Prohibited trade practices against infirm or elderly. 6 **Del.C.** §2581

11.1.182 Prohibition of intimidation [under the Fair Housing Act]; 6 **Del.C.** §4619

11.1.183 Auto Repair Fraud victimizing the infirm or elderly. 6 **Del.C.** §4909A

11.1.184 Unauthorized Acts against a Service Guide or Seeing Eye Dog 7 **Del.C.** §1717

11.1.185 Interception of Communications Generally; Divulging Contents of Communications 11 **Del.C.** §2402

11.1.186 Breaking and Entering, Etc. to Place or Remove Equipment 11 **Del.C.** §2410

11.1.187 Divulging Contents of Communications. 11 **Del.C.** §2422

11.1.188 Installation and Use Generally [of pen trace and trap and trace devices]. 11 **Del.C.** §243.

11.1.189 Attempt to Intimidate. 11 **Del.C.** §3534

11.1.190 Failure of child-care provider to obtain information required under §8561 or for those providing false information; felony. 11 **Del.C.** §8562

11.1.191 Providing false information when seeking employment in a public school. 11 **Del.C.** §8572

11.1.192 Filing False Claim [under Victims' Compensation Fund]. 11 **Del.C.** §9016

11.1.193 Alteration, Theft or Destruction of Will. 12 **Del.C.** §210.

11.1.194 Failure of Physician to file report of abuse of neglect pursuant to 16 **Del.C.** §903.

11.1.195 Coercion or intimidation involving health-care decisions and falsification, destruction of a document to create a false impression that measures to prolong life have been authorized; felony. 16 **Del.C.** §2513 (b).

11.1.196 [Failure to make] Reports of Persons who are Subject to Loss Consciousness. 24 **Del.C.** §1763.

11.1.197 Abuse, neglect, exploitation or mistreatment of infirm adult. 31 **Del.C.** §3913(a), (b) and (c).

11.2 Crimes substantially related to provision of mental health counseling and chemical dependency counseling shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

**\*Please Note:** As the rest of the sections were not amended, they are not being published. A complete set of the rules and regulations for the Board of Professional Counselors of Mental Health and Chemical Dependency Professionals is available at:

<http://www.professionallicensing.state.de.us/boards/profcounselors/index.shtml>

## DIVISION OF PROFESSIONAL REGULATION BOARD OF CLINICAL SOCIAL WORK EXAMINERS

Statutory Authority: 24 Delaware Code,  
Section 3906(1) (24 **Del.C.** §3906(1))  
24 **DE Admin. Code** 3900

The Delaware Board of Clinical Social Work Examiners in accordance with 24 **Del.C.** §3906(1) has proposed changes to its rules and regulations as mandated by SB 229. The proposal identifies crimes that are substantially related to the provision of social work services.

A public hearing will be held on February 14, 2005 at 9:30 a.m. 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 Clinical Social Work 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.

### Proposed Rules and Regulations

#### **11.0 Crimes substantially related to the practice of social work:**

11.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of social work in the State of Delaware without regard to the place of conviction:

11.1.1 Aggravated menacing. 11 **Del.C.** §602(b).

11.1.2 Reckless endangering in the first degree.

11 **Del.C.** §604.

11.1.3 Abuse of a pregnant female in the second degree. 11 **Del.C.** §605.

11.1.4 Abuse of a pregnant female in the first degree. 11 **Del.C.** §606.

11.1.5 Assault in the second degree. 11 **Del.C.** §612.

11.1.6 Assault in the first degree. 11 **Del.C.** §613.



- 11.1.7 Abuse of a sports official; felony. 11 Del.C. §614.
- 11.1.8 Assault by abuse or neglect. 11 Del.C. §615.
- 11.1.9 Terroristic threatening; felony. 11 Del.C. §621.
- 11.1.10 Unlawfully administering drugs. 11 Del.C. §625.
- 11.1.11 Unlawfully administering controlled substance or counterfeit substance or narcotic drugs. 11 Del.C. §626.
- 11.1.12 Manslaughter. 11 Del.C. §632.
- 11.1.13 Murder by abuse or neglect in the second degree. 11 Del.C. §633.
- 11.1.14 Murder by abuse or neglect in the first degree. 11 Del.C. §634.
- 11.1.15 Murder in the second degree. 11 Del.C. §635.
- 11.1.16 Murder in the first degree. 11 Del.C. §636.
- 11.1.17 Promoting suicide. 11 Del.C. §645.
- 11.1.18 Abortion. 11 Del.C. §651.
- 11.1.19 Incest. 11 Del.C. §766.
- 11.1.20 Unlawful sexual contact in the third degree. 11 Del.C. §767.
- 11.1.21 Unlawful sexual contact in the second degree. 11 Del.C. §768.
- 11.1.22 Unlawful sexual contact in the first degree. 11 Del.C. §769.
- 11.1.23 Rape in the fourth degree. 11 Del.C. §770.
- 11.1.24 Rape in the third degree. 11 Del.C. §771.
- 11.1.25 Rape in the second degree. 11 Del.C. §772.
- 11.1.26 Rape in the first degree. 11 Del.C. §773.
- 11.1.27 Sexual extortion. 11 Del.C. §776.
- 11.1.28 Bestiality. 11 Del.C. §777.
- 11.1.29 Continuous sexual abuse of a child. 11 Del.C. §778.
- 11.1.30 Dangerous crime against a child. 11 Del.C. §779.
- 11.1.31 Female genital mutilation. 11 Del.C. §780.
- 11.1.32 Unlawful imprisonment in the first degree. 11 Del.C. §782.
- 11.1.33 Kidnapping in the second degree. 11 Del.C. §783.
- 11.1.34 Kidnapping in the first degree. 11 Del.C. §783A.
- 11.1.35 Acts constituting coercion. 11 Del.C. §791.
- 11.1.36 Arson in the first degree. 11 Del.C. §803.
- 11.1.37 Burglary in the third degree. 11 Del.C. §824.
- 11.1.38 Burglary in the second degree. 11 Del.C. §825.
- 11.1.39 Burglary in the first degree. 11 Del.C. §826.
- 11.1.40 Possession of burglar's tools or instruments facilitating theft. 11 Del.C. §828.
- 11.1.41 Robbery in the second degree. 11 Del.C. §831.
- 11.1.42 Robbery in the first degree. 11 Del.C. §832.
- 11.1.43 Carjacking in the second degree. 11 Del.C. §835.
- 11.1.44 Carjacking in the first degree. 11 Del.C. §836.
- 11.1.45 Extortion. 11 Del.C. §846.
- 11.1.46 Identity theft. 11 Del.C. §854.
- 11.1.47 Forgery. 11 Del.C. §861.
- 11.1.48 Falsifying business records. 11 Del.C. §871.
- 11.1.49 Tampering with public records in the second degree. 11 Del.C. §873.
- 11.1.50 Tampering with public records in the first degree. 11 Del.C. §876.
- 11.1.51 Issuing a false certificate. 11 Del.C. §878.
- 11.1.52 Criminal impersonation. 11 Del.C. §907.
- 11.1.53 Criminal impersonation, accident related. 11 Del.C. §907A.
- 11.1.54 Criminal impersonation of a police officer. 11 Del.C. §907B.
- 11.1.55 Insurance fraud. 11 Del.C. §913.
- 11.1.56 Health care fraud. 11 Del.C. §913A.
- 11.1.57 Misuse of computer system information. 11 Del.C. §935.
- 11.1.58 Dealing in children. 11 Del.C. §1100.
- 11.1.59 Endangering the welfare of a child. 11 Del.C. §1102.
- 11.1.60 Endangering the welfare of an incompetent person. 11 Del.C. §1105.
- 11.1.61 Sexual exploitation of a child. 11 Del.C. §1108.
- 11.1.62 Unlawfully dealing in child pornography. 11 Del.C. §1109.
- 11.1.63 Possession of child pornography. 11 Del.C. §1111.
- 11.1.64 Sexual offenders; prohibitions from school zones. 11 Del.C. §1112.
- 11.1.65 Sexual solicitation of a child. 11 Del.C. §1112A.
- 11.1.66 Perjury in the second degree. 11 Del.C. §1222.
- 11.1.67 Perjury in the first degree. 11 Del.C. §1223.
- 11.1.68 Making a false written statement. 11 Del.C. §1233.
- 11.1.69 Terroristic threatening of public officials or public servants. 11 Del.C. §1240.
- 11.1.70 Assault in a detention facility; Class B

- felony. 11 **Del.C.** §1254.
- 11.1.71 Sexual relations in a detention facility. 11 **Del.C.** §1259.
- 11.1.72 Bribing a witness. 11 **Del.C.** §1261.
- 11.1.73 Bribe receiving by a witness. 11 **Del.C.** §1262.
- 11.1.74 Tampering with a witness. 11 **Del.C.** §1263.
- 11.1.75 Interfering with child witness. 11 **Del.C.** §1263A.
- 11.1.76 Bribing a juror. 11 **Del.C.** §1264.
- 11.1.77 Bribe receiving by a juror. 11 **Del.C.** §1265.
- 11.1.78 Tampering with physical evidence. 11 **Del.C.** §1269.
- 11.1.79 Criminal contempt of a domestic violence protective order. 11 **Del.C.** §1271A.
- 11.1.80 Hate crimes. 11 **Del.C.** §1304.
- 11.1.81 Aggravated harassment. 11 **Del.C.** §1312.
- 11.1.82 Stalking; felony 11 **Del.C.** §1312A.
- 11.1.83 Cruelty to animals; felony. 11 **Del.C.** §1325.
- 11.1.84 Violation of privacy. 11 **Del.C.** §1335.
- 11.1.85 Bombs, incendiary devices, Molotov cocktails and explosive devices. 11 **Del.C.** §1338.
- 11.1.86 Adulteration. 11 **Del.C.** §1339.
- 11.1.87 Promoting prostitution in the first degree. 11 **Del.C.** §1353.
- 11.1.88 Possessing a destructive weapon. 11 **Del.C.** §1444.
- 11.1.89 Unlawfully dealing with a dangerous weapon; felony. 11 **Del.C.** §1445.
- 11.1.90 Organized Crime and Racketeering. 11 **Del.C.** §1504.
- 11.1.91 Victim or Witness Intimidation 11 **Del.C.** §3532 & 3533.
- 11.1.92 Abuse, neglect, mistreatment or financial exploitation of residents or patients. 16 **Del.C.** §1136(a), (b) and (c).
- 11.1.93 Prohibited acts A under the Uniform Controlled Substances Act. 16 **Del.C.** §4751(a), (b) and (c).
- 11.1.94 Prohibited acts B under the Uniform Controlled Substances Act. 16 **Del.C.** §4752(a) and (b).
- 11.1.95 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L. S. D.), designer drugs, or 3,4-methylenedioxymethamphetamine (MDMA). 16 **Del.C.** §4753A (a)(1)-(9).
- 11.1.96 Distribution to persons under 21 years of age. 16 **Del.C.** §4761.
- 11.1.97 Purchase of drugs from minors. 16 **Del.C.** § 4761A.
- 11.1.98 Drug paraphernalia; delivery to a minor 16 **Del.C.** §4774 (c).
- 11.1.99 Obtaining benefit under false representation. 31 **Del.C.** §1003.
- 11.1.100 Reports, statements and documents. 31 **Del.C.** §1004.
- 11.1.101 Kickback schemes and solicitations. 31 **Del.C.** §1005.
- 11.1.102 Conversion of payment. 31 **Del.C.** §1006.
- 11.1.103 Driving a vehicle while under the influence or with a prohibited alcohol content; third and fourth offenses. 21 **Del.C.** §4177 (3) and (4).
- 11.1.104 Prohibited trade practices against infirm or elderly. 6 **Del.C.** §2581.
- 11.1.105 Prohibition of intimidation [under the Fair Housing Act]; felony. 6 **Del.C.** §4619.
- 11.1.106 Auto Repair Fraud victimizing the infirm or elderly. 6 **Del.C.** §4909A.
- 11.1.107 Interception of Communications Generally; Divulging Contents of Communications 11 **Del.C.** §2402.
- 11.1.108 Manufacture, Possession or Sale of Intercepting Device. 11 **Del.C.** §2403.
- 11.1.109 Breaking and Entering, Etc. to Place or Remove Equipment 11 **Del.C.** §2410.
- 11.1.110 Obstruction, Impediment or Prevention of Interception. 11 **Del.C.** §2412.
- 11.1.111 Obtaining, Altering or Preventing Authorized Access. 11 **Del.C.** §2421.
- 11.1.112 Divulging Contents of Communications. 11 **Del.C.** §2422.
- 11.1.113 Installation and Use Generally [of pen trace and trap and trace devices]. 11 **Del.C.** §243.
- 11.1.114 Attempt to Intimidate. 11 **Del.C.** §3534.
- 11.1.115 Disclosure of Expunged Records. 11 **Del.C.** § 4374.
- 11.1.116 Providing false information when seeking employment in a public school. 11 **Del.C.** §8572.
- 11.1.117 Failure of Physician to file report of abuse of neglect pursuant to 16 **Del.C.** §903.
- 11.1.118 Coercion or intimidation involving health-care decisions and falsification, destruction of a document to create a false impression that measures to prolong life have been authorized; felony. 16 **Del.C.** §2513 (b).
- 11.1.119 Failure of Physician to report persons subject to loss of consciousness. 24 **Del.C.** §1763.
- 11.1.120 Abuse, neglect, exploitation or mistreatment of infirm adult. 31 **Del.C.** §3913(a), (b) and (c).
- 11.2 Crimes substantially related to the practice of social work shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes

identified in this rule.

**\*Please Note:** As the rest of the sections were not amended, they are not being published. A complete set of the rules and regulations for the Board of Clinical Social Work Examiners is available at:

<http://www.professionallicensing.state.de.us/boards/socialworkers/index.shtml>

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**PUBLIC SERVICE COMMISSION**

Statutory Authority: 26 Delaware Code,  
Section 209(a) (26 Del.C. §209(a))

In the Matter of the Investigation, on Motion Of The Commission, Into The Terms And Conditions Under Which Water Utilities Require Advances and/or Contributions In-Aid-of Construction from Customers Or Developers, and the Proper Ratemaking Treatment for Such Contributions And Advances (Opened March 24, 1987; Reopened September 24, 1996; and Reopened June 17, 2003)	PSC Regulation Docket No. 15
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**ORDER NO. 6538**

**AND NOW**, this 7<sup>th</sup> day of December, 2004;

**WHEREAS**, on May 14, 2003, the Division of the Public Advocate ("DPA") filed a petition to reopen PSC Regulation Docket No. 15, which addresses the terms and conditions under which regulated water utilities require advances and/or Contributions In-Aid-Of Construction ("CIAC") from customers or developers; and

**WHEREAS**, in PSC Docket No. 02-109, a rate case proceeding filed by Artesian Water Company ("Artesian"), the DPA, the PSC Staff and Artesian entered into a stipulation stating that the DPA would petition the Commission to open a separate generic proceeding to consider the use of a "means test" for determining the amount of advances or CIACs; and

**WHEREAS**, in prior water utility rate cases, both the DPA and the PSC Staff have raised issues about whether the regulated water utility had determined and collected adequate advances or CIACs, so that existing customers did not bear the costs of expansion; and

**WHEREAS**, issues related to advances and CIACs may affect all regulated water utilities in Delaware; and

**WHEREAS**, the PSC Staff submitted a May 16, 2003 memorandum to the Commission in support of the DPA's petition to reopen Regulation Docket No. 15; and

**WHEREAS**, on June 17, 2003, the Commission determined that good reasons exist to reopen this regulation docket, and entered Order No. 6198 to that effect; and

**WHEREAS**, over the course of many months, the Commission Staff has received written comments on a proposed set of regulations from interested parties, including representatives of regulated water utilities, developers, and the DPA; and

**WHEREAS**, over the course of many months, the Commission Staff has met on numerous occasions with representatives of regulated water utilities, developers, and the DPA, engaged in teleconferences, and received further written and oral comments; and

**WHEREAS**, the Commission Staff has attempted to work cooperatively with all interested parties to create a proposed set of regulations that would be fair and reasonable and serve the public interest, and the common interests of regulated water utilities, their present and future customers, developers, and the public at-large; and

**WHEREAS**, in order to proceed more deliberately and expeditiously with the promulgation of proper regulations, the Commission deems it appropriate, advisable, and in the public interest to publish proposed regulations recommended by Staff in order to obtain additional public comment and facilitate the promulgation of final regulations; and

**WHEREAS**, the Commission has considered the proposed regulations prepared by the Commission's Staff that were developed after a lengthy period of comment by interested parties;

Now, therefore, **IT IS SO ORDERED:**

1. Pursuant to 26 Del.C. §209(a), and 29 Del.C. §10111 et seq., the Commission promulgates proposed *Regulations Governing the Terms and Conditions Under Which Water Utilities Require Advances and/or Contributions In-Aid-Of Construction From Customers or Developers and the Proper Ratemaking Treatment For Such Contributions and Advances* ("Regulations").

2. The Secretary of the Commission shall transmit to the Registrar of Regulations for publication in the *Delaware Register* the notice and the proposed Regulations attached hereto as Exhibits "A" and "B," respectively.

3. The Secretary of the Commission shall cause the notice attached hereto as Exhibit "A" to be published in *The News Journal* and *Delaware State News* newspapers on or before Tuesday, December 21, 2004.

4. The Secretary of the Commission shall cause the notice attached hereto as Exhibit "A" to be sent by U.S. mail to all Water Utilities currently operating under a CPCN in Delaware and all persons who have made timely written requests for advance notice of the Commission's regulation-making proceedings.

5. William F. O'Brien is designated the Hearing Examiner for this matter pursuant to 26 Del.C. §502 and 29

**Del.C.** Ch. 101, and is authorized to organize, classify, and summarize all materials, evidence, and testimony filed in this docket, to conduct the public hearing contemplated under the attached notice, and to make proposed findings and recommendations to the Commission concerning Staff's proposed regulations on the basis of the materials, evidence, and testimony submitted. Hearing Examiner O'Brien is specifically authorized, in his discretion, to solicit additional comment and to conduct, on due notice, such public hearing(s) as may be required to develop further materials and evidence concerning any later submitted proposed regulations or amendments thereto.

6. Francis J. Murphy, Esquire, is designated Staff Counsel for this matter.

7. The Class "A" water utilities regulated by the Commission are notified that they may be charged for the cost of this proceeding under 26 **Del.C.** §114.

8. 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

ATTEST: Norma J. Sherwood, Acting Secretary

**EXHIBIT "A"  
 PUBLIC NOTICE**

**SOLICITING COMMENTS CONCERNING  
 REVISIONS TO RULES**

On May 14, 2003, the Division of the Public Advocate ("DPA") filed a petition with the Public Service Commission ("the Commission") asking the Commission to make revisions and amendments to its rules and regulations concerning the *Terms and Conditions Under Which Water Utilities Require Advances and/or Contributions In-Aid-Of Construction From Customers or Developers and the Proper Ratemaking Treatment for Such Contributions and Advances* ("the Regulations"). These Regulations were originally adopted in PSC Order No. 2928 (Mar. 15, 1988) and revised in PSC Order No. 4310 (Sept. 24, 1996).

In PSC Order No. 6198 (June 16, 2003), the Commission accepted the DPA's petition to reopen those earlier Regulations. The Commission agreed to consider revisions proposed by the DPA which would modify the Regulations to adopt and implement a "means test" for determining the amount of Advances In-Aid-Of Construction and Contributions In-Aid-Of Construction.

As the first step in the process, the Commission's Staff,

with the assistance of the DPA, proposed textual amendments and revisions to the present Regulations for the Commission's consideration. The Commission Staff has since met with representatives of the DPA and interested parties, received written comments, conducted meetings and workshops, and the Staff has developed proposed changes to the existing regulations.

The new regulations will address the following: (a) the definitions of Contributions In-Aid-Of Construction ("CIAC") and advances; (b) the computation of CIAC, including costs categories; (c) the nature of advances; (d) refunds of advances; (e) the ratemaking treatment of advances; (f) the ratemaking treatment of CIAC; (g) interest on excess CIAC and advances; and (h) matters necessarily related to the foregoing. The Commission proposes that its Order promulgating the final version of the new regulations will provide that the regulations (and the related docket) will be reopened two years from the effective date of the new regulations to review the new rate-making methodology, and to assess its effectiveness, the CIAC computation, and related costs categories. After such review and assessment, the Commission may, if deemed appropriate, consider further modifications of the regulations.

Copies of the present Regulations and the DPA's petition to reopen are available for public inspection at the Commission's address set out below during normal business hours:

The Commission has authority to promulgate the regulations pursuant to 26 **Del.C.** §209(a) and 29 **Del.C.** §10111 et seq.

The Commission hereby solicits written comments, suggestions, and compilations of data, briefs, or other written materials concerning the proposed regulations. Ten (10) copies of such materials shall be filed with the Commission at its office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware, 19904. All such materials shall be filed with the Commission on or before February 4, 2005. Persons who wish to participate in the proceedings, but who do not wish to file written materials, are asked to send a letter informing the Commission of their intention to participate on or before February 4, 2005.

The regulations and the materials submitted in connection therewith will be available for public inspection and copying at the Commission's Dover office during normal business hours. The fee for copying is \$0.25 per page. The regulations may also be reviewed, by appointment during normal business hours, at the office of the Division of the Public Advocate located at the Carvel State Office Building, 4<sup>th</sup> Floor, 820 North French Street, Wilmington, Delaware 19801, and will also be available for review on the Commission's website: [www.state.de.us/delpsc](http://www.state.de.us/delpsc).

Any individual with disabilities who wishes to

participate in these proceedings should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, by telephone, or otherwise. The Commission's toll-free telephone number (in Delaware) is (800) 282-8574. Any person with questions may also contact the Commission Staff at (302) 739-4247 or by Text Telephone at (302) 739-4333. Inquiries can also be sent by Internet e-mail to [karen.nickerson@state.de.us](mailto:karen.nickerson@state.de.us).

## **EXHIBIT "B"**

### **DEFINITIONS:**

**Main Extension:** The extension of the water utility's mains for the provision of water service.

**New Services:** The extension of pipe from the water utility's mains to the customer's premises.

### **1.2.12 CONTRIBUTIONS IN-AID-OF CONSTRUCTION ("CIAC") - DEFINITION.**

Cash, services, funds, property or other value received from State, municipal, or other governmental agencies, individuals, contractors, or others for the purpose of constructing or aiding in the construction of utility plant for Main Extensions and which represent a permanent infusion of capital from sources other than utility bondholders or stockholders.

### **1.3.13 ADVANCES FOR CONSTRUCTION OF SERVICES ("ADVANCES") - DEFINITION.**

Cash, services, funds, property or other value received by the utility which would be a CIAC but for an agreement by the utility to refund in whole or in part the amount received for New Services so that the Advances initially represent a temporary infusion of capital from sources other than utility bondholders or stockholders.

### **3.8 CONTRIBUTIONS IN-AID-OF CONSTRUCTION AND ADVANCES.**

Nothing contained herein shall prevent a utility from accepting either non-refundable Contributions or refundable Advances, as defined in §§1.2.12 and 1.3.13, for the construction of Main Extensions or the provision of New Services.

#### **3.8.1 COMPUTATION OF CIAC.**

A utility shall require a CIAC when the request for a Main Extension will require the installation of pipe and associated utility plant. All charges henceforth to contractors, builders, developers, municipalities, homeowners, etc., seeking the construction of water facilities from a water utility company shall be in the form of a CIAC to be paid to the water utility for Category 1 and 2

facilities' costs.

#### **Category 1 Costs.**

All on-site facility costs that are directly assignable to a specific project are Category 1 Costs and shall be designated by the utility and paid for by the contractor, builder, developer, municipality, homeowner, etc., as CIAC, with no refunds. These costs include such items as mains, services, hydrants, treatment plants, wells, storage facilities, and shall include any other items that are deemed necessary by the Delaware Public Service Commission for the provision of utility water service. The cost of a main extension from the furthest point of the project site up to 100 feet beyond the boundary of the project shall be considered a Category 1 Cost. However, if the main is installed only to accommodate a specific project and there appears to be little chance that any additional customers would be added due to this expansion, then the utility can include the cost of installation beyond the 100 feet.

#### **Category 2 Costs.**

Category 2 Costs refer to supply and treatment plant costs that are not directly assignable to a specific project and the Category 1 Costs have not included any significant direct costs for supply and treatment plant. The contractor, builder, developer, municipality, or homeowner shall pay \$1,500 per residential water meter service for their portion of supply and treatment facilities already provided by the water utility. These costs will be contributed by the contractor, builder, developer, municipality, homeowner, etc., as CIAC, with no refunds. It is the water utility's responsibility to compute the appropriate charge for non-residential water meter service, however, the utility must be able to justify such charges if challenged in a dispute or complaint investigation.

#### **3.8.3 ADVANCES.**

An Advance may consist of the following components:

a. An amount equal to the entire estimated cost (including reasonable overhead costs) of constructing New Services; plus

b. Any applicable Federal income taxes, and applicable State taxes, that may be generated to the account of the utility as a result of the Advance.

#### **3.8.4 REFUNDS OF ADVANCES.**

By April 30th of each year, the utility will refund a portion of the Advance representing each additional customer connected during the previous calendar year or an agreed upon percentage of the utility's net revenue generated by the new service to which the Advance relates, or pursuant to such other methodology as may be established by agreement of the parties (the "net refund amount") plus the tax savings, if any, which the utility receives from deducting the Advance refund payment (the sum of which is referred to as the "gross refund amount"). In no event shall the total amount refunded by a utility (the sum of the gross refund



amounts) exceed the amount received by such utility as an Advance (as finally determined by the utility after compliance with Rule 3.8.8). At the end of the negotiated refund period, no further refunds or payments will be made. If, at the end of such refund period, an Advance has not been fully refunded, the remaining unrefunded Advance will be considered a CIAC and will be treated for accounting and ratemaking purposes as a CIAC. The utility and the person(s) making the Advance shall determine the period in which the refund of the Advance may occur, but such period shall be at least twenty (20) years unless the approval of the Commission is obtained to employ a shorter period, except that a utility may agree to a full refund in less than twenty (20) years.

### 3.8.5 RATEMAKING TREATMENT OF ADVANCES.

An Advance will be considered as a non-taxable transaction for ratemaking purposes since the income taxes, if required, will be provided by the person making the Advance.

### 3.8.6 CIAC COMPONENT.

A CIAC will consist of an amount equal to the entire actual cost, including the utility's standard overhead costs of constructing the Main Extension. If any of the portion of property contributed by the contractor, builder, developer, municipality, homeowner, etc. is deemed taxable income to the utility, the utility shall be permitted to gross up the amount of the contribution to include such tax liability.

### 3.8.7 RATEMAKING TREATMENT OF CIAC.

The Federal and State income taxes, if required, associated with the CIAC and paid by the utility receiving the CIAC, may be added to rate base at which time the utility will have an opportunity to earn a fair return on this amount.

### 3.8.8 INTEREST ON EXCESS CONTRIBUTIONS AND ADVANCES.

Where the estimated amount of an Advance or Contribution exceeds the finally determined cost of the Main Extension Or New Services, that excess amount shall be returned with interest, at the same rate as authorized by § 6.1.8 herein, to the person making the Advance or Contribution.

Miscellaneous: This docket will be reopened two years from the effective date of these Rules to review the extension methodology and to assess its effectiveness, and the CIAC computation and costs categories. After such review and assessment, the Commission may, if deemed appropriate, consider further modifications.

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

Statutory Authority: 16 Delaware Code,  
Section 223 (16 Del.C. §223)  
16 DE Admin. Code 4108

### PUBLIC NOTICE

#### Nature of the Proceedings

Pursuant to 16 Delaware Code, Section 223, the Department of Health and Social Services is proposing "Autism Surveillance and Registration Program Regulations" that will require health care practitioners to report information on children under 18 years of age with autism to a central Autism Registry. The information collected in the Autism Registry will be used to track changes in prevalence of autism over time, to inform the planning of service delivery to children with autism and their families, and to facilitate autism research.

#### Notice of Public Hearing

The Division of Public Health, Department of Health and Social Services will hold a public hearing to discuss the proposed Autism Surveillance and Registration Program Regulations. The public hearing will be held on January 24, 2005 at 10:00 a.m., in the Third Floor Conference Room of the Jesse Cooper Building, Federal and Water Streets, Dover, Delaware.

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

Community and Family Health (Rebecca Luis)  
Blue Hen Corporate Center, Suite 206  
655 S. Bay Road, Dover, Delaware  
Telephone: (302) 741-2980

Anyone wishing to present his or her oral comments at this hearing should contact David Walton at (302) 744-4700 by January 21, 2005. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by January 31, 2005 to:

David P. Walton  
Division of Public Health  
Jesse Cooper Building  
P.O. Box 637  
Dover, Delaware 19903-0637

**4108 Autism Surveillance and Registration Program****1.0 Purpose**

1.1 Autism is a severe neurodevelopmental disorder whose prevalence appears to be increasing in Delaware and across the United States. An Autism Surveillance and Registration, or an Autism Registry, will enable the Department of Health & Social Services (DHSS), Division of Public Health (DPH) to collect basic descriptive information on the individuals with autism, to track changes in prevalence over time, to inform the planning of service delivery to children with autism and their families, and to facilitate autism research.

1.2 The purpose of the Autism Registry is to provide an accurate and continuing source of data concerning autism to provide information to Public Health officials to help to ultimately decrease the autism morbidity burden associated with the disorder. The Autism Registry will gather data to assist with: prevalence estimation, cluster investigation, risk factor identification, and outcome assessment.

1.3 The usefulness of the data collected in the Autism Registry will depend upon the full and accurate reporting of the confirmed diagnosis of autism by health care practitioners, hospitals, and clinical laboratories.

1.4 The Autism Registry will be a separate component of the Newborn Screening Management System.

**2.0 Definitions**

The following words shall have the meanings indicated:

"Autism" means any structural or biochemical abnormality, regardless of cause, diagnosed at any time before or after birth, that requires medical or surgical intervention or that interferes with normal growth or development. Reportable autism diagnoses are listed in Appendix A of these Regulations.

"Confirmed Autism Or Diagnosed Autism" means an abnormality characterized by each of the following symptoms:

- Impaired social behavior:
  - marked impairment in the use of multiple nonverbal behaviors, such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction
  - failure to develop peer relationships appropriate to developmental level
  - a lack of spontaneous seeking to share enjoyment, interest, or achievements with other people (e.g., by a lack of showing, bringing, or pointing out objects of interest)
  - lack of social or emotional reciprocity
- Abnormal development of communication skills:
  - delay in, or total lack of, the development

of spoken language (not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime)

- in individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others
- stereotyped and repetitive use of language or idiosyncratic language
- lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level
- Lack of awareness of the need for emotional support and little emotional response to family members:
  - encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus
  - apparently inflexible adherence to specific, nonfunctional routines or rituals
  - stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping or twisting or complex whole-body movements)
  - persistent preoccupation with parts of objects

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

"Infant" refers to a newborn from birth to 1 year of age.

"Registry" means a central data bank containing collected, classified, coded, and sorted data relating to confirmed autism in children from birth through age 17, as reported by health care practitioners, hospitals and clinical laboratories.

"Surveillance" means the process of identifying and investigating confirmed autism in children under age 18.

"Suspected Autism" is a term used for an infant or young child who is showing some developmental variations that do not meet the criteria for autism but whose variations have been shown to be associated with a risk of eventually developing all of the traits of autism.

**3.0 Reporting Requirements**

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

3.1 The registry shall collect information on any child under the age eighteen (18) who is a resident of the state of Delaware, or whose parent is a resident of Delaware, and who is diagnosed at any time prior to age eighteen (18) as having confirmed autism. For the purposes related to the registry the Department shall have access to any medical record of the child with confirmed autism.

3.2 The Department shall have access to information in the medical records of children with suspected autism. On request of the Department all mandated reporting sources should identify children who have suspected autism. The Department shall have access to records of such children.

3.3 Any diagnosis of confirmed autism shall be reported for all infants and children up to age 18, including those who have since died (if the data is still available).

3.4 For purposes of these reporting requirements, reportable diagnoses are those diagnoses, from the International Classification of Diseases (ICD) and DSM IV as listed in Appendix A of these regulations; as well as the 6-digit modified Pediatric Association system (BPA/ICD-9). The reportable diagnoses listed in Appendix A may be revised, upon notice, to reflect changes in publications accepted for use by the Centers for Disease Control and Prevention.

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

3.5.1 Any physician, surgeon, dentist, podiatrist, or other health care practitioner who diagnoses a child with autism under age 18 who is not known to be previously reported. Other health care practitioners will include but not be limited to: psychiatrists, clinical and school psychologists, speech and language pathologists, licensed clinical social workers, and nurses including school nurses;

3.5.2 The designated representative of any clinical laboratory conducting assessment, evaluation or research that performs any test which identifies a child or children under age 18 with confirmed autism not known to be previously reported; and

3.5.3 The designated representative of any hospital that diagnoses a child or children under age 18 with confirmed autism.

3.6 The administrative officer of every health care facility shall be responsible for establishing reporting procedures at that facility, using the identified Autism Registry Reporting Form. Reporting procedures must ensure that, on the effective date of these regulations, each child up to the age of 18 diagnosed as having confirmed autism or currently under care with a diagnosis of confirmed autism must be reported to the Division.

3.7 Reporting sources shall complete the Division of Public Health Autism Surveillance Form for each reported case, and forward the completed form to the Division of Public Health Director or designee within 30 days of the diagnosis.

#### **4.0 Follow-up Information from Reporting Sources**

Any follow-up information, including family, physician, hospital or clinical laboratory contact deemed necessary by the Department, shall be submitted to the Department at least 1 time each year by those required to report occurrences of

autism. The required follow-up information for the Autism Surveillance and Registry system will be sent to the same address as the Autism Registry Report Form.

#### **5.0 Confidentiality of Reports**

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

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

5.3 Inclusion on the registry does not determine the eligibility for services through any state agency.

#### **6.0 Penalties**

Any person or organization required to report the diagnosis or treatment of confirmed autism pursuant to these regulations, and who violates these regulations, shall be subject to a fine of up to \$100 for each violation, pursuant to 16 Del.C. Sec. 226. Justices of the Peace Courts have jurisdiction over such violations.

#### **7.0 Severability**

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

### **APPENDIX A**

#### **DELAWARE AUTISM REGISTRY REPORTABLE DIAGNOSES**

<b><u>Broad Categories</u></b>	<b><u>Specific Categories</u></b>	<b><u>Codes</u></b>
<b><u>Autism spectrum disorder (ASD)</u></b>	ICD-9	
	Infantile autism	299.0
	Infantile autism, active state	299.00
	Infantile autism, residual state	299.01
	DSM-IV	
	Autistic disorder	299
	Childhood disintegrative disorder	299.1
	Rett's Disorder	299.8
	Asperger's Disorder	299.8



Pervasive developmental disorder NOS 299.8

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### **DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code, Chapter 5, Section 512 (31 Del.C. Ch.5, §512)

### **PUBLIC NOTICE**

#### **Private Duty Nursing Services**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**), 42 CFR §447.205, and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to amend the Division of Social Services Provider Manual and the Title XIX Medicaid State Plan to revise and clarify the criteria and reimbursement methodology for Private Duty Nursing (PDN) services. The proposal describes program eligibility; who can receive PDN services; who can provide the services and the requirements that must be met; program limitations; and, services a person can receive, if eligible.

