

---

# Delaware Register of Regulations

---

Issue Date: July 1, 2009

Volume 13 - Issue 1, Pages 1 - 143

---

## IN THIS ISSUE:

Regulations:  
Emergency  
Proposed  
Final

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 June 15, 2009.



---

# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

---

## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

## CITATION TO THE DELAWARE REGISTER

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

12 **DE Reg.** 761-775 (12/01/08)

Refers to Volume 12, pages 761-775 of the *Delaware Register* issued on December 1, 2008.

---

## 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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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.

---

---

# INFORMATION ABOUT THE DELAWARE REGISTER OF 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.

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

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

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

Except as provided in the preceding section, no judicial review of a regulation is available unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the *Register of Regulations*.

---

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

ISSUE DATE	CLOSING DATE	CLOSING TIME
August 1	July 15	4:30 p.m.
September 1	August 17	4:30 p.m.
October 1	September 15	4:30 p.m.
November 1	October 15	4:30 p.m.
December 1	November 16	4:30 p.m.

---

## DIVISION OF RESEARCH STAFF

**Deborah A. Porter**, Interim Supervisor; **Judi Abbott**, Administrative Specialist I; **Jeffrey W. Hague**, Registrar of Regulations; **Ruth Ann Melson**, Legislative Librarian; **Deborah J. Messina**, Print Shop Supervisor; **Kathleen Morris**, Administrative Specialist I; **Debbie Puzzo**, Research Analyst; **Don Sellers**, Printer; **Robert Lupo**, Printer; **Georgia Roman**, Unit Operations Support Specialist; **Victoria Schultes**, Administrative Specialist II; **Rochelle Yerkes**, Administrative Specialist II.

---

# TABLE OF CONTENTS

---

## EMERGENCY

### DEPARTMENT OF AGRICULTURE

#### Thoroughbred Racing Commission

Rule 14.20 Toe Grabs.....	6
---------------------------	---

---

## PROPOSED

### DELAWARE STATE FIRE PREVENTION REGULATIONS

Proposed Recommendations for 2009.....	7
--	---

### DEPARTMENT OF AGRICULTURE

#### Division of Animal Health and Food Products Inspection

304 Exotic Animal Regulations.....	8
------------------------------------	---

#### Harness Racing Commission

501 Harness Racing, Rule 7.0 Rules of the Race.....	17
---	----

### DEPARTMENT OF FINANCE

#### State Lottery Office

460 Sports Lottery Rules and Regulations.....	24
---	----

### DEPARTMENT OF HEALTH AND SOCIAL SERVICES

#### Division of Social Services

DSSM 1006.6 Civil Rights Program and Public Relations.....	47
--	----

### DEPARTMENT OF JUSTICE

#### Division of Securities

Part H Provisions Applicable to Broker-Dealers, Agents, Investment Advisers and Investment ..... Adviser Representatives § 800. Senior Specific Designations.....	48
--	----

### DEPARTMENT OF STATE

#### Division of Professional Regulation

400 Gaming Control Board	
..... 401 Regulations Governing Bingo.....	49
..... 404 Regulations Governing No Limit Texas Hold'em Poker.....	49
2500 Board of Pharmacy.....	57
3800 Committee on Dietetics/Nutrition.....	79

---

## FINAL

### DEPARTMENT OF HEALTH AND SOCIAL SERVICES

#### Division of Medicaid and Medical Assistance

1915(c) Home and Community-Based Services Waiver for the Elderly and Disabled.....	93
--	----

#### Division of Social Services

DSSM: 11003.7.8 Special Needs Children.....	97
..... 11006.4.1 Absent Day Policy.....	100

### DEPARTMENT OF INSURANCE

305 Actuarial Opinion and Memorandum Regulation.....	102
--	-----

---

# TABLE OF CONTENTS

---

## DEPARTMENT OF STATE

### Division of Professional Regulation

400 Gaming Control Board	
401 Regulations Governing Bingo.....	107
402 Regulations Governing Raffles.....	107
403 Regulations Governing Charitable Gambling Other Than Raffles.....	107
404 Regulations Governing No Limit Texas Hold'em Poker .....	107
2930 Council on Real Estate Appraisers.....	123
3500 Board of Examiners of Psychologists.....	124

## STATE EMPLOYEE BENEFITS COMMITTEE

2001 Group Health Care Insurance Eligibility and Coverage Rules .....	126
---	-----

---

## CALENDAR OF EVENTS/HEARING NOTICES

<b>Delaware River Basin Commission</b> , Notice of Public Hearing and Business Meeting.....	140
<b>Delaware State Fire Prevention Commission</b> , Notice of Public Hearing.....	140
<b>Dept. of Agriculture, Div. of Animal Health and Food Products Inspection</b> , Notice of Public Hearing...	140
<b>Harness Racing Commission</b> , Notice of Public Hearing.....	141
<b>State Board of Education</b> , Notice of Monthly Meeting.....	141
<b>Dept. of Finance, State Lottery Office</b> , Notice of Public Comment Period.....	141
<b>Dept. of Health and Social Services, Div. of Social Services</b> , Notices of Public Comment Period .....	141
<b>Dept. of Justice</b> , Notice of Public Comment Period.....	142
<b>Dept. of State, Div. of Professional Regulation</b>	
Gaming Control Board, Notice of Public Comment Period.....	142
Board of Pharmacy, Notice of Public Hearing.....	143
Committee on Dietetics/Nutrition, Notice of Public Hearing.....	143

**Symbol Key**

Arial 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.

**Emergency Regulations**

Under 29 **Del.C.** §10119 an agency may promulgate a regulatory change as an Emergency under the following conditions:

**§ 10119. Emergency regulations.**

If an agency determines that an imminent peril to the public health, safety or welfare requires the adoption, amendment or repeal of a regulation with less than the notice required by § 10115, the following rules shall apply:

(1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable;

(2) The order adopting, amending or repealing a regulation shall state, in writing, the reasons for the agency's determination that such emergency action is necessary;

(3) The order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days;

(4) When such an order is issued without any of the public procedures otherwise required or authorized by this chapter, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and

(5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the Register of Regulations. (60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 71 Del. Laws, c. 48, § 10.)

**DEPARTMENT OF AGRICULTURE  
THOROUGHBRED RACING COMMISSION**

Statutory Authority: 3 Delaware Code, Section 10005; 29 Delaware Code,  
Section 4815(b)(3)(c)(3)

(3 **Del.C.** §10005; 29 **Del.C.** §4815(b)(3)(c)(3))

**3 DE Admin. Code 1001**

**EMERGENCY**

At its public meeting on June 23, 2009, the Delaware Thoroughbred Racing Commission (the "Commission") having determined that an imminent peril to the public health safety or welfare exists and acting pursuant to the provisions of 29 Del. C. §10119 and 3 Del. C. §10103(c), adopted the following emergency regulation:

**14.20 Toe Grabs.**

Notwithstanding any house rule of a Commission licensee to the contrary, toe grabs up to a height of no greater than 4 millimeters shall be permitted for racing on dirt."

This Emergency Regulation is to take effect immediately and shall be effective for 120 days unless earlier terminated by the Commission.

Adopted and Effective this 23rd day of June, 2009.

BY ORDER OF THE DELAWARE THOROUGHBRED RACING COMMISSION

Bernard J. Daney, Chairman

---

## Symbol Key

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

## Proposed Regulations

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

---

## DELAWARE STATE FIRE PREVENTION REGULATIONS

Statutory Authority: 16 Delaware Code, Section 6603 (16 **Del.C.** §6603)

### PUBLIC NOTICE

The Delaware State Fire Prevention Commission will hold a hearing pursuant to 16 **Del.C.** §6603 and 29 **Del.C.** 101 on Tuesday, August 18, 2009, at 1:00 P.M. in the Commission Chamber, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware. The Commission is proposing changes to the following Regulations.

Persons may view the proposed changes to the Regulations between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, at the Delaware State Fire Prevention Commission, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware, 19904, or Office of the State Fire Marshal located at the Delaware Fire Service Center, 1537 Chestnut Grove Road, Dover, Delaware, 19904, or the Regional State Fire Marshal's Offices located 2307 MacArthur Road, New Castle, Delaware and 22705 Park Avenue, Georgetown, Delaware, 19947. You can find the meeting announcement and proposed changes on the Delaware Website <http://www.delaware.gov/egov/calendar.nsf> or on the Delaware State Fire Marshal's Office webpage at [www.statefiremarshal.delaware.gov](http://www.statefiremarshal.delaware.gov) under the tabs "Services" and "Proposed Changes".

Persons may present their views in writing by mailing their views to the Commission at the above addresses prior to the hearing, and the Commission will consider those responses received before 9:00 a.m. on August 18, 2009, or by offering testimony at the Public Hearing. If the number of persons desiring to testify at the Public Hearing is large, the amount of time allotted to each speaker will be limited. There will be a reasonable fee charge for copies of the proposed changes or retrieve from the webpage for free.

### Delaware State Fire Prevention Regulations

#### Summary of Proposed Recommendations for 2009

#### 701 Administration and Enforcement

- Chapter 2: New Definitions and recommended changes from the High Rise Committee.
- Chapter 4: Revision on Limitations of Plan Review approvals and permits.

- ANNEX A: Recommendation to adopt the most recent editions of NFPA Codes and Standards that are presently adopted by the Regulation.
- ANNEX B: Recommendations to update the proper section and paragraph numbers from the adopted NFPA Codes and Standards that are presently amended by the Regulation, including NFPA 1; which is being moved from Annex C to Annex B.

**702 Fire Protection in Building Construction**

- Chapter 3, 4, and 5: Proposed recommendations to the High Rise and Large Area building Chapters as proposed by the High Rise Committee.

**703 Installation, Operation, Maintenance, Testing and Sales of Signalling Systems, Fire Protection Systems and Fire Extinguishers**

- Chapter 3: Proposed recommendation to allow the use of reflective paint or reflective tape on hydrants.
- Chapters 4, 5, 6, 7: Proposed recommendation to allow a company, business, or person(s) exempt from Workers' Compensation laws of the State (19 Del. C. Chp. 23 - Workers' Compensation) be licensed by providing written documentation to the Office of the State Fire Marshal stating the exemption.
- Chapter 5 and 7: Proposed recommendation to reflect the requirement in 16 Del. C. § 6603(c) - to have a NICET - Level II - Inspection and Testing of Water-based Systems certification to be licensed to do testing and inspection on water based fire protection systems.

**704 Hazardous Processes and Operations**

- Chapter 1: Proposed Regulations addressing Fire Safe Cigarettes.

**705 General Fire Safety**

- Chapter 1: Proposed recommendations to the Gated Communities section.

**706 Specific Occupancy Requirements**

- Chapter 1 Intermediate Care Facilities for the Mentally Retarded (ICFMR)
- Chapter 2 Bed and Breakfasts
- Chapter 3 Apartment Buildings/Multi-Family Dwellings

**Appendix E**

- Defines the meaning of "apartment complex"

**\*Please Note: Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:**

<http://regulations.delaware.gov/register/july2009/proposed/13 DE Reg 7 07-01-09.htm>

---

**DEPARTMENT OF AGRICULTURE****DIVISION OF ANIMAL HEALTH AND FOOD PRODUCTS INSPECTION**

Statutory Authority: 3 Delaware Code, Section 7202 (3 Del.C. §7202)

**3 DE Admin. Code 304**

**PUBLIC NOTICE**

The Delaware Department of Agriculture repropose these regulations in accordance with the General Assembly's mandate to enforce Chapter 72 of Title 3 of the **Delaware Code** and to specify the means by which citizens of the State of Delaware may obtain a permit from the Delaware Department of Agriculture to possess, sell, or exhibit, exotic animals within the state.



These proposed regulations were considered at a public hearing on February 20, 2009 at 10:00 a.m. at the Department of Agriculture Building, Secretary's Conference Room. Public comments were received leading to substantive changes that are incorporated herein.

The Delaware Department of Agriculture solicits additional written comments from the public concerning these repropoed regulations. Any such comments should be submitted to the State Veterinarian, Heather Hirst, DVM with a cc to the Assistant State Veterinarian, Caroline Hughes, VMD, at Delaware Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901 on or before August 1, 2009. Copies of the proposed regulations are available on request.

## **304 Exotic Animal Regulations**

### **1.0 Authority**

These regulations are promulgated pursuant to the authority of Section 7202 of Title 3 of the **Delaware Code**.

### **2.0 Purpose**

These regulations govern the permitting process, possession, sale, rehabilitation and exhibition of exotic animals, i.e., live wild mammals or hybrids of wild mammals or live reptiles not native to or generally found in the State of Delaware. The State Veterinarian or her or his designee shall have the authority to administer these regulations and shall be solely responsible for making the determinations required herein.