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 Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720 by January 31, 2005.

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

#### **DSS PROPOSED REGULATIONS #04-24a REVISIONS:**

Private Duty Nursing Program Provider Specific Policy

#### **1.0 Overview**

Up to 28 hours of private duty nursing (PDN) per week are included in the Managed Care Organization (MCO) benefit package for both the Diamond State Health Plan (DSHP) and the Delaware Healthy Children Program (DHCP). Additional private duty nursing hours may be covered as a wrap-around service for the DSHP. No additional private duty nurse hours are covered for the DHCP.

Medicaid clients age 21 years and over are eligible for up to eight hours of PDN daily. Children under age 21 are covered under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and may exceed this limit if medically necessary.

Providers shall refer to the Managed Care section of the General Policy for the required forms and procedures related to Diamond State Partners (DSP).

This manual reflects the policies as they relate to:

- Medicaid clients who are exempt from managed care coverage (see list of those exempt from managed care coverage in the Managed Care section of the General Policy)
- Medicaid clients enrolled in the DSHP whose medical need for private duty nursing has been determined by the Delaware Medical Assistance Program (DMAP) to exceed 28 hours per week.
- Medicaid clients whose medical need requires private duty nursing services in a non-institutional setting. This policy does not apply to waiver group homes.

#### 1.1 Service Definition

1.1.1 Private duty nursing PDN services are available through the Delaware Medical Assistance Program (DMAP) DMAP for clients who require more individual and continuous skilled care than is available from a visiting nurse or than is required to be provided in an inpatient setting by the nursing staff of a hospital or skilled nursing facility home health services as defined in 42 CFR 440.80.

1.1.2 PDN services may be provided by a single nurse to an individual or to multiple clients in a non-institutional group setting as described above. The nurse-client ratio will not exceed 3 clients per nurse unless authorized by the Medical Review Team.

1.1.3 Special Arrangements for multiple clients in non-institutional settings may be considered if such arrangements are medically appropriate and advantageous to both the client and to DMAP.

1.1.4 PDN services are provided to Medicaid clients in their home as an alternative to more expensive institutional care. Generally, the total cost of PDN services shall not exceed the cost of care provided in an institutional setting.

#### **2.0 Qualified Providers**

##### 2.1 General Criteria

2.1.1 Private duty nursing may be provided by any registered nurse (RN), licensed practical nurse (LPN) or certified ~~registered~~ nurse practitioner (~~CNP~~) (CRNP) who has a professional license from the State to provide nursing services.

2.1.2 Home health agencies that employ and

provide qualified nursing staff as described above or self-employed qualified nursing staff are considered qualified providers and may enroll as PDN providers.

2.1.2.1 Individual nurses, either employed by an agency or self-employed may provide no more than 16 hours of PDN services in a 24-hour period except in an emergency situation which will be reviewed by the Medical Review Team.

### 3.0 Documentation

#### 3.1 Provider Requirements

3.1.1 The private duty nursing provider is required to keep the following documentation in the patient's record:

3.1.1.1 Documentation of orientation to client's care needs and demonstration of nursing skills necessary to deliver prescribed care.

3.1.1.2 ~~Maintain~~ A written plan of care that is established, signed and dated by the attending practitioner which includes orders for medications, treatments, nutritional requirements, activities permitted, special equipment and other ordered therapies.

3.1.1.3 ~~Renew~~ Orders renewed, signed and dated at least once every 60 days or ~~as often~~ sooner as the severity of the client's conditions requires.

3.1.1.4 Documentation that the nurse promptly alerts the practitioner to any changes that suggest a need to alter the plan of care.

3.1.1.5 Adequate documentation dated and signed by the nurse performing the service.

### 4.0 Reimbursement

#### 4.1 Methodology

4.1.1 Private duty nursing services provided to eligible DMAP clients are reimbursed using prospectively determined at a rates representing hourly or 15 minute units. The unit of service for agency providers is one hour, and for self-employed nurses is 15 minutes. A weekly maximum limit is established for each client by the DMAP based on the authorized services. This limit is defined as the product of the hourly rate and the minimum number of hours necessary to maintain the client in the home as an alternative to institutionalization. Hours will not exceed eight hours daily for clients age twenty one years and over.

4.1.2 ~~Hourly~~ Hourly rates Rates for agency services are reviewed annually. The rate ~~represents the will relate to the~~ lowest prevailing usual and customary charge, as determined by a survey of all private duty nursing service providers agencies. Providers Agencies will be reimbursed the lower of their usual and customary charges or the maximum hourly rate.

4.1.3 Rates for self-employed nurses will be individually negotiated, but will not exceed a predetermined percentage of the agency rate. Rates may not be

renegotiated more than once annually except in extenuating circumstances. Increases will be limited to the normal medical inflation used by DMAP. Self-employed nurses will be reimbursed the lower of their usual and customary charges or the maximum rate.

~~4.1.3~~ 4.1.4 Providers are not required to submit cost reports to the DMAP. There are no retrospective settlements on claims paid.

4.1.5 The baseline PDN reimbursement rate will normally represent services provided by one nurse to one client. An adjusted reimbursement rate per client will be established for medically appropriate PDN services provided by a single nurse for up to three clients. Maximum rates are established according to the following table:

<u>One client: Rate for One =</u>	<u>100% of established baseline rate</u>
<u>Two clients Rate for Each =</u>	<u>50% of 143% of baseline rate</u>
<u>Three clients Rate for Each =</u>	<u>33% of 214% of baseline rate</u>

For example, if the baseline rate for one client is \$21.00 per hour, the reimbursement rate for multiple client settings is as follows:

<u>One Client: Rate for each client =</u>	<u>\$21.00 per hour (Baseline)</u>
<u>Two Clients Rate for each client =</u>	<u>\$15.00 per hour</u>
<u>Three Clients Rate for each client =</u>	<u>\$15.00 per hour</u>

### 5.0 Prior Authorization

#### 5.1 Requirements

5.1.1 Private duty nursing services must be prior authorized by DMAP before payment from the DMAP is made available the services are rendered.

5.1.2 Private duty nursing services for clients who are eligible for the Elderly and Disabled HCBS Waiver program or the Assisted Living Medicaid Waiver program must be prior authorized by the nursing staff of the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD). See the Index in back of General Policy for appropriate address and telephone number.

5.1.3 All other requests for prior authorization should be directed to the ~~Medical Review Team~~ Prior Authorization Units, located in the Robscott Building The New Castle County unit is located in the Robscott Building and the Kent/Sussex County unit is located in Georgetown (see the Index section in the back of General Policy for the address and telephone number of each Prior Authorization Unit).

5.1.4 The maximum number of hours provided by an individual nurse will be restricted to a level that can safely and reasonably be provided. No individual nurse will

be authorized to work more than a 16 hour shift per day except in an emergency situation which will be reviewed by the Medical Review Team.

5.1.5 PDN hours must be used for the period of time in which they are authorized. If the authorized hours are not used they cannot be carried over into another time period.

## 5.2 General Guidelines for Private Duty Nursing Authorization

5.2.1 Initially, a DSS Medical Services Nurse completes a face-to-face medical assessment. The client will receive a written notice of approval or non-approval for PDN services.

5.2.2 The on-going need for PDN care is routinely/periodically re-evaluated. DSS may determine that because of parent/caregiver work schedule, stability of the patient, and other factors, that PDN hours may be reduced or increased.

5.2.3 PDN will only be authorized when there is at least one caregiver and one back-up caregiver willing and able to accept responsibility for the client's care when the nurse is not available. DSS expects that parents/caregivers be willing and capable to accept responsibility for their relative/child's care. If the parent/caregiver cannot or will not accept responsibility for the client's care when PDN is not authorized or available, the client is deemed not to be in a safe environment and PDN will not be authorized.

5.2.4 DSS cannot guarantee that PDN services will be available from a specific home health agency.

5.2.5 DSS reimburses for medically necessary transportation through a Medicaid transportation broker. DSS expects the parent/caregiver to accompany the client in transport. If, because of employment or school, the parent/caregiver cannot accompany the client, the prior authorized PDN may accompany the client. If the client is transported to a medical appointment or the hospital with the PDN, as soon as the parent/caregiver arrives, the PDN service is no longer required. PDN will not be authorized for a nurse to accompany a client to a medical appointment or hospital stay when the parent/caregiver is available.

5.2.6 PDN may be approved to accompany school-age children with a compromised airway in transport to school and to provide medically necessary care during school hours.

5.2.7 DSS may approve PDN when a child is home sick with a cold, virus or normal childhood disease or there are unplanned school closures or inclement weather days. However, additional hours must be prior authorized. Home health agencies may not be able to provide "on demand or same day service." Families should contact DSS as soon as they know about an unplanned school closure, etc. and find a willing and available provider.

5.2.8 DSS may approve PDN to cover summer vacation as well as scheduled school year holiday vacations

for school age children if parent/caregiver requests the coverage timely. Absence of parents/guardian from the home for employment or work-related education reasons must be documented.

5.2.9 DSS projects a sufficient amount of hours per day. If the hours authorized are not used on a particular day, the hours do not carry over to the next day or weekend nor can the hours be "banked" to be used at a later time.

## 5.3 Determination of Hours Needed

5.3.1 DSS does not approve 24 hour on-going PDN services. DSS may approve 24 hours PDN for 3-4 days (trach and vent child/adult) to help parents/caregivers adjust and ensure all equipment is functioning. PDN reduces to 20 hours for 1-2 days. PDN then reduces to 18 hours then reduces to 16 hours, the maximum number of hours a day authorized for children (8 hours for adults).

5.3.2 PDN may be reduced further by school enrollment or attendance at a Prescribed Pediatric Extended Care (PPEC) facility. A home health aid or Certified Nursing Assistant (CNA) may be approved for some clients in lieu of PDN when appropriate and cost effective.

5.3.3 An increase in hours may be approved if additional hours will avoid hospitalization as a cost effective measure. This will depend on the medical necessity, the amount of additional hours needed and the letter of medical necessity from the admitting physician.

5.3.4 If a parent/caregiver needs hours for sleep and skilled care is required for a client with a compromised airway (trach/vent) during this sleep time, PDN is approved for a maximum of up to eight hours, generally eight hours within the range of 10 pm through 8 am.

5.3.5 PDN is adjusted to cover work and travel time of the parent/caregiver or to cover education (class schedule) and travel time of the parent, if there is not another parent/caregiver in the home. PDN is authorized for up to 40 hours per week plus an additional five hours for travel to and from work or school. Parent/guardian work hours/schedule must be verified. PDN for education is for employment related classes, vo-tech, GED, high school, college, etc. and must be documented.

5.3.6 If medical care is needed, but it is less than skilled care, DSS may authorize a CNA or home health aid to provide medically necessary care if it is deemed to be the most appropriate and cost effective.

## **DSS PROPOSED REGULATIONS #04-24b REVISIONS:**

STATE PLAN UNDER TITLE XIX UNDER THE SOCIAL SECURITY ACT  
STATE OF DELAWARE

ATTACHMENT 3.1-A  
Page 3a Addendum

# PROPOSED REGULATIONS

AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES PROVIDED TO THE CATEGORICALLY NEEDY

LIMITATIONS:

8. Private Duty Nursing Services: All requests for private duty nursing services must be prior authorized. Private duty nursing is available only for recipients who require more individual and continuous skilled care than is available from a visiting nurse or routinely provided by the nursing staff of a hospital or nursing facility home health services as defined in 42 CFR 440.80.

**DSS PROPOSED REGULATIONS #04-24c REVISIONS:**

STATE PLAN UNDER TITLE XIX UNDER THE SOCIAL SECURITY ACT  
STATE OF DELAWARE

ATTACHMENT 4.19-B  
Page 10

DELAWARE RATES FOR PRIVATE DUTY NURSING

~~Private Duty Nursing Services, whether performed by a provider located in Delaware or a provider with an out-of-state location are reimbursed at a capped unit rate with weekly maximum dollar limit per client, as set by the Delaware Medicaid Program. The unit rates are reviewed whenever a rate increase is requested by a provider, but no more frequently than annually, by conducting a survey of agencies that provide private duty nursing services and capping the rate at the lowest level available of these prevailing rates. The weekly maximum dollar limit is derived by multiplying the capped unit rate by the minimum number of units necessary to maintain the client in the home as an alternative to institutionalization, but not to exceed eight (8) hours daily.~~

Private duty nursing services provided to eligible DMAP clients are reimbursed using prospectively determined rates. ~~represe~~ The unit of service for agency providers is one hour, and for self-employed nurses is 15 minutes. A weekly maximum limit is established for each client by the DMAP based on the authorized services.

~~Hourly r~~Rates for agency services are reviewed annually. The rate will relate to the lowest prevailing usual and customary charge, as determined by a survey of all private duty nursing service agencies. ~~Providers~~ Agencies will be reimbursed the lower of their usual and customary charges or the maximum hourly rate.

Rates for self-employed nurses will be individually negotiated, but will not exceed a predetermined percentage of the agency rate. Rates may not be renegotiated more than once annually except in extenuating circumstances. Increases will be limited to the normal medical inflation used by DMAP. Self-employed nurses will be reimbursed the lower of their usual and customary charges or the maximum rate.

Providers are not required to submit cost reports to the DMAP. There are no retrospective settlements on claims paid.

The baseline PDN reimbursement rate will normally represent services provided by one nurse to one client. An adjusted reimbursement rate per client will be established for medically appropriate PDN services provided by a single nurse for up to three clients. Maximum rates are established according to the following table:

<u>One client:</u>	<u>Rate for One =</u>	<u>100% of established baseline rate</u>
<u>Two clients</u>	<u>Rate for Each =</u>	<u>50% of 143% of baseline rate</u>
<u>Three clients</u>	<u>Rate for Each =</u>	<u>33% of 214% of baseline rate</u>

For example, if the baseline rate for one client is \$21.00 per hour, the reimbursement rate for multiple client settings is as follows:

<u>One Client:</u>	<u>Rate for each client =</u>	<u>\$21.00 per hour (Baseline)</u>
<u>Two Clients</u>	<u>Rate for each client =</u>	<u>\$15.00 per hour</u>
<u>Three Clients</u>	<u>Rate for each client =</u>	<u>\$15.00 per hour</u>

**DIVISION OF SOCIAL SERVICES**  
Statutory Authority: 31 Delaware Code,  
Section 512 (31 Del.C. Ch.5, §512)

**PUBLIC NOTICE**

**Child Care Subsidy Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the Division of Social Services Manual (DSSM) regarding the child care subsidy program as it

relates to the determination of the child care parent fee and fee waiving situations.

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 Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by January 31, 2005.

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 Proposed Provisions

DSSM 11004.7 – Determination of the Child Care Parent Fee and Fee Waiving Situations

- In accordance with the Trademark Agreement, replaced previous program name with Delaware's Temporary Assistance for Needy Families Welfare Reform Program, where applicable.
- Renumbered and revised the conditions under which child care fees will be waived; and, included examples.

Added one more condition: waive the parent fee of teen parent attending high school.

### DSS PROPOSED REGULATION #04-28 REVISIONS:

11004.7 Determination of The Child Care Parent Fee and Fee Waiving Situations

Under regulations, eligible families are required to contribute to the cost of child care services based upon their ability to pay. Families contribute to the cost of care by paying a DSS child care parent fee. DSS, however, provides child care services to certain families at no cost. ~~Part of the process, therefore, of determining fees includes not only the decision of how much parent/caretakers should pay for the cost of care, but also which families should receive services at no cost. Part of the process after determining the client's financial eligibility and need for child care would be determining the parent fee and which families should have their parent fee waived.~~

All child care fees will be waived if the family meets one of the ~~four~~ (4) six (6) conditions below.

~~1. For all families in Category 31 active with the Division of Family Services (DFS) including foster care~~

~~families:~~

~~2. For all families in Delaware's Temporary Assistance For Needy Families Program (TANF) in Categories 11 and 12. General Assistance (GA) families, and caretakers in Category 31 caring for children who receive TANF or GA assistance where the adult requesting the child care is not the child's natural or adoptive parent (for example, grandparents, aunts, uncles, etc.).~~

~~3. When paying the fee creates an excessive financial burden (as defined below). Excessive financial burden is defined as situations where the family's disposable income, after deductions listed below, result in the family having income below 75% of the federal poverty level. Deductions are limited to:~~

- ~~rent, mortgage, lot rent;~~
- ~~any mandatory expense required by the landlord or mortgage holder (e.g., homeowners insurance, property taxes, school taxes);~~
- ~~actual utility expenses (e.g., electric, gas, water, sewer);~~
- ~~unreimbursed medical costs: Before considering these medical costs as deductions, families not already receiving Medicaid or on the Delaware Healthy Children Program (DHCP), must first apply for either Medicaid or the DHCP. Any unreimbursed medical costs not covered by Medicaid or the DHCP will be considered as a deduction to determine the family's income for excessive financial burden.~~

~~4. Families where the need for service is based on the special needs of the child or the caretaker.~~

1. Families active with and referred by the Division of Family Services (DFS) including foster care families.

2. Families in Delaware's TANF Program in Categories 11 and 12, and General Assistance (GA) families.

3. Families where the need for service is solely based on the special needs of the child or the caretaker/parent. Families must first be financially eligible for Child Care Services. (See policy section 11003.7)

EXAMPLE: A family consisting of a working mother and two children applies for Purchase of Care. One child has ADD/HD and mom needs child care because she is working. The parent fee for the child with ADD/HD would not be waived due to special needs. The need for care is based on her employment not the special need.

EXAMPLE: A family consisting of a working father, stay at home mother and two children applies for POC. They are income eligible and the mom states she needs childcare because her one child is developmentally delayed and needs increased socialization. If this is verified by a professional on the Special Needs form 611, they may

receive child care for that child based on the special need and the parent fee for that child will be waived. (Note, the only need for child care is due to the child's special need, Mom is at home so there would not otherwise be a need for POC.)

4. Caretakers in Category 31 caring for a child/children who receive TANF or GA assistance where the adult requesting the child care is not the child's natural or adoptive parent (for example, grandparents, aunts, uncles, etc.).

5. When paying the fee creates an excessive financial burden. Excessive financial burden is defined as a situation where the family's disposable income prior to the deductions or after the deductions, result in the family having income below 75% of the federal poverty level. Deductions are limited to:

- rent, mortgage, lot rent;
- any mandatory expenses required by the landlord or mortgage holder (e.g., homeowners insurance, property taxes, school taxes);
- actual current monthly utility expenses (e.g., electric, gas, trash, water and sewer). Late fee's and past due amounts are not included.
- telephone expenses are capped at the same rate as the FS standard deduction for telephone bills;
- un-reimbursed medical costs (Before considering these medical costs as deductions, families not already receiving Medicaid or on the Delaware Healthy Children Program (DHCP) must first apply for either Medicaid or the DHCP. The DHCP premiums are included in the un-reimbursed medical cost deductions. Any un-reimbursed medical costs not covered by Medicaid or the DHCP will be considered as a deduction to determine the family's income for excessive financial burden.)

EXAMPLE:

A family of three has gross monthly income of \$1,417.00. The parent fee for this family would be 23% of the cost of care. The rent payment for this family is \$550/month. Utility expenses are \$20 for phone and \$65 for electric.

<u>Total income per month equals:</u>	<u>\$1,417.00</u>
<u>Total expenses are:</u>	<u>\$ 635.00</u>
<u>After deductions:</u>	<u>\$ 782.00</u>

\$782.00 is less than \$954.00, 75% of the federal poverty level for a family of 3, so this family can have the parent fee waived.

EXAMPLE:

A family of four has a gross monthly income of \$2,203.00. The parent fee for this family would be 44% of the cost of care. The rent payment for this family is \$600/month. Utility expenses are \$20 for phone and \$165 for

electric.

<u>Total income per month equals:</u>	<u>\$2,203.00</u>
<u>Total expenses are:</u>	<u>\$ 785.00</u>
<u>After deductions:</u>	<u>\$1,418.00</u>

\$1,418.00 is more than \$1,150.00, 75% of the federal poverty level for a family of 4, so this family will not have the parent fee waived.

6. Teen parents 18 years old or younger attending high school or a high school equivalent.

All requests to waive the fee must be documented in the case file and be approved by the unit supervisor. ~~Requests to waive the fee for Division of Social Service (DSS) employees (seasonal, merit system) or temporary employees working for DSS must be approved by the Operations Administrator, as well as the unit supervisor.~~

As is the case with income, a person who acts as a child's caretaker, as defined in Section 11002.9, pays a child care fee based only upon income attributable to the child, unless the family meets one of the waived fee conditions above.

### **DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 512 (31 Del.C. Ch.5, §512)

### **PUBLIC NOTICE**

#### **Long Term Care Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the Division of Social Services Manual (DSSM) regarding the Long Term Care Program. The proposal gives direction on counting annuities and their streams of income for the eligibility process; to clarify that the list of non-liquid resources is not all inclusive; and, to correct an inconsistency in language.

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 Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by January 31, 2005.

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 Proposed Changes

1. To DSSM 20300.2 Non-Liquid Resources:
  - Add the word "annuity" to the list of non-liquid resources; and,
  - Add the words "including but not limited to".

2. To DSSM 20360 Conditional Medicaid Coverage While Disposing of Resources:

Delete the word "securities" from DSSM 20360. there exists an inconsistency in DSSM 20360 which lists "securities" as a non-liquid resource while DSSM 20300.0 lists "stocks" as a liquid resource.

#### DSS PROPOSED REGULATION #04-27

##### REVISIONS:

#### 20300.2 Non-Liquid Resources

Assets that require more than 20 working days to convert to cash are considered non-liquid.

The following types of resources are non-liquid: including but not limited to: annuities and their streams of income, household goods and personal effects, automobiles, trucks, tractors, and other vehicles, machinery and livestock, buildings and land, non-cash business property.

(Break in Continuity of Sections)

#### 20360 Conditional Medicaid Coverage While Disposing of Resources

Effective September 1, 1987 "conditional" Medicaid coverage for nursing home care can be approved for applicants who need Medicaid services while they are disposing of non-liquid resources, e.g., property, ~~securities,~~ ~~etc.~~ There are strict limits on the amount of time allowed for sale of resources and the applicant must sign a statement agreeing to the conditions before an application can be approved. Under conditional eligibility, excess resources are treated as a "conditional exclusion" and are not counted during the conditional benefit period.

However, there is no "conditional exclusion" for spousal impoverishment cases. These resources count because they meet the spousal definition of countable resources. They should be counted in the spousal resource calculation.

#### DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,  
Section 512 (31 Del.C. Ch.5, §512)

#### PUBLIC NOTICE

#### Long Term Care Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the Division of Social Services Manual (DSSM) regarding the Long Term Care Program related to the redemption period for certain U.S. Savings Bonds and provides instructions on waiving the redemption period for U.S. Savings Bonds

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 Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by January 31, 2005.

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 Proposed Changes

##### Citations

- 31 CFR 351.6; 352.12; 359.70; 351.85; 360.90
- POMS SI 01140.240

To DSSM 20330.7 - U.S. Savings Bonds:

1. Change the redemption period for U.S. Savings Bonds Series EE and I from 6 months to 12 months; and,
2. Include instructions provided by the Centers for Medicare and Medicaid Services (CMS) on waiving the mandatory redemption period.

#### DSS PROPOSED REGULATION #04-29

##### REVISIONS:

#### 20330.7 U.S. Savings Bonds

U.S. Savings Bonds are obligations of the Federal Government. They are not transferable and can only be sold

back to the Federal Government. ~~They~~ Normally, they cannot be redeemed for six months after the issue date specified on the face of the bond. For Series EE, and I Savings Bonds, the redemption period has been extended to 12 months. They are not resources during the ~~6-month mandatory~~ retention period. They become resources (not income) as of the 7<sup>th</sup> or 13<sup>th</sup> month. A bond may not roll over or renew in order to prolong the minimum retention period. Actual redemption (converting to cash) of one bond is required before purchasing a new bond. However, the U.S. Treasury regulation authorizes the Commission of Public Debt to waive the regulatory provisions pertaining to U.S. Savings bonds including the redemption period in order to "relieve any person or persons of unnecessary hardship". A request for a refund because the person now requires Nursing Home care and so needs the funds used to purchase the bonds may constitute hardship. A written request to the Commissioner of Public Debt requesting a waiver to the redemption period is all that is required. The bondholder may simultaneously tender the bond(s) for redemption.

The individual in whose name a U.S. Savings Bond is registered owns it. The Social Security Number shown on a bond is not proof of ownership. The co-owners of a bond (bond titled AND/OR) own equal (50%) shares of the redemption value of the bond. The bond may show an owner followed by POD (proof of death) and another name. This is a survivorship type of bond. The first named individual owns 100% of the bond. The second individual will own 100% of the bond upon the death of the first individual.

Physical possession of a U.S. Savings Bond is a requirement for redeeming it. This is true for sole or joint ownership. If an individual alleges that he or she cannot submit a bond because a co-owner or other individual will not relinquish physical possession of the bond, obtain a signed statement from the co-owner or the other individual that he or she: has physical possession of the bond; will not allow the applicant to cash the bond; and if co-owner, will not cash the bond and give the applicant his or her share.

The Table of Redemption Values for U.S. Savings Bonds is used to determine the value of a bond. These are available from a local bank. The bank will need the series, denomination, date of purchase or issue date. After the mandatory 6 month retention period, the value of a series H or HH bond is its face value.

**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF AIR AND WASTE MANAGEMENT  
AIR QUALITY MANAGEMENT SECTION**  
Statutory Authority: 7 Delaware Code,  
Chapter 60 (7 Del.C. Ch. 60)

**REGISTER NOTICE**

**1. Title Of The Regulation:**

Regulation 45 -- Excessive Idling of Heavy Duty Vehicles

**2. Brief Synopsis Of The Subject, Substance And Issues:**

The Department of Natural Resources and Environmental Control, Division of Air and Waste Management, Air Quality Management Section is proposing a revision to the State Implementation Plan for the Attainment and Maintenance of the National Air Quality Standards for Ozone. Delaware has been designated moderate non-attainment for the eight hour ozone standard. The proposed revision will contain a new regulation, Regulation No. 45. In order to curb air emissions that contribute to the poor air quality in the State, the Department is proposing to regulate the engine idling time for the operation of on-road heavy-duty vehicles, having a gross vehicle weight rating of over 8,500 pounds. This regulation will continue the efforts by the State to reduce the emissions of NOx (nitrogen oxides), particulates and other tailpipe pollutants from vehicles operated in Delaware.

**3. Possible Terms Of The Agency Action:**

N/A

**4. Statutory Basis Or Legal Authority To Act:**

7 Del.C. Section 6010  
29 Del.C. Chapter 101

**5. Other Regulations That May Be Affected By The Proposal:**

None

**6. Notice Of Public Comment:**

The Department will hold a public hearing on January 25, 2005 at 6 PM at the office of Air Quality Management Section, 156 South State Street, Dover Delaware, in the second floor conference room. Prior to the public hearing, an informational workshop on the proposal will be held on January 6, 2005 at 1:30 PM at the same location above.



**7. Prepared By:**

Philip Wheeler (302) 739-4791 December 9, 2004

**Regulation 45****Excessive Idling of Heavy Duty Vehicles****1.0 Applicability**

This regulation applies to all on-road heavy-duty motor vehicles with a gross vehicle weight rating (GVWR) of greater than 8,500 pounds operating in the State of Delaware.

**2.0 Definitions**

The following definitions are applicable to this regulation:

**“Emergency vehicle”** means any publicly owned and operated ambulance, lifeguard, or lifesaving equipment or any privately owned or operated vehicle which is in response to an emergency call. Any publicly owned vehicle operated by the following persons, agencies, or organizations: (a) any federal, state, or local agency, department, or district employing peace officers for use by those officers in the performance of their duties, and.; (b) any forestry or fire department of any public agency or fire department. Any vehicle owned or operated for the purpose of: (a) fighting fires, (b) towing or servicing other vehicles, (c) caring for injured persons, or (d) repairing, maintaining and restoring public utility services necessary for the health and/or safety by any of the following: (1) the state, (2) a bridge and highway district, (3) a municipality and (4) a public or private utility Any state-owned vehicle used in responding to emergency fire, rescue or communications calls and operated either by the Delaware Emergency Management Agency or by any public agency or industrial fire department to which the Delaware Emergency Management Agency has assigned the vehicle. Any vehicle owned or operated by any department or agency of the United States government when the vehicle is used in responding to emergency fire, ambulance, or lifesaving calls or is actively engaged in law enforcement work. Any emergency vehicle which a permit has been issued by the Superintendent of the Delaware State Police.

**“On-road heavy-duty motor vehicle”** means any vehicle with a gross vehicle weight rating (GVWR) of greater than 8,500 pounds which is self-propelled and designed for transporting persons or property, including but not limited to trucks, buses, and farm vehicles.

**3.0 Severability**

Each section of this regulation shall be deemed severable. If any section of this regulation is held to be invalid, the remainder shall continue in full force and effect.

**4.0 Operational Requirements for Heavy Duty Motor****Vehicles.**

The owner or operator of an on-road heavy duty motor vehicle shall comply with the following operational requirements unless specifically exempted from the operational requirements for these motor vehicles:

No on-road heavy duty motor vehicle shall be allowed to operate for more than three (3) consecutive minutes when the vehicle is not in motion.

**5.0 Exemptions**

5.1 any on-road heavy duty motor vehicle which is forced to remain motionless because of traffic conditions or mechanical difficulties over which the operator has no control; or

5.2 any situation where it is necessary to bring the on-road heavy duty vehicle to the manufacturer's recommended operating temperature; or

5.3 any situation when the on-road heavy duty vehicle is being repaired; or

5.4 any emergency vehicle defined in Section 2.0 of this regulation; or

5.5 any vehicle using auxiliary power for equipment to perform the intended operation of the vehicle, including, by way of example, a power take off generator for any utility truck; or

5.6 any vehicle idling for the necessary power for a heater, air conditioner, or any ancillary equipment during sleeping or resting in a sleeper berth such that the vehicle's location is not within 25 miles of a parking facility with available truckstop electrification equipment, either shore power or an advance system; or

5.7 any vehicle idling to verify that the vehicle is in safe operating condition as required by law and that all equipment is in good working order, either as part of a daily vehicle inspection or as otherwise needed, provided that such engine idling is mandatory for such verification; or any transit or school bus for up to five (5) minutes prior to passenger boarding; or

5.8 any transit or school bus when passengers are onboard; or

5.9 any vehicle when providing heat to the occupant and when the temperature is between -23 and 0 C, or -10 and 32 F, an engine shall not idle for more than 15 consecutive minutes; or when the temperature is below -23 C or -10 F, and where no nuisance is created, an engine shall not be subject to idling restrictions.

**6.0 Enforcement and Penalty**

This regulation is enforceable under Title 7 Chapter 60, §§6005 and 6013 of the **Delaware Code**. Violators are subject to a penalty of not less than fifty dollars (\$50) and not more than five-hundred dollars (\$500) for each offence.

## DIVISION OF WATER RESOURCES

Statutory Authority: 7 Delaware Code  
Chapter 60 and 3 Delaware Code Chapter 22  
(7 Del.C. Ch. 60 and 3 Del.C. Ch. 22)

### REGISTER NOTICE

#### 1. Brief Synopsis of the Subject, Substance and Issues

The Department of Natural Resources and Environmental Control, The Department of Agriculture and the Delaware Nutrient management Commission are proposing general permit regulations for concentrated animal feeding operations (CAFOs). The proposed CAFO regulations will amend section 9 (The General Permit Program) of the **Regulations Governing the Control of Water Pollution**. The Clean Water Act and recent revisions to federal regulations define a CAFO. The draft regulations were developed cooperatively with the involvement of the Department of Agriculture, Delaware Nutrient Management Commission, Department of Natural Resources and Environmental Control, Natural Resource Conservation Service and the University of Delaware.

#### 2. Possible Terms of the Agency Action:

N/A

#### 3. List of Other Regulations That May be Impacted or Affected by the Proposal:

**Regulations Governing the Control of Water Pollution** (Amended May 14, 2003)

#### 4. Notice Of Public Comment

The Department of Natural Resources and Environmental Control, the Department of Agriculture and the Delaware Nutrient Management Commission will hold public hearings on January 25, 2005 at 6 PM at the Farmington Fire Hall and January 27, 2005 at 6 PM at the Gumboro Fire Hall to receive comments on proposed amendments to the **Regulations Governing the Control of Water Pollution**. Comments should be sent in writing to Peder Hansen, Surface Water Discharges Section, Division of Water Resources, DNREC, 89 Kings Hwy., Dover, DE 19901.

### Regulations Governing the Control of Water Pollution

#### 9.0 The General Permit Program

Introduction. This section of the regulations, the General Permit Program, is designed to provide NPDES permit coverage to a specified group, category or class of discharges that are substantially similar in nature or type of pollutants discharged. These regulations outline the general provisions or requirements that apply to all discharges within the specified category. This approach eases the

administrative burden of developing and issuing a large number of individual NPDES permits for essentially the same type of discharge. By issuing general permits, the Department can provide a quicker and less expensive mechanism for the regulated community to obtain permit coverage. It also allows staff resources to concentrate on discharges that may have more significant potential for impacting the quality of Delaware's surface waters.

General NPDES Permits as defined by federal regulations in 40 C.F.R. §122.28, authorize a category of discharges from sources within a defined area that share certain similarities. General NPDES Permits are self-implementing standards applicable to multiple dischargers that the DNREC has determined can best be regulated as a class. Conversely, individual NPDES permits are issued to a potential discharger who applies for a permit with special conditions specifically tailored to the discharger. Thus, a General NPDES Permit is an agency statement of general applicability and future effect that implements and prescribes law and as such is a regulation.

Although no individual permits will be issued to the categories of dischargers covered by this section of the regulations, the subsections dealing with each category may be referred to as "General NPDES Permits" and the entire Section of these regulations may be referred to as the "General NPDES Permit Program."

In order to obtain coverage under this section of these regulations (the General NPDES Permit Program), most persons will be required to file with the Department a Notice of Intent to be covered in accordance with 40 C.F.R. §122.28(b)(2). The Department will consider this the equivalent of an NPDES Permit application for a General NPDES Permit.

Subsection 9.1 provides NPDES permit coverage for storm water discharges associated with industrial activity. Industrial activity is that which is directly related to manufacturing, processing, raw material handling or waste handling. The regulations in Subsection 1 seek to define a program for controlling material handling and other industrial activities such that the potential for exposing significant materials to precipitation and the subsequent transport of such materials via storm water runoff or infiltration is eliminated or minimized to the maximum extent practicable. Significant materials are those substances, products or wastes that become exposed to precipitation as a result of the industrial activity and potentially contribute pollutants to storm water runoff or storm water infiltration. The types of activities or categories of industries covered under this subsection are listed in §9.1.1.1, as well as in the federal regulations, 40 CFR Part 122.26(b)(14).

Part 1 of Subsection 9.1 consists of general provisions that apply to each category of industrial activity specified in §9.1.1.1. Part 2 outlines specific provisions applicable to

storm water discharges associated with land disturbing activities (i.e. construction activities). The regulations in Part 2 are designed to mesh NPDES permit program requirements with existing provisions for sediment and erosion control under 7 **Del.C.** Ch. 40 and the Delaware Sediment and Stormwater Regulations. The remaining Parts under Subsection 1 outline category-specific storm water requirements that are tailored to the activity conducted.

Subsections 9.2 through 9.6 provide NPDES permit coverage for the following categories of discharges: discharges from aquaculture or aquatic animal production facilities; discharges from the clean up of gasoline and fuel oil released from underground storage tanks; discharges from feedlot or concentrated animal feeding operations; discharges associated with car washes and other motor vehicle washing operations; and discharges associated with the operation of swimming pools and spas.

9.1 Regulations Governing Storm Water Discharges Associated with Industrial Activities

Part 1 - Baseline General Permit (§9.1.1)

Part 2 - Special Conditions for Storm Water Discharges Associated with Land Disturbing Activities (§9.1.2.)

Part 3 - Special Conditions for Storm Water Discharges Associated with Concrete Manufacturing Activities (§9.1.3)

Part 4 - Special Conditions for Storm Water Discharges Associated with Asphalt Manufacturing Activities (§9.1.04.)

Part 5 - Special Conditions for Storm Water Discharges Associated with Chemical Manufacturing Activities (§9.1.05.)

Part 6 - Special Conditions for Storm Water Discharges Associated with Activities Regulated by the Delaware Regulations Governing Solid Waste (§9.1.06.)

Part 7 - Special Conditions for Storm Water Discharges Associated with Automotive Salvaging Activities (§9.1.07.)

Part 8 - Special Conditions for Storm Water Discharges Associated with Scrap Recycling Activities (§9.1.08.)

Part 9 - Special Conditions for Storm Water Discharges Associated with Watercraft Maintenance Activities (§9.1.09.)

Part 10 - Special Conditions for Storm Water Discharges Associated with Air Transportation Maintenance and De-icing Activities (§9.1.10.)

Part 11 - Special Conditions for Storm Water Discharges Associated with Rail Transportation Maintenance Activities (§9.1.11.)

Part 12 - Special Conditions for Storm Water Discharges Associated with Automotive Transportation Maintenance Activities (§9.1.12.)

Part 13 - Special Conditions for Storm Water

Discharges Associated with Food Processing Activities (§9.1.13.)

Part 14 - Special Conditions for Storm Water Discharges Associated with Metals Manufacturing Activities (§9.1.14.)

APPENDIX -Water Priority Chemicals

9.2 Regulations Governing Discharges from Aquaculture or Aquatic Animal Production Facilities (Reserved)

9.3 Regulations Governing Discharges from the Clean Up of Gasoline and Fuel Oil Released from Underground Storage Tanks (Reserved)

9.4 The Concentrated Animal Feeding Operation (CAFO)

PREAMBLE

These regulations have been developed pursuant to 3 Del.C. §2201-2290 and 7 Del.C. §6000 et.al., 40 Code of Federal Regulations (C.F.R) §122.23 and 40 C.F.R. §122, Appendix B and 40 CFR part 412. These statutory and regulatory authorities establish the requirement that a National Pollutant Discharge Elimination System (NPDES) permitting program for Concentrated Animal Feeding Operations (CAFOs) be implemented. These regulations will function as the baseline CAFO standards for compliance of NPDES permits applicable to certain farms. The Delaware Department of Agriculture (DDA) will administer these regulations, while the legal framework and authority is maintained by the Delaware Department of Natural Resources and Environmental Control. In general, NPDES general permits, as provided in these regulations, are effective for five years. After five years, new or updated CAFO General Permit regulations will be promulgated. These regulations were developed by the Delaware Nutrient Management Commission, the Delaware Department of Agriculture and the Delaware Department of Natural Resources and Environmental Control. They are to be adopted with the guidance, advice and consent of the Commission.

9.4.1 Authority.

These regulations are promulgated pursuant to the authority provided by 3 Del.C. §2200 et.al. and 7 Del.C. §6000 et.al.

9.4.2 Purpose.

The purpose of these regulations is to establish requirements for certain animal feeding operations defined as a Concentrated Animal Feeding Operation (CAFO) in order to protect water quality from activities associated with CAFO management sustain and provide a profitable agricultural industry and to help meet or exceed Federal mandated water quality standards.

9.4.3 Definitions.

For purposes of these regulations, the following words or terms shall have the meanings as indicated:

**“Animal Feeding Operation”** or **“AFO”** means a lot or facility (other than an aquatic animal production facility) where the animals have been, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and the animal confinement areas do not sustain crops, vegetation, forage growth or post-harvest residues in the normal growing season. Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals in an operation, if the production areas adjoin each other or if the AFOs use a common area or system for the disposal of wastes. (For example, facilities or production areas that are commonly managed, co-located and share manure storage systems are considered a single AFO. A poultry operation with many facilities in a single location or address is deemed a single AFO).

**“Animal Waste Management Plan”** means a plan written by a certified nutrient management consultant that documents and recommends a combination of conservation practices and management measures for the handling, storage, treatment and management of any or all of the following for use on cropland and pastureland: animal wastes, manures, composted dead animals, or process wastewater from any animal feeding operation.

**“Applicant”** means any person seeking and or required to obtain an individual CAFO permit or coverage under a general permit.

**“Apply,” “applying,”** or any variation of the word “apply,” as it relates to the application of nutrients, means the human controlled mechanical conveyance of nutrients to land for the purpose of applying organic and/or inorganic nutrients.

**“Best Management Practices”** or **“BMP”** means those practices that have been approved by the Delaware Nutrient Management Commission.

**“Catastrophic Mortalities”** means any mortality that exceeds the approved disposal system capacity to accommodate losses within 24 hours. Most disposal systems are designed to handle the normal anticipated mortality. If enough animals are lost and the disposal system cannot hold them all without causing serious disruption in the disposal process, then it is a catastrophic loss.

**“Concentrated Animal Feeding Operation”** or **CAFO** is an animal feeding operation that is subject to the terms and conditions of these regulations. A CAFO is designated by the confinement of the number of animals specified in section D of these regulations.

**“Delaware Nutrient Management Commission,” “DNMC,”** or **“Commission”** means the Commission established by 3 Del.C. §2220 “or its designee.”

**“Department”** means the Delaware Department of Agriculture.

**“Discharge of a Pollutant”** means the addition of any pollutant or combination of pollutants, to state waters or contiguous zones, or the ocean, from any source or activity other than a vessel or other floating craft when being used as a means of transportation and in compliance with Section 312 of the Act. This definition includes additions of pollutants into State waters from:

Surface runoff that is collected or channeled by man;

Discharges through pipes, sewers, and other conveyances which do not lead to a treatment works; and

Discharges through pipes, sewers, or other conveyances, leading into a treatment works other than a publicly owned treatment works (POTW).

**“Drainage Ditch”** is defined as a constructed or reconstructed watercourse with a drainage area less than 800 acres. A constructed or reconstructed watercourse with a drainage area greater than 800 acres is considered a stream.

**“Effluent Limitation”** means any restrictions, prohibitions, or permit requirements established under State or Federal law, including but not limited to, standards of performance for new sources, best management practices or BMPs, effluent standards and ocean discharge criteria on the quantities, rates, and concentrations of the chemical, physical, biological, or other constituents discharged into State waters.

**“Freeboard Action Level”** is the liquid level within a lagoon or other liquid storage structure that indicates the structure is full and implies that immediate steps be taken to transfer liquid out of the waste storage structure.

**“General Permit”** means an authorization granted to a category of point sources discharges pursuant to Section 9 of the Regulations Governing the Control of Water Pollution.

**“Ground Water”** means any water naturally found under the surface of the earth.

**“Inorganic Fertilizer(s)”** means a fertilizer comprised of chemically synthesized plant nutrient elements that are essential for plant growth and include at least nitrogen or phosphorus.

**“Liquid Manure”** means usually less than 8.0% solids. Wash water, runoff, precipitation, and so forth are added, if needed to dilute the manure and lower the solids content.

**“Liquid Manure Handling System”** means an operation where animals are raised outside with swimming areas or ponds, or with a stream running through an open lot, or in confinement buildings where water is used to flush the manure to a lagoon, pond, or some other liquid storage structure.

**“Manure”** is defined to include fecal and urinary defecations of livestock and poultry; may include

spilled feed, bedding, soil, compost and raw materials if commingled with manure.

**“NPDES”** (National Pollutant Discharge Elimination System) means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits for the discharge of any pollutant or combination of pollutants and imposing and enforcing pretreatment and sludge requirements pursuant to Sections 307, 402, 318, and 405 of the Act.

**“Notice of Intent (NOI)”** means the form used to serve as a notification of the intention of the facility identified on the form to adhere to the provisions of The Concentrated Animal Feeding Operation Regulations.

**“Nutrient Management Plan”** or **“Plan”** means a plan by a certified nutrient consultant to manage the amount, placement, timing and application of nutrients in order to reduce nutrient loss or runoff and to maintain the productivity of soil when growing agricultural commodities and turf grass.

**“Nutrients”** means nitrogen, nitrate, phosphorus, organic matter and any other elements necessary for or helpful to plant growth.

**“Phosphorus Site Index or PSI”** means the assessment tool developed by the University of Delaware designed to evaluate the site characteristics and management factors in determining Phosphorus loss to the environment.

**“Person”** means any individual, partnership, association, fiduciary, corporation, or any organized group of persons, whether incorporated or not.

**“Pollutant”** means any substance, which causes or contributes to, or may cause or contribute to, pollution.

**“Process Wastewater”** means any process-generated wastewater directly or indirectly used in the operation of an AFO (such as spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits; direct contact swimming, washing, or spray cooling of animals; and dust control) or any precipitation (rain or snow) which comes into contact with any manure or litter, bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animals or poultry or direct products (e.g., milk, eggs).

**“Production Area”** means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area and the waste containment areas, also includes egg washing or processing facility and any area used in the storage, handling, treatment or disposal of mortalities.

**“Realistic Yield Goals”** are defined as the expected crop yields based on the best 4 out of 7 years of recorded data. Without yield records, one shall use soil productivity classes. Yield goals higher than the average, require written justification from a certified consultant.

**“Secretary”** means the Secretary of the Delaware Department of Agriculture or his/her designee.

**“Sinkhole”** is defined as a depression in the landscape where limestone has been dissolved.

**“Soil Productivity”** means the capacity of a soil, in its normal environment, to produce a specified plant or sequence of plants under a specified system of management. The “specified” limitations are needed because no soil can produce all crops with equal success and a single system of management cannot achieve the same effect on all soils. Productivity means the capacity of soil to produce crops and is expressed in terms of yields.

**“State Nutrient Management Program”** or **“SNMP”** means all the nutrient management program elements developed by the Commission, whether or not reduced to rules or regulations.

**“State Waters”** or **“Waters of the State”** means all water, on the surface and under the ground, wholly or partially within, or bordering the State, or within its jurisdiction including but not limited to:

- Waters which are subject to the ebb and flow of the tide including, but not limited to, estuaries, bays and the Atlantic Ocean;
- All interstate waters, including interstate wetlands;
- All other waters of the State, such as lakes, rivers, streams (including intermittent and ephemeral streams), drainage ditches, tax ditches, creeks, mudflats, sand flats, wetlands, sloughs, or natural or impounded ponds;
- All impoundments of waters otherwise defined as waters of the State under this definition;
- Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in the above four statements.
- Waste and storm water treatment systems or waste storage structures including, but not limited to, treatment ponds or lagoons designed to meet the requirements of the Act (other than cooling ponds which otherwise meet the requirements of this definition) are not “State waters” or “waters of the State.” This exclusion applies only to manmade bodies of water, which neither were originally created in waters of the State nor resulted from the impoundment of waters of the State

**“Vegetated Buffer”** means a narrow, permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any

potential nutrients or pollutants from leaving the field and reaching surface waters.

**“Water Quality Standard”** means any rule or limit established by the Secretary of the Department of Natural Resources and Environmental Control which consists of a designated use or uses for waters of the State and the water quality criteria for such waters based upon such designated uses.

**“25-Year, 24-Hour Rainfall Event”** means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years, as defined by the National Weather Service Technical Paper Number 40, “Rainfall Frequency Atlas of the United States”, equivalent to regional or state rainfall probability information developed there from, or a rain event greater than 5.7 inches for New Castle county, 5.9 for Kent county and 6.3 for Sussex county.

**“100-Year, 24-Hour Rainfall Event”** means the maximum 24-hour precipitation event with a probable recurrence interval of once in 100 years, as defined by the National Weather Service Technical Paper Number 40, “Rainfall Frequency Atlas of the United States”, equivalent to regional or state rainfall probability information developed there from, or a rain event greater than 7.3 inches for New Castle county, 7.6 for Kent county and 7.9 for Sussex county.

#### 9.4.4 Applicability

9.4.4.1 Any person who owns or operates a CAFO (Concentrated Animal Feeding Operation) must comply with the applicable standards required by and issued pursuant to, these regulations.

9.4.4.2 These NPDES permit requirements shall apply to any person who engages in the management of a CAFO where animal manure is, has been or will be generated. An Animal Feeding Operation (AFO) is a CAFO if the number of animals equal or exceed the following criteria:

9.4.4.2.1 More than the numbers of animals specified in any of the following categories:

9.4.4.2.1.1 1,000 beef cattle or heifers,

9.4.4.2.1.2 700 mature dairy cattle (whether milked or dry cows),

9.4.4.2.1.3 2,500 swine each weighing over 55 pounds,

9.4.4.2.1.4 10,000 swine weighing under 55 pounds,

9.4.4.2.1.5 500 horses,

9.4.4.2.1.6 10,000 sheep or lambs,

9.4.4.2.1.7 55,000 turkeys,

9.4.4.2.1.8 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system,

9.4.4.2.1.9 125,000 chickens except laying hens (if other than a liquid manure handling system).\*

9.4.4.2.1.10 82,000 laying hens (if other than a liquid manure handling system),

9.4.4.2.1.11 1,000 veal calves.

\*Note: An alternative criterion for square footage calculations may be utilized and adopted as policy that qualifies a CAFO based on the area within the confined facility. For example the animal density of 0.75 square feet per bird calculates to 93,750 square feet and can be defined as a CAFO. This alternative may not supersede the actual number of chickens maintained.

9.4.4.2.2 Provided one of the following conditions are met and the number of animals is in the range specified below, the operator has a duty to apply:

9.4.4.2.2.1 Pollutants are discharged into waters of the State through a man-made ditch, flushing system, or other similar man-made device; or

9.4.4.2.2.2 Pollutants are discharged directly into waters of the State, which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

9.4.4.2.2.2.1 300 to 999 beef cattle or heifers,

9.4.4.2.2.2.2 210 to 699 mature dairy cattle (whether milked or dry cows),

9.4.4.2.2.2.3 750 to 2,499 swine each weighing over 55 pounds,

9.4.4.2.2.2.4 3,000 to 9,999 swine weighing under 55 pounds,

9.4.4.2.2.2.5 150 to 499 horses,

9.4.4.2.2.2.6 3,000 to 9,999 sheep or lambs,

9.4.4.2.2.2.7 16,500 to 54,999 turkeys,

9.4.4.2.2.2.8 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system,

9.4.4.2.2.2.9 37,500 to 124,999 chickens except laying hens (if other than a liquid manure handling system).\*

9.4.4.2.2.2.10 24,600 to 81,999 laying hens (if other than a liquid manure handling system),

9.4.4.2.2.2.11 300 to 999 veal calves.

9.4.4.2.2.3 These General NPDES permit requirements shall apply to any person notified in writing by the Secretary and covered by the Nutrient Management Law (3 Del.C. §2200 et.al.) as specified in 9.4.7 of these regulations or anyone requesting coverage.

#### 9.4.5 Application For Coverage

9.4.5.1 Any one who owns or operates a CAFO or is designated as a CAFO must submit a Notice of Intent (NOI) on a form provided by the Department, to the Secretary within 120 calendar days of the effective date of

these regulations or upon operation of a new facility. Anyone who expands their operation and becomes a CAFO must submit a NOI within 90 days of becoming a CAFO. The NOI will serve as a formal commitment by the CAFO applicant to comply with the standards established in these regulations. The NOI shall include, but not be limited to, the following information:

9.4.5.1.1 The name of the farm/facility, mailing address, manager or applicant, contact information to include emergency address or closest road name intersection of the CAFO.

9.4.5.1.2 The name, address and contact information of the farm/facility owner if different than the applicant.

9.4.5.1.3 Annual operation data to include, animal type(s), number of animals confined, estimated manure generation by type per year, manure storage capacity, manure storage system, animal mortality system, process waste water (quantity where applicable), and total number of acres under control and available for land application.

9.4.5.1.4 The NOI must be signed by the owner or other person who performs similar policy-making or decision-making functions for the facility. Any person signing documents in accordance with this subsection shall certify that the information submitted is, to the best of his/her knowledge and belief, true, accurate and complete. Such person is advised that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for willful violations.

9.4.5.1.5 A completed and signed copy of the NOI shall be submitted to the Delaware Department of Agriculture, Nutrient Management Program, 2320 S. DuPont Highway, Dover, DE 19901.

9.4.5.1.6 Contents of the NOI and any discharge data shall be available to the public. However, all animal waste management plans, nutrient management plans and records of implementation shall be kept by the land owner or person responsible for the plans or records. Animal waste management plans, nutrient management plans and records of implementation shall not be considered as public records under the Freedom of Information Act and shall not be disclosed, except, however, that they shall be made available for inspection by the Department and the Commission.

9.4.5.1.7 A person's obligation to independently seek and secure an NPDES permit is not conditioned upon or qualified by having received a notice that an NPDES permit is required from the Secretary.

9.4.5.2 Effective date of coverage: Permit coverage under these regulations begins at the time when the NOI is received by the Department.

9.4.5.3 Expiration date of coverage: Permit coverage for a CAFO under these regulations will continue

until an individual NPDES permit is issued to the CAFO or until the deadline for notices of intent to be filed under new general permit regulations that are promulgated for CAFOs. These regulations shall expire five years from the effective date.

9.4.5.4 Duty to maintain permit coverage: No later than 180 days before the expiration of the permit, the permittee must submit an application to renew its permit, unless the facility has ceased operation or is no longer a CAFO.

9.4.6 Requirements For General CAFO NPDES Permits

Each person covered by these regulations shall meet or exceed the minimum standards of a general permit that consists of the following and applicable contents:

9.4.6.1 A nutrient management plan or animal waste management plan required by the Commission and developed by a Delaware certified consultant. A required nutrient management plan or animal waste management plan consists of the following applicable contents:

9.4.6.1.1 Plan Identification:

9.4.6.1.1.1 Applicant name, mailing address, county road number or name, telephone number and watershed designation of operation.

9.4.6.1.1.2 The name of the farm/facility, mailing address, manager or applicant, contact information to include emergency address or closest road name intersection of the CAFO.

9.4.6.1.1.3 Nutrient consultant's name and company:

9.4.6.1.1.3.1 Address and telephone number.

9.4.6.1.1.3.2 Nutrient management consultant certification number.

9.4.6.1.1.3.3 Date of plan and duration of animal waste or nutrient management plan (not to exceed 3 years).

9.4.6.1.1.4 Total acres under control (owned, rented or leased) of the CAFO represented in the nutrient management plans and a brief description of agricultural commodities produced within the operation.

9.4.6.1.1.5 Certification statement signed by the applicant documenting the intention to implement the nutrient management and/or animal waste management plan.

9.4.6.1.2 Field maps or aerial photographs that include the following:

9.4.6.1.2.1 Individual field identification and boundaries for all owned, rented or leased fields under control of the CAFO.

9.4.6.1.2.2 A copy of soil survey map showing all soil types on each field or the soil texture identification of all pertinent soils.

9.4.6.1.2.3 The location of all surface waters including drainage ditches, streams, ponds, etc.

9.4.6.1.2.4 Irrigation systems where applicable.

9.4.6.1.3 Crop and Nutrient Information:

9.4.6.1.3.1 The total number and type of animals, annual quantity estimate of waste generation and storage methods.

9.4.6.1.3.2 Description and method of temporary outside storage/stockpiling of manure.

9.4.6.1.3.3 Total acres (controlled by the CAFO, owned, rented or leased) represented by the animal waste management plan and/or nutrient management plan and summary of needed nutrients.

9.4.6.1.3.4 Realistic yield goal determined (average yield for the best 4 of the last 7 years).

9.4.6.1.3.5 Without yield records use soil productivity classes or provide written justification if realistic yield goals are higher than average.

9.4.6.1.3.6 Soil test (no older than 3 years) from an agronomic laboratory approved by the Commission.

9.4.6.1.3.7 Current and planned crop rotation.

9.4.6.1.3.8 Determine nitrogen rate based on realistic yield goal of crop(s) to be grown.

9.4.6.1.3.9 The application rate of phosphorus to high soil phosphorus levels, as defined by the Commission, cannot exceed a three-year crop removal rate. Optionally, a University of Delaware approved Phosphorus Site Index (PSI) may be performed and Phosphorus may be added as indicated by the PSI value.

9.4.6.1.3.10 Manure analysis (annually) results or a nutrient value average with written justification.

9.4.6.1.3.11 Estimate residual nitrogen (organic nutrients, fertilizer, or legume crops from prior year) in absence of a Pre-sidedress Soil Nitrate Test (PSNT).

9.4.6.1.3.12 Nutrient source(s) selected, rates and approximate timing of application(s).

9.4.6.1.4 Best Management Practices (BMPs) are recommendations to enhance agronomic and environmental practices should be recommended to better advise and educate persons and are not to be interpreted as mandatory implementation actions of a plan (e.g., Pre-sidedress Soil Nitrate Test, cover crops, vegetative buffer strips, litter additives, manure incorporation, timing/method, etc.) unless specified in site-specific practices covered in paragraph F2 below.

9.4.6.2 Site-specific management requirements that supplement the animal waste management

plan and/or nutrient management plan by addressing the following site-specific measures to protect waters of the State shall include:

9.4.6.2.1 An overall manure balance budget that clearly identifies available manure, intended manure use, manure storage capacity, and excess manure determined by the animal waste management plan and/or nutrient management plan. This budget must identify intended use to include land application, exportation, or other described uses. Operations must account for excess manure in the Annual Nutrient Management Report.

9.4.6.2.2 A description of manure storage capacity and general schedule or timeframe when manure is removed or transported from storage site to include but not be limited to:

9.4.6.2.2.1 Management practices to prevent storage, collection, and conveyance systems from leaking pollutants to ground or surface water.

9.4.6.2.2.2 For liquid storage: storage must be conducted to prevent a discharge and must include a calendar plan for liquid and sediment removal, with a freeboard action level of not less than one foot, with a depth marker.

9.4.6.2.2.3 For solid storage: permanent and temporary storage must be conducted to prevent a discharge and be consistent with standards adopted by NRCS and/or the Commission.

9.4.6.2.2.4 Emergency actions for spills and catastrophic events for existing CAFO liquid storage systems to include the volume of water generated and collected by a 25-year, 24-hour rainfall event or as specified in N.2.2.

9.4.6.2.3 A description and action plan to divert or segregate all clean water as appropriate from the production area and/or for collecting all water coming in contact with the production area to include but not limited to the following categories:

9.4.6.2.3.1 Roof runoff control to prevent contact of clean runoff with production areas where animal manures are present;

9.4.6.2.3.2 Direct contact between animals and waters of the State; and

9.4.6.2.3.3 Runoff coming into contact with animal waste.

9.4.6.2.4 A detailed animal mortality plan indicating as outlined. Burial of dead animals is prohibited except with approval and under special circumstances such as serious bio-security circumstances as approved by the state veterinarian.

9.4.6.2.4.1 Daily handling and disposal of dead animals in a manner that prevents contamination of ground/surface waters as recommended by the BMPs approved by the Commission.

9.4.6.2.4.1 Methods for handling



catastrophic mortalities as recommended by the BMPs approved by the Commission.

9.4.6.2.5 Manure and processed wastewater application setbacks. These setbacks are defined as the distance between the application area and any down-gradient surface waters, open tile line, intake structures, sinkholes or other conduits to surface waters. The direct application of manure or processed wastewater to ditches or surface waters is prohibited. These setback standards are provided as three options:

9.4.6.2.5.1 100-foot application setback, or

9.4.6.2.5.2 35-foot vegetated buffer where applications of manure, litter, and process wastewater are prohibited, or

9.4.6.2.5.3 Alternative compliance practices as follows:

9.4.6.2.5.3.1 For surface waters other than drainage ditches:

9.4.6.2.5.3.1.1 50-foot application setback for the field under the conservation practice of incorporation or planting a winter cover crop following the crop receiving manure, litter or process wastewater.

9.4.6.2.5.3.1.2 15-foot application setback for the field under the conservation practice of incorporation within 2 days of application and planting a winter cover crop following the crop receiving manure, litter or process wastewater.

9.4.6.2.5.3.2 For drainage ditches:

9.4.6.2.5.3.2.1 20-foot application setback for the field under the conservation practice of incorporation or planting a winter cover crop following the crop receiving manure, litter or process wastewater.

9.4.6.2.5.3.2.2 10-foot application setback for the field under the conservation practice of incorporation within 2 days of application and planting a winter cover crop following the crop receiving manure, litter or process wastewater.

9.4.6.2.5.3.3 Any alternative compliance practice approved by the Commission.

9.4.6.2.6 Chemicals and other contaminants handled on-site are not to be disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals and contaminants.

9.4.6.3 A nutrient management plan and/or animal waste management plan and site-specific management requirements shall be updated a minimum of every three years or upon significant alteration to include, but not be limited to, a 25 percent increase in animal units or acres of crops grown. Such plans shall be reported to the

Commission no later than December 15 of the year in which they must be updated.

9.4.7 Requirements for Individual CAFO NPDES Permit

9.4.7.1 With the guidance, advice and consent of the Commission, the Secretary may require any person covered by these regulations and the Nutrient Management Law (3 Del.C. §2248) to apply for and obtain an individual NPDES permit. Cases where an individual NPDES permit may be required include but not limited to the following:

9.4.7.1.1 There is noncompliance with the provisions of these regulations, the Nutrient Management Law (3 Del.C. §2200 et.al.), or the SNMP.

9.4.7.1.2 There is evidence indicating that a person is a significant contributor of a pollutant to waters of the State by demonstrating one of the following discharges:

9.4.7.1.2.1 Pollutants are discharged into waters of the State through a manmade ditch, flushing system, or other similar manmade device; or

9.4.7.1.2.2 Pollutants are discharged directly into waters of the State which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

9.4.7.1.3 There is a request for coverage by an applicant who is not required to obtain coverage.

9.4.7.2 Each person designated to need an individual CAFO permit will be notified in writing by the Secretary. Such notice shall include a brief statement of the reasons for the decision, an application form, a deadline for submission of the application and a statement regarding the effective date of coverage.

9.4.7.3 A CAFO Individual NPDES Permit will establish standards for mitigating or preventing pollutants from entering waters of the State and will consist of, but not be limited to, the following information:

9.4.7.3.1 All applicable contents found in a General Permit (9.4.6).

9.4.7.3.2 Conditions and compliance measures to mitigate or prevent pollutants from entering waters of the State.

9.4.7.3.3 The time line for implementation requirements and an expiration date not to exceed five years.

9.4.8 Reporting and Emergency Notification Requirements

9.4.8.1 Reporting Requirements: Each person covered by these regulations shall submit to the Department and the Commission by March 1 of every calendar year, on a form developed and supplied by the Commission, a report detailing, at a minimum, the following:

9.4.8.1.1 Annual plan identification to

include:

9.4.8.1.1.1 Applicants name, mailing address and telephone number.

9.4.8.1.1.2 Nutrient consultant's name and company.

9.4.8.1.1.3 Date Nutrient Management plan was prepared and duration of plan not to exceed 3 years.

9.4.8.1.1.4 Total acres represented by the nutrient management plan and a brief description of agricultural commodities produced within the operation.

9.4.8.1.2 The annual operating data to include animal type(s), number of animals confined and manure generation by type.

9.4.8.1.3 The quantity of animal manure in tons or thousand gallons applied to land managed within operation and the quantity of land to which applied.

9.4.8.1.4 The quantity of inorganic fertilizers applied to the land and the quantity of land to which applied.

9.4.8.1.5 The quantity and type of manure exported from operation; and the name, address and organization of person(s) responsible for utilizing the manure.

9.4.8.1.6 All reports submitted under this subsection shall not be considered public records under the Delaware Freedom of Information Act and shall not be disclosed. Such data may be used for data compilation.

9.4.8.1.7 A statement indicting that the current nutrient management plan was developed by a certified Nutrient Consultant.

9.4.8.2 Emergency Notification: If for any reason, there is a discharge from a CAFO the applicant shall verbally notify the Department within 24 hours of becoming aware of the discharge and document the incident in writing within five (5) days. In general, discharges occur when manure is conveyed by means of surface flow from a confinement facility, holding area, manure storage structure. The information to be provided shall include:

9.4.8.2.1 A description of the discharge and cause, including a description of the flow path to the receiving waters, an estimate of the flow and volume discharged.

9.4.8.2.2 The period of discharge, including exact dates and times and if not corrected, the anticipated time the discharge is expected to continue and the steps being taken to reduce, eliminate and prevent recurrence of the discharge.

9.4.8.2.3 If the discharge was caused by a precipitation event(s), the amount of rainfall, as measured with a rain gauge at the site.

9.4.8.2.4 Results of any sampling and analysis of the discharge, if available.

9.4.8.2.5 For further questions or

assistance, call the Delaware Department of Agriculture at 1-800-282-8685, (Nutrient Management Program), or DNREC Emergency at 1-800-662-8802.

#### 9.4.9 Record Keeping

9.4.9.1 Those persons requiring coverage by these regulations must maintain records of implementation for six years. All animal waste management plans, nutrient management plans, site-specific management requirements and records of implementation shall be kept by the landowner or person responsible for the plans or records. Animal waste management plans, nutrient management plans and records of implementation shall not be considered as public records under the Delaware Freedom of Information Act and shall not be disclosed, except, however, that they shall be made available for inspection as specified in Subsection J. Records of implementation shall include:

9.4.9.1.1 Soil test results and recommended nutrient application rates or the nutrient management plan.

9.4.9.1.2 Quantities, analyses and sources of all nutrients applied to fields.

9.4.9.1.3 Dates, weather conditions (as specified by the Commission) and methods of nutrient application(s).

9.4.9.1.4 Crops planted, yields, and plant matter (grain, silage, etc.) removed from the land.

9.4.9.1.5 The annual report and supporting documents.

#### 9.4.9.2 Off site use of manure

9.4.9.2.1 If the manure is sold or given to other persons for disposal and/or utilization, the following applicant information shall be maintained at the facility generating the waste or manure:

9.4.9.2.1.1 The date of manure removal.

9.4.9.2.1.2 Name of receiver and contact information.

9.4.9.2.1.3 Quantity (tons/gallons) of waste removed.

9.4.9.2.1.4 A copy of the manure nutrient analysis shall be given to the receiver.

9.4.9.3 Corrective actions taken as a result of visual inspections of storm water diversion devices, water lines, manure, litter, and process wastewater impoundments.

#### 9.4.10 Entry and Evaluation

9.4.10.1 The Secretary or the Commission, or authorized designee shall be authorized to evaluate implementation of these regulations and furthermore be allowed to:

9.4.10.1.1 Enter and inspect the facility subject to these regulations following proper notification.

9.4.10.1.2 Have access to and the right to copy, at reasonable times, any records that must be kept under the conditions of these regulations.

9.4.10.1.3 Sample or monitor any discharges from the site.

9.4.10.2 Facility applicant and/or the landowner shall be notified 48 hours in advance. Entry and evaluation shall be in accordance with any biosecurity requirements of the individual or commodity industry involved.

9.4.10.3 In cases where there is a probable blatant violation, in the sole judgment of the Secretary to these regulations, no advanced notice is required.

9.4.10.4 The implementation of these regulations shall not deny any property rights of either real or personal property, nor shall it authorize any injury to private property or any invasion of personal rights.

9.4.11 Duty to Comply

All practices required by these regulations shall be consistent with the terms and conditions of these regulations. The discharge of any pollutant more frequently than, or at a level in excess of, that identified and authorized herein shall constitute a violation of these regulations and shall be grounds for enforcement action as provided in 3 Del.C. §2200 et.al. and 7 Del.C. §6000 et.al.; for loss of authorization to discharge pursuant to these regulations; or for denial of a permit renewal application. The Department may seek voluntary compliance with a warning, notice or other educational means. However, the law does not require that such voluntary means be used before proceeding with enforcement.

9.4.12 Transfer of Ownership

9.4.12.1 In the event of any pending change in ownership of facilities covered by a CAFO general or individual permit, the new owner or applicant shall submit either an application for an individual NPDES permit or Notice Of Intent (NOI) to the Department as outlined in 9.4.5. (Application for Coverage).

9.4.12.2 Such written notice shall include the proposed date of transfer. The new owner is encouraged to provide notice at least 30 days prior to the proposed transfer to avoid any lag in coverage.

9.4.12.3 The Secretary per 3 Del.C. §2248(d) may require the new owner to apply for and obtain an individual NPDES permit, as provided in 9.4.7.

9.4.13 Effluent Standards and Limitations

Discharge limitations: No discharges of process wastewater from any animal feeding operation subject to these regulations may enter waters of the United States. The requirements do allow a discharge caused by a rainfall event, provided the following conditions are met:

9.4.13.1 The production area must be designed, built, operated and maintained to handle all of the process wastewater, plus the runoff and direct precipitation from a 25-year, 24-hour rainfall event.

9.4.13.2 The discharge may consist only of overflows caused by the rainfall event. Dry weather

discharges are not permitted. Discharges caused by poor management are never permitted.

9.4.14 Criteria for New Facilities

New CAFO facilities permitted after the effective date of these regulations shall meet the following criteria:

9.4.14.1 Siting of Control Facilities.

9.4.14.1.1 Waste storage structures shall not be located in the 100-year flood plain unless the facility is designed and constructed such that the manure from a facility is protected from floodwaters from a storm of 24 hours duration having a one (1) percent chance of recurrence within a given year. Such events are defined as 100-year 24-hour rainfall event. Waste storage structures and treatment lagoons are to be designed as essentially watertight structures in accordance with NRCS practices and standards.