### **3.0 Definitions**

"**Accurate Description of the Exotic**" means the name, residence, age, gender, markings/color, tattoo, identification tag, microchip and/ or other distinguishing characteristics of the exotic together with the name and residence of the owner or custodian.

"**Adopter**" means a person who becomes an owner or custodian of an exotic animal.

"**Animal Attack Protocol**" means a written document that outlines an owner's or custodian's plan should the exotic animal bite, injure or attack a human or animal.

"**Carnivore**" means a flesh-eating mammal, which possesses teeth and claws adapted for attacking and devouring prey.

"**Class of Exotic**" means each of the following groups constitute a separate and distinct class: Carnivore, Herbivore, Hybrid of a wild animal, Omnivore, Primate and Reptile.

"**Custodian**" means a person who possesses or cares for an exotic animal. A custodian has immediate charge and control of the exotic.

"**Department**" means the Delaware Department of Agriculture.

"**DNREC**" means the Delaware Department of Natural Resource and Environmental Control.

"**Emergency Evacuation Plan**" means a written document that outlines the actions the owner or custodian plans to implement in an emergency or ordered departure in order to provide for the exotic's welfare and the public's health and safety.

"**Exhibitor**" means a person who displays exotic animals to the public.

"**Exotic**" means a live wild mammal or hybrid of a wild mammal or a live reptile not native to or generally found in Delaware as determined by the Delaware Department of Natural Resources and Environmental Control (DNREC) and the Division of Fish and Wildlife.

"**Herbivore**" means a mammal that feeds exclusively on vegetable matter.

"**Hybrid of a wild mammal**" means a mammal whose parents are different varieties of the same species or belong to different but closely allied species, one parent being a wild mammal not native to or generally found in Delaware and the other parent being a domestic mammal native to or generally found in Delaware.

"Nuisance" means an act or the threat of an action that unreasonably interferes with the health, safety or property rights of the community at large.

"Omnivore" means an animal which eats any sort of food, both animal and vegetable in origin.

"Owner" means a person who owns an exotic animal. An owner has or holds the exotic animal as property.

"Permit Holder" means an owner or custodian of an exotic animal who holds an applicable exotic animal permit.

"Person" means any individual, partnership, corporation, trade or professional association, firm, limited liability company, joint venture, association, trust, estate or any other legal entity, and any officer, member, shareholder, director, employee, agent or representative thereof.

"Pet" means an exotic animal that is kept for interest, companionship and amusement and is associated with a household.

"Primate" means a mammal that belongs to the highest order of mammals including monkeys and lemurs.

"Purchaser" means a person who becomes an owner of an exotic animal by exchange of cash, goods or animals.

"Rehabilitator" means a person who restores an exotic animal to good condition by providing short term care.

"Reptile" means any cold-blooded vertebrate of the class Reptilia including turtles, lizards, snakes, crocodilians and tuatara.

"Seller" means a person who holds a Sales permit and is engaged in the sale or trade of exotic animals for cash, goods, or animals.

"Secretary" means the Secretary of the Delaware Department of Agriculture or his or her designee.

"State Veterinarian" means the State Veterinarian of the Delaware Department of Agriculture, or his or her designee.

"USDA" means the United States Department of Agriculture.

"Valid Identification" (Valid ID) means a photo identification such as Delaware driver's license, State of Delaware Identification card, or a Passport that includes the name and address of the purchaser/adopter of the exotic animal.

"Welfare" means that the owner or custodian provides for the health and well-being and safeguards the physiological requirements of the exotic animal.

"Zoo" means a park or institution accredited by the Association of Zoos and Aquariums (AZA) (or its designated successor organization) where: exotics are primarily kept in cages or enclosures for people to come and see; exotics are exhibited outside of the park to the public for educational purposes; and exotics are bred and studied by scientists.

#### **4.0 The State Veterinarian Powers; Duties**

- 4.1 The State Veterinarian is responsible for administering and enforcing these regulations. The State Veterinarian has the power to grant, deny, or revoke permits to own or have custody of exotics in this state.
- 4.2 The State Veterinarian is vested with the power to designate agencies to seize and when warranted to humanely destroy an exotic if necessary to protect the public health, safety, or welfare and to protect the health of other animals. The State Veterinarian or his/her agent can humanely destroy an exotic without first notifying the exotic animal's owner or custodian.
- 4.3 The State Veterinarian will maintain a list of exotic animals that are exempt from the permitting requirement. This list will be available to the public and is subject to change in keeping with current animal and human health and safety concerns.
- 4.4 The State Veterinarian will maintain a list of exotic animals in the Herbivore and Reptile Classes that are prohibited from being bred by Sales Permit Holders. This list will be available to the public and is subject to change in keeping with current animal and human health and safety concerns. Sales Permit

Holders may petition the State Veterinarian in writing if he or she wants to breed an exotic animal in the Herbivore or Reptile Class that is listed on the prohibited from being bred list.

- 4.5  The State Veterinarian is charged with preventing the introduction and spread of contagious and infectious diseases into and within the domestic animal population of the state, therefore:
  - 4.5.1  The State Veterinarian can prohibit activities by any Permit class if there is a threat to domestic animals in the state.
  - 4.5.2  The State Veterinarian can prohibit Accredited Zoo Permit and Sales Permit holders from breeding exotics if there is a threat to domestic animals in the state.
  - 4.5.3  The State Veterinarian expects any exotic animal health concern to be reported immediately to the Department by all other governmental agencies and veterinarians as well as by the owners or custodians of exotics.

## **5.0 Permit Requirement: Permit Prerequisites: Renewals: Waivers**

- 5.1  Unless specifically exempted by the Department from the permitting requirement (see Regulation 4.3), all persons who would own or have custody of an exotic animal must first obtain a permit issued by the Department.
- 5.2  To obtain the required permit from the Department, the prospective owner or custodian of an exotic animal must:
  - 5.2.1  Provide the Department with satisfactory proof that the exotic animal will be confined within two enclosures, designated herein as primary and secondary.
    - 5.2.1.1  The primary enclosure shall be a pen, cage or other structure where the exotic will be kept and which must be of sturdy and escape-proof construction. The primary enclosure must be consistent in size, structure, lighting, temperature control, and ventilation according to the welfare standards prescribed in the scientific literature or in the USDA regulations for the species being enclosed. The permit applicant is required to demonstrate knowledge of enclosure and welfare standards for the species under consideration with the application.
    - 5.2.1.2  The secondary enclosure must be sufficient to prevent the exotic animal from escaping from the property of the owner or custodian should it be set free or escape from its primary enclosure. The secondary enclosure must ensure there will be no physical contact between members of the public and the exotic. The secondary enclosure must prevent the exotic from escaping the premises if it is out of its primary enclosure.
    - 5.2.1.3  The holder of an Accredited Zoo, Exhibitor or Rehabilitator permit issued in accordance with Regulations 6.2, 6.3 and 6.4 may request in writing that the State Veterinarian consider waiving the enclosure requirements set forth at 5.2.1.1 and/ or 5.2.1.2 because the exotic animal has unique enclosure requirements.
    - 5.2.1.4  Shared enclosures:
      - 5.2.1.4.1  The holders of Sales permits are permitted to breed exotic animals in the Herbivore and Reptile class in the State of Delaware in accordance with Regulations 4.4 and 10.4.2.; therefore exotics in these classes may share enclosures.
      - 5.2.1.4.2  The holders of Accredited Zoo permits are permitted to breed exotic animals in the State of Delaware in accordance with Regulations 4.5.2 and 10.4.3; therefore exotics permitted by the Accredited Zoo Permit may share enclosures.
      - 5.2.1.4.3  All other Permit class holders are not permitted to breed exotic animals; hence any shared enclosures are only for sterile animals or animals unable to reproduce.
  - 5.2.2  Provide the Department with a copy of an emergency evacuation plan upon request.
  - 5.2.3  Provide the Department with a copy of an animal attack protocol upon request.
- 5.3  To obtain the renewal of an exotic animal permit, exotic animal owners or custodians must confirm the ongoing existence of all the requirements set forth at 5.2 and must, in addition, allow Department employees access to inspect the premises where exotics are located to confirm the health and humane treatment of the exotic.

5.4 Any existing permits issued by the Delaware Department of Agriculture will become void sixty (60) days after the effective date of these proposed regulations and must be renewed in accordance with Regulations 5.3 and 8.0 at no additional cost to the owner or custodian.

## **6.0 Permit Classes**

### **6.1 Individual Permit**

6.1.1 When exotics are kept as pets, the owner or custodian of the exotic must apply to the Department for an Individual Permit on a form supplied by the Department. Individual Permits granted by the Department shall become null and void when the owner or custodian transfers ownership or possession of the exotic to another person. The owner or custodian must obtain a separate Individual Permit for each exotic animal kept as a pet. A background check of an owner or custodian applying for an Individual Permit may be completed by the Department.

### **6.2 Accredited Zoo Permit**

6.2.1 All zoos in Delaware must obtain an Accredited Zoo Permit every five (5) years or other time period that is in keeping with the AZA accreditation process.

### **6.3 Exhibitor Permit**

6.3.1 All owners or custodians (with the exception of permitted Accredited Zoos located in Delaware) that wish to present exotic animals for public viewing must obtain an Exhibitor Permit from the Department annually.

6.3.2 A background check of an owner or custodian applying for an Exhibitor Permit may be completed by the Department.

#### 6.3.3 Exotic Animal Exhibitors Duties:

6.3.3.1 Notify the Department within the 60 day period prior to exhibiting exotic animals in Delaware;

6.3.3.2 Provide the Department with an annual inventory which includes an Accurate Description of each exotic animal to be exhibited. If changes to the annual inventory provided to the Department occur prior to exhibiting in Delaware then notify the Department by e-mail or Fax of the changed inventory by listing the addition or removal of each exotic animal.

6.3.3.3 Provide the Department with the dates of exhibition;

6.3.3.4 Provide the Department with a list of exhibition activities;

6.3.3.5 Provide the Department with a public health and safety plan, an animal attack protocol, and an animal health plan upon request.

6.3.3.6 Show proof of exotic animal permits or licenses from the state or states where the exhibitor is based;

6.3.3.7 Provide valid health certificates upon request;

6.3.3.8 Have a valid business license; and

6.3.3.9 Provide proof of knowledge of exotics' health, safety and proper care upon request.

### **6.4 Rehabilitator Permit**

6.4.1 The Rehabilitator Permit must be obtained from the Department by an owner or a custodian who provides short term care and rehabilitation of exotic animals.

6.4.2 The applicant for the Rehabilitator Permit must provide documentation that he/she holds a Wildlife Rehabilitator Permit from DNREC.

6.4.3 A background check of an owner or custodian applying for a Rehabilitator Permit may be completed by the Department.

#### 6.4.4 Rehabilitator Permit Holder's Duties:

6.4.4.1 By December 31st of each calendar year the Exotic Animal Rehabilitator must:

6.4.4.1.1 Provide the Department with a yearly inventory of every exotic currently being rehabilitated. The inventory must include an Accurate Description of each exotic.