9.4.14.1.2 Waste storage structures shall not be located closer than 300 feet from a public water well nor 200 feet from domestic water well.

9.4.14.1.3 No waters of the State shall come into direct contact with the animals confined at the facility. Fences or other practices may be used to restrict such access.

9.4.14.1.4 Animal confinement areas shall not be located:

9.4.14.1.4.1 In the 100 year flood plain unless they are protected from inundation and damage that may occur during that flood event.

9.4.14.1.4.2 Closer than 300 feet from a public water well, nor 200 feet from a domestic water well.

9.4.14.1.5 The handling, treatment, and management of AFO wastes shall not:

9.4.14.1.5.1 Result in the inadvertent destruction or adverse modification of the critical habitat of endangered or threatened species of plant, fish, or wildlife.

9.4.14.1.5.2 Create a public health hazard.

9.4.14.1.5.3 Result in groundwater contamination.

9.4.14.2 Effluent Limitations

9.4.14.2.1 No discharges of process wastewater from any animal feeding operation subject to these regulations may enter waters of the United States. The requirements do allow a discharge caused by a rainfall event, provided the following conditions are met:

9.4.14.2.1.1 The production area for horse, sheep, duck, dairy and beef (other than veal) must be designed, built, operated and maintained to handle all of the process wastewater, plus the runoff and direct precipitation from a 25-year, 24-hour rainfall event.

9.4.14.2.1.2 The production area for swine, veal calf, turkey and chickens must be designed, built,

operated and maintained to handle all of the process wastewater, plus the runoff and direct precipitation from a 100-year, 24-hour rainfall event.

9.4.14.2.1.3 The discharge may consist only of overflows caused by the rainfall event. Dry weather discharges are not permitted. Discharges caused by poor management are never permitted.

#### 9.4.15 Enforcement, Fines, and Penalties

9.4.15.1 Whoever violates these regulations shall be subject to the following fines and penalties:

9.4.15.1.1 A civil penalty shall be imposed by the Justice of the Peace Court of not less than \$25 nor more than \$1,000 for each violation. Each day of continued violation shall be considered as a separate violation up to a limit of \$10,000. The Justice of the Peace Court shall have jurisdiction of a violation in which a civil penalty is sought. In setting penalty amounts under this section, consideration shall be given to offsetting any economic benefit from non-compliance or any delayed or avoided costs to any person. Further, penalty assessments shall be sufficient to deter recurrence of non-compliance. If there is a substantial likelihood that non-compliance will reoccur, the Commission may recommend that the Secretary also seek a permanent or preliminary injunction or temporary restraining order in the Court of Chancery. Civil penalties imposed under this section may not be suspended.

9.4.15.1.2 In its discretion, the Commission may recommend that the Secretary impose an administrative penalty of not more than \$1,000 for each violation. Prior to assessment of an administrative penalty, written notice of the Secretary's proposal to impose such penalty shall be given to the violator and the violator shall have 30 days from receipt of said notice to request a public hearing. Any public hearing, if requested, right of appeal and judicial appeal shall be conducted pursuant to this section. Assessment of an administrative penalty shall be determined by the nature, circumstances, extent and gravity of the violation or violations, ability of the violator to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any), resulting from the violation and such other matters as justice may require.

9.4.15.2 Any expenses or civil administrative penalties collected by the Department under this section are hereby appropriated to the Department for use in assisting persons in achieving compliance or to demonstrate the application of research that may be of substantial benefit to any individuals seeking compliance with this section.

9.4.15.3 Any person wishing to file a complaint against any person regarding an alleged violation of these regulations shall follow the process established by Regulations Governing the Processing of Complaints and Violations published in the January 1, 2001 *Register of Regulations*.

9.4.16 Effective Date.

These regulations shall become effective.

9.5 Regulations Governing Discharges Associated with Car Washes and Other Motor Vehicle Washing Operations (Reserved)

9.6 Regulations Governing Discharges Associated with the Operation and Maintenance of Swimming Pools and Spas (Reserved)

## **DEPARTMENT OF SAFETY AND HOMELAND SECURITY**

### **BAIL ENFORCEMENT AGENTS**

Statutory Authority: 24 Delaware Code,  
Section 5404(a) (24 **Del.C.** §5404(a))

### **PUBLIC NOTICE**

Notice is hereby given that the Department of Safety and Homeland Security, Division of State Police, in accordance with 24 **Del.C.** Section 5404(a) proposes to amend Adopted Rule 1.0 - Licensing. This amendment will clarify items and fees that a Bail Enforcement Agent will receive when applying or renewing. If you wish to view the complete Rule, contact Ms. Peggy Anderson at (302) 739-5991.

These clarifications were originally published in the November issue (8 **DE Reg.** 689) of the *Register of Regulations*. The public comment period originally open until November 8, 2004, has been extended until January 31, 2005. Any persons wishing to present views may submit them in writing, by January 31, 2005, to Delaware State Police, Detective Licensing, P.O. BOX 430, DOVER, DE, 19903.

### **Bounty Hunter/Bail Enforcement Agents**

#### **Preamble**

These Rules & Regulations are promulgated pursuant to 24 **Del.C.** §5504(a) and the Secretary of Public Safety delegates his regulatory authority granted by Chapter 55 to the Division of State Police.

#### **1.0 Licensing**

1.1 Any individual applying for a bail enforcement agent ID card under 24 **Del.C.** Ch. 55 must meet and maintain the following qualifications:

1.1.1 Must not be convicted of any felony; and

1.1.2 Must not have been convicted, within the last seven (7) years, of any two (2) of the following misdemeanors: theft, drug offenses, offensive touching, or assault III; and

1.1.3 Must not have been convicted of any

charge or been involved in any conduct that may impair the performance of the bail enforcement agent and endanger public safety as determined by the Detective Licensing Section and

1.1.4 Must not have been, as a juvenile, adjudicated as delinquent for conduct which, if committed by an adult, would constitute a felony, unless and until that person has reached their 25<sup>th</sup> birthday.

1.2 An individual bail enforcement agent ID card will not be issued if there is a pending charge as listed in Section 1.1.1 or a pending charge as listed in Section 1.1.2 for an applicant with one (1) conviction of specified misdemeanor listed in Section 1.1.2.

1.3 The individual bail enforcement agent applying for an ID card under Title 24 Chapter 55 must also meet the following qualifications:

1.3.1 Must be at least 21 years of age; and

1.3.2 Must complete the training qualifications set forth in Section 6.0; and

1.3.3 If carrying a weapon, must meet and maintain the qualifications set forth in Section 4.0.

1.4 The individual bail enforcement agent applying for an ID card under Title 24 Chapter 55 must submit the following for approval:

1.4.1 A fee of ~~\$25~~ \$75 for a four (4) year ID card which shall expire and be renewable on the 4<sup>th</sup> anniversary date of the birth of the applicant next following the date of its issuance unless the birth date is February 29, in which event the license shall expire and be renewable on February 28 every 4<sup>th</sup> year; and

1.4.2 Any and all applications required by the Detective Licensing Section; and

1.4.3 Submit two (2) sets of fingerprints for a Delaware (CHRI) and Federal (FBI) criminal history record check. The Director of the State Bureau of Identification (SBI) determines the fee for this process. This subsection 1.4.3 does not apply to the renewal of ID cards, unless required by the Director of Detective Licensing.

1.5 The ID cards are the property of the Delaware State Police and must be returned to the Detective Licensing Section upon expiration of the ID card or at the request of the Detective Licensing Section.

1.6 A bail enforcement agent that has been issued an ID card by the Detective Licensing Section shall be required to have such card in their possession while in the performance of his or her duties.

1.7 A bail enforcement agent must not be a member or employee of any Delaware Law Enforcement Organization, as defined by the Council on Police Training, or a member or employee of a law enforcement organization of any other local, state or federal jurisdiction.

1.8 There will be no reciprocity with any other state regarding the issuing of an ID card to a bail enforcement

agent.

1.9 A fee of \$50 shall be for the renewal of the ID card and license, which shall be valid for another four (4) years.

**7 DE Reg. 1782 (6/1/04)**

## **2.0 Badges, Patches, Advertisements**

2.1 No individual licensed under 24 Del.C. Ch. 55 shall use any type of uniform or other clothing items displaying logos, badges, patches, or any other type of writing without first being approved by the Detective Licensing Section. Under no circumstances shall any item contain the seal or crest of the State of Delaware, any state of the United States, the seal or crest of any county or local sub division, or any facsimile of the aforementioned seals or crests.

2.2 All advertisements or other forms of publication, subsequent to their use, are subject to review by the Detective Licensing Section for potential misrepresentation. If the Detective Licensing Section does not approve the advertisement or publication, it will forward its concerns to the licensee. Failure to correct the advertisement or publication will be considered a violation of these Rules & Regulations.

2.3 The use of auxiliary lights, sirens, or any markings on vehicles is prohibited.

## **3.0 Use Of Animals**

3.1 The use of animals is prohibited in the performance of any bail enforcement agent activity.

## **4.0 Firearms Policy**

4.1 No person shall carry a firearm under this chapter unless the individual first completed and passed an approved 40-hour firearm course, instructed by a certified firearm instructor, recognized by the Detective Licensing Section.

4.2 All persons licensed to carry a firearm under this chapter must be re-certified yearly, by an instructor as described in Section 4.1, by shooting a minimum of three (3) qualifying shoots a year. The shoots must be scheduled on at least two (2) separate days, with a recommended 90 days between scheduled shoots. Of the three (3) shoots, there will be one mandatory "low light" shoot. Simulation is permitted and it may be combined with a daylight shoot. All individuals must qualify with the same type of weapon that he/she will carry. The minimum passing score is 75%.

4.2.1 All renewal shoot sheets must be submitted by January 31st of each year for the previous calendar year.

4.3 All handguns must be either a revolver or semi-automatic and be maintained to factory specifications. Only the handguns with the following calibers are permitted:

4.3.1 9mm

4.3.2 .357

4.3.3 .38

4.3.4 .40

4.4.5 .45

4.4 All ammunition will be factory fresh (no re-loads).

4.5 Any person requesting to carry any shotgun, rifle, any type of weapon or apprehension device must first provide proof of training to the Detective Licensing Section for approval.

#### **5.0 Nightstick, PR24, Mace, Peppergas, Chemical Spray, And Handcuffs**

5.1 To carry the above weapons/items a bail enforcement agent must have completed training by a Detective Licensing Section approved instructor, on each and every weapon/item carried. Proof of training, and any renewal training, must be provided to the Detective Licensing Section. Under no circumstances would a person be permitted to carry any other type weapon/item, unless first approved by the Detective Licensing Section.

**7 DE Reg. 1782 (6/1/04)**

#### **6.0 Training**

6.1 All bail enforcement agents licensed under Title 24 Chapter 55 must complete training in the following courses: Constitution/Bill of Rights, Laws of Arrest, Laws of Search & Seizure of Persons Wanted, Police Jurisdiction, Use of Deadly Force, and the Rules & Regulations of Bounty Hunters/Bail Enforcement Agents.

6.2 The training must be completed prior to obtaining a license.

**7 DE Reg. 1782 (6/1/04)**

#### **7.0 Notification Of Apprehensions**

7.1 All bail enforcement agents licensed under 24 **Del.C.** Ch. 55 are required to notify the police emergency 911 dispatch center (i.e., Recom, Kentcom, Suscom) of the appropriate police agency in which the apprehension will be attempted.

#### **8.0 Notification Of Arrest**

8.1 Anyone licensed under 24 **Del.C.** Ch. 55 shall, excluding weekends and State holidays, notify the Detective Licensing Section within five (5) days of being arrested for a misdemeanor or felony crime. Failure to do so may result in the suspension or revocation of any individual.

#### **9.0 Suspensions And Revocations**

9.1 The Detective Licensing Section shall have the power to suspend or revoke any individual, licensed under 24 **Del.C.** Ch. 55, that violates the Chapter or the promulgated Rules & Regulations.

9.2 The Detective Licensing Section may suspend or revoke any individual, licensed under 24 **Del.C.** Ch. 55, that has been arrested and that arrest could result in the conviction of any misdemeanor or felony as described in Section 1.0.

9.3 Anyone whose license has been suspended,

revoked, rejected, or denied is entitled to a hearing before the Secretary of Safety and Homeland Security.

9.3.1 Anyone requesting a hearing shall notify the Detective Licensing Section, in writing, within 30 days from the suspension, revocation, rejection, or denial and the hearing shall be scheduled at the earliest possible time.

**5 DE Reg. 1523 (1/1/02)**

**7 DE Reg. 1782 (6/1/04)**

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**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.

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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF CHIROPRACTIC**  
Statutory Authority: 24 Delaware Code,  
Section 706(a)(1)) (24 Del.C. 706(a)(1))  
24 DE Admin. Code 700

**ORDER**

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on December 16, 2004 at a scheduled meeting of the Delaware Board of Chiropractic to receive comments regarding proposed Regulation 9.0. The proposed regulation identifies crimes substantially related to chiropractic practice as mandated by SB 229 enacted by the 142<sup>nd</sup> General Assembly. The proposed regulation was published in the *Register of Regulations*, Vol. 8, Issue 5, November 1, 2004.

**Background**

Under Title 24, Chapter 7, as amended by SB 229, one of the qualifications for licensure is that the applicant “shall not have a criminal conviction record, nor pending criminal charge relating to an offense, the circumstances of which substantially relate to the practice of chiropractic. Applicants who have criminal convictions records or

pending criminal charges shall require appropriate authorities to provide information about the record or charge directly to the Board in sufficient specificity to enable the Board to make a determination whether the record or charge is substantially related to the practice of chiropractic.” 24 Del.C. §707(a)(5). In addition, a licensee shall be subject to disciplinary action for unprofessional conduct which includes, but is not limited to, “conviction of a crime that is substantially related the practice of chiropractic.” 24 Del.C. §711(b)(2).

“‘Substantially related’ means the nature of the criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the practice of chiropractic. 24 Del.C. §707(a)(5); 24 Del.C. §711(b)(2).

The Board is charged by SB 229 to “promulgate regulations specifically identifying those crimes, which are substantially related to the practice of chiropractic.” 24 Del.C. §706(f).

**Summary Of The Evidence**

No written comments were received. No members of the public attended the hearing.

**Findings Of Fact**

The Board carefully reviewed and considered the crimes presented as a compilation of crimes extracted from the **Delaware Code**. The overarching concern of the Board was



the safety of public since the licensees have direct physical contact with the individuals they treat while performing chiropractic procedures which can include children. In addition, healthcare professions come into contact with the public at times when their patients are sick or infirmed and often extremely vulnerable to undue influence or other forms of abuse. The "primary objective of the Board of Chiropractic, to which all other objectives and purposes are secondary, is to protect the general public, specifically those persons who are the direct recipients of the services regulated by this chapter, from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered" 24 Del.C. §700. Board finds that the violent crimes and crimes involving abuse of children identified in the proposed rule are substantially related to the practice of chiropractic.

#### Decision And Effective Date

**NOW THEREFORE**, the Board hereby adopts the changes to Regulation 9.0 to be effective 10 days following publication of this order in the *Register of Regulations*.

#### Text And Citation

The text of the revised rules remains as published in *Register of Regulations*, Vol. 8, Issue 5, November 1, 2004, without any changes.

**IT IS SO ORDERED** this 16th day of December, 2004.

#### STATE BOARD OF CHIROPRACTIC

William Cowan, D.C., Chairman, Professional Member  
 Gary Morgan, D.C., Professional Member  
 Trent Camp, D.C., Professional Member  
 Raymond Moore, Public Member  
 Terry Jackson, Public Member  
 Pramela Kaza, Public Member  
 Michael P. Kelman, D.C., Professional Member

#### 700 Board of Chiropractic

#### **9.0 Crimes substantially related to the practice of chiropractic**

9.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of chiropractic in the State of Delaware without regard to the place of conviction:

9.1.1 Manslaughter. 11 Del.C. §632.

9.1.2 Murder by abuse or neglect in the first degree. 11 Del.C. § 634.

9.1.3 Murder in the second degree. 11 Del.C. § 635.

9.1.4 Murder in the first degree. 11 Del.C. § 636.

9.1.5 Rape in the second degree. 11 Del.C. § 772.

9.1.6 Rape in the first degree. 11 Del.C. § 773.

9.1.7 Continuous sexual abuse of a child. 11 Del.C. § 778.

9.1.8 Dangerous crime against a child. 11 Del.C. § 779.

9.1.9 Sexual exploitation of a child. 11 Del.C. § 1108.

9.1.10 Unlawfully dealing in child pornography. 11 Del.C. § 1109.

9.2 Crimes substantially related to the practice of chiropractic shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

**\*Please Note:** As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Chiropractic is available at:

<http://www.state.de.us/research/AdminCode/title24/700 Board of Chiropractic.shtml>

#### **DIVISION OF PROFESSIONAL REGULATION BOARD OF ELECTRICAL EXAMINERS**

Statutory Authority: 24 Delaware Code,  
 Section 1406(b) (24 Del.C. §1406(b))  
 24 DE Admin. Code 1400

#### **ORDER**

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on December 1, 2004 at a scheduled meeting of the Board of Electrical Examiners to receive comments regarding proposed Regulation 17.0. The proposed regulation identifies crimes substantially related to the work of an electrician as mandated by SB 229 enacted by the 142<sup>nd</sup> General Assembly. The proposed regulation was published in the *Register of Regulations*, Vol. 8, Issue 5, November 1, 2004.

#### **Background**

The felony bar in 24 Del.C. §1408(a)(8) is stricken by



SB 229. However, conviction of a felony remains as grounds for discipline in §1412(a)(4).

One of the qualifications for licensure in Title 24, Chapter 14 is that the applicant “shall not have a criminal conviction record, nor pending criminal charge relating to an offense, the circumstances of which substantially relate to providing electrical services. Applicants who have criminal convictions records or pending criminal charges shall request appropriate authorities to provide information about the record or charge directly to the Board to make a determination whether the record or charge is substantially related to providing electrical services.” §1408(a)(9). The Board is charged by SB 229 with “promulgating regulations specifically identifying those crimes which are substantially related to the work of an electrician.” §1406(b)

“Substantially related” means the nature of the criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the work of an electrician. §1402(19).

**Summary of the Evidence and Information Submitted**

No comments were received.

**Findings of Fact with Respect to the Evidence and Information Submitted**

The Board carefully reviewed and considered the crimes presented as a compilation of crimes extracted from the Delaware Code. The overarching concern of the Board was the safety of public since the licensees have access to the homes of consumers, sometimes when the resident is home alone or not at home. The “primary objective of the Board of Electrical Examiners, to which all other objectives and purposes are secondary, is to protect the general public, specifically those persons who are the direct recipients of the services regulated by this chapter, from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered” 24 Del.C. §1401. Unrestricted access to a person’s home is a matter of security and involves an element of trust. Board finds crimes of dishonesty and violence are substantially related to the work of an electrician.

**Decision and Effective Date**

The Board hereby adopts the changes to Regulation 17.0 to be effective 10 days following publication of this order in the *Register of Regulations*.

**Text and Citation**

The text of the revised rules remains as published in

*Register of Regulations*, Vol. 8, Issue 5, November 1, 2004.

**SO ORDERED** this 1st day of December, 2004.

**STATE BOARD OF ELECTRICAL EXAMINERS**

- Jacob Good, President
- Richard Strouse, Vice President
- Shirley Good, Secretary
- Leroy James
- Donald Collins
- Donald King
- John Gordy
- Steve Dignan
- James Anderson

**1400 Board of Electrical Examiners**

**17.0 Crimes substantially related to work of an electrician.**

17.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or the solicitation to commit any of the following crimes, is deemed to be a crime substantially related to the work of an electrician in the State of Delaware without regard to the place of conviction:

- 17.1.1 Reckless endangering in the first degree. 11 Del.C. §604
- 17.1.2 Assault in the second degree. 11 Del.C. §612
- 17.1.3 Assault in the first degree. 11 Del.C. §613
- 17.1.4 Manslaughter. 11 Del.C. §632
- 17.1.5 Murder by abuse or neglect in the second degree. 11 Del.C. §633
- 17.1.6 Murder by abuse or neglect in the first degree. 11 Del.C. §634
- 17.1.7 Murder in the second degree. 11 Del.C. §635
- 17.1.8 Murder in the first degree. 11 Del.C. §636
- 17.1.9 Unlawful sexual contact in the second degree. 11 Del.C. §768
- 17.1.10 Unlawful sexual contact in the first degree. 11 Del.C. §769
- 17.1.11 Rape in the fourth degree. 11 Del.C. §770
- 17.1.12 Rape in the third degree. 11 Del.C. §771
- 17.1.13 Rape in the second degree. 11 Del.C. §772
- 17.1.14 Rape in the first degree. 11 Del.C. §773
- 17.1.15 Sexual extortion. 11 Del.C. §776
- 17.1.16 Continuous sexual abuse of a child. 11 Del.C. §778
- 17.1.17 Dangerous crimes against a child. 11 Del.C. §779
- 17.1.18 Kidnapping in the second degree. 11 Del.C. §783

- §783A 17.1.19 Kidnapping in the first degree.11 Del.C.
- §802 17.1.20 Arson in the second degree.11 Del.C.
- 17.1.21 Arson in the first degree.11 Del.C. §803
- 17.1.22 Criminal mischief. 11 Del.C. §811
- §824 17.1.23 Burglary in the third degree. 11 Del.C.
- §825 17.1.24 Burglary in the second degree.11 Del.C.
- 17.1.25 Burglary in the first degree.11 Del.C. §826
- §831 17.1.26 Robbery in the second degree. 11 Del.C.
- §832 17.1.27 Robbery in the first degree. 11 Del.C.
- 17.1.28 Theft of services. 11 Del.C. §845
- 17.1.29 Extortion. 11 Del.C. §846
- 17.1.30 Identity theft. 11 Del.C. §854
- 17.1.31 Forgery. 11 Del.C. §861
- 17.1.32 Unlawful use of credit card. 11 Del.C.
- §903 17.1.33 Criminal impersonation of a police officer. 11 Del.C. §907B
- 17.1.34 Insurance fraud. 11 Del.C. §913
- 17.1.34 Home improvement fraud. 11 Del.C. §916
- 17.1.36 New home construction fraud. 11 Del.C.
- §917 17.1.37 Dealing in children. 11 Del.C. §1100
- 17.1.38 Sexual exploitation of a child. 11 Del.C.
- §1108 17.1.39 Unlawful dealing in child pornography. 11 Del.C. §1109
- §1112A 17.1.40 Sexual solicitation of a child.11 Del.C.
- §1222 17.1.41 Perjury in the second degree. 11 Del.C.
- §1223 17.1.42 Perjury in the first degree. 11 Del.C.
- 17.1.43 Aggravated harassment. 11 Del.C. §1312
- 17.1.44 Adulteration. 11 Del.C. §1339
- 17.1.45 Possession of a firearm during a felony. 11 Del.C. §1447
- 17.1.46 Theft of a firearm.11 Del.C. §1451
- Del.C. §1503 17.1.47 Organized crime and racketeering. 11 Del.C. §1503
- 17.1.48 Breaking and entering, etc. to place or remove equipment 11 Del.C. §2410
- 17.2 Crimes substantially related to the work of an electrician shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

\*Please Note: As the rest of the sections were not

amended, they are not being published. A complete set of the rules and regulations for the Board of Electrical Examiners is available at: <http://www.state.de.us/research/AdminCode/title24/1400> Board of Electrical Examiners.shtml

### DIVISION OF PROFESSIONAL REGULATION BOARD OF PLUMBING EXAMINERS

Statutory Authority: 24 Delaware Code,  
Section 1802(b) (24 Del.C. §1802(b))  
24 DE Admin. Code 1800

#### ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on December 14, 2004 at a scheduled meeting of the Board of Electrical Examiners to receive comments regarding proposed Regulation 8.0. The proposed regulation identifies crimes substantially related to plumbing services as mandated by SB 229 enacted by the 142<sup>nd</sup> General Assembly. The proposed regulation was published in the *Register of Regulations*, Vol. 8, Issue 5, November 1, 2004.

#### Background

The disciplinary provisions in 24 Del.C. §1810(a)(3) were amended to replace the word “felony” with the phrase “crime that is substantially related to plumbing services.” Offenses that are grounds for discipline 24 Del.C. §1810(a)(3) are a bar to licensure under 24 Del.C. §1806(c). The Board is charged by SB 229 with “promulgating regulations specifically identifying those crimes which are substantially related to plumbing services” in §1805(b). ‘Substantially related’ means the nature of the criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to providing plumbing services. §1802(6).

#### Summary of the Evidence and Information Submitted

No written comments were received.

Paul Smith commented in the public hearing that he believed that burglary in the third degree, proposed rule 8.1.2.2, should not be included in the crimes related to plumbing. In his view it was barely over a misdemeanor.

#### Findings of Fact with Respect to the Evidence and Information Submitted

The Board carefully reviewed and considered the crimes presented as a compilation of crimes extracted from the Delaware Code. The overarching concern of the Board was the safety of public since the licensees have access to the homes of consumers, sometimes when the resident is home alone or not at home. The Board finds that burglary in the third degree should be included in the list of crimes since an element of the offense is entry into a building with the intent to commit a crime.

The “primary objective of the Board of Plumbing Examiners, to which all other objectives and purposes are secondary, is to protect the general public, specifically those persons who are the direct recipients of the services regulated by this chapter, from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered” 24 **Del.C.** §1801. Unrestricted access to a person’s home is a matter of security and involves an element of trust. Board finds crimes of dishonesty and violence are substantially related to providing plumbing services.

**Decision and Effective Date**

The Board hereby adopts the changes to Regulation 8.0 to be effective 10 days following publication of this order in the *Register of Regulations*.

**Text and Citation**

The text of the revised rules remains as published in *Register of Regulations*, Vol. 8, Issue 5, November 1, 2004.

**SO ORDERED** this 14<sup>th</sup> day of December, 2004.

**STATE BOARD OF PLUMBING EXAMINERS**

- Bruce Collins, Chair
- Lawrence Carson, Secretary
- Dess Stokes
- Brent Schrock
- Frank Beebe
- Carol Guilbert
- Thomas Ciconte
- Robert Briccotto, Jr.

**1800 Board of Plumbing Examiners**

**8.0 Crimes substantially related to plumbing services.**

8.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of the solicitation to commit any of the following crimes, is deemed to be a crime substantially related to plumbing services or in the State of Delaware without regard to the place of conviction:

- 8.1.1 Reckless endangering in the first degree. 11 **Del.C.** §604
- 8.1.2 Assault in the second degree. 11 **Del.C.** §612
- 8.1.3 Assault in the first degree. 11 **Del.C.** §613
- 8.1.4 Manslaughter. 11 **Del.C.** §632
- 8.1.5 Murder by abuse or neglect in the second degree. 11 **Del.C.** §633
- 8.1.6 Murder by abuse or neglect in the first degree. 11 **Del.C.** §634
- 8.1.7 Murder in the second degree. 11 **Del.C.** §635
- 8.1.8 Murder in the first degree. 11 **Del.C.** §636
- 8.1.9 Unlawful sexual contact in the second degree. 11 **Del.C.** §768
- 8.1.10 Unlawful sexual contact in the first degree. 11 **Del.C.** §769
- 8.1.11 Rape in the fourth degree. 11 **Del.C.** §770
- 8.1.12 Rape in the third degree. 11 **Del.C.** §771
- 8.1.13 Rape in the second degree. 11 **Del.C.** §772
- 8.1.14 Rape in the first degree. 11 **Del.C.** §773
- 8.1.15 Sexual extortion. 11 **Del.C.** §776
- 8.1.16 Continuous sexual abuse of a child. 11 **Del.C.** §778
- 8.1.17 Kidnapping in the second degree. 11 **Del.C.** §783
- 8.1.18 Kidnapping in the first degree. 11 **Del.C.** §783A
- 8.1.19 Arson in the second degree. 11 **Del.C.** §802
- 8.1.20 Arson in the first degree. 11 **Del.C.** §803
- 8.1.21 Criminal mischief. 11 **Del.C.** §811
- 8.1.22 Burglary in the third degree. 11 **Del.C.** §824
- 8.1.23 Burglary in the second degree. 11 **Del.C.** §825
- 8.1.24 Burglary in the first degree. 11 **Del.C.** §826
- 8.1.25 Robbery in the second degree. 11 **Del.C.** §831
- 8.1.26 Robbery in the first degree. 11 **Del.C.** §832
- 8.1.27 Theft; lost or mislaid property; mistaken delivery. 11 **Del.C.** §842
- 8.1.28 Theft; false pretense. 11 **Del.C.** §843
- 8.1.29 Theft, false promise. 11 **Del.C.** §844
- 8.1.30 Theft of services. 11 **Del.C.** §845
- 8.1.31 Extortion. 11 **Del.C.** §846
- 8.1.32 Identity theft. 11 **Del.C.** §854
- 8.1.33 Forgery. 11 **Del.C.** §861
- 8.1.34 Falsifying business records. 11 **Del.C.** §871
- 8.1.35 Unlawful use of credit card. 11 **Del.C.** §903

- 8.1.36 Reencoder and scanning devices. 11 Del.C. §903A  
 8.1.37 Insurance fraud. 11 Del.C. §913  
 8.1.38 Home improvement fraud. 11 Del.C. §916  
 8.1.39 New home construction fraud. 11 Del.C. §917  
 8.1.40 Dealing in children. 11 Del.C. §1100  
 8.1.41 Sexual exploitation of a child. 11 Del.C. §1108  
 8.1.42 Sexual solicitation of a child. 11 Del.C. §1112A  
 8.1.43 Perjury in the second degree. 11 Del.C. §1222  
 8.1.44 Perjury in the first degree. 11 Del.C. §1223  
 8.1.45 Aggravated harassment. 11 Del.C. §1312  
 8.1.46 Possession of a deadly weapon during commission of a felony. 11 Del.C. §1447  
 8.1.47 Possession of a firearm during commission of a felony. 11 Del.C. §1447A  
 8.1.48 Breaking and entering, etc., to place or remove equipment. 11 Del.C. §2410

8.2 Crimes substantially related to plumbing services shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

**\*Please Note:** As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Plumbing Examiners is available at: <http://www.state.de.us/research/AdminCode/title24/1800 Board of Plumbing Examiners.shtml>

**DIVISION OF PROFESSIONAL REGULATION  
BOARD OF OPTOMETRY**

Statutory Authority: 24 Delaware Code,  
Section 2104(a)(1) (24 Del.C. §2104(a)(1))  
24 DE Admin. Code 2100

**ORDER**

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on December 16, 2004 at a scheduled meeting of the Delaware Board of Examiners in Optometry to receive comments regarding proposed Regulation 14.0. The proposed regulation identifies crimes substantially related to the practice of optometry as mandated by SB 229 enacted by the 142<sup>nd</sup> General Assembly. The proposed regulation was published in the *Register of Regulations*, Vol. 8, Issue 5,

November 1, 2004.

**Background**

Under Title 24, Chapter 21, one of the qualifications for licensure is that the applicant shall submit evidence that the applicant “has not engaged in any of the acts or offenses that would be grounds for disciplinary action under this chapter and has no disciplinary proceedings or unresolved complaints pending against him or her in any jurisdiction where the applicant has previously been or is currently licensed.” 24 Del.C. §2107(a)(4), 24 Del.C. §2113(a)(8), as amended by SB 229 provides that a licensee shall be subject to disciplinary action set forth §2114 if, after a hearing the Board finds that the optometrist “has been convicted of a crime that is substantially related to the practice of optometry. ‘Substantially related’ means the nature of the criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the practice of optometry. A copy of the record of conviction certified by the clerk of the court entering the conviction shall be conclusive evidence therefore.” §2133 (a)(8).

The Board’s authority to promulgate rules and regulations implementing or clarifying specific sections of Chapter 21 is set forth in 24 Del.C. §2104. The proposed regulation specifically identifies those crimes which are substantially related to the practice of optometry.

**Summary Of The Evidence**

No written comments were received. No public comment was received at the December 16, 2004 hearing.

**Findings of Fact with Respect to the Evidence and Information Submitted**

The Board carefully reviewed and considered the crimes presented as a compilation of crimes extracted from the Delaware Code. The overarching concern of the Board was the safety of the public since the licensed practitioners work in close physical proximity, and have direct physical contact, with the individuals they treat while performing optometric services. An optometrist’s patients may also include children and the elderly who are vulnerable to undue influence or other forms of abuse. An optometrist has access to confidential patient records, billing and health insurance records. In addition, therapeutically certified optometrists have prescriptive authority for those pharmaceutical agents specified by statute.

The “primary objective” of the Board of Examiners in Optometry, to which all other objectives and purposes are secondary, is to protect the general public, specifically those persons who are the direct recipients of services regulated by

this chapter, from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered” 24 **Del.C.** §2100. The Board finds that the crimes in the proposed rule are substantially related to fitness or ability to perform 1 or more of the duties and responsibilities of an optometrist in that they involve: the use of physical violence or force, or the threat thereof, toward or upon the person of another; dishonesty, or false or fraudulent conduct; mistreatment or abuse of children, the elderly or animals; offenses against the public administration including but not limited to bribery and perjury; offenses against public health, order and decency; offenses which evidence a lack of appropriate concern for the safety and well being of another person or persons in general demonstrating sufficiently flawed judgment to call into question the individuals ability to make or advise upon health care related matters for other individuals; and offenses involving the illegal possession or the misuse or abuse of narcotics, or other addictive substances and those non-addictive substances with a substantial capacity to impair reason or judgment.

In summary, the Board finds that adopting regulation 14.0 as proposed is in the best interest of the citizens of the State of Delaware and is necessary to protect the health and safety of the general public, particularly the recipients of optometric services.

#### **Decision And Effective Date**

The Board hereby adopts the changes to Regulation 14.0 to be effective 10 days following publication of this order in the *Register of Regulations*.

#### **Text And Citation**

The text of the revised rule remains as published in *Register of Regulations*, Vol. 8, Issue 5, November 1, 2004, and as attached hereto as Exhibit A.

**SO ORDERED** this 16th day of December, 2004.

#### **BOARD OF EXAMINERS IN OPTOMETRY**

Carl Maschauer, O.D., President, Professional Member  
Sonja P. Biddle, O.D., Professional Member  
Allan S. Tocker, O.D., Professional Member  
Ruth Banta, Public Member  
Nichole Anderson, Public Member

#### **2100 Board of Optometry**

**14.0 Crimes substantially related to the practice of optometry:**

14.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of optometry in the State of Delaware without regard to the place of conviction:

- 14.1.1 Aggravated menacing. 11 Del.C. §602 (b)
- 14.1.2 Reckless endangering in the first degree. 11 Del.C. §604
- 14.1.3 Abuse of a pregnant female in the second degree. 11 Del.C. §605.
- 14.1.4 Abuse of a pregnant female in the first degree. 11 Del.C. §606.
- 14.1.5 Assault in the third degree. 11 Del.C. §611.
- 14.1.6 Assault in the second degree. 11 Del.C. §612
- 14.1.7 Assault in the first degree. 11 Del.C. §613.
- 14.1.8 Abuse of a sports official; felony. 11 Del.C. §614.
- 14.1.9 Assault by abuse or neglect. 11 Del.C. §615.
- 14.1.10 Terroristic threatening; felony. 11 Del.C. §621.
- 14.1.11 Unlawfully administering drugs. 11 Del.C. §625.
- 14.1.12 Unlawfully administering controlled substance or counterfeit substance or narcotic drugs. 11 Del.C. §626
- 14.1.13 Vehicular assault in the first degree. 11 Del.C. §629.
- 14.1.14 Vehicular homicide in the second degree. 11 Del.C. §630.
- 14.1.15 Vehicular homicide in the first degree. 11 Del.C. §630A.
- 14.1.16 Criminally negligent homicide. 11 Del.C. §631.
- 14.1.17 Manslaughter. 11 Del.C. §632.
- 14.1.18 Murder by abuse or neglect in the second degree. 11 Del.C. §633
- 14.1.19 Murder by abuse or neglect in the first degree. 11 Del.C. §634.
- 14.1.20 Murder in the second degree; class A felony. 11 Del.C. §635.
- 14.1.21 Murder in the first degree. 11 Del.C. §636.
- 14.1.22 Promoting suicide. 11 Del.C. §645.
- 14.1.23 Abortion. 11 Del.C. §651.
- 14.1.24 Incest. 11 Del.C. §766.
- 14.1.25 Unlawful sexual contact in the second degree. 11 Del.C. §768.
- 14.1.26 Unlawful sexual contact in the first degree. 11 Del.C. § 769.
- 14.1.26 Rape in the fourth degree. 11 Del.C. §770.

- 14.1.27 Rape in the third degree. 11 **Del.C.** §771.
- 14.1.28 Rape in the second degree. 11 **Del.C.** §772.
- 14.1.29 Rape in the first degree. 11 **Del.C.** §773.
- 14.1.30 Sexual extortion. 11 **Del.C.** §776.
- 14.1.31 Bestiality. 11 **Del.C.** §777.
- 14.1.32 Continuous sexual abuse of a child. 11 **Del.C.** §778.
- 14.1.33 Dangerous crime against a child. 11 **Del.C.** §779.
- 14.1.34 Female genital mutilation. 11 **Del.C.** §780.
- 14.1.35 Unlawful imprisonment in the first degree. 11 **Del.C.** §782.
- 14.1.36 Kidnapping in the second degree. 11 **Del.C.** §783.
- 14.1.37 Kidnapping in the first degree. 11 **Del.C.** §783A.
- 14.1.38 Arson in the third degree. 11 **Del.C.** §801.
- 14.1.39 Arson in the second degree. 11 **Del.C.** §802.
- 14.1.40 Arson in the first degree. 11 **Del.C.** §803.
- 14.1.41 Criminal mischief. 11 **Del.C.** §811.
- 14.1.42 Burglary in the third degree. 11 **Del.C.** §824.
- 14.1.43 Burglary in the second degree. 11 **Del.C.** §825.
- 14.1.44 Burglary in the first degree. 11 **Del.C.** §826.
- 14.1.45 Possession of burglar's tools or instruments facilitating theft. 11 **Del.C.** §828.
- 14.1.46 Robbery in the second degree. 11 **Del.C.** §831.
- 14.1.47 Robbery in the first degree. 11 **Del.C.** §832.
- 14.1.48 Carjacking in the second degree. 11 **Del.C.** §835.
- 14.1.49 Carjacking in the first degree. 11 **Del.C.** §836.
- 14.1.50 Shoplifting; felony. 11 **Del.C.** §840.
- 14.1.51 Use of illegitimate retail sales receipt or Universal Product Code Label; felony. 11 **Del.C.** §840A.
- 14.1.52 Extortion. 11 **Del.C.** §846.
- 14.1.53 Use, possession, manufacture, distribution and sale of unlawful telecommunication and access devices; felony. 11 **Del.C.** §850.
- 14.1.54 Receiving stolen property; felony. 11 **Del.C.** §851.
- 14.1.55 Identity theft. 11 **Del.C.** §854.
- 14.1.56 Possession of shoplifters tools or instruments facilitating theft. 11 **Del.C.** §860.
- 14.1.57 Forgery; felony; misdemeanor. 11 **Del.C.** §861.
- 14.1.58 Possession of forgery devices. 11 **Del.C.** §862.
- 14.1.59 Falsifying business records. 11 **Del.C.** §871.
- 14.1.60 Tampering with public records in the second degree. 11 **Del.C.** §873.
- 14.1.61 Tampering with public records in the first degree. 11 **Del.C.** §876.
- 14.1.62 Offering a false instrument for filing. 11 **Del.C.** §877.
- 14.1.63 Issuing a false certificate. 11 **Del.C.** §878.
- 14.1.64 Issuing a bad check; felony. 11 **Del.C.** §900.
- 14.1.65 Unlawful use of credit card; felony. 11 **Del.C.** §903.
- 14.1.66 Reencoder and scanning devices. 11 **Del.C.** §903A.
- 14.1.67 Deceptive business practices. 11 **Del.C.** §906.
- 14.1.68 Criminal impersonation. 11 **Del.C.** §907.
- 14.1.69 Criminal impersonation, accident related. 11 **Del.C.** §907A.
- 14.1.70 Criminal impersonation of a police officer. 11 **Del.C.** §907B.
- 14.1.71 Securing execution of documents by deception. 11 **Del.C.** §909.
- 14.1.72 Fraudulent conveyance of public lands. 11 **Del.C.** §911.
- 14.1.73 Fraudulent receipt of public lands. 11 **Del.C.** §912.
- 14.1.74 Insurance fraud. 11 **Del.C.** §913.
- 14.1.75 Health care fraud. 11 **Del.C.** §913A.
- 14.1.76 Use of consumer identification information. 11 **Del.C.** §914.
- 14.1.77 Home improvement fraud. 11 **Del.C.** §916.
- 14.1.78 New home construction fraud. 11 **Del.C.** §917.
- 14.1.79 Unauthorized access. 11 **Del.C.** §932.
- 14.1.80 Theft of computer services. 11 **Del.C.** §933.
- 14.1.81 Interruption of computer services. 11 **Del.C.** §934.
- 14.1.82 Misuse of computer system information. 11 **Del.C.** §935.
- 14.1.83 Destruction of computer equipment. 11 **Del.C.** §936.
- 14.1.84 Dealing in children. 11 **Del.C.** §1100.
- 14.1.85 Abandonment of child. 11 **Del.C.** §1101.
- 14.1.86 Endangering the welfare of a child. 11 **Del.C.** §1102.
- 14.1.87 Endangering the welfare of an incompetent person. 11 **Del.C.** §1105.
- 14.1.88 Sexual exploitation of a child. 11 **Del.C.** §1108.
- 14.1.89 Unlawfully dealing in child pornography.

<p><u>11 Del.C. §1109.</u></p> <p><u>14.1.90 Possession of child pornography. 11 Del.C. §1111.</u></p> <p><u>14.1.91 Sexual offenders; prohibitions from school zones. 11 Del.C. §1112.</u></p> <p><u>14.1.92 Sexual solicitation of a child. 11 Del.C. §1112A</u></p> <p><u>14.1.93 Bribery. 11 Del.C. §1201</u></p> <p><u>14.1.94 Receiving a bribe; class E felony. 11 Del.C. §1203.</u></p> <p><u>14.1.95 Improper influence. 11 Del.C. §1207.</u></p> <p><u>14.1.96 Official misconduct. 11 Del.C. §1211.</u></p> <p><u>14.1.97 Perjury in the second degree. 11 Del.C. §1222.</u></p> <p><u>14.1.98 Perjury in the first degree. 11 Del.C. §1223.</u></p> <p><u>14.1.99 Making a false written statement. 11 Del.C. §1233.</u></p> <p><u>14.1.100 Wearing a disguise during the commission of a felony. 11 Del.C. §239.</u></p> <p><u>14.1.101 Terroristic threatening of public officials or public servants. 11 Del.C. §1240.</u></p> <p><u>14.1.102 Hindering prosecution. 11 Del.C. §1244.</u></p> <p><u>14.1.103 Falsely reporting an incident. 11 Del.C. §1245.</u></p> <p><u>14.1.104 Abetting the violation of driver's license restrictions. 11 Del.C. §1249.</u></p> <p><u>14.1.105 Offenses against law-enforcement animals. Felony 11 Del.C. §1250.</u></p> <p><u>14.1.106 Escape in the second degree. 11 Del.C. §1252.</u></p> <p><u>14.1.107 Escape after conviction. 11 Del.C. §1253.</u></p> <p><u>14.1.108 Assault in a detention facility. 11 Del.C. §1254.</u></p> <p><u>14.1.109 Promoting prison contraband; felony; misdemeanor. 11 Del.C. §1256.</u></p> <p><u>14.1.110 Use of an animal to avoid capture; felony 11 Del.C. § 1257A.</u></p> <p><u>14.1.111 Misuse of prisoner mail; felony. 11 Del.C. §1260.</u></p> <p><u>14.1.112 Bribing a witness. 11 Del.C. §1261.</u></p> <p><u>14.1.113 Bribe receiving by a witness. 11 Del.C. §1262.</u></p> <p><u>14.1.114 Tampering with a witness. 11 Del.C. §1263.</u></p> <p><u>14.1.115 Interfering with child witness. 11 Del.C. §1263A.</u></p> <p><u>14.1.116 Bribing a juror. 11 Del.C. §1264.</u></p> <p><u>14.1.117 Bribe receiving by a juror. 11 Del.C. §1265.</u></p> <p><u>14.1.118 Tampering with a juror. 11 Del.C. §1266.</u></p>	<p><u>14.1.119 Misconduct by a juror. 11 Del.C. §1267.</u></p> <p><u>14.1.120 Tampering with physical evidence. 11 Del.C. §1269.</u></p> <p><u>14.1.121 Riot. 11 Del.C. §1302.</u></p> <p><u>14.1.122 Hate crimes; misdemeanor; felony. 11 Del.C. §1304.</u></p> <p><u>14.1.123 Aggravated harassment. 11 Del.C. §1312.</u></p> <p><u>14.1.124 Stalking. 11 Del.C. §1312A.</u></p> <p><u>14.1.125 Cruelty to animals; felony. 11 Del.C. §1325.</u></p> <p><u>14.1.126 Animals; fighting and baiting prohibited; felony. 11 Del.C. §1326.</u></p> <p><u>14.1.127 Maintaining a dangerous animal; felony. 11 Del.C. §1327.</u></p> <p><u>14.1.128 Abusing a corpse. 11 Del.C. §1332.</u></p> <p><u>14.1.129 Trading in human remains and associated funerary objects. 11 Del.C. §1333.</u></p> <p><u>14.1.129 Violation of privacy; misdemeanor; felony. 11 Del.C. §1335.</u></p> <p><u>14.1.130 Bombs, incendiary devices, Molotov cocktails and explosive devices. 11 Del.C. §1338.</u></p> <p><u>14.1.131 Adulteration. 11 Del.C. §1339.</u></p> <p><u>14.1.132 Prostitution. 11 Del.C. §1342.</u></p> <p><u>14.1.133 Patronizing a prostitute prohibited. 11 Del.C. §1343.</u></p> <p><u>14.1.134 Promoting prostitution in the third degree. 11 Del.C. §1351.</u></p> <p><u>14.1.135 Promoting prostitution in the second degree. 11 Del.C. §1352.</u></p> <p><u>14.1.136 Promoting prostitution in the first degree. 11 Del.C. §1353.</u></p> <p><u>14.1.137 Permitting prostitution. 11 Del.C. §1355.</u></p> <p><u>14.1.138 Carrying a concealed deadly weapon. 11 Del.C. §1442.</u></p> <p><u>14.1.139 Carrying a concealed dangerous instrument. 11 Del.C. §1443.</u></p> <p><u>14.1.140 Possessing a destructive weapon. 11 Del.C. §1444.</u></p> <p><u>14.1.141 Unlawfully dealing with a dangerous weapon. 11 Del.C. §1445.</u></p> <p><u>14.1.142 Possession of a deadly weapon during commission of a felony. 11 Del.C. §1447.</u></p> <p><u>14.1.143 Possession of a firearm during commission of a felony. 11 Del.C. §1447A.</u></p> <p><u>14.1.144 Possession and purchase of deadly weapons by persons prohibited. 11 Del.C. §1448.</u></p> <p><u>14.1.145 Criminal history record checks for sales of firearms; felony. 11 Del.C. §1448A.</u></p> <p><u>14.1.146 Wearing body armor during commission of felony. 11 Del.C. §1449.</u></p> <p><u>14.1.147 Receiving a stolen firearm. 11 Del.C.</u></p>
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§1450.

- 14.1.148 Theft of a firearm. 11 Del.C. §1451.  
14.1.149 Giving a firearm to person prohibited. 11 Del.C. §1454.  
14.1.150 Engaging in a firearms transaction on behalf of another. 11 Del.C. §1455.  
14.1.151 Unlawfully permitting a minor access to a firearm. 11 Del.C. §1456.  
14.1.152 Possession of a weapon in a Safe School and Recreation Zone. 11 Del.C. §1457.  
14.1.153 Removing a firearm from the possession of a law enforcement officer. 11 Del.C. §1458.  
14.1.154 Possession of a weapon with a removed, obliterated or altered serial number. 11 Del.C. §1459.  
14.1.155 Prohibited acts, cheating devices (a)-(e), second or subsequent offense. 11 Del.C. §1471.  
14.1.156 Organized Crime and Racketeering. 11 Del.C. §1504.  
14.1.157 Victim or Witness Intimidation 11 Del.C. §3532 & 3533.  
14.1.158 Abuse, neglect, mistreatment or financial exploitation of residents or patients 16 Del.C. §1136(a), (b) and (c).  
14.1.159 Prohibited acts A under the Uniform Controlled Substances Act. 16 Del.C. §4751(a), (b) and (c).  
14.1.160 Prohibited acts B under the Uniform Controlled Substances Act. 16 Del.C. §4752(a) and (b).  
14.1.161 Unlawful delivery of noncontrolled substance. 16 Del.C. §4752A.  
14.1.162 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3,4-methylenedioxymethamphetamine (MDMA). 16 Del.C. §4753A (a)(1)-(9).  
14.1.163 Possession and delivery of noncontrolled prescription drug. 16 Del.C. §4754A.  
14.1.164 Prohibited acts E under the Uniform Controlled Substances Act. 16 Del.C. §4755.(a)(1) and (2)  
14.1.165 Prohibited acts under the Uniform Controlled Substances Act. 16 Del.C. §4756(a)(1)-(5) and (b).  
14.1.166 Hypodermic syringe or needle; delivering or possessing; disposal; 16 Del.C. §4757.  
14.1.167 Keeping drugs in original containers. 16 Del.C. §4758.  
14.1.168 Distribution to persons under 21 years of age. 16 Del.C. § 4761.  
14.1.169 Purchase of drugs from minors. 16 Del.C. §4761A  
14.1.170 Distribution, delivery, or possession of controlled substance within 1,000 feet of school property; penalties; defenses. 16 Del.C. §4767  
14.1.171 Distribution, delivery or possession of

controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship. 16 Del.C. §4768

- 14.1.172 Drug paraphernalia. 16 Del.C. §4771 (a) and (b).  
14.1.173 Possession, manufacture and sale, delivery to a minor and advertising of drug paraphernalia. 16 Del.C. §4774(a), (b), (c) (d)  
14.1.174 Operation of a vessel or boat while under the influence of intoxicating liquor and/or drugs; third and fourth offenses. 23 Del.C. §2302(a) and §2305 (3) and (4).  
14.1.175 Attempt to evade or defeat tax. 30 Del.C. §571.  
14.1.176 Failure to collect or pay over tax. 30 Del.C. §572.  
14.1.177 Failure to file return, supply information or pay tax. 30 Del.C. §573.  
14.1.178 Fraud and false statements. 30 Del.C. §574.  
14.1.179 Obtaining benefit under false representation. 31 Del.C. §1003.  
14.1.180 Reports, statements and documents. 31 Del.C. §1004(1), (2), (3), (4), (5)  
14.1.181 Kickback schemes and solicitations. 31 Del.C. §1005.  
14.1.182 Conversion of payment. 31 Del.C. §1006.  
14.1.183 Unlawful possession or manufacture of proof of insurance. 21 Del.C. §2118A.  
14.1.184 Temporary registration violations related to providing false information. 21 Del.C. §2133(a) (1)-(3).  
14.1.185 False statements. 21 Del.C. §2315.  
14.1.186 Altering or forging certificate of title, manufacturer's certificate of origin, registration card, vehicle warranty or certification sticker or vehicle identification plate. 21 Del.C. §2316.  
14.1.187 False statements; incorrect or incomplete information. 21 Del.C. §2620.  
14.1.188 License to operate a motorcycle, motorbike, etc. 21 Del.C. §2703.  
14.1.189 Issuance of a Level 1 Learner's Permit and Class D operator's license to persons under 18 years of age. 21 Del.C. §2710.  
14.1.190 Unlawful application for or use of license or identification card. 21 Del.C. §2751.  
14.1.191 False statements. 21 Del.C. §2752.  
14.1.192 Driving vehicle while license is suspended or revoked. 21 Del.C. §2756.  
14.1.193 Duplication, reproduction, altering, or counterfeiting of driver's licenses or identification cards. 21 Del.C. §2760(a) and (b).  
14.1.194 Driving after judgment prohibited. 21

**Del.C. §2810.**

14.1.195 False statements. 21 **Del.C. §3107.**  
14.1.196 Driving a vehicle while under the influence or with a prohibited alcohol content. 21 **Del.C. §4177 (3) and (4).**

14.1.197 Duty of driver involved in accident resulting in injury or death to any person. 21 **Del.C. §4202.**

14.1.198 Duty to report accidents; evidence. 21 **Del.C. §4203.**

14.1.199 Possession of motor vehicle master keys, manipulative keys, key-cutting devices, lock picks or lock picking devices and hot wires. 21 **Del.C. §4604(a).**

14.1.200 Tampering with vehicle. 21 **Del.C. §6703.**

14.1.201 Receiving or transferring stolen vehicle. 21 **Del.C. §6704.**

14.1.202 Removed, falsified or unauthorized identification number on vehicle, bicycle or engine; removed or affixed license/registration plate with intent to misrepresent identity. 21 **Del.C. §6705(a)-(e).**

14.1.203 Possession of blank title; blank registration card; vehicle identification plate; warranty sticker and registration card. 21 **Del.C. §6708(a) and (b).**

14.1.204 Removal of warranty or certification stickers; vehicle identification plates; confidential vehicle identification numbers. 21 **Del.C. §6709(a).**

14.1.205 Unlawful possession of assigned titles, assigned registration cards, vehicle identification plates and warranty stickers. 21 **Del.C. §6710(a).**

14.1.206 Offenses [involving meat and poultry inspection including bribery or attempted bribery or assaulting or impeding any person in the performance of his duties] (felony) 3 **Del.C. §871**

14.1.207 Fraudulent Written Statements 3 **Del.C. §10049**

14.1.208 Fraudulent Certificate of Registration or Eligibility Documents 3 **Del.C. §10050**

14.1.209 Prohibited trade practices against infirm or elderly] 6 **Del.C. §2581**

14.1.210 Auto Repair Fraud victimizing the infirm or elderly 6 **Del.C. §4909A**

14.1.211 Possession or use of false weights. 6 **Del.C. §5134**

14.1.212 Violations of the Securities Act 6 **Del.C. §7322**

14.1.213 Unauthorized Acts against a Service Guide or Seeing Eye Dog 7 **Del.C. §1717**

14.1.214 Interception of Communications Generally; Divulging Contents of Communications 11 **Del.C. §2402**

14.1.215 Manufacture, Possession or Sale of Intercepting Device. 11 **Del.C. §2403**

14.1.216 Breaking and Entering, Etc. to Place or Remove Equipment 11 **Del.C. §2410**

14.1.217 Obstruction, Impediment or Prevention of Interception. 11 **Del.C. §2412**

14.1.218 Obtaining, Altering or Preventing Authorized Access. 11 **Del.C. §2421**

14.1.219 Divulging Contents of Communications. 11 **Del.C. §2422**

14.1.220 Installation and Use Generally [of pen trace and trap and trace devices]. 11 **Del.C. §2431**

14.1.221 Aggravated Act of Intimidation. 11 **Del.C. §3533**

14.1.223 Attempt to Intimidate. 11 **Del.C. §3534**

14.1.224 Disclosure of Expunged Records. 11 **Del.C. §4374**

14.1.225 Violation of reporting provisions re: SBI. 11 **Del.C. §8523**

14.1.226 Failure of child-care provider to obtain information required under §8561 or for those providing false information. 11 **Del.C. §8562**

14.1.227 Providing false information when seeking employment in a public school. 11 **Del.C. §8572**

14.1.228 Filing False Claim [under Victims' Compensation Fund]. 11 **Del.C. §9016**

14.1.229 Alteration, Theft or Destruction of Will. 12 **Del.C. §210**

14.1.230 Violation of reporting requirements involving abuse under §903. 16 **Del.C. §914**

14.1.231 Coercion or intimidation involving health-care decisions and falsification, destruction of a document to create a false impression that measures to prolong life have been authorized. 16 **Del.C. §2513(a) and (b).**

14.1.232 Violations related to the sale, purchase, receipt, possession, transportation, use, safety and control of explosive materials other than 16 **Del.C. §7103. 16 Del.C. §7112**

14.1.233 Operation of a Vessel or Boat while under the Influence of Intoxicating Liquor and/or Drugs 23 **Del.C. §2302 (3) and (4)**

14.1.234 License Requirements. 24 **Del.C. §901**

14.1.235 Sale to Persons under 21 or Intoxicated Persons. 24 **Del.C. §903**

14.1.236 Failure to make Reports of Persons who are Subject to Loss of Consciousness 24 **Del.C. §1763**

14.1.237 [Interference] Relating to the Blind and "Seeing Eye Dogs" 31 **Del.C. §2117**

14.1.238 Abuse, neglect, exploitation or mistreatment of infirm adult. 31 **Del.C. §3913(a), (b) and (c).**

14.2 Crimes substantially related to the practice of optometry shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes

identified in this rule.

**\*Please Note:** As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Optometry is available at: <http://www.professionallicensing.state.de.us/boards/optometry/index.shtml>

## DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,  
Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 610

### REGULATORY IMPLEMENTING ORDER

#### 610 Treatment of Severe Discipline Problems Component

##### I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to repeal 14 DE Admin. Code 610 Treatment of Severe Discipline Problems Component (14 Del.C. Section 1604 of Chapter 16 Comprehensive School Discipline Improvement Program August 1998) and replace it with two separate regulations (14 DE Admin. Code 609 District and School Based Intervention Services and 14 DE Admin. Code 611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems). The new regulations 609 and 611 streamline and clarify the requirements for each type of program, School Based Programs and Alternative Program Sites.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on October 22, 2004, in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Children and the State Council for Persons with Disabilities. The Councils recommended some word changes for clarity in sections 4.1 and 4.3 of 609 and the changes have been made. In Section 5.0 in 609 and in Section 12.0 in 611 clarifying phrases concerning the reporting process were added as per the Councils recommendations. In response to the concern about students who are eligible for CDAP services being excluded from eligibility for school based services the Department offers the following response. Proposed regulation 609 requires that the districts provide services to disruptive students who are not eligible for placement in consortia discipline alternative programs (CDAP's). It does not prohibit districts from providing school based services to students who are eligible for CDAP placement. The categorical exclusion in

proposed regulations 609 and 611 runs the opposite direction: students may not be placed in CDAP for behaviors that are best served through school based programs and services.

##### II. Findings of Facts

The Secretary finds that it is appropriate to repeal 14 DE Admin. Code 610 Treatment of Severe Discipline Problems Component (14 Del.C. Section 1604 of Ch. 16 Comprehensive School Discipline Improvement Program August 1998) and replace it with two separate regulations (14 DE Admin. Code 609 District and School Based Intervention Services and 14 DE Admin. Code 611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems) in order to streamline and clarify the requirements for each type of program, School Based Programs and Alternative Program Sites.

##### III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to repeal 14 DE Admin. Code 610 and replace it with two separate regulations 14 DE Admin. Code 609 District and School Based Intervention Services and 14 DE Admin. Code 611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems. Therefore, pursuant to 14 Del.C. Chapter 16, 14 DE Admin. Code 609 and 14 DE Admin. Code 611 attached hereto as *Exhibit "B"* are hereby adopted. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 609 and 14 DE Admin. Code 611 hereby adopted 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 14 DE Admin. Code 609 and 14 DE Admin. Code 611 adopted hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulations shall be cited as 14 DE Admin. Code 609 and 14 DE Admin. Code 611 in the *Administrative Code of Regulations* for the Department of Education. In addition 14 DE Admin. Code 610 shall be removed from the *Administrative Code of Regulations* for the Department of Education.

##### V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del.C. Ch.16 on December 15, 2004. 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 16th day of December 2004.

**DEPARTMENT OF EDUCATION**

Valarie A. Woodruff, Secretary of Education

Approved this 16<sup>th</sup> day of December 2004

**STATE BOARD OF EDUCATION**

Dr. Joseph A. Pika, President

Jean W. Allen, Vice President

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**~~610 Treatment of Severe Discipline problems Component (14 Del.C. Section 1604 of Chapter 16 Comprehensive School Discipline Improvement Program August 1998)~~**

~~1.0 Population to be Served: Except as otherwise provided herein, all students who are expelled by a local school district or are in danger of being expelled shall be placed in the alternative program unless the student is expelled for an offense equivalent to a violation of one of the following: 11 **Del.C.** §613 (Assault in the First Degree); or 11 **Del.C.** §1457 (Possession of a Weapon in a Safe School and Recreation Zone); or 11 **Del.C.** §802 (Arson in the Second Degree); or 11 **Del.C.** §803 (Arson in the First Degree); or 11 **Del.C.** §771 (Unlawful Sexual Penetration in the Second Degree); or 11 **Del.C.** §772 (Unlawful Sexual Penetration in the First Degree); or 11 **Del.C.** §773 (Unlawful Sexual Intercourse in the Third Degree); or 11 **Del.C.** §774 (Unlawful Sexual Intercourse in the Second Degree); or 11 **Del.C.** §775 (Unlawful Sexual Intercourse in the First Degree); or 16 **Del.C.** §4753A (Trafficking Marijuana, Cocaine, Illegal Drugs or Methamphetamine).~~

~~2.0 Non-referral of Students: In any case in which an expelled student is not referred to an alternative program, the decision of the local school district to expel shall state with specificity the reason for non-referral and the evidence in support thereof.~~

~~3.0 Informing the Legal Guardian: Districts shall inform the legal guardian of students for whom expulsion is being considered or who are expelled of the alternative education options that are then currently available to the students. These options shall include but not be limited to the alternative program, GED programs, James H. Groves High School and others.~~

~~4.0 Age/Grade Level to be Served: Eligible students shall be primarily those who are enrolled in grades 6 through 12, however students in lower grades may also be served through these funds.~~

~~5.0 Placement in Alternative Programs: Each district shall establish an Alternative Placement Team to review each case and prescribe the appropriate placement for each student. The Placement Team, in concert with the Alternative Program staff, shall design an Individual Service Plan (ISP) for each student that will include educational goals, behavioral goals, and services needed by both the student and his/her family. The ISP shall include a tentative re-entry/transition plan. The Alternative Placement Team shall be composed of a representative of the Alternative Program staff; a district level coordinator who will be designated by the superintendent; the building level principal, assistant principal or other person as appropriate; student's custodial adult; guidance counselor and/or school social worker; representatives from DSCYF such as Youth Rehabilitation Service or other worker with whom the family is involved as appropriate. Other school, alternative program, or agency personnel may be invited as needed and determined by the Placement Team. Students who are being placed in the Alternative Program as a transition from DSCYF facilities will have an ISP developed in concert with the DSCYF facility team, the Alternative Placement Team, and the student's custodial adult. If students from either a school district or DSCYF facility are students with disabilities, appropriate special education staff shall be included in placement considerations. The Alternative Placement Team and the IEP Team may be the same.~~

~~6.0 September 30 Enrollment Count: A student enrolled in an Alternative Program may be counted in the regular school enrollment count. If enrolled the previous year in a special education program in the reporting school, the student may continue to be reported for the same level of special education service as was received the previous year. If enrolled the previous year in a vocational program in the reporting school, the student may be reported as enrolled in the next vocational course in the program series.~~

~~7.0 Alternative Program Setting: The Alternative Program setting shall be apart from the regular school setting, however, a part of a school building may be used for these programs so long as the students do not interact with the regular school population or use any school facility at the same time as the regular school population. Use of other agency facilities (Boys and Girls Club, YMCA, YWCA, etc.) is encouraged. Settings shall meet safety regulations for student occupancy as outlined in **Delaware Code**.~~

~~8.0 Alternative Program Design: The Alternative Program~~

shall include an educational program designed to maintain and improve skills at least in core academic areas such as English/language arts, mathematics, science, and social studies that will allow students to re-enter the regular school program with a reasonable chance and expectation for success. Every effort shall be made to provide courses comparable to the regular school setting for each student. Opportunities for academic acceleration will also be provided. The academic program should focus on applied learning activities that encourage students' active participation in the learning process as opposed to work sheets and other "seat oriented" drill exercises. Credit for work accomplished in the Alternative Program setting shall be automatically transferred to the regular school. Included in the academic core studies should be study skills, test taking strategies, and academic confidence building. Counseling and other services shall be delivered on-site for students.

9.0 Staffing: Instructional staff shall include at least two certified teachers in the major academic subject areas who can provide the lead for academic instruction and at least two instructional/service aides. Priority should be given to hiring staff who are qualified to teach special education.

10.0 Students With Disabilities: Notwithstanding any of the provisions to the contrary, students with disabilities shall be served pursuant to the provisions of Regulation 925, Children with Disabilities.

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

See 7 **DE Reg.** 330 (9/1/03)

### **609 District and School Based Intervention Services**

**1.0** Each school district shall provide services for students whose behavior disrupts the classroom setting and creates distractions that impede the learning process, but who are not eligible for placement in an alternative program pursuant to 14 **DE Admin. Code** 611. School districts may offer such services based on the identified needs of the district and its individual schools, subject to the requirements of this regulation.

### **2.0 Application for Funding:**

Any school district requesting an incentive or supplemental grant to provide intervention services shall apply for such funds using the LEA Consolidated Application process provided by the Department of Education.

2.1 Any incentive or supplemental grant approved as part of the LEA Consolidated Application process shall be in the amount appropriated for that purpose by law.

### **3.0 Student Population to be Served:**

Services funded under this regulation may be provided to any student in grades K-12, subject to the terms of the district's approved LEA Consolidated Application. Notwithstanding any of the provisions to the contrary, students with disabilities shall be served pursuant to the provisions in 14 **DE Admin. Code** 925.

### **4.0 School Based Intervention Programs:**

If a district, through its LEA Consolidated Application, provides a School Based Intervention Program as part of the services provided to disruptive students, such Program shall meet the following requirements:

4.1 A School Based Intervention Program shall include both short term and long term intervention strategies. Such strategies may include character education, short or long term counseling to improve behavior which impacts ~~academic~~ educational performance, and methods to identify the need to refer students for additional services either within the district or to other agencies. The Program shall also include support services to provide a smooth transition for students who are returning to their regular school from a Consortium Discipline Alternative Program or from a Department of Services to Children, Youth and their Families (DSCYF) setting.

4.2 The decision to place a student in the School Based Intervention Program shall be made by the student's Intervention Team. The Intervention Team shall include the building principal or assistant principal, school nurse, counselor, social worker (if the student receives social work services), and a teacher familiar with the student. Other individuals, including parents, guardians or Relative Caregivers, may be invited as appropriate.

4.3 When placing a student with disabilities in a School Based Intervention Program, the Intervention Team and a student's IEP team may be the same as long as the membership of the ~~IEP team~~ Intervention Team also meets the requirements of 14 **DE Admin. Code** 925.

### **5.0 Evaluation of Services:**

Any local school district receiving a grant pursuant to this regulation shall submit an annual evaluation report on the effectiveness of its District and School Based Intervention Services. Such report shall be submitted as part of the LEA Consolidated Application process [and shall conform to content and format standards.]

### **611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems**

#### **1.0 Eligible Students:**

Except as otherwise provided in this regulation, any student who is expelled by a local school district, who is subject to expulsion or who otherwise seriously violates the district discipline code shall be eligible for placement at a

Consortium Discipline Alternative Program site.

1.1 Local school districts may place a student at a Consortium Discipline Alternative Program site only if the district board:

1.1.1 Has expelled the student for a violation of the district's discipline code; or

1.1.2 Determines that the student has engaged in conduct that permits the board to expel the student; or

1.1.3 Determines that the student has exhibited such severe discipline problems that expulsion is imminent.

1.2 School districts may place a student in a Consortium Discipline Alternative Program site for classroom or school environment disruptions only if:

1.2.1 Such disruptions are chronic and repetitive; and

1.2.2 The student has participated in all available School Based Intervention Programs pursuant to 14 DE Admin. Code 609 and continues to routinely and seriously disrupt the classroom and impede the learning of other students.

## **2.0 Ineligible students:**

Any student expelled or suspended pending expulsion for behavior equivalent to a violation of the following is not eligible for, and may not be placed at a Consortium Discipline Alternative Program site.

2.1 11 Del.C. §613 Assault in the First Degree; class C felony; or

2.2 11 Del.C. §1457 Possession of a Weapon in a Safe School and Recreation Zone; class D, E, or F; class A or B misdemeanor; or

2.3 11 Del.C. §802 Arson in the Second Degree affirmative defense; class D felony; or

2.4 11 Del.C. §803 Arson in the first degree; class C felony; or

2.5 11 Del.C. §770 Rape in the fourth degree; class C felony; or

2.6 11 Del.C. §771 Rape in the third degree; class B felony; or

2.7 11 Del.C. §772 Rape in the second degree class B felony; or

2.8 11 Del.C. §773 Rape in the first degree class A felony; or

2.9 16 Del.C. §4753A Trafficking in marijuana, cocaine, illegal drugs, methamphetamine, LSD, or designed drugs or

2.10 Any behavior equivalent to or greater than the offenses in 2.1 through 2.9.

## **3.0 Written Decision:**

When a school board expels a student but determines the student shall not be placed at a Consortium Discipline Alternative Program under subsections 2.1.1 to 2.1.10 of this regulation, the school district's written decision shall address

with specificity the reason for non-placement and the evidence in support thereof. Such decisions shall be reported to the Delaware Department of Education's Office of School Climate and Discipline within five working days.