- 6.4.4.1.2 Request in writing permission from the State Veterinarian or his/her designee for an extension of the exotic's rehabilitation time when the exotic is carried over from the prior year's inventory.
- 6.4.4.2 On a biannual basis (by June 30<sup>th</sup> and by Dec 31<sup>st</sup>) notify the Department of exotic animals that were acquired in the previous 6 months, and which were not previously included in the yearly inventory (see 6.4.4.1.1).
- 6.4.4.3 Provide the Department with a public health and safety plan, an animal attack protocol, an emergency evacuation plan and an animal health, proper care and rehabilitation plan upon request.
- 6.4.4.4 Be limited to a maximum of twenty (20) exotic animals per Class of Exotic unless a written request to exceed the maximum number is approved by the State Veterinarian biannually (by June 30<sup>th</sup> and by December 31<sup>st</sup>).
- 6.4.4.5 Send a list of relocated exotics to the Department biannually (by June 30<sup>th</sup> and by December 31<sup>st</sup>).
- 6.4.4.6 The rehabilitator must require at the time of the exotic's relocation that the adopter has obtained the appropriate class of Exotic Animal Permit from the Department.
- 6.4.4.7 The rehabilitator must verify at the time of the exotic's relocation that the adopter's name and address on a Valid Identification card is the same as noted on the appropriate class of Exotic Animal Permit presented.
- 6.4.4.8 Provide the adopter with written information regarding the exotic's enclosure, proper care, nutrition and welfare requirements.
- 6.4.4.9 The rehabilitator must inform the adopter that there may be county, city, local laws, rules and regulations that may govern or proscribe the possession of exotics in their area.
- 6.4.4.10 If the adopter resides outside the State of Delaware, the rehabilitator must maintain a record of the interstate transfer of ownership, including adopter's address; and the rehabilitator is responsible for notifying the appropriate state veterinarian's office or applicable state agency.
- 6.4.4.11 Keep a record of the adopter's name, address and when available, telephone and e-mail, for three years.
- 6.4.5 Adopters of Rehabilitated Exotics; Duties: When an adopter proposes to become an owner or custodian of an exotic that requires permitting by the Department the following conditions prior to becoming an owner/custodian must be met:
  - 6.4.5.1 The adopter must obtain the appropriate class of Exotic Animal Permit from the Department prior to the time of the exotic's relocation.
  - 6.4.5.2 The adopter must present to the rehabilitator at the time of the exotic's relocation a Valid ID with the same name and address that are on the Exotic Animal Permit.
- 6.5 Sales Permit
  - 6.5.1 Owners or custodians that sell exotics in Delaware or sell exotics from Delaware to locations outside of Delaware must have a valid Delaware business license and must obtain a Sales Permit from the Department. Sales Permits granted by the Department must be renewed annually and are not transferable.
    - 6.5.1.1 Accredited Zoo Permit holders are not required to hold a Sales Permit.
    - 6.5.1.2 Individual Permit holders, Exhibitor Permit holders, and Rehabilitator Permit holders engaged in the sale of exotics are required to hold a Sales Permit in accordance with sections 6.5, 7.5 and 8.5 of these regulations. All of the aforementioned Permit holders who apply for a Sales Permit must have a valid Delaware business license.
    - 6.5.1.3 A background check of an owner or custodian applying for a Sales Permit may be completed by the Department.
  - 6.5.2 Seller's Duties- When an owner or custodian proposes to sell an exotic that requires permitting by the Department the following conditions of sale must be met:

---

## PROPOSED REGULATIONS

---

- 6.5.2.1 The seller must require at the time of the sale that the purchaser has obtained the appropriate class of Exotic Animal Permit from the Department.
  - 6.5.2.2 The seller must verify at the time of the sale that the purchaser's name and address on a Valid Identification card is the same as noted on the appropriate class of Exotic Animal Permit presented.
  - 6.5.2.3 The seller must provide the purchaser with written information regarding the exotic's enclosure and welfare requirements.
  - 6.5.2.4 The seller must notify the purchaser that there may be county, city, and local laws, rules and regulations within the State of Delaware that may proscribe or govern the possession of exotics in their area.
  - 6.5.2.5 The seller must notify the Department of the purchaser's name and address, and when available, e-mail address or telephone number and an Accurate Description of the Exotic after the sale of an Exotic by the first of every month.
  - 6.5.2.6 If the purchaser resides outside the State of Delaware, the seller must maintain a record of the interstate sale, including purchaser's address, and must notify the appropriate state veterinarian's office or applicable state agency.
  - 6.5.2.7 A legible copy of the purchaser's sale record must be maintained by the seller for 3 years after the sale of the exotic animal.
  - 6.5.2.8 The seller must guarantee that all exotic animals put up for sale are in good health at the time of sale.
- 6.5.3 Purchaser's Duties- When a purchaser proposes to become an owner or custodian of an exotic that requires permitting by the Department the following conditions prior to purchase must be met:
- 6.5.3.1 The purchaser must obtain the appropriate class of Exotic Animal Permit from the Department prior to the time of purchase.
  - 6.5.3.2 The purchaser must present to the seller at the time of the sale a Valid ID with the same name and address that are on the Exotic Animal Permit.

### **7.0 Initial Permit Applications**

- 7.1 Individual Permit. Initial applications must be filed with the Department prior to acquiring the exotic and prior to relocating an exotic into the State of Delaware. The State Veterinarian, for good causes shown, and upon written request of the owner/custodian may grant an extension of time to apply for an initial permit. The pre-purchase or pre-adoption fees required to obtain an Individual Permit for an exotic are non refundable.
- 7.2 Accredited Zoo Permit. Initial applications must be filed with the Department upon accreditation by the Association of Zoos and Aquariums, or its successor association. The Accredited Zoo Permit covers every exotic animal housed or kept at the Zoo. The Accredited Zoo Permit application must include a current copy of the Zoo's on-going accreditation document and identify an inventory of every exotic animal by Accurate Description kept at the Zoo at the time of application.
- 7.3 Exhibitor Permit. Initial applications must be filed with the Department prior to exhibiting exotic animals in the State of Delaware. A single Exhibitor Permit covers every exotic animal housed or kept by the exhibitor.
- 7.4 Rehabilitator Permit. Initial applications must be filed with the Department prior to rehabilitating an exotic animal. A single Rehabilitator Permit covers every exotic animal housed or kept by the rehabilitator.
- 7.5 Sales Permit. Initial applications must be filed with the Department prior to the sale of any exotic animal by a business. Sales Permits must be obtained for each Class of exotic sold. If an exotic animal can be placed in more than one Class, the applicant need only apply for one class per exotic animal. The yearly Sales Permit request must include an inventory of each exotic animal per Class of Exotic animal identified on the Permit Application. The inventory must identify every exotic animal by Accurate Description of the exotic stocked at the business at the time of application for the yearly Permit.

---

## **8.0 Permit Renewal**

- 8.1 Individual Permits are valid for 3 years and must be renewed by March 31st of the fourth year.
- 8.2 Accredited Zoo permits are required to be renewed every fifth year by March 31st in keeping with the AZA accreditation schedule. An updated inventory must be submitted with each permit renewal application.
- 8.3 Exhibitor Permits are required to be renewed as stipulated in 8.3.1 and 8.3.2. An updated inventory must be submitted with each permit renewal application.
  - 8.3.1 Holders of Exhibitor permits who exhibit in Delaware more than 180 days per calendar year must renew by December 31st of each year or by the first of the month after exhibition activities in Delaware have exceeded 180 days.
  - 8.3.2 Holders of Exhibitor permits who exhibit in Delaware less than or equal to 180 days per calendar year must renew annually on an "as needed" basis.
- 8.4 Rehabilitator Permits are valid for three years and renewal must occur by March 31st of the fourth year. The renewal application must include proof of an active Wildlife Rehabilitator Permit issued by DNREC and an updated inventory.
- 8.5 Sales Permits are required to be renewed on an annual basis and renewal must occur by December 31st of each year. An updated inventory must be submitted with each permit renewal application.

## **9.0 Possessing or Owning an Exotic Animal Without a Permit**

- 9.1 When the Department determines that an owner or custodian of an exotic animal has not obtained the required permit, or has failed to timely renew a permit, the Department shall inform the owner or custodian by mailing a letter to the owner or custodian's last known address of the legal requirement to obtain a permit. The owner or custodian will then have ten (10) business days from the date the Department's letter was mailed to obtain the required permit. The State Veterinarian may grant additional time to obtain a permit for good cause if petitioned in writing during the ten (10) business days from the date the Department's letter. No permit will be issued if possession of an exotic animal is prohibited by other applicable statutes.
- 9.2 Failure to obtain a permit or to timely renew a permit are grounds for the State Veterinarian to seize and dispose of the exotic without the administrative hearing contemplated by regulation 13.2 and/or to institute criminal proceedings in accordance with Title 3, section 7203.

## **10.0 Transporting; Relocation of Exotic Animals; Transfer of Ownership; Births and Deaths**

- 10.1 If an exotic is to be moved from one location to another for any reason, the exotic shall be transported in a cage or other container that will be strong enough to prevent its escape while in transport, that will protect the public from physical contact with the exotic and that meets the exotic's welfare requirements. If an owner or custodian is transporting an exotic because of zoonotic or animal disease concerns, the State Veterinarian is to be notified immediately. Violation of this regulation is grounds for revoking an otherwise valid permit.
- 10.2 All permit holders are required to notify the Department in writing within thirty (30) business days if they change their name, permanent address or other contact information.
- 10.3 All permit holders are required to immediately notify the Department of any change of ownership or custodianship of an exotic animal.
- 10.4 Births and Deaths
  - 10.4.1 All permit holders must notify the Department of the birth or death of each Exotic by the first of every month.
  - 10.4.2 Sales permit holders are limited to breeding the following classes: Reptile and Herbivore and must stay current with State Veterinarian's list of exotic animals that are prohibited from being bred by Sales Permit holders as referenced in 4.4 of these regulations.
  - 10.4.3 Accredited Zoo Permit holders may breed exotics in keeping with 4.5.2 of these regulations.

10.4.4 Exotics on the State Veterinarian's current list of exotic animals exempt from these regulations (see regulation 4.3) may be bred.

### **11.0 Nuisances Prohibited**

The exotic must not become a nuisance. Any exotic animal that is an immediate threat and/or poses a risk of danger to the public may be subject to seizure and destruction in accordance with regulation 4.2 and without the administrative hearing contemplated by regulation 13.2.

### **12.0 Escape**

The owner or custodian of an exotic who learns of its escape from its enclosures must immediately notify the Department and the appropriate animal control agency of the escape. The owner or custodian of an escaped exotic has a duty to offer assistance to recapture the exotic and must reimburse the Department for any expenses it incurs associated with recapturing the exotic including damage to persons, animals or property.

### **13.0 Permit Denials and Revocations; Administrative Hearings; Appeals**

13.1 The State Veterinarian or his/her designee may deny or revoke an initial application, renewal application, or a permit for good cause. Reasons for denials may include, but are not limited to the following: a zoo losing its accreditation; an exotic animal biting, maiming, or injuring a human; an exotic animal escaping from its enclosures; failure to require and verify that a purchaser/adopter has obtained the appropriate class of Exotic Animal Permit from the Department prior to the time of purchase/relocation of the Exotic; failure to notify the Department of the transfer or sale of any exotic animal; exotic animals being bred or reproducing by Permit class holders not permitted to breed exotics; failure to notify the Department of the birth or death of an exotic; failure to keep copies of sales records for three years; failure to perform the duties stated in these regulations; any zoonotic or animal disease concerns; prior animal cruelty violations; and the applicant/permit holder fails to maintain enclosure, proper care, nutrition and welfare standards.

13.2 Administrative Hearing: The owner or custodian of an exotic animal may appeal from the State Veterinarian's determinations pursuant to regulation 13.1 by requesting an Administrative Hearing before the Secretary or his or her designee.

13.2.1 Whenever the State Veterinarian proposes to revoke a permit or deny an application for any reason other than that the exotic poses an immediate and unreasonable risk of harm to the public, the Department shall first give written notice to the permit holder or applicant of the State Veterinarian's determination. The written notice shall inform the permit holder or applicant that he or she has the right to challenge the determination and to request a hearing before the Secretary of the Department or his or her designee. A request for an administrative hearing must be made in writing and must be received by the Department within ten (10) business days of the date of the written notice to such permit holder or applicant; otherwise, the State Veterinarian's determination becomes final. The hearing shall be informal, and the technical rules of evidence shall not apply. The administrative hearing shall be scheduled by the Department as soon as practical, but in no event more than thirty (30) business days after receiving the written request for an administrative hearing.

13.2.2 Whenever the State Veterinarian determines that an exotic animal poses an immediate and unreasonable risk of harm to public health and safety or domestic animal health, the exotic animal is subject to immediate seizure and possible destruction. In such circumstances no administrative hearing is available to the applicant/permit holder to challenge the State Veterinarian's determination.

13.2.3 Administrative hearings shall be recorded. The Secretary or his or her designee shall render his or her decision in writing to all interested parties within sixty (60) days of the date of the administrative hearing.

13.3 Appeals shall be on the record to the Superior Court of the State of Delaware.



## HARNESS RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 10005 (3 Del.C. §10005)\  
3 DE Admin. Code 501

### PUBLIC NOTICE

The Delaware Harness Racing Commission, pursuant to 3 Del.C. §10005, proposes to change its Rule 7. The Commission will hold a public hearing on the proposed rule changes on August 11, 2009. Written comments should be sent to Hugh J. Gallagher, Administrator of Harness Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901. Written comments will be accepted for thirty (30) days from the date of publication in the *Register of Regulations* on July 1, 2009.

The proposed changes are for the purpose of updating Rule 7 and reflect current policies, practices and procedures. Copies are published online at the *Register of Regulations* website: [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml)

A copy is also available for inspection at the Harness Racing Commission office.

### 501 Harness Racing Rules and Regulations

#### *(Break in Continuity of Sections)*

## 7.0 Rules of the Race

#### *(Break in Continuity within Section)*

### 7.6 Racing Rules

#### 7.6.1 Under Supervision of Starter

- 7.6.1.1 Horses shall be under supervision of the starter from the time they arrive on the track until the start of the race.
- 7.6.1.2 All horses shall parade from the paddock to the starting post, and no driver shall dismount without the permission of the starter. Attendants may not care for the horses during the parade except by permission of the starter.
- 7.6.1.3 After entering the track not more than ten (10) minutes shall be consumed in the parade of the horses to the post except in cases of unavoidable delay.
- 7.6.1.4 Horses awaiting post time may not be held on the backstretch in excess of five (5) minutes, except when delayed by an emergency.

#### 7.6.2 Pre-Race Accidents

When, before a race starts:

- 7.6.2.1 A horse is a runaway or is otherwise involved in an accident, such horse shall be examined by the racing veterinarian and if the horse is not ordered scratched by the veterinarian, the judges may permit the horse to compete and have this decision announced.
- 7.6.2.2 A driver is unseated and appears to have been injured, the horse that was being driven by that driver may compete with a substitute driver.
- 7.6.2.3 If a horse is scratched in error and cannot be added back into the pari-mutuel system, the horse may race for purse only. The judges shall ensure that the race announcer informs the public that the horse will be racing without pari-mutuel wagering.

#### 7.6.3 Fair Start

The starter shall give such orders and take such measures that do not conflict with the rules of racing, as are necessary to secure a fair start.

**7.6.4 Starter's Duties**

- 7.6.4.1 The starter shall be in the starting gate ten (10) minutes before the post time of the race.
- 7.6.4.2 The starter shall have control over the horses and authority to assess fines and/or suspend drivers for any violation of the rules from the formation of the parade until the word "go" is given.
- 7.6.4.3 The starter may assist in placing the horses when requested by the judges to do so.
- 7.6.4.4 The starter shall notify the judges and the drivers in writing of penalties imposed by him.

**7.6.5 Starting**

- 7.6.5.1 The starter shall have control of the formation of the parade until giving the word "go".
- 7.6.5.2 After warming up scores, the starter shall notify the drivers to come to the starting gate.
- 7.6.5.3 The horses shall be brought to the starting gate as near one-quarter of a mile before the start as the track will permit.
- 7.6.5.4 Allowing sufficient time so that the speed of the gate can be increased gradually, the following minimum speeds will be maintained:
  - 7.6.5.4.1 For the first one-eighth of a mile, not less than 11 miles per hour.
  - 7.6.5.4.2 For the next one-sixteenth of a mile, not less than 18 miles per hour.
  - 7.6.5.4.3 From that point to the starting point, the speed will be gradually increased to maximum speed.
- 7.6.5.5 The starting point will be a point marked at a designated spot not less than 200 feet from the first turn. The starter shall give the word "go" at the starting point.
- 7.6.5.6 When a speed has been reached in the course of a start there shall be no decrease except in the case of a recall.

**7.6.6 Recall Rules**

- 7.6.6.1 In case of a recall, a light plainly visible to the drivers shall be flashed and a recall sounded, but the starting gate shall proceed out of the path of the horses. In the case of a recall, whenever possible, the starter shall leave the wings of the gate extended and gradually slow the speed of the gate to assist in stopping the field of horses. In an emergency, however, the starter shall use his discretion to close the wings of the gate.
- 7.6.6.2 There shall be no recall after the word "go" has been give unless there is a mechanical failure of the starting gate.
- 7.6.6.3 The starter shall attempt to dispatch all horses away in position and on gait but there shall be no recall for a breaking horse.
- 7.6.6.4 In the event a horse causes two recalls, it may be scratched by the judges.
- 7.6.6.5 The starter may sound a recall for the following reasons:
  - 7.6.6.5.1 A horse scores ahead of the gate;
  - 7.6.6.5.2 There is interference;
  - 7.6.6.5.3 A horse has broken equipment;
  - 7.6.6.5.4 A horse falls before the word "go" is given; or
  - 7.6.6.5.5 A mechanical failure of the starting gate;
  - 7.6.6.5.6 A horse comes to the gate out of position.
- 7.6.6.7 A fine and/or suspension may be applied to any driver for:
  - 7.6.6.7.1 Delaying the start;
  - 7.6.6.7.2 Failure to obey the starter's instructions;
  - 7.6.6.7.3 Rushing ahead of the inside or outside wing of the gate;
  - 7.6.6.7.4 Coming to the starting gate out of position;
  - 7.6.6.7.5 Crossing over before reaching the starting point;
  - 7.6.6.7.6 Interference with another driver during the start; or
  - 7.6.6.7.7 Failure to come up into position.

**7.6.7 Starting Gate**

- 7.6.7.1 No persons shall be allowed to ride in the starting gate except the starter and the driver or operator and a patrol judge, unless permission has been granted by the Presiding Judge.
- 7.6.7.2 Use of the mechanical loudspeaker for any purpose other than to give instructions to the drivers is prohibited. The volume shall be no higher than necessary to carry the voice of the starter to the drivers.
- 7.6.7.3 The arms of all starting gates shall be provided with a screen or shield in front of the position for each horse.
- 7.6.7.4 The official starter must ensure that the starting gate is in good working order prior to the beginning of each race program.
- 7.6.7.5 The official starter and starting gate driver shall operate the starting gate in a manner consistent with the safe conduct of the race, the safety of the race participants and the safety of the patrons.

**7.6.8 Two-Tiered Races**

- 7.6.8.1 In the event there are two tiers of horses, the withdrawing of a horse that has drawn or earned a position in the front tier shall not affect the positions of horses that have drawn or entered positions in the second tier.
- 7.6.8.2 Whenever a horse is drawn from any tier, horses on the outside move in to fill the vacancy. Where a horse has drawn a post position in the second tier, the driver of such horse may elect to score out behind any horse in the front tier so long as it does not interfere with another trailing horse or deprive another trailing horse of a drawn position.
- 7.6.8.3 When there is only one trailer, it may start from any position in the second tier. When there is more than one trailer, they must start from inside any horse with a higher post position.

**7.6.9 Starting Without a Gate**

- 7.6.9.1 When horses are started without a gate the starter shall have control of the horses from the formation of the parade until giving the word "go". The starter shall be located at the wire or other point of start of the race at which point as nearly as possible the word "go" shall be given. No driver shall cause unnecessary delay after the horses are called. After two preliminary warming-up scores, the starter shall notify the drivers to form in parade.
- 7.6.9.2 The driver of any horse refusing or failing to follow the instructions of the starter as to the parade or scoring ahead of the pole horse may be set down for the heat in which the offense occurs, or for such other period as the starter shall determine, and may be fined. Whenever a driver is taken down, the substitute shall be permitted to score the horse once. A horse delaying the race may be started regardless of its position or gait and there shall not be a recall because of a bad acting horse. If the word "go" is not given, all the horses in the race shall immediately turn on signal, and jog back to their parade positions for a fresh start. There shall be no recall after the starting word is given.

**7.6.10 Horse Deemed a Starter**

Horses shall be deemed to have started when the word "go" is given by the starter and all horses must go the course except in the case of an accident in which it is the opinion of the judges that it is impossible to go the course.

**7.6.11 Unmanageable/Bad Acting Horses**

- 7.6.11.1 If, in the opinion(s) of the judges and/or the starter, a horse is unmanageable or liable to cause accidents or injury to any other horse or to any driver, it may be sent to the barn. When this action is taken, the starter will notify the judges who will in turn notify the public and order any refunds as may be required in Rule 10 of these rules.
- 7.6.11.2 The starter may place a bad acting horse on the outside at his discretion. Such action may be taken only where there is time for the starter to notify the judges who will in turn notify the public prior to any pari-mutuel wagering on the race. If pari-mutuel wagering has already begun on the race, the horse must be scratched as stipulated in subdivision 1 above.

**7.6.12 Post Positions, Heat Racing**

7.6.12.1 The horse winning a heat shall take the inside position in the succeeding heat, unless otherwise specified in the published conditions of the race, and all others shall take their positions in the order they were placed in the prior heat.

7.6.12.2 When two or more horses dead heat, their positions shall be determined by lot.

**7.6.13 Conduct of the Race**

7.6.13.1 A driver shall not commit any of the following acts which are considered violations of driving rules:

7.6.13.1.1 Change course or position, or swerve in or out, or bear in or out during any part of the race in such a manner as to compel a horse to shorten its stride or cause another driver to change course, take his horse back, or pull his horse out of its stride.

7.6.13.1.2 Impede the progress of another horse or cause it to break from its gait.

7.6.13.1.3 Cross over too sharply in front of another horse or in front of the field.

7.6.13.1.4 Crowd another horse by 'putting a wheel under it.'

7.6.13.1.5 Allow another horse to pass needlessly on the inside, or commit any other act that helps another horse to improve its position.

7.6.13.1.6 Carry another horse out.

7.6.13.1.7 Take up or slow up in front of other horses so as to cause confusion or interference among the trailing horses.

7.6.13.1.8 Maintain an outside position without making the necessary effort to improve his overall position.

7.6.13.1.9 Strike or hook wheels with another sulky.

7.6.13.1.10 Lay off a normal pace and leave a hole when it is well within the horse's capacity to keep the hole closed.

7.6.13.1.11 Drive in a careless or reckless manner.

7.6.13.1.12 Fail to set, maintain or properly contest a pace comparable to the class in which he is racing considering the horse's ability, track conditions, weather and circumstances confronted in the race.

7.6.13.1.13 Riding 'half-in' or 'half-out'.

7.6.13.1.14 Kicking a horse.

7.6.13.1.15 Excessive and/or unnecessary conversation between and among drivers while on the racetrack during the time when colors are required is prohibited. Any violation of this rule may be punished by a fine, suspension or combination thereof.

7.6.13.2 A complaint by a driver of any foul, violation of the rules or other misconduct during a race shall be made immediately after the race to which it relates, unless the driver is prevented from doing so by an accident or injury or other reasonable excuse. A driver desiring to enter a claim of foul, or other complaint of violation of the rules, shall make this known to the starter before dismounting and shall proceed immediately to the paddock telephone to communicate immediately with the judges. Any driver who is involved in an objection or inquiry shall proceed immediately to the paddock telephone to communicate with the judges. The judges shall not cause the official sign to be posted until the matter has been dealt with.

7.6.13.3 If a violation is committed by a person driving a horse coupled as an entry the judges may set both horses back if, in their opinion, the violation may have affected the finish of the race, otherwise penalties may be applied individually.

7.6.13.4 In the case of interference, collision, or violation of any rules, the offending horse may be placed back one or more positions in that heat or dash, and in the event of such collisions, interference or violation preventing any horse from finishing the heat or dash, the offending horse may be disqualified from receiving any winnings and the driver may be fined or suspended. If a horse is set back, it must be placed behind the horse with which it

- interfered. If an offending horse has interfered with a horse involved in a dead heat and the offending horse is set back, it must be placed behind the horses in the dead heat.
- 7.6.13.5 If the judges believe that a horse is, or has been driven with design to prevent it winning a race or races, they shall consider it a violation by the driver.
- 7.6.13.6 If the judges believe that a horse has been driven in an inconsistent manner, they shall consider it a violation.
- 7.6.13.7 If the judges believe that a horse has been driven in an unsatisfactory manner due to lack of effort or a horse has been driven in an unsatisfactory manner for any reason, they shall consider it a violation punishable by a fine and/or suspension.
- 7.6.13.8 If a horse is suspected to have choked or bled during a race, the driver and/or trainer of that horse is required to report this to the judges immediately after the race.
- 7.6.13.9 If, in the opinion of the judges, a driver is for any reason unfit or incompetent to drive, or is reckless in his conduct and endangers the safety of horses or other drivers in a race, he shall be removed and another driver substituted at any time and the offending driver may be fined, suspended or expelled.
- 7.6.13.10 If for any cause other than being interfered with, or broken equipment, a horse fails to finish after starting a race, that horse shall be ruled out of any subsequent heat of the same event. If it is alleged that a horse failed to finish a race because of broken equipment, this fact must be reported to the paddock judge who shall make an examination to verify the allegation and report the findings to the judges.
- 7.6.13.11 A driver must be mounted in the sulky at all times during the race or the horse shall be placed as a non-finisher.
- 7.6.13.12 Shouting or other improper conduct in a race is forbidden.
- 7.6.13.13 Drivers shall keep both feet in the stirrups during the post parade and from the time the horses are brought to the starting gate until the race has been completed. Drivers shall be permitted to remove a foot from the stirrups during the course of the race solely for the purpose of pulling ear plugs and once same have been pulled the foot must be placed back into the stirrup. Drivers who violate this rule may be subject to a fine and/or suspension.
- 7.6.13.14 ~~Drivers will be allowed whips not to exceed 4 feet, plus a snapper not longer than 6 inches. Provided further that the following actions shall be considered as excessive or an indiscriminate use of the whip: a) Causing visible injury. b) Whipping a horse after a race. e) Whipping under the arch or shafts of the sulky. The use of the whip shall be confined to an area above and between the sulky shafts, to include the sulky shafts and the outside wheel discs. Drivers shall keep a line in each hand from the start of the race until the quarter pole. From the quarter pole to the 7/8th pole, a driver may only use the whip once for a maximum of three strokes. Once the lead horse is at the 7/8th pole, these restrictions do not apply. The Judges shall have the authority to order and/or conduct such visual inspections at their discretion. Impelling of a Horse~~
- 7.6.13.14.1 Whips: Drivers will be allowed whips not to exceed 4 feet, plus a snapper not longer than 6 inches. Modification of a whip is prohibited.
- 7.6.13.14.1.1 Use: The use of a whip shall be confined to the areas above and between the sulky shafts and the outside wheel disks.
- 7.6.13.14.1.2 Drivers shall keep a line in each hand from the start of the race until the quarter pole.
- 7.6.13.14.1.3 From the quarter pole to the 7/8th pole, a driver may only use the whip once for a maximum of three strokes. Once the lead horse is at the 7/8th pole, these restrictions do not apply.
- 7.6.13.14.2 Violations:
- 7.6.13.14.2.1 Whipping under the arch or shafts of the sulky
- 7.6.13.14.2.2 Whipping a horse after the race