## **4.0 Informing the Parents, Guardians, Relative Caregiver or Students (if the Student is Age 18 or Older):**

Districts shall inform the parents, guardians, Relative Caregiver or students (if the student is age 18 or older) of the alternative education options that are then currently available to them if the students have been expelled or expulsion is being considered. These options may include, but are not be limited to, the Consortium Discipline Alternative Program, a GED Program, James H. Groves High School and continued special education and related services for children with disabilities as determined by the student's individual eligibility for participation in such programs. A student's eligibility for such alternative education options is determined by the requirements of such programs.

## **5.0 Grade Level to be Served:**

Eligible students in the Consortium Discipline Alternative Program shall be primarily those who are enrolled in grades 6 through 12, however students in the lower grades may also be served through Alternative Program funds.

## **6.0 Placement at Consortium Discipline Alternative Program Sites**

6.1 Each district shall establish an Alternative Placement Team to review each case and prescribe the appropriate placement for students. The Placement Team, in concert with the Consortium Discipline Alternative Program staff, shall design an Individual Service Plan (ISP) for each student that will include educational goals, behavioral goals, and services needed by both students and their families. The ISP shall include a tentative transition plan.

6.1.1 The Alternative Placement Team shall be composed of a representative of the Consortium Discipline Alternative Program staff; a district level coordinator who will be designated by the superintendent; the building level principal, assistant principal or other person as appropriate; the student's custodial adult; guidance counselor or school social worker; and a representative from the Department of Services for Children Youth and Their Families (DSCYF) with knowledge of the student's and family's needs as appropriate. Other individuals may be invited as determined by the placement team.

6.1.1.1 Students who are being placed at a Consortium Discipline Alternative Program site as a transition from DSCYF facilities shall have an ISP developed in concert with the DSCYF facility team, the Alternative Placement Team, and the student's custodial adult.

6.1.2 If students from either a school district or DSCYF facility are children with disabilities, appropriate special education staff shall be included in placement considerations. The Alternative Placement Team and the Individual Education Program (IEP) Team may be the same so long as the membership of the IEP Team meets the requirements of 14 DE Admin. Code 925.

### **7.0 September 30 Enrollment Count**

7.1 Students enrolled at a Consortium Discipline Alternative Programs site shall be counted in the enrollment of the sending school.

7.2 Students shall be reported for the level of special education service as defined by the current IEP.

7.3 If a student was enrolled the previous year in a vocational program in the reporting school, the students shall be reported as enrolled in the next vocational course in the program series.

### **8.0 Consortium Discipline Alternative Program Setting**

8.1 The Consortium Discipline Alternative Program setting shall be apart from the regular school setting, however, a part of a school building may be used for these programs if the students do not interact with the regular school population or use any school facility at the same time as the regular school population.

8.1.1 Use of other agency facilities (Boys and Girls Club, YMCA, YWCA, etc.) is encouraged. Consortium Discipline Alternative Program settings shall meet all applicable health and safety laws and regulations for student occupancy.

### **9.0 Consortium Discipline Alternative Program Design**

9.1 The Consortium Discipline Alternative Program shall include an educational program designed to maintain and improve skills aligned to the Delaware State Content Standards that will allow students to re-enter the regular school program with a reasonable chance and expectation for success. Opportunities for academic acceleration shall also be provided.

9.1.1 The academic program shall include applied learning activities that encourage students' active participation in the learning process as opposed to work sheets and other "seat oriented" drill exercises. Study skills, test taking strategies for academic confidence building, and Character Education shall be integrated with the Delaware State Content Standards.

9.1.1.1 Credit for work accomplished in the Consortium Discipline Alternative Program setting shall be automatically transferred to the sending school.

9.1.2 All students enrolled in Consortium Discipline Alternative Programs shall participate in the Delaware Student Testing Program (DSTP).

### **10.0 Staffing**

Instructional staff shall include educators who are licensed and certified in the content areas of English language arts, mathematics, science and social studies.

### **11.0 Children With Disabilities**

Notwithstanding any of the provisions to the contrary, children with disabilities shall be served pursuant to the provisions of 14 DE Admin. Code 925.

12.0 The Department of Education shall annually evaluate the effectiveness of the Consortium Discipline Alternative Programs using criteria that includes student demographic data, types of interventions employed, and prior versus subsequent behavioral and academic patterns, parent involvement, agency involvement and recidivism. [Grantees shall compile and submit data based on uniform standards and format established by the Department.]

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## **DEPARTMENT OF EDUCATION**

Statutory Authority: 14 Delaware Code,  
Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 851

### **REGULATORY IMPLEMENTING ORDER**

#### **851 K-12 Comprehensive Health Education Program**

##### **I. Summary Of The Evidence And Information Submitted**

The Secretary of Education seeks the consent of the State Board of Education to re-authorize 14 DE Admin. Code 851 K-12 Comprehensive Health Education Program. The regulation is due for review under the five year cycle prescribed by statute. Some amendments to the regulation may need to be made in the future due to possible changes in the National Health Education Standards as well as the work of the Secretary of Education's Healthy Lifestyles Task Force, but these projects are not yet completed.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on October 22, 2004, in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Children and the State Council for Persons with Disabilities. In response to concerns expressed about the inclusion of content on tobacco use, depression and obesity, the Department notes that tobacco is addressed in the regulation in section 1.3 as a core concept as is depression (under emotional health) and obesity (under nutrition and



physical health). In the future changes may be made to this regulation as a result of pending changes in the National Health Education Standards and/or recommendations from Secretary Woodruff's Task Force on Healthy Lifestyles. A draft of the recommendations of the Healthy Lifestyles Task Force will be made available to the Councils.

## II. Findings of Facts

The Secretary finds that it is appropriate to re-authorize 14 **DE Admin. Code** 851 in order to keep the regulation in place pending any future changes in the National Health Education Standards and/or recommendations from Secretary Woodruff's Task Force on Healthy Lifestyles.

## III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to re-authorize 14 **DE Admin. Code** 851. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 851 attached hereto as *Exhibit "B"* is hereby re-authorized. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 851 is hereby re-authorized and 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 14 **DE Admin. Code** 851 re-authorized hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 851 in the *Administrative Code of Regulations* for 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 December 16, 2004. 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 16<sup>th</sup> day of December 2004.

### DEPARTMENT OF EDUCATION

Valarie A. Woodruff, Secretary of Education

Approved this 16<sup>th</sup> day of December 2004

### STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President

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## **851 K-12 Comprehensive Health Education Program**

**1.0** Each school district shall have a sequential, skill-based **K-12 Comprehensive Health Education Program** that establishes a foundation of understanding the relationship between personal behavior and health and shall include at a minimum the following:

**1.1** Identification of a district level person to coordinate the district program and a coordinator in each building to assure compliance at the building level.

**1.2** Appointment of persons such as teachers, parents, school nurses, community leaders, guidance counselors, law enforcement officers and others with expertise in the areas of health, family life and safe and drug free schools and communities to serve as members of the District Consolidated Application Planning Committee.

**1.3** The use of the state content standards for health education for grades K-12 inclusive of the core concepts: alcohol and other drugs, injury prevention, nutrition, physical activity, family life and sexuality, tobacco, emotional health, personal and consumer health and community and environmental health with minimum hours of instruction as follows:

**1.3.1** In grades K-4, a minimum of thirty (30) hours in each grade of comprehensive health education and family life education of which ten (10) hours, in each grade, must address drug/alcohol education.

**1.3.2** In grades 5 and 6, a minimum of thirty-five (35) hours in each grade of comprehensive health education and family life education of which fifteen (15) hours, in each grade, must address drug/alcohol education.

**1.3.3** In grades 7 and 8, separate from other subject areas, a minimum of sixty (60) hours of comprehensive health education of which fifteen (15) hours, in each grade, must address drug/alcohol education. If all of the 60 hours are provided in one year at grade 7 or 8, an additional fifteen hours of drug/alcohol education must be provided in the other grade.

**1.3.4** In grades 9-12, one-half (1/2) credit of comprehensive health education is required for graduation of which fifteen (15) hours of this 1/2 credit course must address drug/alcohol education. This 1/2 credit course may be provided in the 9th, 10th, 11th or 12th grade. In each of the remaining three grades, fifteen (15) hours of drug/alcohol education must be provided for all students.

**1.4** Inclusion of a comprehensive sexuality education and an HIV prevention program that stresses the benefits of abstinence from high-risk behaviors.

1.5 Inclusion of the core concepts of nutrition and family life and sexuality implemented through family and consumer science/home economics courses.

1.6 An annual staff development plan that describes the use of effective instructional methods as demonstrated in sound research in the core concepts and skills inclusive of accessing information, self-management, analyzing internal and external influences, interpersonal communication, decision making and goal setting and advocacy.

1.7 A description of the method(s) used to implement and evaluate the effectiveness of the program which shall be reported every three years as part of the Quality Review for Ensuring School and Student Success.

**3 DE Reg. 1073 (2/1/00)**

**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES  
DIVISION OF LONG TERM CARE RESIDENTS  
PROTECTION**

Statutory Authority: 16 Delaware Code,  
Section 3006A (16 Del.C. §3006A)

**ORDER**

**Regulations for Training and Certification for Nursing  
Assistants and Certified Nursing Assistants**

**Nature of the Proceedings:**

The Department of Health and Social Services, Division of Long Term Care Residents Protection (DLTCRP) initiated proceedings in accordance with 29 **Delaware Code**, Chapter 101 to amend the Regulations for Training and Qualifications for Nursing Assistants and Certified Nursing Assistants. On November 1, 2004, DLTCRP published proposed regulations in the *Register of Regulations* and held public hearings on November 30 and December 2 at which written comments were received.

DLTCRP reviewed and evaluated the comments from those public hearings as well as comments from earlier public hearings on proposed regulations pertaining to the responsibility of federally certified nursing facilities to pay the costs of training nursing assistants. As a result of that evaluation, the accompanying proposed regulations are being promulgated as final regulations. The discussion of the comments is in the accompanying Summary of Evidence.

**Findings of Fact**

The Department of Health and Social Services finds that

the proposed regulations, as set forth in the attached copy, should be adopted as final regulations. Therefore, it is ordered that the proposed Regulations for Training and Qualifications for Nursing Assistants and Certified Nursing Assistants are promulgated effective January 10, 2005.

Vincent P. Meconi, Secretary  
Department of Health and Social Services  
Date of Signature, 12.15.2004

**Summary of the Evidence**

A comment asked the purpose of the regulations relating to reimbursement issues. The purpose is to clarify and ensure compliance with federal regulations found at 42 CFR §483.152 which prohibit charging a nurse aide for any portion of a nurse aide training program and which require reimbursement of personally incurred training costs if a federally certified nursing facility hires an individual within twelve months of completion of a training program.

Several commenters discussed the issue of the added costs to facilities if students in facility-based CNA training programs cannot be charged any amount for the training. Concern was expressed that the added costs may lead to the closing of some facility-based training programs. Additionally, a commenter made the point that students who are paying for a portion of the training program score higher on the test because they have a personal investment in succeeding. However valid these points may be, the federal regulations are explicit in prohibiting facilities from charging students for CNA training.

One comment suggested that facilities are not required under federal regulations to pay for more than one competency evaluation although the federal regulations permit the student to test three times. Since the federal regulations clearly prohibit charging students for any portion of the training program, there is no basis to conclude that it is the intent of the regulations that students should pay for the second or third test.

Several comments focused on issues related to state reimbursement to facilities for their training and competency evaluation costs. One comment requested that these regulations clarify the method by which facilities recoup their training costs from Medicaid. Another comment suggested that Medicaid reimburse costs entirely under CNA training costs rather than to divide them between training costs and the regular cost report. A commenter called for the state to pay all costs of testing. Another comment stated that Medicaid and not the Division of Long Term Care Residents Protection should issue these regulations because they are a Medicaid fiscal issue. The Medicaid reimbursement methodology in place in the Medicaid State Plan is the mechanism by which the state pays facilities for CNA

training and testing costs; and, therefore, the Division of Long Term Care Residents Protection is not including in these regulations fiscal matters that are the province of Medicaid.

One comment called attention to the section of the state law pertaining to CNA training which says that it is the intent of the General Assembly that costs to entities administering CNA training courses be offset to the fullest extent possible by state and federal training funds. Currently, several schools offering CNA training programs receive funding from the Department of Labor. Facility-based programs may wish to explore their potential eligibility for such funding.

Several comments were received expressing concerns about nonfacility-based training programs raising their rates if students were eligible for reimbursement by a facility. It should be noted that federal regulations already require such reimbursement, so these regulations should not provide any new incentive for training programs to raise rates. In any event, since students who are not eligible for any other funding source must pay training costs out of pocket, school-based training programs imposing excessive rate increases would lose enrollments.

A comment proposed that a reasonable charge for nonfacility-based training programs be established prior to the adoption of these regulations. The Division of Long Term Care Residents Protection has no authority to set charges for training programs.

Another comment expressed concern that CNAs who are eligible for reimbursement of personally incurred expenses might encounter difficulty in finding jobs if they are competing for employment with applicants who are not eligible for reimbursement. The comment raises a legitimate concern, and the ease or difficulty with which a CNA eligible for reimbursement finds employment may be dictated by the facility's ease or difficulty in complying with minimum staffing requirements.

A commenter questioned how to handle a situation in which a facility hires a previously trained CNA and subsequently decides to retrain the CNA in the facility's training program because the facility found the individual's skills inadequate. A facility's decision to retrain an employee has no effect on the initial reimbursement requirement if the employee is eligible for reimbursement. If the facility subsequently expends additional funds to retrain the individual, those expenditures should be eligible for reimbursement through the cost-reporting process.

Comments were received urging that reimbursement to CNAs for personally incurred costs of training and testing should take place after a CNA has worked at the facility for one year in order to encourage the employee to remain at the facility for at least that period. By pro-rating payments over a year's time, these regulations attempt to address that concern while also recognizing the CNA's interest in

recouping those expenditures.

Another comment proposed that these regulations extend to all Medicare and Medicaid certified entities that hire CNAs including home health agencies, temporary staffing agencies and hospitals. The Division of Long Term Care Residents Protection has jurisdiction strictly over long term care facilities and has no authority to regulate other entities.

Along the same lines, a comment called for the reimbursement requirements to be expanded by using the term "long term care facilities" rather than "nursing homes" so that the regulations would be more inclusive. The federal regulations that form the basis for the reimbursement requirement apply only to federally certified nursing facilities.

One comment expressed concern that facilities would be responsible for keeping records of all items in the CNA Registry. Nothing in these regulations assigns such responsibility to facilities; the Division of Long Term Care Residents Protection maintains records for the Delaware CNA Registry.

A comment criticized the requirement that facilities notify the Division upon reimbursing a CNA's personally incurred training costs, saying that the Division would be aware of the individual because the Division had issued the certification and that the notification would be a violation of the facility's privacy. The Division's issuance of certification is based on the applicant completing the Delaware training and testing requirement or meeting the requirements for reciprocal certification from another state. Nothing in the certification criteria relates to the source of payment for training. The purpose of requiring notification of reimbursement is to protect facilities from duplicating reimbursements, not to invade their privacy.

Comments called for addressing the matter of a duplicate reimbursement to a CNA by having the Division remove the CNA from the CNA Registry or otherwise note the fraudulent activity in the database until the duplicated payment is repaid to the facility. The CNA Registry is established under federal regulations which do not include provisions for such action to be taken. The issue of potential duplicated reimbursements is dealt with in these regulations by the requirement that facilities notify the Division upon reimbursing personally incurred training costs to students. The maintenance of that reimbursement data by the Division will enable any facility questioning the eligibility of a CNA for reimbursement to prevent a duplicated payment by contacting the Division before initiating the reimbursement.

One comment proposed that a standard Division form be developed to report reimbursements by facilities to CNAs with the form identifying the individual at the Division who will enter the information in the database. If such a standard form is needed, the Division will prepare one. However, since several Division employees assist in responding to

CNA inquiries and maintaining the CNA Registry database, the form would not identify a single contact person.

A commenter disputed the enforcement of these regulations in a facility that does not have a facility-based CNA training program. It should be noted that the regulations apply to all federally certified nursing facilities regardless of whether a facility chooses to have its own training program.

A commenter described scenarios that a facility might implement to avoid reimbursement to an employee or to prevent a school from charging a student for training. Implementation of such schemes would violate federal regulations. The commenter also characterized the regulations as a tax which the Division of Long Term Care Residents Protection has no authority to impose. The Division is not imposing a tax; it is clarifying federal regulations which already apply to federally certified nursing facilities.

One comment complained of the inadequacy of Medicaid reimbursement and stated that Medicare's portion of the training costs are eliminated. In fact, the training costs are to be allocated to Medicaid, Medicare and private pay patients based on patient days of service.

A comment complained that the regulations permit schools to shift their costs to facilities. Inasmuch as these regulations and federal regulations require reimbursement of student costs, it is costs being borne by students rather than costs being borne by schools that are the subject of these regulations.

One comment objected to the regulation that the 64 hours of nursing related services required for recertification be performed for pay. The comment stated that volunteer services should qualify for recertification. The requirement for 64 hours of nursing related services is intended to ensure that CNAs are current in maintaining their skills. By requiring that the 64 hours are performed for pay, a mechanism is established to verify the necessary maintenance of those skills. An ongoing issue of claims of unverifiable volunteer services has directly led to this regulation.

A comment objected to the reimbursement of costs to an employee on a quarterly basis. The comment appears to assume that an employee who left employment at a time other than the end of a quarter would not be eligible for reimbursement for less than a full quarter of work. That assumption should not be read into the regulation.

### **69 Regulations for Training and Qualifications for Nursing Assistants and Certified Nursing Assistants**

#### **Section 69.200 – General Training Requirements And Competency Test**

Each Nursing Assistant/Certified Nursing Assistant

employed by any nursing facility either as contract/agency or facility staff shall be required to meet the following:

69.201 An individual shall complete a nursing assistant training course approved by the Department on the recommendation of the CNA Training Curriculum Committee. The Committee shall consist of individuals with experience in the knowledge and skills required of CNAs.

69.202 Nursing Assistants are required to pass a competency test provided by the Department or by a contractor approved by the Department.

69.203 Nursing Assistants shall take the competency test within 30 days of completion of an approved program or when the nearest testing location is available to the nursing assistant, whichever is later. Nursing assistants who fail to obtain a passing score may repeat the test two additional times, but must obtain certification within 90 days of program completion. Nursing assistants who fail to obtain a passing score after testing three times must repeat the CNA training program before retaking the test, or they cannot continue to work as a nursing assistant.

69.204 A Certified Nursing Assistant must perform at least 64 hours of nursing related services ~~in a health care setting~~ for pay under the supervision of a licensed nurse or physician during each 24-month certification period in order to qualify for recertification. A certified nursing assistant who does not perform at least 64 hours of nursing related services in a certification period must complete and pass a new training course and competency test, or competency test.

69.205 A Certified Nursing Assistant trained and certified outside the State of Delaware in a program that equals or exceeds the federal nurse aide training program requirements in the Code of Federal Regulations § 483.152 cannot work in Delaware without a Delaware certificate. Delaware certification is required prior to being employed as a CNA. The Department will grant reciprocity if the following conditions are met:

A. The CNA must have a current certificate from the jurisdiction where he or she currently practices, except that candidates from the State of Maryland must hold a current Geriatric Nursing Assistant certificate.

B. The CNA must have 3 months of full-time experience as a CNA performing nursing related services for pay under the supervision of a licensed nurse or physician, or have completed a training and competency evaluation program with the number of hours at least equal to that required by the State of Delaware.

C. The CNA must be in good standing in the jurisdiction where he/she is currently certified.

69.206 Employees hired as Nursing Assistants/Certified Nursing Assistants who are currently enrolled in an RN or LPN nursing program and have satisfactorily completed a Fundamentals/Basic Nursing course with a clinical component will be deemed to meet the training

requirements. These individuals will be approved to take the competency test upon submission of a letter from their school of nursing attesting to current enrollment status and satisfactory course completion as described.

69.207 Individuals who have graduated from an RN or LPN program within 24 months prior to application for certification are deemed qualified to meet the Department's nurse aide training and competency evaluation program requirements and are eligible for certification upon submission of a sealed copy of their diploma. Individuals who have graduated from an RN or LPN program more than 24 months prior to application for certification are deemed qualified to meet the Department's nurse aide training program requirements and are eligible to take the competency test upon submission of a sealed copy of their diploma.

69.208 An individual who has satisfactorily completed a military nursing assistant training course or hospital-based nursing assistant training course of at least 150 hours with a curriculum comparable to the curriculum content of Section 69.303 of these regulations and who has performed nursing related services within 24 months prior to application for certification is deemed qualified to meet the Department's nurse aide training program requirements and is eligible to take the competency test upon submission of documentation of course completion.

69.208~~9~~ For the purpose of calculating minimum staffing levels, any individual who has completed all of the classroom training and half of the clinical training in a facility sponsored training program may be considered as a member of such facility's staff while undergoing the last 37.5 hours of clinical training at such facility.

69.209 ~~A nursing assistant who is employed by, or who has received an offer of employment from, a facility on the date on which the aide begins a nurse aide training and competency evaluation program may not be charged for any portion of the program including tuition, initial and any subsequent testing and fees for textbooks or other required course materials.~~

69.210 ~~If a certified nursing assistant who is not employed, or does not have an offer to be employed as a nurse aide becomes employed by, or receives an offer of employment from, a facility not later than 12 months after completing a nurse aide training and competency evaluation program, the facility shall reimburse all personally incurred costs in completing the program. Such costs include tuition, initial and any subsequent testing and fees for textbooks or other required course materials. Such costs are payable upon completion by the CNA of a six month period of employment including the orientation period.~~

69.211 ~~The facility shall be required to notify the Department upon reimbursement to a CNA of personally incurred costs of the nurse aide training and competency evaluation program for the purpose of inclusion in the CNA~~

~~registry database. Facilities may contact the Department to verify the reimbursement status of any CNA seeking such reimbursement.~~

69.210 A nursing assistant who is employed by, or who has received an offer of employment from, a federally certified nursing facility on the date on which the aide begins a nurse aide training and competency evaluation program may not be charged for any portion of the program including tuition, any tests taken and fees for textbooks or other required course materials.

69.211 If a Certified Nursing Assistant who is not employed, or does not have an offer to be employed as a nurse aide becomes employed by, or receives an offer of employment from, a federally certified nursing facility not later than 12 months after completing a nurse aide training and competency evaluation program, the federally certified nursing facility shall reimburse all documented personally incurred costs in completing the program. Facilities shall accept as documentation canceled checks, paid receipts, written verification from a training program or other written evidence which reasonably establishes the CNA's personally incurred costs. Such costs include tuition, tests taken and fees for textbooks or other required course materials. Such costs shall be reimbursed in equal quarterly payments with full reimbursement to coincide with the CNA's completion of one year of employment including the orientation period.

69.212 Any nursing facility which reimburses a Certified Nursing Assistant for documented personally incurred costs of a nurse aide training and competency evaluation program shall notify the Division of Long Term Care Residents Protection of such reimbursement. Notice of such reimbursement shall be entered in the CNA Registry database and information regarding such reimbursement shall be available to facilities upon request.

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## **DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 512 (31 Del.C. §512)

### **ORDER**

#### **Nature Of The Proceedings**

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings 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 co-payments for pharmaceutical services from Medicaid/Medical Assistance clients. 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 November 2004 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by November 30, 2004 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

### Summary Of The Pharmacy Services Co-payment Policy

#### Title of Notice:

Medicaid/Medical Assistance Client Cost Sharing

#### Overview:

42 USC 1396a(a)(14) permits state Medicaid programs to require certain clients to share some of the costs of Medicaid by imposing enrollment fees, premiums, deductibles, coinsurance, co-payments, or similar cost sharing charges. The Delaware Medicaid/Medical Assistance Program (DMAP) exercises this option to impose a co-payment for prescription drugs for Medicaid clients. Having elected to impose this co-payment, DMAP must comply with the specific provisions of 42 U.S.C. 1396o, 42 CFR §§447.15, 447.21, 447.53, 447.54, 447.55 and, 447.57.

### Summary of Pharmacy Services Co-Payment Policy

This notice is being 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 establish and implement co-payments for pharmacy services. The following provisions of this amendment shall be implemented on January 10, 2005:

- 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 initial and refilled prescription and over-the-counter drug 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:

Medicaid Fee

Co-Pay Amount

\$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, co-payments are not imposed upon categorically needy individuals for the following:
  - Services furnished to individuals under 21 years of age;
  - Services furnished to pregnant women; including postpartum care;
  - 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 supplies; 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 co-pay amount.

The proposed amendment applies to Medicaid clients and shall be implemented on January 10, 2005.

The proposed cost sharing requirements are subject to approval by the Centers for Medicare and Medicaid Services (CMS)

### Summary Of Comments Received With Agency Response and Explanation Of Any Change(S)

DSS received comments from the following organizations: the Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD).

A summary of all the comments and agency response follows:

- In §14960.2 may wish to reconsider the language since “under the long term care nursing” is not a paragon of clarity. Does DSS intend to exempt all waiver participants from the co-pay requirement or does DSS intend to exempt actual nursing home residents?
- In §14960.2 may wish to expand the list of exempt individuals to include GA recipients.

**Agency Response:** This was a publication formatting problem. Under 14960.2 Exclusions from Co-payment Requirement, the list should read from “a” to “f”, not “h”. What is listed under “d” is actually a continuation of “c”. In this case, letters were dropped when the word document was imported. The final order regulation shows the correct text. DSS intends to exempt actual nursing home residents. GA and waiver participants are not exempt from the co-pay requirement.

- The proposed effective date (January 10, 2005) may leave inadequate time to advise affected beneficiaries who may need to adjust budgets, etc.

**Agency Response:** DSS expects to notify affected beneficiaries prior to implementation.

- DSS notes that it plans to advise pharmacies of the prohibition of service denial based on inability to pay. GACEC and SCPD respectfully requests copies of the pertinent section of the provider manual, the description in the provider newsletter, and the proposed letter to be sent to beneficiaries to review content.

**Agency Response:** The requested information will be made available once finalized.

- The proposed regulation undermines the Olmstead implementation because persons in institutions are exempt from the co-pays while person in the community must pay them.

**Agency Response:** Federal regulations require states to exempt persons in institutions.

- The co-pays are essentially nuisance payments hardly worth the cost of collection.

**Agency Response:** Co-pays have been implemented and are working in many other states.

- The state should adopt a “cumulative maximum co-pay” for high pharmacy users [42 CFR §447.54(d)].

**Agency Response:** At present, the policy will remain as is.

**Findings Of Fact:**

The Department finds that the proposed changes as set forth in the November 2004 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to establish the provisions relating to imposing and collecting co-payments for pharmaceutical services from Medicaid/Medical Assistance clients is adopted and shall be final effective January 10, 2005.

Vincent P. Meconi, Secretary, DHSS

Date of Signature 12.15.2004

**DSS FINAL ORDER REGULATION #04-31a**

**Page 54**

**Revision:**

**OMB No.: 0938-**

**State/Territory: DELAWARE**

**Citation**  
**42 CFR 447.51**  
**through 447.58**

4.18

**Recipient Cost Sharing and Similar Charges**

- (a) Unless a waiver under 42 CFR 431.55(g) applies deductibles, coinsurance rates, and co payments 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, co-payment, or similar charge is imposed under the plan for the following:
- (i) Services to individuals under age 18, or under--

**1916 (a) and (b) of the Act**



Age 19

447.53 (b) (4).

Age 20

**X** **Age 21**

(vi) Family planning services and supplies furnished to individuals of childbearing age.

Reasonable categories of individuals who are age 18 or older, but under age 21, to whom charges apply are listed below, if applicable.

(vii) Services furnished by a health maintenance organization in which the individual is enrolled.

- (ii) Services to pregnant women related to the pregnancy or any other medical condition that may complicate the pregnancy.

**1916 of the Act,  
P.L. 99-272,  
(Section 9505)**

(viii) Services furnished to an individual receiving hospice care, as defined in section 1905 (o) of the Act.

## Page 55

## Page 56

Revision: OMB No.: 0938-  
State/Territory: **DELAWARE**

Revision: OMB No.: 0938-  
State/Territory: **DELAWARE**

**Citation** 4.18 (b) (2) (Continued)

**Citation** 4.18(b) (Continued)

**42 CFR 447.51  
through  
447.58**

- (iii) All services furnished to pregnant women.
- Not applicable. Charges apply for services to pregnant women unrelated to the pregnancy.

**42 CFR 447.51  
through  
447.48**

- (3) Unless a waiver under 42 CFR 431.55 (g) applies, nominal deductible, coinsurance, co-payment, or similar charges are imposed for services that are not excluded from such charges under item (b) (2) above.

- (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.

Not applicable. No such charges are imposed.

- (i) For any service, no more 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

X 21 or older

- (v) Emergency services if the services meet the requirements in 42 CFR

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.

cost sharing contained in 42 CFR 447.53 (b);and

G. Cumulative maximum that applies to all deductible, coinsurance or co-payment charges imposed on a specified time period.

X Not applicable. There is no maximum.

**Page 56a**

**Revision:** OMB No.: 0938-

**State/Territory:** DELAWARE

**Citation** 4.18 (b) (3) (Continued)

**42 CFR 447.51 through 447.58**

(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

**Page 56b**

**Revision:** OMB No.: 0938-

**State/Territory:** DELAWARE

**Citation**  
**1916 (c) of the Act**

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**

4.18 (b) (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.

income exceeds 150 percent (but does not exceed 200 percent) of the Federal poverty level applicable to a family of the size involved.

**1916 (d) of the Act** 4.18 (b) (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

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.

**DSS FINAL ORDER REGULATION #04-31b**

**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	Co-payment	
Pharmacy	<u>-0-</u>	<u>-0-</u>	<b>X</b>	<u>This co-pay is effective January 10, 2005 and is based on the nominal ranges specified in 42 CFR 447.54(a)(3), based on the State fee for the service.</u>

**NEW STATE PLAN PAGE**

**Revision:**

**ATTACHMENT 4.18-A**

**Page 2**

**OMB NO.: 093-0193**

**STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT**

**STATE: DELAWARE**

- 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 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 co-pay amount.

NEW STATE PLAN PAGE

Revision:

ATTACHMENT 4.18-A

Page 3

OMB NO.: 093-0193

**STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT**  
**STATE: DELAWARE**

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.

Co-payment 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 FINAL ORDER REGULATION #04-31c****Division of Social Services Manual (DSSM)**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 January 10, 2005, 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 under the long term care nursing facility group or the acute care hospital group
- 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 because 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 prescription(s) as written. 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-payment amount from the recipient.

**DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 512 (31 Del.C. §512)

**ORDER**

**Nature Of The Proceedings:**

Delaware Health and Social Services (“Department”) / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding Delaware’s Temporary Assistance for Needy Families Welfare Reform Program. 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 November 2004 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by November 30, 2004 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**Summary Of Proposed Changes**

1. DSSM 3003 Non-Time Limited Program – Children’s Program

- In accordance with the Trademark Agreement, replaced previous program name with Delaware’s Temporary Assistance for Needy Families Welfare Reform Program, where applicable.
- Adds language that states if a family is placed in the TANF Children’s Program because the parent or caretaker is caring for a disabled family member, DSS will obtain a statement or have the DSS Medical Certification form completed by a medical professional to verify that the person is needed in the home to care for the disabled family member.

**2. DSSM 3031 Work for Your Welfare**

~~Adds language that states to be exempt from Workfare, TANF recipients who are employed need to be earning at least the equivalent of minimum wage at twenty hours per week.]~~

**Summary Of Comments Received With Agency Response And Explanation Of Change(S)**

The Governor’s Advisory Council for Exceptional Citizens (GACEC) and, the State Council for Persons with Disabilities (SCPD) provided the following observations summarized below:

First, the proposed regulations amend the name of the program.

**Agency Response:** DSS is mandated by the trademark agreement to change the name of the program from Delaware’s A Better Chance Program. DSS chose to just call it the Temporary Assistance for Needy Families Program since that is the name of the Federal legislation.

Second, although TANF eligibility is generally time-limited, there are exceptions. One exception is the necessity of a parent to care for a child or adult with disability in the home. See §3003, 1<sup>st</sup> bullet. DSS proposes to require a statement or completed form from a medical professional verifying that “the person is needed in the home to care for the disabled family member.” We believe it would be preferable to amend the references to read “medical or licensed mental health professional” to permit licensed clinical psychologist or licensed clinical social worker to provide the verification. Alternately, a sentence could be added at the end to read as follows: For purposes of this paragraph, the term “medical profession” shall include a licensed mental health professional (e.g., psychologist; LCSW).” The latter amendment would be more consistent with use of a “Medical Certification Form”. In the context of mental illness or mental retardation, such non-medical professionals may be the primary expert on the child or family member’s impairment.

**Agency Response:** The sentence has been amended to include licensed behavioral health professional.

In addition, references to “disabled family member” in the proposed amendment do not reflect “people-first” language. Unfortunately, similar terminology is used in §3003, 1<sup>st</sup> bullet, which is not earmarked for amendment. For a variety of reasons, revision of the new sentence may not be preferred at this time. The substance of the regulation does not restrict eligibility.

**Agency Response:** It is the intent of DSS to use written and oral language that reflects the individuality and dignity of the persons we serve. The current language is consistent with the rest of the manual. In the near future, DSS will look into making wholesale changes in its policy manuals to reflect people first language.

Third, DSS adds a sentence intended to clarify the extent of expected employment for TANF recipients in the Work for Your Welfare program. Unfortunately, the added sentence is not grammatically correct and is difficult to understand. Perhaps a phrase or provision was inadvertently omitted. We recommend that the sentence be revised to ensure clarity of intent.

**Agency Response:** DSS is postponing changes to DSSM 3031 to allow for consistency with required changes to Work for Your Welfare hours. Your comments will be considered.

#### **Findings Of Fact:**

The Department finds that the proposed changes as set forth in the November 2004 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual regarding Delaware's Temporary Assistance for Needy Families Welfare Reform Program is adopted and shall be final effective January 10, 2005.

Vincent P. Meconi, Secretary, DHSS  
12.15.2004, Date of Signature

#### **DSS ORDER REGULATION #04-30**

##### **3003 Non-Time Limited Program - Children's Program**

DELAWARE'S A BETTER CHANCE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES WELFARE REFORM PROGRAM creates a non-time-limited program for certain families, referred to as the Children's Program. Families with the following status will receive benefits in the Children's Program:

- Families that the agency has determined are unemployable and unable to achieve self-sufficiency, either because a parent is too physically or mentally disabled to work in an unsubsidized work setting or because the parent is needed in the home to care for a child or another adult disabled to that extent; or
- Families headed by a non-needy, non-parent caretaker; or
- Families where the agency has determined that the adult caretaker is temporarily unemployable. Based on medical information, DSS will set the duration of the unemployability. The caretaker has the responsibility to request an extension and provide proof of continuing unemployability. Otherwise, DSS will consider the caretaker employable and transfer the family to the time-

limited program.