## PROPOSED REGULATIONS

- 7.6.13.14.2.3 Causing injury (visible or not) with a whip
- 7.6.13.14.2.4 Striking or jabbing a horse with the butt end of a whip
- 7.6.13.14.2.5 Whipping a horse that is out of contention
- 7.6.13.14.2.6 Brutal, excessive, and or indiscriminate use of a whip.
- 7.6.13.14.2.6.1 Inspections: At extended pari-mutuel meetings, under the supervision of the judges, there may be a mandatory inspection of each horse following each race for evidence of excessive or brutal use of the whip. At all other meetings, the judges shall have the authority to order and/or conduct such inspections at their discretion.
- 7.6.13.15 The use of any goading device, or chain, or spur, or mechanical or electrical device other than a whip as allowed in the rules, upon any horse, shall constitute a violation.
- 7.6.13.16 The possession of any mechanical or electrical goading device on the grounds of an Association shall constitute a violation.
- 7.6.13.17 The judges shall have the authority to disallow the use of any equipment or harness that they feel is unsafe or not in the best interests of racing.
- 7.6.13.18 ~~Brutal or excessive or indiscriminate use of a whip, or striking a horse with the butt end of a whip, or striking a wheel disc of a sulky with a whip, shall be a violation. At extended pari-mutuel meetings, under the supervision of the judges, there may be a mandatory visual inspection of each horse following each race for evidence of excessive or brutal use of the whip. At all other meetings, the judges shall have the authority to order and/or conduct such visual inspections at their discretion.~~
- 7.6.13.19 ~~Whipping a horse by using the whip below the level of the shafts or the seat of the sulky or between the legs of the horse shall be a violation.~~
- 7.6.13.20~~18~~When a horse breaks from its gait, it shall be considered a violation on the part of the driver for:
- 7.6.13.20~~18~~.1~~1~~Failure to take the horse to the outside of other horses where clearance exists.
- 7.6.13.20~~18~~.2~~2~~Failure to properly attempt to pull the horse to its gait.
- 7.6.13.20~~18~~.3~~3~~Failure to lose ground while on a break.
- 7.6.13.20~~18~~.4~~4~~If no violation has been committed, the horse shall not be set back unless a contending horse on his gait is lapped on the hind quarter of the breaking horse at the finish. The judges may set any horse back one or more places if in their judgment, any of the above violations have been committed, and the driver may be penalized.
- 7.6.13.20~~18~~.5~~5~~Any horse making a break which causes interference to other horses may be placed behind all offended horses. If there has been no failure on the part of the driver of the breaking horse in complying with Rule 7.6.13.20, no fine or suspension shall be imposed on the driver as a consequence.
- 7.6.13.24~~19~~If, in the opinion of the judges, a driver allows a horse to break for the purpose of losing a race, he or she shall be in violation of the rules.
- 7.6.13.22~~20~~It shall be the duty of one of the judges to call out every break made and have them duly recorded in judges official race reports.
- 7.6.13.23~~21~~The horse whose nose reaches the wire first is the winner. If there is a dead heat for first, both horses shall be considered winners. In races having more than one heat or dash, where two horses are tied in the summary, the winner of the longer dash or heat shall be entitled to the trophy. Where the dashes or heats are of the same distance and the horses are tied in the summary, the winner of the faster dash or heat shall be entitled to the trophy. Where the dashes or heats are of the same time, both horses shall be considered winners and the entitlement of the trophy will be decided by lot.
- 7.6.13.24~~22~~The wire or finish line is a real line established with the aid of a surveyor's transit, or an imaginary line running from the center of the judges' stand to a point immediately across and at right angles to the track.

7.6.13.25~~23~~If, during the preliminary scores or during a race a driver is unseated in such a manner that he or she falls to the ground, the Presiding Judge or judges may direct the driver to report to the infirmary or to the emergency department of the nearest hospital for examination and receive clearance to continue with driving assignments on that day of racing.

7.6.13.26~~24~~If a horse is to warm up it must go its last warm-up on the same racing strip as it will compete on unless excused by the judges.

## 7.6.14 Harness Race Track Without a Hubrail

7.6.14.1 If at a racetrack which does not have a continuous solid inside hub rail, a horse or part of the horse's sulky leaves the course by running over or going inside the pylons or other demarcation which constitutes the inside limits of the course, the offending horse may be placed one or more positions where, in the opinion of the judges, the action gave the horse an unfair advantage over other horses in the race, or the action helped the horse improve its position in the race. Drivers may be fined or suspended for permitting a horse's sulky to run over or go inside the pylons or other demarcation which constitutes the inside limits of the course. In addition, when an act of interference causes a horse or part of the horse's sulky to cross the inside limits of the course, and the horse is placed by the judges, the offending horse shall be placed behind the horse with which it interfered.

7.6.14.2 In the event a horse or part of a horse's sulky leaves the course for any reason, it shall be the driver's responsibility to take all reasonable steps to safely reenter the race course as soon as possible.

## 7.6.15 Extended Homestretch

7.6.15.1 With approval of the Commission, a track may extend the width of its homestretch up to 10 feet inward in relation to the width of the rest of the racetrack.

7.6.15.2 In the event the home stretch is expanded pursuant to 7.6.15.1 above, the following shall apply:

7.6.15.2.1 When entering or while going through the homestretch for the first time in a race, no horse shall use the expanded inside lane in an attempt to pass other horses or improve its position. Any horse, which does so shall be disqualified and placed last in the order of finish.

7.6.15.2.2 the lead horse in the homestretch shall maintain as straight a course as possible while allowing trailing horses full access to the extended inside lane.

If, in the opinion of the judges, the lead horse changes course in the homestretch in an attempt to prevent a trailing horse from passing, said horse shall be placed accordingly.

7.6.15.2.3 Horses using the expanded inside lane during the homestretch drive for the finish of the race, must first have complete clearance of the pylons marking the inside boundary of the racecourse. Any horse or sulky running over one or more of the pylons or going inside the pylons while attempting to use the expanded inside lane, may be disqualified or placed back one or more positions.

7.6.15.2.4 A horse may only be driven into the expanded homestretch lane for the purpose of passing another horse and may not be driven into the expanded homestretch lane for the purpose of blocking a trailing horse. If, in the opinion of the judges, a horse is driven into the expanded homestretch lane for the purpose of blocking a trailing horse, the driver of the blocking horse may be fined and/or suspended and the horse may be placed accordingly.

**\*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 Harness Racing Commission is available at:**

<http://regulations.delaware.gov/AdminCode/title3/500/501/index.shtml#TopOfPage>

---

# PROPOSED REGULATIONS

---

## DEPARTMENT OF FINANCE STATE LOTTERY OFFICE

Statutory Authority: 29 Delaware Code, Section 4805 (29 Del.C. §4805)

### PUBLIC NOTICE

#### A. Type of Regulatory Action Required

Adoption of New Regulations

#### B. Synopsis of Subject Matter of the Regulations

The Office of the State Lottery will seek public comments on proposed new rules governing a sports lottery. These regulations come as a result of recent legislation amending 29 Del.C., Chapter 48, which directs the Director of the Lottery to promulgate rules for the features and attributes of a sports lottery.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before July 31 to: Delaware State Lottery Office, 1575 McKee Road, Suite 102, Dover, DE 19904. A copy of these regulations is available from the above address or may be viewed at the Lottery business office at the same address.

#### **460 Sports Lottery Rules and Regulations**

##### 1.0 Introduction

These regulations are authorized pursuant to 29 Del.C. §4805 of Title 29 of the Delaware Code. Sports lottery operations in the State of Delaware are strictly regulated by the Delaware State Lottery Office through the powers delegated to the Director of the Lottery pursuant to Title 29 of the Delaware Code.

##### 2.0 Definitions

The following words shall be accorded these meanings:

"agency" - the Delaware State Lottery Office created pursuant to 29 Del.C. Ch. 48.

"agent" or "licensed agent" or "licensed sports lottery agent" - any person licensed by the Director of the agency to conduct sports lottery operations.

"applicant" - any person applying for a license authorized under these regulations.

"background investigation" - the security, fitness and background checks conducted of an applicant.

"business plan" - a document containing information regarding sports lottery operations as may be required by the Director.

"central system" - the hardware, software and network components, which link and support all required sports lottery machines and the central site.

"central system provider" - a person with whom the agency has contracted for the purpose of providing and maintaining a central communication system and the related management facilities with respect to operating and servicing the sports lottery machines.

"central site" - the location where the central sports lottery communications control systems shall be located.

"certification" - the authorization by the lottery in accordance with its inspection and approval process of sports lottery machines, such certification to relate to either hardware or software.

"credit" - the opportunity provided to a player to play a sports lottery game or redeem the credit for cash.

"credit slip" - the ticket (receipt) resulting from a sports lottery game.

"Director" - the Director of the Delaware State Lottery Office as established by Title 29 of the Delaware Code.



"key employee" - an individual employee, person or agent of an applicant or licensee who has the power to exercise significant influence over significant decisions concerning the applicant's or licensee's business.

"kind, type and number" - the generic varieties of sports lottery machines that may be selected for installation, and the quantities in which they may be installed.

"license" - the authorization granted by the agency which permits an applicant to engage in defined sports lottery activities as an agent or technology provider; and authorization granted by the agency which permits an applicant to perform employment duties as a key employee or sports lottery operations employee.

"license application" - the process by which a person requests licensing for participation in the sports lottery operations.

"licensee" - any person authorized by the Director to participate in sports lottery operations.

"lottery" - the public gaming system or games established and operated by the Delaware State Lottery Office.

"maximum wager limit" - the maximum amount that can be wagered on a single sports lottery wager be it head-to-head or parlay, as determined by the Lottery Director from time to time.

"net proceeds" – All proceeds net of proceeds returned to players.

"owner" - a person who owns, directly or indirectly, ten percent or more of an applicant or licensee.

"person" - an individual, general partnership, limited partnership, corporation or other legal entity.

"player" - an individual who plays a sports lottery game.

"premises" - the building and grounds occupied by a licensed agent where the agent's sports lottery operations occur or support facilities for such operations exist, such as facilities for the service of food or drink, including those areas not normally open to the public, such as areas where records related to sports lottery operations are kept. The boundaries of the premises will be delineated on the floor plan in an agent's business plan.

"request for proposals and qualifications" - a document developed under the direction of the Delaware State Lottery Office for the purpose of soliciting responses from potential technology providers as a means of acquiring bids for goods or services.

"service technician" - any person who performs service, maintenance and repair operations on sports lottery machines.

"sports lottery" shall mean a lottery in which the winners are determined based on the outcome of any professional or collegiate sporting event, including racing, held within or without the State, but excluding collegiate sporting events that involve a Delaware college or university, and amateur or professional sporting events that involve a Delaware team.

"sports lottery machine" shall mean any machine in which bills, coins or tokens are deposited in order to play a sports lottery game. A machine shall be considered a sports lottery machine notwithstanding the use of an electronic credit system making the deposit of bills, coins or tokens unnecessary.