- Families in which the adult files a claim or has a claim being adjudicated for SSI or disability insurance under OASDI. (In this case, the family must sign an agreement to repay cash benefits received under the Children's Program from the proceeds of the first SSI/DI check received. However, the Division will require this only as long as the SSI/DI benefit includes retroactive payments for a period when the family received benefits under the Children's Program. The amount repaid will not exceed the amount of the retroactive SSI/DI benefit.)

In cases for which the family is placed in the Children's program because the parent (or other caretaker relative) is caring for a disabled family member, DSS will obtain a statement from a medical [or licensed behavioral health] professional or have the DSS Medical Certification form completed by a medical professional to verify that the person is needed in the home to care for the disabled family member.

CONTRACT OF MUTUAL RESPONSIBILITY requirements and sanctions for non-compliance apply to families in the Children's Program.

##### **3031 Work For Your Welfare**

All two-parent households, who are without employment, must enter a Work For Your Welfare activity to qualify for benefits. Single adult recipients, who reach their 22<sup>nd</sup> month of benefit and are without employment, and all eligible applicants on or after 01/01/2000, must enter a Work For Your Welfare activity to qualify for benefits. ~~[Additionally, all TANF recipients who are employed must earn at least the equivalent of minimum wage at twenty hours per week will be considered mandatory for Work for Your Welfare.]~~ Work for Your Welfare is defined as a work experience program in which participants work to earn their benefits. In addition, DSS requires each participant to complete 10 hours of job search activity per week. The failure to complete job search as required will result in a progressive 1/3 sanction. For two parent households, one parent must participate in the work for your welfare program in order to earn benefits. The second parent, unless exempt, must also participate in required employment related activities as defined by DSS and the DSS contractor.

Currently DSS operates the work for your welfare program under contract with a work for your welfare services provider. The provider assumes responsibility for the assessment, placement and monitoring of all work for your welfare participants in unsalaried work assignments. The work assignments are with public or nonprofit

organizations. In return for their services, participants earn the amount of the benefit they are eligible to receive.

Work for your welfare is not preferable to participants obtaining unsubsidized employment. Though the work for your welfare assignment should be a safe assignment, it should not be more attractive than unsubsidized employment.

DSS is to ensure that no participants placed in work for welfare activities displace regular paid employees of any of the organizations providing the placements.

Since placements are not voluntary, DSS expects participants to accept assignments unless the assignment represents an unreasonable health and safety risk (e.g., the participant has a health condition, which would be aggravated by the assignment).

Participants cannot appeal their assignments to work for your welfare work sites[.]

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## DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code,  
Sections 311 and 3403  
(18 Del.C. §§311 and 3403)

### ORDER

A public hearing was held on December 2, 2004 to receive comments on proposed amendments to Regulation 1501 relating to amendments to Delaware's Medicare Supplement Insurance Minimum Standards. On October 14, 2004, I appointed Deputy Insurance Commissioner F.L. Peter Stone as the hearing officer to receive comments and testimony on the proposed regulatory amendments. Public notice of the hearings and publication of the proposed amendments to Regulation 1501 in the Register of Regulations and two newspapers of general circulation was in conformity with Delaware law. Five persons attended the public hearing. Four written comments were received by the Department as a result of the public notice for comment.

#### Summary Of The Evidence And Information Submitted

Exhibits admitted into the record included, the order appointing the hearing officer, the affidavits of publication in the Delaware State News and the News Journal, the National Association of Insurance Commissioners' ("NAIC") September 8, 2004 model regulation ("NAIC model") showing the changes to be made and drafting notes explaining all of the changes, and the written statements of Allan R. Glass, UnitedHealth Group and America's Health Insurance Plans. Deputy Attorney General Michael J. Rich presented the position of the Delaware Department of

Insurance ("the Department"). One of the Department's purposes in proposing the changes to the regulation was to adopt the NAIC's recommended changes to the NAIC model regulation which, in turn, reflected changes in the federal regulatory provisions. Delaware's existing regulation 1501 was itself based on the original NAIC model and adopting the proposed changes would keep Delaware's regulation consistent with the uniform changes approved by the NAIC. The drafting notes in the NAIC model provided the basis and the rationale for the changes to the current version of the regulation. A second purpose for the proposed amendments was to amend section 12.2.1. The Department seeks to amend section 12.2.1. independently of the NAIC model to provide a 63 day guaranteed issue period for Medigap purchase for Delawareans whose employer-sponsored health plans cut back on some or all benefits. Allan R. Glass, a member of Senator Joseph R. Biden, Jr.'s staff, speaking for himself and not the Senator, had recommended additional changes to the regulation. However, the Department recommended against such changes since those additional changes might expand the scope of the change to section 12.2.1 beyond that intended by the Department.

Ms. Dotti Outland, on behalf of UnitedHealth Group, spoke in support of the proposed changes. She recommended that the effective date of the regulation in section 25 be amended to reflect the federal provision that forms being currently used under Plans K and L can be used through 2005 since the federal provisions relating to forms used under Medicare Part D do not become effective until the beginning of 2006.

The NAIC had faxed errata sheets to the Department on December 1, 2004 noting several printing errors in certain of the tables included in the regulation. The errata sheets did not suggest any substantive changes to the regulation.

#### Findings Of Fact

The purpose for a public hearing on a proposed regulatory change is to determine the necessity for the change and whether the language proposed to effect that change needs to be changed or modified for purposes of clarity or efficiency. There were no objections to the adoption of the proposed changes to the regulation. I find that the proposed technical changes recommended by UnitedHealth Group and America's Health Insurance Plans are desirable for purposes of clarity and conformity with existing law (in the case of the modification to the provisions relating to the effective date). Accordingly, I find that making such changes does not require republication and rehearing under the provisions of 29 Del.C. §10113.

I find that Mr. Glass' recommendations to modify sections 12.6 and 12.3.1.1 are not required and would be likely to be substantive. Since any change to a regulation is normally prospective in nature, any change to sections 12.6



or 12.3.1.1 as recommended would, by necessity either be retroactive or delay the purpose for the change. That would either increase a class of beneficiaries or delay the implementation of the change. As a result, I find that it is not appropriate to make the recommend changes to sections 12.6 or 12.3.1.1.

### **Decision**

Based on the provisions of 18 **Del.C.** §§311 and 3403, and the record in this docket, I adopt the FINAL REPORT AND RECOMMENDATION OF THE HEARING OFFICER dated December 8, 2004 and order that Regulation 1501 be amended as provided for in the notice published in the *Delaware Register of Regulations* 8 **DE Reg.** 672 (10/1/04) with the technical and legally conforming changes recommended by the Department, the NAIC, UnitedHealth Group and America's Health Insurance Plans.

I order that the proposed change shall become effective on February 1, 2005.

Donna Lee H. Williams, Insurance Commissioner  
DATED: December 10, 2004

**DUE TO THE LENGTH OF THE REGULATION THE FULL TEXT IS NOT BEING PUBLISHED. THE REGULATION IS AVAILABLE FROM THE REGISTRAR OR ONLINE.**

**Regulation 1501 Medicare Supplement Insurance  
Minimum Standards (PDF Version)**  
**Regulation 1501 Medicare Supplement Insurance  
Minimum Standards (HTML Version)**

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**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL**  
**DIVISION OF WATER RESOURCES**  
Statutory Authority: 7 Delaware Code,  
Section 60 (7 **Del.C.** §60)

**Secretary's Order No.: 2004-W-0059**

**Total Maximum Daily Loads ("TMDLs") for the Little  
Assawoman Bay and its Watershed, Delaware**

### **I. Background**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental

Control under 29 **Del.C.** §§8001 et seq., the following findings and conclusions are entered as an Order of the Secretary:

### **II. Findings**

In sum, I find and conclude that:

1. Based on the record developed, as reviewed in the Hearing Officer's Report("Report"), dated December 9, 2004, and appended hereto and incorporated herein, I find and conclude that the record overwhelmingly supports approval of issuance of the proposed regulation as a final regulation, as recommended in the Report;

2. The Department provided adequate public notice of the proposed regulation and public hearing as required by the law and Department regulations;

### **III. Order**

3. The Department, acting through an order of the Secretary, adopts the proposed regulation as a final regulation under the Clean Water Act and regulations promulgated thereunder;

### **Reasons**

4. The issuance of the proposed regulation as a final regulation will protect and improve the water quality of the Little Assawoman Bay;

5. The issuance of the proposed regulation as a final regulation will comply with the federal consent decree;

6. The issuance of the proposed regulation as a final regulation will enable the Pollution Control Strategy to be developed and implemented in a subsequent regulation proceeding;

7. The TMDLs were developed consistent with the applicable law and regulatory standards; and

8. The Department has an adequate record for its decision.

John A. Hughes, Secretary

Date of Issuance:

December 9, 2004

Effective Date of the Amendment: December 9, 2004

### **1.0 Introduction And Background**

Intensive water quality monitoring performed by the State of Delaware, the federal government, various university and private researchers, and citizen monitoring groups has shown that surface waters of the Inland Bays Watershed including the Little Assawoman Bay are highly enriched with the nutrients nitrogen and phosphorous. Although nutrients are essential elements for both plants and animals, their presence in excessive amounts cause undesirable conditions. Symptoms of nutrient enrichment in the Inland Bays have included excessive macroalgae growth

(sea lettuce and other species), phytoplankton blooms (some potentially toxic), large daily swings in dissolved oxygen levels, loss of Submerged Aquatic Vegetation (SAV), and fish kills. These symptoms threaten the future of the Inland Bays - very significant natural, ecological, and recreational resources of the State - and may result in adverse impacts to the local and State economies through reduced tourism, a decline in property values, and lost revenues. Hence, excessive nutrients pose a significant threat to the health and well being of people, other animals, and plants living within the watershed.

A reduction in the amount of nitrogen and phosphorous reaching the Inland Bays is necessary to reverse the undesirable effects. These nutrients enter the Bays and its tributaries and ponds from several sources including point sources, nonpoint sources, and from the atmosphere. Point sources of nutrients are end-of-pipe discharges coming from municipal and industrial wastewater treatment plants and other industrial uses. Nonpoint sources of nutrients include runoff from agricultural and urban areas, seepage from septic tanks, and ground water discharges. Atmospheric deposition comes from both local and regional sources, such as motor vehicle exhausts and emissions from power plants that burn fossil fuels.

Section 303(d) of the Federal Clean Water Act (CWA) requires States to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality standards and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impacts. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

The Delaware Department of Natural Resources and Environmental Control (DNREC) listed the Little Assawoman Bay and several tributaries and ponds of the Inland Bays on the State's 303(d) Lists and establishes the following Total Maximum Daily Loads regulation for nitrogen and phosphorous.

### **Total Maximum Daily Loads (TMDLs) for Little Assawoman Bay Watershed, Delaware**

#### **1.0 Introduction and Background**

1.1 Intensive water quality monitoring performed by the State of Delaware, the federal government, various university and private researchers, and citizen monitoring groups has shown that surface waters of the Inland Bays Watershed including the Little Assawoman Bay are highly enriched with the nutrients nitrogen and phosphorous. Although nutrients are essential elements for both plants and

animals, their presence in excessive amounts cause undesirable conditions. Symptoms of nutrient enrichment in the Inland Bays have included excessive macroalgae growth (sea lettuce and other species), phytoplankton blooms (some potentially toxic), large daily swings in dissolved oxygen levels, loss of Submerged Aquatic Vegetation (SAV), and fish kills. These symptoms threaten the future of the Inland Bays - very significant natural, ecological, and recreational resources of the State - and may result in adverse impacts to the local and State economies through reduced tourism, a decline in property values, and lost revenues. Hence, excessive nutrients pose a significant threat to the health and well being of people, other animals, and plants living within the watershed.

1.2 A reduction in the amount of nitrogen and phosphorous reaching the Inland Bays is necessary to reverse the undesirable effects. These nutrients enter the Bays and its tributaries and ponds from several sources including point sources, nonpoint sources, and from the atmosphere. Point sources of nutrients are end-of-pipe discharges coming from municipal and industrial wastewater treatment plants and other industrial uses. Nonpoint sources of nutrients include runoff from agricultural and urban areas, seepage from septic tanks, and ground water discharges. Atmospheric deposition comes from both local and regional sources, such as motor vehicle exhausts and emissions from power plants that burn fossil fuels.

1.3 Section 303(d) of the Federal Clean Water Act (CWA) requires States to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality standards and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impacts. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

1.4 The Delaware Department of Natural Resources and Environmental Control (DNREC) listed the Little Assawoman Bay and several tributaries and ponds of the Inland Bays on the State's 303(d) Lists and proposes the following Total Maximum Daily Loads regulation for nitrogen and phosphorous.

#### **2.0 Total Maximum Daily Loads (TMDLs) Regulation for the Little Assawoman Bay, Delaware**

Article 1. The nonpoint source nitrogen load in the Little Assawoman Bay Watershed shall be reduced by 40 percent. For the 3-year period of 1998 through 2000, this would result in reduction of total nitrogen load in the Watershed from 594 pounds per day to 357 pounds per day.

Article 2. The nonpoint source phosphorous load in the Little Assawoman Bay Watershed shall be reduced by 40 percent. For the 3-year period of 1998 through 2000, this would result in reduction of total phosphorous load in the Watershed from 49 pounds per day to 30 pounds per day.

Article 3. Implementation of this TMDL Regulation shall be achieved through development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Inland Bays Tributary Action Team, other stakeholders, and the public.

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## **DEPARTMENT OF SAFETY AND HOMELAND SECURITY**

Statutory Authority: 21 Delaware Code,  
Section 4101(d) (21 **Del.C.** §4101(d))

### **ORDER**

#### **Summary Of Evidence**

The Secretary of the Department of Safety and Homeland Security (hereinafter referred to as "Secretary") intends to promulgate regulations that will regulate the administration of the Electronic Red Light Safety Program (hereinafter referred to as "Program") in unincorporated areas of the State of Delaware. The Program through the use of traffic light signal monitoring systems will impose monetary liability on owners or operators of motor vehicles for failure to comply with traffic light signals.

Notice for public comment and a public hearing were properly noticed and a public hearing was held on November 22, 2004 in the second floor conference room of the Department of Safety and Homeland Security Building, Dover, DE. No comments were received either in writing or at the public hearing. The attendance sheet, record of public comment and documents received are attached to this Order.

#### **Findings Of Fact**

Based on the evidence and information, the Secretary finds the following facts:

1. The public was given proper notice and the opportunity to provide the Secretary with comments, in writing, and at a public hearing. The Department received no comments.

2. 73 **Del. Laws**, c. 350 provides for the establishment of a red light safety program in unincorporated areas of the State of Delaware. Additionally, authority for the promulgation of the Electronic Red Light Safety Program regulations (hereinafter referred to as "Regulations") is

found at 21 **Del.C.** §4101(d).

3. The Regulations will provide for an effective, efficient and reasonable means of administering the Program.

4. The Regulations are necessary for the implementation of the Program as directed under 73 **Del. Laws**, c. 350 in unincorporated areas of the State of Delaware.

5. It is in the best interest of the citizens of the State of Delaware that the Regulations which provide for the administration of the Program in unincorporated areas of the State of Delaware are promulgated.

### **DECISION**

The Secretary hereby adopts the Regulations as proposed and a copy of the Regulations as adopted is attached to this Order. The effective date of this Order shall be January 11, 2005.

IT IS SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2004.

The Honorable David B. Mitchell, J.D.

#### **Electronic Red Light Safety Program (ERLSP)**

##### **1.0 Statement of Purpose**

The purpose of these regulations are to provide for the establishment and administration of a program in unincorporated areas of the State of Delaware imposing monetary liability on owners or operators of motor vehicles for failure to comply with traffic light signals. These regulations are being promulgated in accordance with 21 **Del.C.** §4101(d) and 73 **Del. Laws**, c. 350, sec. 92.

##### **2.0 Locations of Traffic Light Signal Monitoring Systems**

There shall be up to 10 locations in unincorporated areas of the State of Delaware where traffic light signal monitoring systems shall be installed and operated.

##### **3.0 Nestor Traffic Systems, Inc.**

The Department of Transportation has selected Nestor Traffic Systems, Inc. to provide traffic light signal monitoring systems for unincorporated areas of the State of Delaware and to assist in administering the Electric Red Light Safety Program in unincorporated areas of the State of Delaware. Nestor Traffic Systems, Inc. and its employees may participate in the administration of the Electronic Red Light Safety Program.

##### **4.0 Fines**

The owner or operator of a vehicle that commits a violation by failing to comply with a traffic light signal, as evidenced by information obtained from a traffic light signal

monitoring system, shall be subject to a civil assessment in the amount of \$75.

### **5.0 Violation Criteria**

For a violation to occur, the front of a vehicle must be behind the stop line marked on the pavement at the time the traffic light signal turns red and must then continue into the intersection while the traffic light signal is red.

### **6.0 Determination of Violation**

An employee of the Delaware State Police shall review video evidence from a traffic light signal monitoring system and make a determination as to whether a violation has occurred. If a determination is made that a violation has occurred, a Notice of Violation shall be sent to the registered owner of the vehicle that committed the violation.

### **7.0 Exemptions**

The following vehicles are exempt from receiving a notice of violation:

- 7.1 Emergency vehicles with active emergency lights;
- 7.2 Vehicles moving through the intersection to avoid or clear the way for a marked emergency vehicle;
- 7.3 Vehicles under police escort; and
- 7.4 Vehicles in a funeral procession.

### **8.0 Notice of Violation Content**

A Notice of Violation shall contain:

- 8.1 A civil violation number;
- 8.2 The name and address of the registered owner of the vehicle that committed the violation;
- 8.3 The registration number of the motor vehicle involved in the violation;
- 8.4 The violation charges;
- 8.5 The location where the violation occurred;
- 8.6 The date and time of the violation;
- 8.7 The date the notice of violation is mailed;
- 8.8 Four images that demonstrate proof of a violation.

This shall include:

- 8.8.1 An image showing the vehicle behind the stop line, light is red;
- 8.8.2 An image showing vehicle within intersection, light is red;
- 8.8.3 An image showing a close-up of the license plate; and
- 8.8.4 An image showing the rear of vehicle, with license plate;
- 8.9 The amount of the civil assessment imposed and the date by which the civil assessment should be paid;
- 8.10 Information advising an owner or operator of a vehicle regarding the manner, time and place by which liability as alleged in a Notice of Violation may be contested and warning that the failure to pay the civil assessment or to contest liability within 30 days of the mailing of the Notice

of Violation is an admission of liability and may result in a judgment being entered against the owner or operator and/or the denial of the registration or the renewal of the registration of any of the owner's vehicles; and

8.11 Notice concerning a person's ability to rebut the presumption that he or she was the operator of the vehicle at the time of the alleged violation and the means for rebutting the presumption.

### **9.0 Affidavits**

9.1 If the registered owner of a vehicle whom has received a notice of violation contends that he/she was not the operator of the vehicle at the time of the violation, he/she will be required to submit an affidavit denying that he/she was an operator and shall provide the name and address of the operator at the time of the violation.

9.2 If the registered owner is a leasing company that rents/leases vehicles, that leasing company must provide by affidavit the name and address of the person or entity who rented/leased or otherwise had care, custody, or control of the vehicle at the time of the violation.

9.3 If a vehicle, or its plates were stolen at the time of the alleged violation, the registered owner must provide an affidavit denying he/she was an operator and provide a certified copy of the police report/log reflecting such theft.

9.4 An affidavit must be provided by the registered owner of a vehicle receiving a Notice of Violation within 30 days of the mailing date of the Notice of Violation.

9.5 Upon receipt of an affidavit by the State of Delaware or Nestor Traffic Signals, Inc., the newly implicated person will be mailed a notification informing him/her of the violation.

### **10.0 Payment of Civil Assessment**

A person electing to pay a civil assessment should make payment by check or money order to ERLSP. Payment should be made by mail to: P.O. Box 2018, Winchester, VA 22604 or at such other address as specified on the Notice of Violation.

### **11.0 Procedures to Contest a Violation**

A hearing to contest a violation will be heard in the Justice of the Peace Court for the State of Delaware. A person receiving a Notice of Violation may request a hearing to contest a violation by sending such request to the address provided with or on the Notice of Violation within 30 days of the date the Notice of Violation was sent to the owner or operator of the vehicle. If a request for a hearing is not made within 30 days of the Notice of Violation being sent to the owner or operator of the vehicle, that person or entity has waived the right to contest the violation.

### **12.0 Failure to Pay Civil Assessment**

If the owner or operator of a vehicle does not pay a civil

assessment within 30 days of the Notice of Violation being sent to the owner or operator of the vehicle or does not successfully contest a violation, the Division of Motor Vehicles may refuse to register and/or deny the renewal of the registration of any of the owner's vehicles. Additionally, the Department of Transportation may pursue a civil action, including seeking judgment and execution on a judgment against the owner or operator of the vehicle.

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**DEPARTMENT OF STATE**  
**DIVISION OF HISTORICAL AND**  
**CULTURAL AFFAIRS**

Statutory Authority: 30 Delaware Code,  
Section 1815(b), (30 Del.C. §1815(b))

**ORDER**

**Nature of Proceedings:**

In accordance with 29 Del.C. §10115 and 30 Del.C. §1815(b), the Department of State, Division of Historical and Cultural Affairs (Department) published notice of proposed changes to the Historic Preservation Tax Credit Program in the *Delaware Register of Regulations* (Register) on October 1, 2004 [7 DE Reg. 526-530 (10/1/04)]. The notice provided a full text of the existing Regulations with proposed changes, and provided notice of date and location for receiving written public comment. In addition to the notice published in the *Register*, the Department published notice of the opportunity to comment for public comment concerning the proposed regulations in two newspapers of general circulation throughout the State. The public comment period was from October 1, 2004 through November 1, 2004. The purpose of the proposed changes to the regulations is to implement code revisions of 2004 relating to the phasing of projects and to make technical corrections in order to clarify the regulations.

**Summary of Evidence:**

The Department received no written comments in response to the notice of intention to adopt the proposed regulations.

**Finding of Fact:**

The public was given the required notice of the Department's intention to adopt the proposed regulations and was given ample opportunity to provide the Department with comments opposing the Department's proposals. Thus, the Department concludes that its consideration of the proposed

regulations was entirely within its prerogatives and statutory authority and, having received no comments opposed to adoption, is now free to adopt them.

**Order and Effective Date:**

NOW THEREFORE, it is ordered that the proposed regulations, as set forth in the attached copy, are adopted and shall be final effective January 11, 2005.

Harriet N. Smith Windsor  
Secretary of State

**Regulations Governing the Historic Preservation Tax  
Credit Act:**

**1.0 Scope**

A person or business entity that owns and rehabilitates a certified historic property may receive a credit against personal Delaware State income tax or bank franchise tax liabilities according to procedures and criteria established in these regulations and those that may be promulgated by the Division of Revenue or the State Bank Commissioner. Any person eligible for credits under this Chapter, except a person engaged in a resident curator relationship, may transfer, sell or assign any or all unused credits. ~~except a person engaged in a resident curator relationship.~~

**6 DE Reg. 108 (7/2/02)**

**2.0 Statutory Authority**

These regulations are created pursuant to 30 Del.C. Ch. 18, Subch. II which authorizes the Division of Historical and Cultural Affairs to promulgate regulations for implementation of the provisions of this subchapter (except tax-related procedures) including, but not limited to, setting of fees and development of standards for the rehabilitation of eligible historic properties. The subchapter further authorizes the Division of Historical and Cultural Affairs to promulgate the application and forms governing participation in the certification program.

**3.0 Definitions**

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

“Act” means the 30 Del.C. Ch. 18, Subch. II.

“Application” means the Delaware Historic Preservation Tax Credit application that shall consist of ~~three~~ four parts, as follows: the Request for Certification of Historic Property (Part 1); the Request for Certification of Rehabilitation (Part 2); ~~and~~ the Request for Certification of Completion (Part 3), and the Request for Credit Award.

“Certified historic property” or “qualified property” means a property located within the State of Delaware that

is:

- individually listed in the National Register of Historic Places; or
- located in a historic district listed in the National Register of Historic Places and certified by the United States Secretary of the Interior as contributing to the historic significance of that district; or
- individually designated as a historic property by local ordinance and certified by the Delaware State Historic Preservation Office as meeting the criteria for inclusion in the National Register of Historic Places; or
- located in a historic district set apart or registered by a local government, certified by the Delaware State Historic Preservation Office as contributing to the historic significance of such area, and certified by the Delaware State Historic Preservation Office as meeting the criteria for inclusion in the National Register.

**"Certification of Completion", "Completion Certificate" or "Certificate of Completion"** means the certificate issued by the Delaware State Historic Preservation Officer attesting that certified rehabilitation, or, if applicable, phase thereof, has been completed and that the documentation of qualified expenditures and project plans that would be required in order to qualify for tax credits under Section 47 of the Internal Revenue Code (whether or not such project would be eligible for such federal tax credit) has been obtained.

**"Certified rehabilitation"** means rehabilitation of a certified historic structure property or portion thereof that has been certified by the Delaware State Historic Preservation Officer as a substantial rehabilitation, and is in conformance with ~~the Standards of~~ the Secretary of the Interior's Standards for Rehabilitation (36 CFR, part 67) or such other standards as the Delaware State Historic Preservation Office shall from time to time adopt.

**"Credit award"** means the amount of qualified expenditures as determined by the State Office as part of the Part 2 approval multiplied by the appropriate ~~amount~~ percentage as determined in 30 Del.C. §1813.

**"Delaware State Historic Preservation Officer"** means the person designated and appointed in accordance with 16 USC §470a(b)(1)(a).

**"Federal tax credit"** means the Federal Rehabilitation Tax Credit as defined in the United States Tax Code, Title 26, Subtitle A, Chapter 1, Subchapter A, Part IV, Subpart E, Section 47.

**"Fiscal Year"** means the State's of Delaware's fiscal year.

**"National Register of Historic Places" or "National Register"** means the National Register of districts, sites,

buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture that the United States Secretary of the Interior is authorized to expand and maintain pursuant to Section 101(a)(1) of the National Historic Preservation Act of 1966, as amended.

**"Office" or "State Office"** means the Delaware State Historic Preservation Office.

**"Owner-occupied historic property"** means any certified historic property, or any portion thereof, which is owned by a taxpayer and is being used, or within a reasonable period will be used, by such taxpayer as the taxpayer's principal residence. ~~"Reasonable period" shall mean within six months of the issuance of the Certification of Completion. The State Office, in its sole discretion, may offer one extension, not to exceed three months, for cause.~~ Such property may consist of part of a multiple dwelling or multiple purpose building or series of buildings, including a cooperative or condominium. If only a portion of a building is used as the principal residence, only those qualified expenditures that are properly allocable to such portion shall be eligible under this subchapter.

**"Person"** means any individual, any form of company or corporation which is lawful within the State of Delaware (including limited liability companies and S corporations) whether or not for profit, any form of partnership which is lawful within the State of Delaware (including limited liability partnerships) whether or not for profit, any trust or estate, and any lawful joint venture. "Person" shall also mean any governmental entity, pass-through entity, or person under a lease contract for five years or longer.

**"Phased rehabilitation"** means any certified rehabilitation of a certified historic property reasonably expected to be completed in two or more distinct stages of development as more fully described in Treasury Regulation 1-48-12(b)(v) or any successor provision.

**"Property"** means real estate and shall include any building or structure, including multiple-unit structures.

**"Qualified expenditure"** means any amount properly expended by a person for the certified rehabilitation of a certified historic property, but shall not include:

- acquisition of real property or acquiring an interest in real property;
- any addition to an existing structure except where the combined square footage of all additions is 20% or less than the total square footage of the historic portion of the property and each such addition is approved by the Delaware State Historic Preservation Officer, pursuant to federal guidelines, as:
  - preserving the character-defining features of the certified historic property,
  - adequately differentiating the new construction from the existing structure, and

- complying with requirements regarding safety and accessibility in a manner reasonably designed to minimize any adverse impact on the certified historic property;
- paving or landscaping costs which exceed 10% of the total qualified expenditures;
- sales and marketing costs; or
- expenditures not properly charged to a capital account, including in the case of owner-occupied property, expenditures that would not properly be charged to a capital account where the owner using such property is a trade or business.

“Reasonable period” means that an owner must occupy the rehabilitated property as their principal residence within six months of the issuance of the Certificate of Completion. The State Office, in its sole discretion, may offer one extension, not to exceed three months, for cause.

“Resident Curator” means a person who has entered into a contractual agreement with the owner of a qualified property in which the person agrees to pay for full restoration of the owner’s qualifying property in exchange for a life tenancy in the property without remunerative compensation to the owner for the life tenancy.

“Substantial rehabilitation” or “full restoration” means rehabilitation of a certified historic property for which the qualified expenditures, during the 24-month period, or the 60-month period for a phased rehabilitation, selected by the taxpayer and ending with or within the taxable year, exceed:

- for income-producing property, and non-income producing property other than owner-occupied historic property, the current standard required by Section 47(c)(1)(C) Internal Revenue Code; and
- for owner-occupied historic property or property under contract with a resident curator, \$5,000.

“Taxpayer” means any person as defined in this section, and shall include any individual or corporation taxable under Title 5, or taxable under either 30 Del.C. Ch. 11 or 30 Del.C. Ch. 19.

**6 DE Reg. 108 (7/1/02)**

**8 DE Reg. 194 (7/1/04)**

**4.0 Procedures for Certification of Historic Property**

4.1 A taxpayer may request that a property in a National Register listed or locally designated historic district be certified by the Delaware State Historic Preservation Officer as a certified historic property by filing the Part 1 application with the State Office. The Part 1 application shall be filed on standard forms available from the State Office. ~~An incomplete application will not be processed until all~~

~~required application information has been received. The State Office will notify the taxpayer of the additional information needed to undertake or complete the review.~~

4.2 An incomplete Part 1 application will not be processed until all required application information has been received. Where adequate documentation is not provided, the State Office will notify the taxpayer of the additional information needed to undertake or complete the review.

4.3 The Delaware State Historic Preservation Officer shall determine whether the property for which a complete Part 1 application is received meets the definition of certified historic property and will notify the taxpayer of the decision.

4.4 ~~Taxpayers of properties~~ If a property is individually listed in the National Register, do not need to submit submission of a Part 1 application is not required. The name of the historic property and its date of listing in the National Register must be provided in the Part 2 application.

**6 DE Reg 108 (7/1/02)**

**5.0 Procedures for Certification of Rehabilitation**

5.1 A taxpayer may request a determination by the Delaware State Historic Preservation Officer that a proposed ~~substantial~~ rehabilitation plan meets the criteria for certification by filing a Part 2 application with the State Office. The Part 2 application shall be filed on standard forms available from the State Office.

5.2 A taxpayer must submit Part 1 of the application prior to, or with, Part 2. ~~The Part 2 of the~~ application will not be processed until an adequately documented and approved Part 1 application, where required as outlined in Section 4.0 of these regulations, is on file.

5.3 An incomplete Part 2 application will not be processed until all required application information has been received. Where adequate documentation is not provided, the State Office will notify the taxpayer of the additional information needed to undertake or complete review.

5.4 A taxpayer requesting approval of a phased rehabilitation plan shall provide the State Office with a description of the phases and their completion dates when submitting the Part 2 application. The Delaware State Historic Preservation Officer will notify the taxpayer if the phased rehabilitation plan is approved. The final completion date for a phased rehabilitation is binding unless the taxpayer requests a change in writing. For a phased rehabilitation, the taxpayer has 60 months to meet the substantial rehabilitation test.

5.4-5 The Delaware State Historic Preservation Officer shall determine whether the proposed ~~substantial~~ rehabilitation for which a complete application is received under Section 5.1 of this regulation meets the definition of a certified rehabilitation and shall send the taxpayer notice of the determination ~~and of the credit award.~~ The State Office may require modifications to the plan in order to meet the definition of a certified rehabilitation.



5.5.6 A Request for Credit Award application must be submitted with the Part 2 application. The Part 2 application A taxpayer must also provide cost estimates of qualified expenditures prepared by a licensed architect, engineer, or contractor or a certified construction cost estimator. for the proposed rehabilitation. This information will be used to determine the credit award for approved Part 2 applications.

5.5.7 The amount of tax credit applied against the qualified expenditures in accordance with 30 Del.C. §1813 shall represent the credit award. The cost estimate supplied by the taxpayer in accordance with Section 5.6 will be used to determine the credit award for approved Part 2 applications.

5.5.8 Credits will be awarded in chronological order based upon the date and time on which each application receives Part 2 approval from the State Office. The State Historic Preservation Officer shall notify the taxpayer of the amount of the credit award.

5.5.9 In the alternative, the Delaware State Historic Preservation Officer may certify a rehabilitation plan and issue a Part 2 approval to any taxpayer who has obtained a Part 1 and Part 2 certification from the federal government pursuant to 36 CFR 67. where applicable. Under this provision, a taxpayers must file the State of Delaware Part 2 cover form containing as well as the information required under Section 5.5 5.6 of these regulations.

5.5.10 All taxpayers must begin construction on the approved Part 2 certified rehabilitation plan within one year of receiving the Part 2 approval. Taxpayers, having received Part 2 approval, must notify the State Office in writing of the start date of the rehabilitation work. If construction on the rehabilitation plan is not substantially commenced and is being diligently pursued within this time period, the taxpayer will forfeit the awarded credits, and the credits awarded to such taxpayer will become available for award to other taxpayers. Substantially commenced and diligently pursued means that at a minimum 25% of the estimated rehabilitation costs must have been expended. The State Office reserves the right to obtain documentation from the applicant supporting the expenditure.

5.10.11 The project may be inspected by the Delaware State Historic Preservation Officer or his/her designated representative to determine if the work is consistent with the approved Part 2 certified rehabilitation plan, or and if the project has substantially commenced and is being diligently pursued.

**6 DE Reg. 108 (7/1/02)**

## **6.0 Procedures for Certification of Completion**

6.1 Upon completion of a certified rehabilitation, or an approved project phase thereof, the taxpayer must submit a Part 3 application with required documentation and a final accounting of qualified expenditures, to the Delaware State

Historic Preservation Office. The completed project may be inspected by the Delaware State Historic Preservation Officer or his/her designated representative to determine if the work meets the definition of a certified rehabilitation.

6.2 An incomplete Part 3 application will not be processed until all required application information has been received. Where adequate documentation is not provided, the State Office will notify the taxpayer of the additional information needed to undertake or complete the review. The completed project may be inspected by the Delaware State Historic Preservation Officer or his/her designated representative to determine if the work meets the definition of a certified rehabilitation.

6.2.3 Upon approval by the State Office that the completed rehabilitation, or an approved phase thereof, meets the definition of a certified rehabilitation, the State Office shall submit the documentation of qualified expenditures to the Division of Revenue or the State Bank Commissioner, as appropriate, and request a determination of the value of the tax credit for the completed project or an approved phase.