"sports lottery operations employee" shall mean an individual employee, person or agent of an applicant or licensee who is responsible for the security of sports lottery operations or proceeds.

"sports lottery systems" – systems provided by a technology provider that consist of sports wagering products, risk management (bookmaking), operations and support services.

"technology provider" - any person or entity who proposes to contract with a sports lottery agent or the agency for the provision of goods or services related to a sports lottery, the provision of which requires a license pursuant to 29 Del.C. Ch. 48.

"terminal" – see "sports lottery machine".

"VLEU"- the Video Lottery Enforcement Unit of the Delaware State Police. This unit is also responsible for the security of the Sports Lottery.

**3.0 Licensing of Agents: Business Plans**

- 3.1 Any applicant desiring to obtain a license to act as an agent shall apply to the agency on forms specified by the Director from time to time. Application forms shall require the applicant to provide the following, without limitation:
- 3.1.1 The applicant's legal name, form of entity (e.g., general or limited partnership, corporation), the names, addresses, employer identification or social security numbers (if applicable) and dates of birth (if applicable) of its directors, officers, partners, owners, and key employees and sports lottery operations employees.
  - 3.1.2 A description of the applicant's organizational structure.
  - 3.1.3 With respect to any persons named in subparagraph 3.1.1 that are not individuals, the names, addresses, social security numbers, and birth dates of all individuals who are directors, officers, owners, partners, key employees, or sports lottery operations employees of any such persons.
  - 3.1.4 The percentages of shares of stock, if any, held by each person named in subparagraph 3.1.1 or subparagraph 3.1.3 above. The Director may, at his or her discretion, cause periodic reexamination of the percentage of shares held by persons subject to such disclosures under these regulations.
  - 3.1.5 The names of all persons principally involved in the original creation of the applicant's enterprise.
  - 3.1.6 The names, if any, and addresses, social security numbers, and dates of birth of any person who is or was a director, officer, owner, partner, key employee, or sports lottery operations employee of the applicant who has been charged with or convicted of a felony, a crime involving gambling, or a crime of moral turpitude.
  - 3.1.7 Certified copies of the applicant's charter, articles of incorporation, partnership agreement, and other documents which constitute or explain the legal organization of the applicant.
  - 3.1.8 The name, address, social security or employer identification number and date of birth of the record owner of the premises or the property upon which the premises are located or, if the applicant is not the sole owner of the premises or property, the information required by subparagraph 3.1.1 above with respect to all persons having an ownership interest in the premises or property and copies of all agreements pursuant to which the applicant occupies the premises or property, as well as copies of all documents relating to the premises or property including, without limitation, all mortgages, deeds of trust, bonds, debentures, pledges of corporate stock and voting trust agreements, but excluding easements; utility agreements; subdivision and plot plans; and, for the period prior to three years before the filing of the application, deeds in the chain of title and satisfied mortgages.
  - 3.1.9 The information required by subparagraph 3.1.1 above as to any operator of any business conducted by such applicant and any other contractor (which is not a publicly traded entity) utilized by such applicant which has received compensation from such applicant in excess of \$50,000 in any of the three (3) preceding fiscal years together with a copy of all agreements between such applicant and such operator or contractor and a statement of all compensation paid to such operator or contractor during said three-year period.
  - 3.1.10 Copies of the applicant's audited financial statements for the preceding three (3) fiscal years and a copy of internally prepared financial statements for the current fiscal year as at the close of the most recent fiscal quarter.
  - 3.1.11 Copies of the applicant's State and Federal tax returns for a period of three (3) fiscal years.
  - 3.1.12 Copies of the declaration pages of all insurance policies insuring the applicant or the premises.
  - 3.1.13 The information required by subparagraph 3.1.1 above as to the ten (10) largest unsecured creditors which are not publicly traded entities or accounting firms or legal firms of the applicant who are owed more than \$25,000 by the applicant for a period in excess of sixty days.
  - 3.1.14 Disclosure regarding the applicant or any other persons identified in subparagraphs 3.1.1 or 3.1.3 who were rejected for any gambling or gaming license or permit in any other jurisdiction.
  - 3.1.15 Any and all other information as the Director may require to determine the competence, honesty and integrity of the applicant as required by Title 29 of the Delaware Code.

- 3.2 The application, as well as other documents submitted to the agency by or on behalf of the applicant for purposes of determining the qualifications of the applicant or agent, shall be sworn to or affirmed before a notary public. If any form or document is signed by an attorney for the applicant, the signature shall certify that the attorney has read the forms or documents and that, to the best of his or her knowledge, information and belief, based on diligent inquiry, the contents of the form or documents so supplied are true.
- 3.3 Upon request of the agency, the applicant shall supplement the information provided in the application form as deemed necessary by the agency. The applicant shall furnish all information, including financial data and documents, certifications, consents, waivers, individual history forms, tax returns, cancelled checks or other materials required or requested by the agency for purposes of determining the qualifications of the applicant or agent.
- 3.4 To the extent, if any, that the information supplied in the application or otherwise supplied by the applicant or on the applicant's behalf, becomes inaccurate or incomplete, the applicant shall so notify the agency in writing as soon as it is aware that the information is inaccurate or incomplete, and shall at that time supply the information necessary to correct the inaccuracy or incompleteness of the information.
- 3.5 The applicant shall cooperate fully with the agency and the VLEU with respect to its background investigation of the applicant. Among other things, the applicant, upon request, shall make available any and all of its books or records for inspection by the agency or the VLEU.
- 3.6 The applicant shall submit with the application a proposed business plan for the conduct of sports lottery operations. The plan shall include, without limitation, the following items: a floor plan of the area to be used for sports lottery operations; an advertising/marketing plan; the proposed placement of sports lottery machines on the premises; the kind, type and number of sports lottery machines proposed; money control procedures; a security plan; a staffing plan for sports lottery operations; accounting and tax compliance procedures; and the method to be utilized for payments of winnings by players.
- 3.7 As soon as the agency has determined that the application is complete, it shall forward same to the VLEU which shall, as soon as practicable, undertake and complete the background investigation of the applicant, its officers, directors, partners, owners and key employees, sports lottery operations employees and report its findings to the agency.
- 3.8 The Director shall weigh the following factors in his or her evaluation of the application:
- 3.8.1 The criminal background, if any, of the applicant, or any of its officers, directors, partners, owners, key employees, and sports lottery operations employees. No license shall be issued to any applicant if any of the persons identified in this subsection have been convicted, within 10 years prior to the filing of the application, of any felony, a crime of moral turpitude or a crime involving gambling.
- 3.8.2 The extent to which, if any, the applicant would be subject to the control or influence of its activities by any person having a financial interest pertaining to the applicant, including a mortgage or other lien against property of the applicant or, who in the opinion of the agency, might otherwise influence its activities. In such case the Director shall consider the character, honesty and integrity of whoever has the ability to control or influence the activities of the applicant.
- 3.8.3 The degree to which the applicant has demonstrated its ability to finance the proposed sports lottery operations, as well as the source of such financing.
- 3.8.4 The degree to which the applicant has supplied accurate and complete information pursuant to the requirements of these regulations.
- 3.8.5 Whether the applicant holds a license as a technology provider. An agent license shall not be granted to an applicant who is an owner of a technology provider.
- 3.8.6 Whether the applicant has demonstrated the business ability and experience necessary to satisfactorily conduct the sports lottery operations.
- 3.8.7 The extent to which the applicant has cooperated with the agency and the State Police in connection with the background investigation.

---

## PROPOSED REGULATIONS

---

- 3.8.8 Whether the person, or any of its officers, directors, partners, owners, key employees, or sports lottery operations employees are known to associate with persons of nefarious backgrounds or disreputable character such that the association could adversely affect the general credibility, security, integrity, honesty, fairness or reputation of the lottery.
- 3.8.9 With respect to any past conduct which may adversely reflect upon the applicant, the nature of the conduct, the time that has passed since the conduct, the frequency of the conduct and any extenuating circumstances that affect or reduce the impact of the conduct or otherwise reflect upon the applicant's fitness for the license.
- 3.8.10 The extent, if any, to which the applicant has failed to comply with any applicable tax laws of the federal, state or local governments.
- 3.8.11 The adequacy of the applicant's business plan, as it reflects on the applicant's competency or capability to conduct sports lottery operations in conformance with the requirements of these regulations.
- 3.8.12 Any other information before the Director, including substantially similar background investigations performed by other agencies or jurisdictions, which relates to the applicant's competency, financial capability, honesty, integrity, reputation, habits, or associations.
- 3.9 A license shall be issued to the applicant if the Director is satisfied, upon consideration of the factors specified in subsection 3.8, that the applicant would be a fit agent and not pose a threat to the public interest, the reputation of the lottery, or the effective control of the lottery.
- 3.10 The approval of any license or the renewal of a license to an agent is subject to the following conditions:

  - 3.10.1 Operation pursuant to a license issued under these regulations shall signify agreement by the agent to abide by all provisions of the regulations, including those contained in this section.
  - 3.10.2 The agent shall at all times make its premises available for inspection by authorized representatives of the agency or the VLEU personnel, on a 24-hour unannounced basis. The VLEU shall be authorized entry to the premises and access to any sports lottery machines or records of the agent without acquiring a warrant.
  - 3.10.3 The agent and any entity owned by the agent in which the agent has a controlling ownership interest shall consent in writing to the examination of all accounts, bank accounts, and records under the control of the agent or the owned entity; and, upon request of the agency, shall authorize all third parties in possession or control of the said documents to allow the agency to examine such documents.
  - 3.10.4 To the extent permitted by law, an agent accepts all risks of adverse public notice, embarrassment, criticism, damages, or financial loss which may result from any disclosure or publication of material or information supplied to the agency in connection with the application for the agent's operations.
  - 3.10.5 An agent shall immediately notify the agency of any proposed or effective change regarding the makeup of the owners, directors, officers, partners, or key employees of the agent.
  - 3.10.6 The agent shall certify by a sworn notarized statement that it has not entered and does not intend to enter into any joint venture, partnership or teaming agreement in order to fulfill its obligations in connection with the sports lottery operations; that it is not acting as a distributor of products manufactured by another entity; and that it has not entered and does not intend to enter into any agreement whereunder the proceeds generated by any agreement between the agent and the agency would be shared with one or more other persons. Provided, however, that an agent may enter into a management agreement with a third-party, who is not licensed under these regulations as a technology provider, for the operation of the sports lottery on the agent's premises provided that: (1) the proposed management agreement is provided to and approved by the agency, and (2) the third-party complies with all these regulations which apply to agents, including without limitation the licensure requirements.
- 3.11 Any license granted may not be transferred, assigned or pledged as collateral. A change of ownership which occurs after the Director has issued a license shall automatically terminate the license ninety (90) days thereafter. Provided, however, that the Director may issue a license to the new owner if

satisfied, after the submission of an application that the new owner has met the requirements contained in 29 Del.C. §4806(a)(1-4), as well as the fitness and background standards contained in such law and these regulations. In the case of a death of an owner, the estate of such owner shall be deemed to have met the requirements of §4806(a)(1-4) for a period of one year following such death without the need for submitting an application, and, thereafter, need only supply such additional information as the Director may request. In the case of a shift in equity positions of owners, or a transfer among owners, notice shall be given the Director, but the license shall not terminate so long as no new owner is created or results. An agent may also seek approval of a proposed change in ownership prior to the actual change.

- 3.12 If the Director proposes to deny a license application and the agency is subject to the requirements contained in subchapter IV of 29 Del.C. Ch. 101, the agency shall first give written notice to the applicant of the intended action, the reasons therefor, and the right to a hearing as provided for in 29 Del. C. Ch. 101.
- 3.13 At the time of issuance of the license or thereafter, in the Director's sole discretion, the Director may approve the proposed business plan of the applicant or the agent. If the Director determines that an amendment or amendments to the plan are necessary to increase revenues from the sports lottery, protect the public welfare or ensure the security of the sports lottery, he or she may amend the plan accordingly. An agent may request an amendment to an approved business plan, which proposed amendment shall be subject to the approval of the Director.
- 3.14 Any potential sports lottery agent who is already licensed as a Delaware State Lottery Video Lottery Agent is not required to apply for a separate sports lottery license. Any such Agent must, however, file with the agency, the names, addresses, employer identification or social security numbers (if applicable) and dates of birth (if applicable) of its directors, officers or partners, owners, key employees and sports lottery operations employees not already provided under the Agent's Video Lottery license application. The Agent must also submit an amendment to its video lottery business plan that shall include, without limitation, the items as described in section 3.6 of this regulation.
- 3.15 To the extent provided by law, any information obtained pursuant to this Section 3 shall be held in confidence and not subject to the Delaware Freedom of Information Act, 29 Del.C. Ch. 100.