6.3.4 Upon receipt from the Division of Revenue of the certification of the value of the tax credit for the project, or an approved phase thereof, associated with the Certificate of Completion by the Division of Revenue or the State Bank Commissioner, the Delaware State Historic Preservation Officer shall issue a Certificate of Completion to the taxpayer. For approved phased rehabilitations, each phase must receive a Certificate of Completion indicating that each phase is a certified rehabilitation in order for the overall project to be considered to be a certified rehabilitation.

6.5 In the case of approved phased projects, more than one Certificate of Completion may be awarded to a single rehabilitation project. Credits issued to the initial assignee, or in the case of a tax-exempt assignee, to the first taxable transferee after the associated phase completion, shall be subject to revocation and repayment to the Delaware Division of Revenue or the Office of the State Bank Commissioner if, under regulations issued by the State Office, a phased rehabilitation is not completed by the agreed upon completion date indicating that the applicant for the credit award is unable or unwilling to complete it, or in the event that the project does not meet the certification requirements previously agreed to with the State Office.

6.4.6 In no event shall the credit claimed by a taxpayer exceed the approved Part 2 credit award.

**6 DE Reg. 108 (7/1/02)**

## **7.0 Fees for Processing Rehabilitation Certification Request**

7.1 The fee for review of rehabilitation work for projects where the qualified expenditures are over \$100,000 is \$250 for each separate application. The fee from a single taxpayer for multiple projects submitted at the same time

shall not exceed \$2,500. Final action will not be taken on any application until the appropriate remittance is received. No fee will be charged for rehabilitation projects where the qualified expenditures are under \$100,000.

7.2 The fee, where applicable, must be submitted with the Part 3 application. For phased projects, the fee must be submitted with the first Part 3 submitted. All checks shall be made payable to the State of Delaware.

### **8.0 Resident Curator Program**

8.1 Curatorship property is subject to periodic inspection by the State Office during the tax years in which the credit is applicable.

8.2 Improvements to curatorship property must be completed within five years from the date of execution of the contract between the owner and the resident curator.

8.3 Curatorship property must not be used for commercial purposes.

**8 DE Reg. 194 (7/1/04)**

### **9.0 Administrative Review**

9.1 A taxpayer whose application has been disapproved by the Delaware State Historic Preservation Officer under these regulations may file a written request for review with the Secretary of State or the Secretary's designee within 60 days after the notice of disapproval is sent.

9.2 The Secretary of State or the Secretary's designee shall review the request within 60 days after receipt of the request. If the Secretary of State or the Secretary's designee determines that the application filed meets the standards set forth in these regulations the application shall be considered approved. If the Secretary of State or Secretary's designee determines that the application filed does not meet the standards set forth in these regulations, the application shall be disapproved. The Secretary of State or Secretary's designee shall promptly notify the taxpayer of the Secretary's determination.

9.3 A taxpayer whose application has been disapproved by the Secretary of State may appeal that action in accordance with the Administrative Procedures Act, 29 **Del.C.** §10101 et. seq.

9.4 An appellant who has exhausted all administrative remedies shall be entitled to judicial review in accordance with 29 **Del.C.** Ch. 101, Subch. V of the Administrative Procedures Act.

**6 DE Reg. 108 (7/1/02)**

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**GOVERNOR'S APPOINTMENTS**

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Delaware Economic and Financial Advisory Council	Mr. William Fasy	Pleasure of the Governor
First State Historical Park Task Force	Ms. Reba Hollingsworth	Pleasure of the Governor
Governor's Energy Advisory Council	Mr. John W. Andrew	11/12/2007
	Mr. Robert L. Baker	11/12/2006
	Mr. David R. Hodas	11/12/2007
	Mr. Raymond Long	11/12/2006
	Mr. Patrick McCullar	11/12/2005
	Mr. Gary Patterson	11/12/2006
	Mr. Seth Ross	11/12/2007
	Mr. Gary Stockbridge	11/12/2007
	Mr. Stephen Thompson	11/12/2005

**DEPARTMENT OF FINANCE**  
**DIVISION OF REVENUE****Technical Information Memorandum 2004-4**  
**Headquarters Management Corporation****Technical Information Memorandum 2004-3**  
**Transient Nursery Retailers****BACKGROUND**

Senate Bill 341 of the 142<sup>nd</sup> General Assembly amended Chapter 29 of Title 30 of the **Delaware Code** by adding a new license requirement for Transient Nursery Retailers. Transient nursery retailers must obtain a business license for each place of business. The fee for each location is \$75.00 and is valid for 30 consecutive days from the date issued. The applicant must supply an original or copy of a valid Nursery Industry License issued by the Department of Agriculture prior to being issued a business license. In addition the applicant must provide proof that he or she has obtained all other necessary State, county and municipal licenses, permits and waivers regarding the sale of their products and operation at each location. These new requirements are effective July 19, 2004

A **“Transient Nursery Retailer”** is any retailer of nursery products as defined in Section 1301(27) of Title 3 of the **Delaware Code** that does not otherwise sell nursery products from a permanent structure within the State. Any charitable organization as defined in Section 501(c) of the Internal Revenue Code is excluded from the definition of a transient nursery retailer.

**“Nursery Products”** is defined as -- any plant for planting, propagation, or ornamentation, including, but not limited to:

- a. All plants, trees, shrubs, vines, perennials, grafts, cuttings and buds that may be sold for propagation, whether cultivated or wild, and all viable parts of these plants.
- b. Any other plant or plant part, including cut Christmas trees or any non-hardy plant or plant part, including but not limited to, annuals, bedding plants and vegetable plants.

Every transient nursery retailer must complete a Combined Registration Application, pay the license fee for each location, and supply the appropriate State, county and municipal licenses, permits and waivers prior to selling any nursery product in the State. The Division of Revenue will issue a Cease and Desist Order for failure to comply with these requirements. In addition a civil penalty of \$200.00 will be imposed for each violation.

Please contact Ron Kaminski, 302-577-8448, or by email at, [ronald.kaminski@state.de.us](mailto:ronald.kaminski@state.de.us) if you have any questions concerning the licensing requirements for transient nursery retailers.

Patrick T. Carter, Director of Revenue

House Bill 403 of the 142<sup>nd</sup> General Assembly creates a new Chapter 64 of Title 30 of the **Delaware Code**. This new chapter relates to the formation, powers and taxation of a new corporate entity known as a Delaware Headquarters Management Corporation (HMC). The purpose of this legislation and the creation of the HMC is to allow for the opportunity to attract investment management activities and headquarter support operations to the State of Delaware to create new employment within the State.

**QUALIFICATION AND ELECTION**

Any corporation may elect to be classified as an HMC if the corporation limits its activities in Delaware to investment activities and/or providing headquarters management services to itself and to members of its affiliated group. The election to become an HMC may be made anytime before the last day of the end of the first taxable year commencing after December 31, 2003. An election shall remain in effect until terminated by revocation by the taxpayer or the taxpayer's failing to limit its activities in this State to headquarters services or investment activities.

**DEFINITIONS**

Section 6401(c) of 30 **Del.C.** defines **“investment activities”** as: the maintenance and management by an HMC of its intangible investments and the collection and distribution of the income from such investments or from tangible property physically located outside this State. Section 6401(b) of 30 **Del.C.** defines **“headquarters management services”** as: accounts receivable and payable, employee benefit plan, insurance, legal, payroll, data processing, purchasing, and tax, financial and securities accounting, reporting and compliance services provided by an HMC to itself and members of its affiliated group, and the maintenance and management of the intangible investments of other members of its affiliated group.

**TAXATION**

An HMC will pay an annual tax that is the greater of the sum of 8.7% of its HMC taxable income derived from headquarters services activities, not including investment income; and 4% of its HMC taxable income derived from its investment activities or \$5,000. An HMC shall be credited with the amount of tax the income upon which tax was also paid, with respect to the taxable year, to any other state of the United States or the District of Columbia.

### ALTERNATIVE CALCULATION OF TAXABLE INCOME

House Bill 403 of the 142<sup>nd</sup> General Assembly also creates a new Subchapter VII to Chapter 20, 30 **Del.C.** that offers an alternative calculation of Delaware taxable income of the HMC and also offers employment tax credits. Section 2061(a), 30 **Del.C.** contains an alternative method for a newly formed HMC. Section 2061(b), 30 **Del.C.** contains an alternative method for an HMC that previously conducted business in Delaware prior to its HMC election.

### REDUCTIONS IN TAXABLE FOR EMPLOYMENT AND/INVESTMENT

Section 2061(a) provides a 20% tax reduction in taxable income for each qualified employee of the HMC and/or a 2% tax reduction for each expenditure (not including wages/salaries/benefits) by the HMC in Delaware of \$7,500 in excess of 100% of the HMC's operating expenses for the most recent tax year ending before the effective date of its original license.

Section 2061(b) provides a 20% tax reduction for each qualified employee of the HMC that is 25% or more greater than the number of individuals employed within this state before the effective date of its original license and/or a 2% tax reduction for each expenditure (not including wages/salaries/benefits) by the HMC in Delaware of \$7,500 in excess of 125% of the HMC's operating expenses for the most recent tax year ending before the effective date of its original license.

The alternative Delaware taxable income calculations Section 2061 is available during each of the ten years commencing with the first taxable year beginning on the effective date of the HMC's original license. The maximum amount of tax reduction is 99%. The maximum amount of tax reduction can not exceed a minimum annual HMC income tax of \$5,000.

### TAX CREDITS FOR NEW EMPLOYMENT

In addition to the reduction in taxable income, section 2063 provides that any qualified HMC, during any 12 month taxable year, that employs 5 or more qualified employees is entitled to a \$400/employee income tax credit. The amount of the credit allowable for each taxable year shall not exceed 50% of the amount of tax imposed by this Chapter upon the HMC that is in excess of the \$5,000 minimum tax nor shall the employment tax credit reduce the tax imposed upon the HMC below the \$5,000 minimum tax. The employment tax credit and any carryover of the unused tax credit are limited to a 5 year life.

### FILING REQUIREMENTS

A qualified HMC will be required to file an annual income tax return and pay a tax in lieu of the taxes imposed under Chapter 19 of Title 30 of the Delaware Code. Such return shall be due on the first day of the fourth month immediately following the end of the taxable year. The HMC's Delaware taxable income for any year means the amount of its federal taxable income as computed for federal income tax purposes and subject to the specific allocation and apportionment provisions contained in Section 6403(a) and Section 6403(b), 30 **Del.C.**

A tentative tax return, covering estimated income tax liability for the current taxable year, shall be filed with the Division of Revenue on or before the first day of the fourth month of the current taxable year. For calendar year corporations, 25% of the estimated tax liability for the current taxable year shall each be paid with the tentative return required to be filed on or before April 1 of the current taxable year, the 15<sup>th</sup> day of June of the current taxable year, the 15<sup>th</sup> day of September of the current taxable year and the 15<sup>th</sup> day of January of the immediately following taxable year. For fiscal year corporations, 25% of the estimated tax liability for the current taxable year shall each be paid with the tentative return required to be filed on or before the 1<sup>st</sup> day of the 4<sup>th</sup> month of the current taxable year, the 15<sup>th</sup> day of the 6<sup>th</sup> month of the current taxable year, the 15<sup>th</sup> day of the 9<sup>th</sup> month of the current taxable year and the 15<sup>th</sup> day of the 1<sup>st</sup> month of the immediately following taxable year. Tentative tax declarations and payments are not required for returns for taxable periods of less than 92 calendar days and any additional tax as computed in the final return shall be paid with the final return.

### ANNUAL LICENSE FEE

An HMC is required to obtain an occupational business license pursuant to 30 **Del.C.**, §2301(27). The annual license fee is \$5,000. Affiliates of the HMC are subject to an annual license fee of \$500 for each affiliate electing to be a Headquarters Management Company. An HMC is exempt from sections (b) and (d) of Section 2301 relating a General Service license and the payment of gross receipts tax.

Form 6401-HMC, APPLICATION AND ELECTION FOR A HEADQUARTERS MANAGEMENT CORPORATION BUSINESS LICENSE must be completed and submitted with the appropriate license fee to the Director of Revenue.

Please contact Ron Kaminski, 302-577-8448, or by email at, [ronald.kaminski@state.de.us](mailto:ronald.kaminski@state.de.us) if you have any questions concerning questions regarding this notice.

Patrick T. Carter, Director of Revenue

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

**PUBLIC NOTICE**

The Delaware Board of Accountancy in accordance with 24 **Del.C.** §105(a)(1) has proposed changes to its rules and regulations as mandated by SB 229. The proposal identifies crimes that are substantially related to the practice of accountancy.

A public hearing will be held on February 16, 2005 at 9:00 a.m. in the second floor conference room B 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 Accountancy, 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.

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**DIVISION OF PROFESSIONAL REGULATION  
BOARD OF LANDSCAPE ARCHITECTURE**

**PUBLIC NOTICE**

The Delaware Board of Architecture in accordance with 24 **Del.C.** §205 has proposed changes to its rules and regulations. The first proposed rule change, in accordance with 29 **Del.C.** Section 10113(b)(5), is to conform application requirements for certificate of authorization to changes in the law as amended by HB 211. The second proposed rule change is to clarify the requirements for processing continuing education requirements in Rule 7.1.2. The third proposed rule change, as mandated by SB 229, identifies crimes that are substantially related to the provision of landscape architecture services.

A public hearing will be held on March 9, 2005 at 10:15 a.m. in the second floor conference room B 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 Landscape Architecture, 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.

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**DIVISION OF PROFESSIONAL REGULATION  
BOARD OF ARCHITECTURE**

**PUBLIC NOTICE**

The Delaware Board of Architecture in accordance with 24 **Del.C.** §306 has proposed changes to its rules and regulations as mandated by SB 229. The proposal identifies crimes that are substantially related to the provision of architectural services.

A public hearing will be held on February 2, 2005 in the second floor conference room B 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 Architecture, 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.

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**DIVISION OF PROFESSIONAL REGULATION  
BOARD OF PODIATRY**

**PUBLIC NOTICE**

The Delaware Board of Podiatry, in accordance with 24 **Del.C.** §506(a)(1) has proposed changes to its rules and regulations as mandated by Senate Bill No.229 (74 Del. Laws c. 262) The proposal changes list the crimes that are substantially related to the provision of Podiatry

A public hearing will be held at 5:00 p.m. February 17, 2005 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 Board, 861 Silver



Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board of Podiatry 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.

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**DIVISION OF PROFESSIONAL REGULATION  
REAL ESTATE COMMISSION**

**PUBLIC NOTICE**

The Delaware Real Estate Commission in accordance with 24 **Del.C.** §2905(a)(1) has proposed changes to its rules and regulations as mandated by SB 229. The proposal identifies crimes that are substantially related to services provided by real estate brokers, salespersons, and appraisers.

A public hearing will be held on February 10, 2005 at 9:00 a.m. 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 Real Estate Commission, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Commission at the above address. The final date to receive written comments will be at the public hearing.

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

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**DIVISION OF PROFESSIONAL REGULATION  
BOARD OF PROFESSIONAL COUNSELORS OF  
MENTAL HEALTH AND  
CHEMICAL DEPENDENCY PROFESSIONALS**

**PUBLIC NOTICE**

The Delaware Board of Professional Counselors of Mental Health and Chemical Dependency Professionals in accordance with 24 **Del.C.** §3006(a)(1) has proposed changes to its rules and regulations as mandated by SB 229. The proposal identifies crimes that are substantially related to the provision of mental health counseling and chemical dependency counseling.

A public hearing will be held on February 4, 2005 at

3:00 p.m. 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 Professional Counselors of Mental Health and Chemical Dependency Professionals, 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.

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**DIVISION OF PROFESSIONAL REGULATION  
BOARD OF CLINICAL SOCIAL WORK  
EXAMINERS**

The Delaware Board of Clinical Social Work Examiners in accordance with 24 **Del.C.** §3906(1) has proposed changes to its rules and regulations as mandated by SB 229. The proposal identifies crimes that are substantially related to the provision of social work services.

A public hearing will be held on February 14, 2005 at 9:30 a.m. 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 Clinical Social Work 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.

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**PUBLIC SERVICE COMMISSION**

**PUBLIC NOTICE**

On May 14, 2003, the Division of the Public Advocate (“DPA”) filed a petition with the Public Service Commission (“the Commission”) asking the Commission to make revisions and amendments to its rules and regulations concerning the *Terms and Conditions Under Which Water Utilities Require Advances and/or Contributions In-Aid-Of*



*Construction From Customers or Developers and the Proper Ratemaking Treatment for Such Contributions and Advances* ("the Regulations"). These Regulations were originally adopted in PSC Order No. 2928 (Mar. 15, 1988) and revised in PSC Order No. 4310 (Sept. 24, 1996).

In PSC Order No. 6198 (June 16, 2003), the Commission accepted the DPA's petition to reopen those earlier Regulations. The Commission agreed to consider revisions proposed by the DPA which would modify the Regulations to adopt and implement a "means test" for determining the amount of Advances In-Aid-Of Construction and Contributions In-Aid-Of Construction.

As the first step in the process, the Commission's Staff, with the assistance of the DPA, proposed textual amendments and revisions to the present Regulations for the Commission's consideration. The Commission Staff has since met with representatives of the DPA and interested parties, received written comments, conducted meetings and workshops, and the Staff has developed proposed changes to the existing regulations.

The new regulations will address the following: (a) the definitions of Contributions In-Aid-Of Construction ("CIAC") and advances; (b) the computation of CIAC, including costs categories; (c) the nature of advances; (d) refunds of advances; (e) the ratemaking treatment of advances; (f) the ratemaking treatment of CIAC; (g) interest on excess CIAC and advances; and (h) matters necessarily related to the foregoing. The Commission proposes that its Order promulgating the final version of the new regulations will provide that the regulations (and the related docket) will be reopened two years from the effective date of the new regulations to review the new rate-making methodology, and to assess its effectiveness, the CIAC computation, and related costs categories. After such review and assessment, the Commission may, if deemed appropriate, consider further modifications of the regulations.

Copies of the present Regulations and the DPA's petition to reopen are available for public inspection at the Commission's address set out below during normal business hours:

The Commission has authority to promulgate the regulations pursuant to 26 **Del.C.** §209(a) and 29 **Del.C.** §10111 *et seq.*

The Commission hereby solicits written comments, suggestions, and compilations of data, briefs, or other written materials concerning the proposed regulations. Ten (10) copies of such materials shall be filed with the Commission at its office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware, 19904. All such materials shall be filed with the Commission on or before February 4, 2005. Persons who wish to participate in the proceedings, but who do not wish to file written materials, are asked to send a letter informing the Commission of their intention to participate on or before

February 4, 2005.

The regulations and the materials submitted in connection therewith will be available for public inspection and copying at the Commission's Dover office during normal business hours. The fee for copying is \$0.25 per page. The regulations may also be reviewed, by appointment during normal business hours, at the office of the Division of the Public Advocate located at the Carvel State Office Building, 4<sup>th</sup> Floor, 820 North French Street, Wilmington, Delaware 19801, and will also be available for review on the Commission's website: [www.state.de.us/delpsc](http://www.state.de.us/delpsc).

Any individual with disabilities who wishes to participate in these proceedings should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, by telephone, or otherwise. The Commission's toll-free telephone number (in Delaware) is (800) 282-8574. Any person with questions may also contact the Commission Staff at (302) 739-4247 or by Text Telephone at (302) 739-4333. Inquiries can also be sent by Internet e-mail to [karen.nickerson@state.de.us](mailto:karen.nickerson@state.de.us).

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## **DEPARTMENT OF EDUCATION**

The State Board of Education will hold its monthly meeting on Thursday, January 20, 2005 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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

### **PUBLIC NOTICE**

#### **Nature of the Proceedings**

Pursuant to 16 **Delaware Code**, Section 223, the Department of Health and Social Services is proposing "Autism Surveillance and Registration Program Regulations" that will require health care practitioners to report information on children under 18 years of age with autism to a central Autism Registry. The information collected in the Autism Registry will be used to track changes in prevalence of autism over time, to inform the planning of service delivery to children with autism and their families, and to facilitate autism research.

**Notice of Public Hearing**

The Division of Public Health, Department of Health and Social Services will hold a public hearing to discuss the proposed Autism Surveillance and Registration Program Regulations. The public hearing will be held on January 24, 2005 at 10:00 a.m., in the Third Floor Conference Room of the Jesse Cooper Building, Federal and Water Streets, Dover, Delaware.

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

Community and Family Health (Rebecca Luis)  
Blue Hen Corporate Center, Suite 206  
655 S. Bay Road, Dover, Delaware  
Telephone: (302) 741-2980

Anyone wishing to present his or her oral comments at this hearing should contact David Walton at (302) 744-4700 by January 21, 2005. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by January 31, 2005 to:

David P. Walton  
Division of Public Health  
Jesse Cooper Building  
P.O. Box 637  
Dover, Delaware 19903-0637

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**DIVISION OF SOCIAL SERVICES**
**PUBLIC NOTICE**
**Private Duty Nursing Services**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**), 42 CFR §447.205, and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to amend the Division of Social Services Provider Manual and the Title XIX Medicaid State Plan to revise and clarify the criteria and reimbursement methodology for Private Duty Nursing (PDN) services. The proposal describes program eligibility; who can receive PDN services; who can provide the services and the requirements that must be met; program limitations; and, services a person can receive, if eligible.

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 Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720 by January 31, 2005.

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.

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**DIVISION OF SOCIAL SERVICES**
**PUBLIC NOTICE**
**Child Care Subsidy Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the Division of Social Services Manual (DSSM) regarding the child care subsidy program as it relates to the determination of the child care parent fee and fee waiving situations.

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 Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by January 31, 2005.

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.

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**DIVISION OF SOCIAL SERVICES**
**PUBLIC NOTICE**
**Long Term Care Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the Division of Social Services Manual (DSSM) regarding the Long Term Care Program. The proposal gives direction on counting annuities and their

streams of income for the eligibility process; to clarify that the list of non-liquid resources is not all inclusive; and, to correct an inconsistency in language.

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 Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by January 31, 2005.

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.

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**DIVISION OF SOCIAL SERVICES**  
**PUBLIC NOTICE**

**Long Term Care Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the Division of Social Services Manual (DSSM) regarding the Long Term Care Program related to the redemption period for certain U.S. Savings Bonds and provides instructions on waiving the redemption period for U.S. Savings Bonds

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 Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by January 31, 2005.

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

**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL**  
**DIVISION OF AIR AND WASTE MANAGEMENT**  
**AIR QUALITY MANAGEMENT SECTION**

**REGISTER NOTICE**

**Title Of The Regulation:**

Regulation 45 -- Excessive Idling of Heavy Duty Vehicles

**Brief Synopsis Of The Subject, Substance And Issues:**

The Department of Natural Resources and Environmental Control, Division of Air and Waste Management, Air Quality Management Section is proposing a revision to the State Implementation Plan for the Attainment and Maintenance of the National Air Quality Standards for Ozone. Delaware has been designated moderate non-attainment for the eight hour ozone standard. The proposed revision will contain a new regulation, Regulation No. 45. In order to curb air emissions that contribute to the poor air quality in the State, the Department is proposing to regulate the engine idling time for the operation of on-road heavy-duty vehicles, having a gross vehicle weight rating of over 8,500 pounds. This regulation will continue the efforts by the State to reduce the emissions of NOx (nitrogen oxides), particulates and other tailpipe pollutants from vehicles operated in Delaware.

**Notice Of Public Comment:**

The Department will hold a public hearing on January 25, 2005 at 6 PM at the office of Air Quality Management Section, 156 South State Street, Dover Delaware, in the second floor conference room. Prior to the public hearing, an informational workshop on the proposal will be held on January 6, 2005 at 1:30 PM at the same location above.

**Prepared By:**

Philip Wheeler (302) 739-4791 December 9, 2004

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**DIVISION OF WATER RESOURCES**

**REGISTER NOTICE**

**Brief Synopsis of the Subject, Substance and Issues:**

The Department of Natural Resources and Environmental Control, The Department of Agriculture and the Delaware Nutrient management Commission are proposing general permit regulations for concentrated

animal feeding operations (CAFOs). The proposed CAFO regulations will amend section 9 (The General Permit Program) of the Regulations Governing the Control of Water Pollution. The Clean Water Act and recent revisions to federal regulations define a CAFO. The draft regulations were developed cooperatively with the involvement of the Department of Agriculture, Delaware Nutrient Management Commission, Department of Natural Resources and Environmental Control, Natural Resource Conservation Service and the University of Delaware.

**Notice Of Public Comment:**

The Department of Natural Resources and Environmental Control, the Department of Agriculture and the Delaware Nutrient Management Commission will hold public hearings on January 25, 2005 at 6 PM at the Farmington Fire Hall and January 27, 2005 at 6 PM at the Gumboro Fire Hall to receive comments on proposed amendments to the Regulations Governing the Control of Water Pollution. Comments should be sent in writing to Peder Hansen, Surface Water Discharges Section, Division of Water Resources, DNREC, 89 Kings Hwy., Dover, DE 19901.

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**DEPARTMENT OF SAFETY AND  
HOMELAND SECURITY  
BAIL ENFORCEMENT AGENTS**

**PUBLIC NOTICE**

Notice is hereby given that the Department of Safety and Homeland Security, Division of State Police, in accordance with 24 **Del.C.** Section 5404(a) proposes to amend Adopted Rule 1.0 - Licensing. This amendment will clarify items and fees that a Bail Enforcement Agent will receive when applying or renewing. If you wish to view the complete Rule, contact Ms. Peggy Anderson at (302) 739-5991.

These clarifications were originally published in the November issue (8 **DE Reg.** 689) of the *Register of Regulations*. The public comment period originally open until November 8, 2004, has been extended until January 31, 2005. Any persons wishing to present views may submit them in writing, by January 31, 2005, to Delaware State Police, Detective Licensing, P.O. BOX 430, DOVER, DE, 19903.

**DELAWARE RIVER BASIN  
COMMISSION**

**NOTICE OF PUBLIC HEARING**

The Delaware River Basin Commission ("Commission" or "DRBC") is a federal-state regional agency charged with managing the water resources of the Basin without regard for political boundaries. Its members are the governors of the four Basin states – Delaware, New Jersey, New York and Pennsylvania – and a Federal representative appointed by the President of the United States. The Commission is exempt from the requirements of the 29 **Delaware Code** Chapter 101. This notice is published by the Commission for informational purposes.

Proposal to Amend the Administrative Procedure and Fee Schedule for the Renewal of Projects Under Section 3.8 and Article 10 of the Delaware River Basin Compact

**Summary:** The Commission will hold a public hearing to receive comments on a proposed amendment to the Commission's administrative procedure and fee schedule for the renewal of project approvals under Section 3.8 and Article 10 of the Delaware River Basin Compact.

The Commission's fee schedule for the review of projects under Section 3.8 and Article 10 of the *Delaware River Basin Compact* is set forth in Resolution No. 2003-14, duly adopted by the Commission on June 26, 2003. The proposed amendments to the schedule would add provisions (a) for the administrative continuance of dockets and permits (collectively, "approvals") pending Commission action on renewal applications that are timely submitted; and (b) imposition of a fee of \$1,000, in addition to the ordinary review fee, for the review of renewal applications not submitted in a timely fashion. In accordance with the proposed amendment, a docket holder or permittee whose approval has been administratively continued will not be subject to penalties for operating without a docket or permit during the period between expiration of the approval and Commission action on an application for renewal, provided that the docket holder or permittee will be responsible for violations of the terms and conditions of its approval to the same extent as if the approval had been renewed prior to its expiration.

In order to phase in the new program, the proposed rule sets forth one timeline for approvals that expire before October 1, 2005 and another for approvals that expire on or after October 1, 2005.

Approvals expiring before October 1, 2005 are proposed to be administratively continued pending issuance of a docket renewal when the docket holder or permittee submits a complete application within 90 calendar days after receipt



of a written notice from the Executive Director or by September 30, 2005, whichever is earlier. The Executive Director may extend the deadline for good cause shown in the event a substantially complete application, along with the full fee, is submitted by the deadline. The fee of \$1,000, payable in addition to the ordinary fee, is proposed to be charged for renewal applications submitted after September 30, 2005.

Approvals expiring after September 30, 2005 are proposed to be administratively continued pending issuance of a docket renewal when the docket holder or permittee submits a complete application at least 120 calendar days in advance of the expiration date. If the approval establishes a different application submission date, the docket or permit is controlling. Again, the Executive Director may extend the deadline for good cause shown, in the event a substantially complete application, along with the full fee, is submitted by the deadline. A fee of \$1,000 above the ordinary fee is proposed to be charged for renewal applications submitted fewer than 120 calendar days before the approval's expiration date.

The amendment provides for the Executive Director to implement procedures to furnish written notice to docket holders and permittees in advance of their approval expiration dates, reminding them to file a timely renewal application. However, failure of the Executive Director to send such notice or lack of receipt of the notice by the docket holder or permittee will not relieve the docket holder or permittee of any obligation or condition or create any defense.

**Dates:** The public hearing will be held during the Commission's regularly scheduled business meeting on January 19, 2005 at 1:30 P.M. Persons wishing to testify at the hearing are asked to register in advance with the Commission Secretary by phoning 609-883-9500, ext. 224. Submission of written comments by January 14, 2005 is requested; however, written comments will be accepted through the close of the public hearing on Wednesday, January 19, 2005.

**Addresses:** The public hearing will be held in the Goddard Room of the Commission's office building at 25 State Police Drive in West Trenton, New Jersey. Written comments should be addressed to the Commission Secretary as follows: by e-mail to paula.schmitt@drbc.state.nj.us; by fax to 609-883-9522; by U.S. Mail to Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628-0360; or by overnight mail to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628-0360.

**Further Information, Contact:** The full text of the proposed amendment is posted on the Commission's web site, <http://www.drbc.net>. Please contact Commission

Secretary Pamela Bush, 609-883-9500 ext. 203, with questions about the proposed amendment or the amendment process.

Pamela M. Bush, Esquire  
Commission Secretary

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## **DELAWARE RIVER BASIN COMMISSION**

### **PUBLIC NOTICE**

The Delaware River Basin Commission ("Commission" or "DRBC") is a federal-state regional agency charged with managing the water resources of the Basin without regard for political boundaries. Its members are the governors of the four Basin states – Delaware, New Jersey, New York and Pennsylvania – and a Federal representative appointed by the President of the United States. The Commission is not subject to the requirements of 29 Delaware Code Chapter 101. This notice is published by the Commission for informational purposes.

Proposed Amendments to the Comprehensive Plan and Water Code Relating to the Coordinated Operation of Lower Basin and Hydroelectric Reservoirs During a Basinwide Drought.

**Summary:** The Commission will hold a public hearing to receive comments on proposed amendments to Section 2.5.5 of the *Water Code* (21 NYCRR §§ 890.11 and 890.12), relating to the Coordinated Operation of Lower Basin and Hydroelectric Reservoirs During a Basinwide Drought. The Commission proposes to amend and codify changes to the *Comprehensive Plan* and *Water Code* effected by Resolution No. 2002-33, approved in November 2002 by the Commission and the parties to the U.S. Supreme Court Decree in *New Jersey v. New York*, 347 U.S. 995 (1954) ("Decree Parties"). The amendments are for purposes of clarification and accuracy and to better ensure that the benefits of the changes effected by Resolution No. 2002-33 are achieved without compromising habitat protection goals. Resolution No. 2002-33, which was not codified, in part amended the *Comprehensive Plan* and *Water Code* relating to the utilization of Lake Wallenpaupack during drought watch, drought warning and drought operations.

The proposed changes are as follows:

First, numbered paragraph 1 of Resolution No. 2002-33 provides that "any and all provisions pertaining to the operation of Lake Wallenpaupack during basinwide drought warning also apply to basinwide drought watch as

temporarily defined by the Commission in Docket No. D-77-20 CP.” The proposed amendment adds the parenthetical “(Revision 7 and following)” at the end of this sentence to make clear that the most current applicable revision of Docket No. D-77-20 CP is intended to apply.

Second, the inclusion of the term “drought watch” in brackets following every mention of “drought warning” in the November 2002 amendments is proposed to be deleted, because the Commission makes clear in numbered Paragraph 1 of the Resolution that provisions in Section 2.5.5 of the *Water Code* pertaining to the operation of Lake Wallenpaupack during drought warning also are intended to apply to drought watch as defined by Docket No. D-77-20 CP (Revision 7 and following).

Third, throughout the language added by Resolution No. 2002-33, the terms “drought conditions” and “drought warning conditions” are replaced by “drought operations” and “drought warning operations,” respectively, to more accurately reflect the fact that the reservoir management activities described are triggered by a set of reservoir drought operating rules established by the Commission and the Decree Parties, rather than by hydrologic conditions.

Fourth, the November 2002 amendments inserted language at Section 2.5.5 of the *Water Code* stating that “[d]uring ‘drought’ and ‘drought warning’ operations . . . , ‘the power companies shall release water only in accordance with Commission direction.’” This statement is proposed to be changed to reflect the Commission’s intention that “[d]uring ‘drought’ and ‘drought warning’ operations as defined in Figure 1 of Section 2.5.3.A. of the *Water Code*, releases from Lake Wallenpaupack shall be made only in accordance with Commission direction.” In a related amendment, a new sentence is proposed to be added to Section 2.5.5 addressing operation of the Mongaup reservoir system by the Commission, which may take place only under more limited circumstances. The proposed provision reads, “After issuance of a Conservation Order by the Commission, power generation releases from the Mongaup reservoir system shall be made only in accordance with Commission direction.” This statement restores the rule governing drought operation of the Mongaup system reservoirs to the rule in effect before the November 2002 amendments.

Fifth, the Commission proposes to add a clause providing that when it directs releases from Lake Wallenpaupack during drought watch (including warning) and drought operations, it must give consideration to any flow and temperature targets established by the Commission and the Decree Parties in the upper Delaware River and in the West Branch Delaware, East Branch Delaware, and Neversink rivers for the protection of the cold water fisheries in these streams.

**Dates:** The public hearing will be held during the Commission’s regularly scheduled business meeting on

January 19, 2005 at 1:30 P.M. Persons wishing to testify at the hearing are asked to register in advance with the Commission by phoning 609-883-9500, ext. 224. Submission of written comments by January 14, 2005 would be appreciated, but written comments will be accepted through the close of the public hearing on Wednesday, January 19, 2005.

**Addresses:** The public hearing will be held in the Goddard Room of the Commission’s office building at 25 State Police Drive in West Trenton, New Jersey. Written comments should be addressed to the Commission Secretary as follows: by e-mail to paula.schmitt@drbc.state.nj.us; by fax to 609-883-9522; by U.S. Mail to Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628-0360; or by overnight mail to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628-0360.

**Further Information, Contact:** The full text of the proposed resolution, the text of Resolution No. 2002-33, and the text of the sections of the *Water Code* as amended by both Resolution No. 2002-33 and the proposed resolution, are posted on the Commission’s web site, <http://www.drbc.net>. Please contact Commission Secretary Pamela Bush, 609-883-9500 ext. 203, with questions about the proposed action.

Pamela M. Bush, Esquire  
Commission Secretary

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