## **4.0 Licensing of Technology Providers**

- 4.1 As deemed necessary, the Director shall give public notice of the agency's intent to select technology providers of sports lottery systems that consist of sports wagering products, risk management (bookmaking), operations and support services through a request for proposal and qualifications by advertising in a newspaper of general circulation in Delaware and in a prominent trade publication requesting expressions of interest to serve as a technology provider. The licensing of a technology provider shall not serve as the basis of requiring the Director to select the technology provider under the procurement procedures set forth in Chapter 69 of Title 29 of the Delaware Code.
- 4.2 Each person desiring to obtain a license from the agency as a technology provider shall submit a license application on a form specified and supplied by the agency. Any person or entity who proposes to contract with a sports lottery agent or the Lottery for the provision of goods or services related to sports lottery operations, must obtain a technology provider license pursuant to these Sports Lottery Regulations. The license application shall, among other things:
- 4.2.1 Give notice that the applicant will be required to submit to a background investigation, the cost of which must be borne by the applicant.
- 4.2.2 Require the applicant to supply specified information and documents related to the applicant's fitness and the background of its owners, partners, directors, officers, key employees, and sports lottery operations employees, including but not limited to copies of financial statements, tax returns, insurance policies, and lists of creditors.
- 4.2.3 Require the applicant to disclose the identity of all customers to whom it has furnished sports lottery systems within the three years immediately preceding the date of the application.
- 4.2.4 Require the applicant to disclose whether the applicant, or any of its present or former officers, directors, owners, partners, key employees, or sports lottery operations employees, is or has been

---

## PROPOSED REGULATIONS

---

- the subject of an investigation in another jurisdiction, the nature of the investigation, and the outcome, if any, of such investigation.
- 4.2.5 Provide a description of the means by which the applicant exercises security and financial control over the activities of service technicians in order to insure the integrity of sports lottery operations.
- 4.2.6 Require the applicant to disclose its legal name, form or entity (e.g., general or limited partnership, corporation), the names, addresses, social security numbers and dates of birth of its directors, officers, partners, owners, key employees and sports lottery operations employees.
- 4.2.7 Require the applicant to disclose the names and addresses of individuals who have been authorized by the applicant to engage in dealings with the agency for purposes of representing the interests of the applicant.
- 4.2.8 Require the applicant to enclose copies of its audited financial statements for the preceding three (3) fiscal years and a copy of internally prepared financial statements for the current fiscal year or at the close of the most recent fiscal quarter.
- 4.2.9 Require the applicant to provide a description of its risk management capabilities, engineering and software development resources, technical and maintenance support capabilities and ability to manufacture and deliver the sports lottery machines.
- 4.2.10 Require persons who are proposing to contract with the agency or a sports lottery agent to provide a copy of their contract proposal.
- 4.3 Upon request, the applicant shall supplement the information provided in the application form as deemed necessary by the Director.
- 4.4 To the extent, if any, that the information in the application or the supplemental information provided by the applicant becomes inaccurate or incomplete, the applicant shall so notify the agency in writing as soon as it is aware that the information is inaccurate or incomplete, and shall at that time supply the information necessary to make the application or supplementary information accurate and complete.
- 4.5 The applicant shall cooperate fully with the agency and the Delaware State Police VLEU in any background investigation of the applicant.
- 4.6 The applicant, upon request of the agency or the Delaware State Police VLEU, shall make any and all of its books and records available for inspection by the agency or the Delaware State Police VLEU. Provided, however, that any information obtained pursuant to this subsection shall, to the extent provided by law, be held in confidence and not subject to the Delaware Freedom of Information Act.
- 4.7 As soon as the agency has determined that the application form is complete and that the applicant is otherwise qualified, it shall forward the same to the Delaware State Police VLEU which shall conduct as soon as practicable a background investigation of the applicant, its officers, partners, owners, directors, key employees, and sports lottery operations employees, and report its findings to the agency.
- 4.8 Notwithstanding any other provision contained herein to the contrary, the Director may determine, upon review of the licensing standards of another state, that such standards are so comprehensive, thorough, and provide similar adequate safeguards, that the license of an applicant in such other state precludes the necessity of a full application and background check. In such case, the Director shall require a limited application and background check, as determined by the Director in his sole discretion, as are necessary to assure that the applicant is fit for the license and does not pose a threat to the public interest of the State or to the reputation of or effective regulation of the sports lottery.
- 4.9 In evaluating applications, the Director shall consider:
- 4.9.1 Whether the applicant has demonstrated that it has the resources, experience and ability necessary to supply the necessary sports lottery systems as may be required under a contract with the agency.
- 4.9.2 Any past conduct of the applicant, or any of its present or former officers, directors, partners, owners, key employees, or sports lottery operations employees which may adversely reflect upon the applicant, the nature of the conduct, the time that has passed since the conduct, the frequency of the conduct and any extenuating circumstances that affect or reduce the impact of the conduct or otherwise reflect upon the applicant's fitness for the license. No license shall be issued to any

applicant if any of the persons identified in this subsection have been convicted, within ten years prior to the filing of the application, of any felony, a crime of moral turpitude or a crime involving gambling.

- 4.9.3 Any findings provided by the Delaware State Police VLEU following its background investigation.
- 4.9.4 The extent, if any, to which the applicant has failed to comply with any applicable tax laws of the Federal, State or local governments.
- 4.9.5 The association of the applicant, or any of its officers, directors, owners, partners, key employees, or sports lottery operations employees with persons of known criminal background or persons of disreputable character, that may adversely affect the general credibility, security, integrity, honesty, fairness or reputation of sports lottery operations.
- 4.9.6 Any other information supplied in connection with the application, including substantially similar background investigations performed by other agencies or jurisdictions, which relates to the applicant's competence, financial capability, honesty, integrity, reputation, habits, or associations.
- 4.9.7 The degree to which the applicant has supplied accurate and complete information pursuant to the requirements of these regulations.
- 4.9.8 Whether the applicant is in compliance with the section of Title 29, ch. 48, §4805 (a) (17) that states: "The risk manager must be a bookmaker currently licensed to operate, and operating, sports books in the United States and the sports lottery technology system provider must be licensed to operate lotteries in the United States."
- 4.10 A license shall not be issued to a technology provider if the applicant technology provider has any direct or indirect financial interest in an agent licensee or the real or personal property of an agent licensee.
- 4.11 A license shall be issued to the applicant if the Director is satisfied, upon consideration of the factors specified in subsection 4.9, that the applicant would be a fit technology provider and not pose a threat to the public interest, the reputation of the lottery or to the effective control of the lottery.
- 4.12 An applicant for a technology provider's license shall, prior to issuance of the license, post a bond or irrevocable letter of credit in a manner and in an amount established by the agency. Any such bond shall be issued by a surety company authorized to transact business in Delaware and said company shall be approved by the State Insurance Commissioner as to solvency and responsibility.
- 4.13 The agency, with the assistance of the VLEU, may require licensed technology providers to annually update information submitted with their initial license application.

## **5.0 Technology Providers: Contracts: Requirements: Duties**

- 5.1 The Director shall, pursuant to the procedures set forth in chapter 69 of title 29 of the **Delaware Code**, enter into contracts with licensed technology providers as he or she shall determine to be appropriate, pursuant to which the technology providers shall furnish to the State, a sports lottery system that results in the efficient and economical operation of the lottery, convenience of the players, and is in accordance with the agents' business plans as approved and amended by the Director.
- 5.2 All contracts with technology providers who are sports lottery system providers shall include without limitation, provisions to the following effect:
  - 5.2.1 The technology provider shall furnish a person to work with the agency and its consultants to provide assistance as needed in establishing, planning and executing acceptance tests on the sports lottery machines provided by such technology provider. Technology provider assistance shall be provided as requested by the agency in troubleshooting communication and technical problems that are discovered when sports lottery machines are initially placed at the agent's site;
  - 5.2.2 The technology provider shall submit sports lottery machine illustrations, schematics, block diagrams, circuit analysis, technical and operation manuals, program source code and object code and any other information requested by the Director for purposes of analyzing and testing the sports lottery machines;
  - 5.2.3 For testing, examination and analysis purposes, the technology provider shall furnish working models of sports lottery machines, associated equipment, and documentation at locations

---

## PROPOSED REGULATIONS

---

- designated by the Director. The technology provider shall maintain the current software and sports lottery machines in good working order acceptable to the agency. The technology provider shall pay all costs of any testing, examination, analysis and transportation of the sports lottery machines, which may include the entire dismantling of the machines and some tests that may result in damage or destruction to one or more electronic components of the machines. The agency and its agents shall have no liability for any damage or destruction. The agency may require that the technology provider provide specialized equipment or the agency may employ the services of an independent technical laboratory expert to test the sports lottery machine at the technology provider's expense;
- 5.2.4 Technology providers shall submit all hardware, software, and test equipment necessary for testing of their sports lottery machines, and shall provide the Director with keys and locks subject to the Director's specifications for each approved sports lottery machine;
- 5.2.5 The software or other equivalent technology of each sports lottery machine shall be certified to be in compliance with published specifications;
- 5.2.6 No sports lottery machine shall be put into use prior to certification of its model by the Director.
- 5.3 All contracts with technology providers shall include without limitation, provisions to the following effect;
- 5.3.1 Technology providers shall agree to promptly report any violation or any facts or circumstances that may result in a violation of these rules; provide immediate access to all its records and its physical premises for inspection at the request of the Director; attend all trade shows or conferences as required by the Director;
- 5.3.2 Technology providers shall agree to modify their hardware and software as necessary to accommodate sports game changes directed by the agency from time to time;
- 5.3.3 Technology providers shall provide such bonds and provide evidence of such insurance as the Director shall require from time to time and in such amounts and issued by such companies as the Director shall approve; and
- 5.3.4 Technology providers shall have a valid license to conduct business in the State of Delaware, shall comply with all applicable tax provisions, and shall in all other respects be qualified to conduct business in Delaware.
- 5.4 Each sports lottery machine certified by the Director shall bear a unique serial number and shall conform to the exact specifications of the sports lottery machine model tested and certified by the Director.
- 5.5 Technology providers shall hold harmless the agency, the State of Delaware, and their respective employees for any claims, loss, cost, damage, liability or expense, including, without limitation, legal expense arising out of any hardware or software malfunction resulting in the wrongful award or denial of credits or cash.
- 5.6 A technology provider shall not distribute a sports lottery machine for placement in the state unless the machine has been approved by the agency. Only licensed technology providers may apply for approval of a sports lottery machine or associated equipment. The technology provider shall submit two copies of sports lottery machine illustrations, schematics, block diagrams, circuit analysis, technical and operation manuals, program source code and object code, and any other information requested by the agency for purposes of analyzing and testing the sports lottery machine or associated equipment.
- 5.7 The agency may require that two working models of a sports lottery machine be transported to the location designated by the agency for testing, examination, and analysis. The technology provider shall pay all costs of testing, examination, analysis and transportation of such sports lottery machine models, which may include the entire dismantling of the sports lottery machine and tests which may result in damage or destruction to one or more electronic components of such sports lottery machine model. The agency may require that the technology provider provide specialized equipment or the services of an independent technical expert in testing the terminal.
- 5.8 After each test has been completed, the agency shall provide the sports lottery systems provider with a report that contains findings, conclusions, and pass/fail results. Prior to approving a particular sports



lottery machine model, the agency may require a trial period not in excess of sixty (60) days for a licensed agent to test the sports lottery machine. During the trial period, the technology provider may not make any modifications to the sports lottery machine model unless such modifications are approved by the agency.

- 5.9 The technology provider is responsible for the assembly and initial operation, in the manner approved and licensed by the agency, of all its sports lottery machines and associated equipment. The technology provider may not change the assembly or operational functions of any of its sports lottery machines approved for placement in Delaware unless a "request for modification to an existing sports lottery machine prototype" is made to the agency, that request to contain all appropriate information relating to the type of change, reason for change, and all documentation required. The agency must approve such request prior to any changes being made, and the agency shall reserve the right to require second testing of sports lottery machines after modifications have been made.
- 5.10 Each sports lottery machine approved for placement in a licensed agent's place of business shall conform to the exact specifications of the sports lottery machine prototype tested and approved by the agency. Any sports lottery machine which does not so conform shall be disconnected from the Delaware sports lottery system until compliance has been achieved. Each sports lottery machine shall at all times operate and be placed in accordance with the provisions of these regulations.
- 5.11 The following duties are required of all licensed technology providers, without limitation:
- 5.11.1 Manufacture terminals and associated equipment for placement in Delaware in accordance with the specifications of the agency.
  - 5.11.2 Manufacture terminals and associated equipment to ensure timely delivery to licensed Delaware agents.
  - 5.11.3 Maintain and provide an inventory of associated equipment to assure the timely repair and continued, approved operation and play of licensed sports lottery machines acquired under the contract for placement in Delaware, provided further that said equipment will be maintained at a Delaware storage facility or warehouse.
  - 5.11.4 Provide an appropriate number of service technicians with the appropriate technical knowledge and training to provide for the service and repair of its licensed sports lottery machines and associated equipment so as to assure the continued, approved operation and play of those machines acquired under contract for placement in Delaware.
  - 5.11.5 Obtain any certification of compliance required under the applicable provisions of rules adopted by the Federal Communications Commission.
  - 5.11.6 Promptly report to the agency any violation or any facts or circumstances that may result in a violation of State or Federal law and/or any rules or regulations adopted pursuant thereto.
  - 5.11.7 Conduct sports lottery operations in a manner that does not pose a threat to the public health, safety, or welfare of the citizens of Delaware, or reflect adversely on the security or integrity of the sports lottery.
  - 5.11.8 Hold the agency and the State of Delaware and its employees harmless from any and all claims that may be made against the agency, the State of Delaware, or the employees of either, arising from the technology provider's participation in or the operation of a sports lottery game.
  - 5.11.9 Defend and pay for the defense of all claims that may be made against the agency, the State of Delaware, or the employees of either, arising from the technology provider's participation in sports lottery operations.
  - 5.11.10 Maintain all required records.
  - 5.11.11 Provide only those licensed sports lottery machines, validation units and associated equipment approved under these regulations.
  - 5.11.12 It shall be the continuing duty of the technology provider licensee to provide the Director with an updated list of the names and addresses of all its employees who are involved in the daily operation of the sports lottery machines. These employees will include individuals or their supervisors involved with (1) the repair or maintenance of the sports lottery machines, or (2) positions that provide direct access to the sports lottery machines. It shall be the continuing duty of

---

## PROPOSED REGULATIONS

---

- the technology provider licensee to provide for the bonding of each of these individuals to ensure against financial loss resulting from wrongful acts on their parts.
- 5.11.13 It shall be the ongoing duty of the technology provider licensee to notify the Director of any change in officers, partners, directors, key employees, sports lottery operations employees, or owners. These individuals shall also be subject to a background investigation. The failure of any of the above-mentioned individuals to satisfy a background investigation may constitute "cause" for the suspension or revocation of the technology provider's license.
- 5.11.14 Supervise its employees and their activities to ensure compliance with these rules.
- 5.11.15 Promptly report to the Lottery any violation or any facts or circumstances that may result in a violation of State or Federal law and/or any rules or regulations pursuant thereto, excluding violations concerning motor vehicle laws.
- 5.11.16 Comply with such other requirements as shall be specified by the Director.

### **6.0 Agents: Duties**

The following duties are required of all licensed agents:

- 6.1 Provide a secure location for the placement, operation, and play of all licensed sports lottery machines located on the licensed agent's premises.
- 6.2 Permit no person to tamper with or interfere with the approved operation of any licensed sports lottery machine without prior written approval of the agency and the VLEU, unless otherwise directed by the Lottery.
- 6.3 Assure that telephone lines from the central computer system to the licensed sports lottery machines located on the licensed agent's premises are at all times connected, and prevent any person from tampering or interfering with the continuous operation of the lines.
- 6.4 With respect to sports lottery operations, contract only with officers, directors, owners, partners, key employees, and suppliers of sports lottery equipment and paraphernalia authorized by the agency to participate in sports lottery operations within the State of Delaware.
- 6.5 Ensure that licensed sports lottery machines are placed and remain as placed unless the agency authorizes their movement within the sight and control of the agent or a designated employee, through physical presence and by the use of surveillance cameras at all times.
- 6.6 Ensure that licensed sports lottery machines are placed and remain as placed in the specific area of the premises as approved by the lottery. The initial placement and any subsequent relocation of any sports lottery machine requires the prior written approval of the agency.
- 6.7 Monitor sports lottery play and prevent play by persons who are under the age of twenty-one (21) years or who are intoxicated, or whom the agent has reason to believe are intoxicated, and prohibit play by persons who are barred by law or self-banned from playing the sports lottery.
- 6.8 Commit no violations of the laws of this State concerning the sale, dispensing, and consumption on the premises of alcoholic beverages that result in suspension or revocation of an alcoholic beverage license.
- 6.9 Maintain at all times sufficient cash for daily operations.
- 6.10 Exercise caution and good judgment in extending credit for sports lottery play, and comply with all applicable federal and state laws.
- 6.11 Exercise caution and good judgment in providing cash for checks presented for sports lottery play. The agent shall also ensure that any contractor who performs check-cashing services for the agent also exercises caution and good judgment in providing cash for checks under this Regulation.
- 6.12 Report promptly all sports lottery machine malfunctions to the appropriate technology provider and notify the agency of any technology provider failure to provide service and repair of such terminals and associated equipment.
- 6.13 Conduct agency approved advertising and promotional activities related to sports lottery operations.
- 6.14 Install, post and display prominently at locations within or about the premises signs, redemption information and other promotional material as may be required by the agency.

- 6.15 Conduct sports lottery operations only during those hours established and approved by the Director or designee.
- 6.16 Assume responsibility for the proper and timely payment to players of winning sports lottery wagers.
- 6.17 Prohibit the possession, use or control of gambling paraphernalia on the premises not directly related to the lottery or horse racing or harness horse racing and prohibit illegal gambling on the premises.
- 6.18 Attend all meetings, seminars, and training sessions required by the agency.
- 6.19 Supervise its employees and their activities to ensure compliance with these rules.
- 6.20 Assume responsibility for the proper and immediate redemption of all credits; however, no credits may be redeemed by a person under twenty-one (21) years of age, and no credits submitted for redemption beyond the one year time limit will be redeemed. No credits or prizes may be redeemed by any person illegally on the agent's premises or persons who have requested that they be self-banned from the Agent's premises.
- 6.21 Provide dedicated power and a proper sports lottery environment in accordance with the specifications of the agency. The agent shall permit no person to completely shut off power to an operational sports lottery machine without the prior approval of the agency.
- 6.22 Furnish to the Director complete information pertaining to any change in ownership of the agent or the owner of the premises or beneficial owner (other than a change in ownership by an owner of less than twenty (20) percent of the issued and outstanding capital stock of the agent or premises owner if such stock is publicly traded).
- 6.23 Promptly report to the lottery any violation or any facts or circumstances that may result in a violation of State or Federal law and/or any rules or regulations pursuant thereto, excluding violations concerning motor vehicle laws.
- 6.24 Conduct sports lottery operations in a manner that does not pose a threat to the public health, safety, or welfare of the citizens of Delaware, or reflect adversely on the security or integrity of the lottery.
- 6.25 Hold the Director, the State of Delaware, and employees thereof harmless from and defend and pay for the defense of any and all claims which may be asserted against the Director, the State or the employees thereof, arising from the participation in the sports lottery, except claims arising from the negligence or willful misconduct of the Director, the State or the employees thereof.
- 6.26 Maintain all required records.
- 6.27 Provide at the request of the Director or the VLEU immediate access to the premises and to all records related to any aspect of these regulations, including without limitation the duties imposed by these regulations.
- 6.28 Keep current on all payments, tax obligations and other obligations to the agency and other licensees with whom sports lottery business is conducted. The agent shall pay the players and transfer the net proceeds to the State lottery fund in conformity with the requirements set forth in these regulations and 29 Del.C. Ch. 48.
- 6.29 Locate all sports lottery machines within the viewing range of closed circuit television cameras at all times, including both normal business hours and those periods when sports lottery operations are closed. The presence of these cameras is to ensure the integrity of the lottery, the sports lottery operations, and the safety of the patrons. Surveillance tapes will be maintained by the agent according to a schedule established by the Director and the VLEU. The installation of any new closed circuit television or repositioning of any CCTV cameras or new surveillance system must be reviewed and approved by the Director and the VLEU before being placed in operation.
- 6.30 Comply with such other requirements as shall be specified by the Director. The agent shall submit to the Director a description of its system of internal procedures and administrative and accounting controls which shall conform to the rules and regulations of the agency and be otherwise satisfactory to the Director in his or her sole discretion.
- 6.31 Provide, on a continuing basis, to the Director the names and addresses of all employees who are involved in the daily operation of the sports lottery. These employees will include individuals or their supervisors involved with (1) the security of the sports lottery, (2) the handling or transporting of proceeds from sports lottery, or (3) positions that provide direct access to sports lottery machines. It

---

## PROPOSED REGULATIONS

---

shall be the continuing duty of the sports lottery agent licensee to provide for the bonding of any of the above-mentioned employees to ensure against financial loss resulting from wrongful acts on their parts. Likewise, the agent shall post a bond or irrevocable letter of credit in a manner and in an amount established by the agency. Any such bonds shall be issued by a surety company authorized to transact business in Delaware and said company shall be approved by the State Insurance Commissioner as to solvency and responsibility.

- 6.32 Notify the Director on a continuing basis of any change in officers, partners, directors, key employees, sports lottery operations employees, and owners.
- 6.32.1 The sports lottery agent shall provide this information to the Lottery and the VLEU on a weekly basis. Such persons will also be subject to a background investigation. The failure of any of the above-mentioned persons to satisfy a background investigation may constitute "cause" for the suspension or revocation of the sports lottery agent's license, provided that an agent is first given a reasonable opportunity to remove or replace such person if the agent was unaware of such "cause" prior to the background investigation. The agent must supply the VLEU with the completed License Application Form ("LAF") and fingerprint cards for each employee before the employee begins employment. Agent employees required to be licensed by the Delaware Lottery laws, 29 **Del.C.** Ch. 48, and these Regulations must have been successfully completed and been issued a valid license under section 14.0 of these Regulations prior to commencement of employment.
- 6.32.2 The agent must notify the VLEU of the transfer of any employee within the agent's organization on a weekly basis. The Lottery and the VLEU will determine if a new or updated LAF must be submitted for the transferred employee.
- 6.32.3 The agent must notify the Lottery and the VLEU of the termination of any employee and the reason for the termination on a weekly basis.
- 6.32.4 The agent must submit to the Lottery and the VLEU on a weekly basis the names of all new employees who will work on the sports lottery premises.
- 6.32.5 The agent must obtain advance approval before any temporary employee, consultant, or contractor will be permitted access to secure locations. Any such temporary employee, consultant, or contractor must submit a Request for Temporary Work Approval Form to the VLEU at least forty-eight (48) hours prior to the date of assignment. Any such temporary employee, consultant, or contractor must also submit a license application pursuant to Regulation 14.0 and must be employed by a licensed technology provider. Any vendor who proposes to contract with a sports lottery agent or the Lottery for the provision of goods or services, related to the sports lottery operations, must obtain a technology provider license pursuant to Sports Lottery Regulation 4.0. The Lottery will consider secure areas to include, but not be limited to, access to the inside of a sports lottery machine, surveillance rooms, cash vaults, and cash booths.
- 6.33 As soon as it is known to the agent, file with the Director a copy of any current or proposed agreement and disclose to the Director any other relationship between the agent, its parents, subsidiaries, related entities, partners, owners, directors, officers or key employees for the sale, lease, maintenance, repair or other assignment of the agent's premises, or any other relationship of any vendor, manufacturer or other person who stands to benefit financially from the possession or use of sports lottery machines by such agent. Failure to file such information shall constitute grounds for the revocation or suspension of a license.
- 6.34 The agent shall file with the Director for approval every contract in excess of \$50,000 which pertains to the agent's sports lottery operations. The agent shall notify the Director of any contract with an entity that is subject to the license requirements for vendors or technology providers under 29 **Del.C.** §4805(a)(17) and Chapter 4 of these Regulations.
- 6.35 Comply with the provisions of the business plans as approved and amended.
- 6.36 Comply on a continuing basis with the requirements for obtaining or retaining a license under the provisions of these regulations and 29 **Del.C.** Ch. 48.

---

## 7.0 Sports lottery

- 7.1 The Director shall authorize a sports lottery on the agent's premises in conformity with approved business plans, as amended.
- 7.2 The sports lottery shall be based on bills, coins, or credits and the wagering limits shall be set by the Lottery in cooperation with the technology provider.
- 7.3 Each sports lottery machine shall display the amount wagered and the payout based on the amount wagered.
- 7.4 Each player shall be at least twenty-one (21) years of age. In the event an underage player attempts to claim any winning payout, the sports lottery agent should treat the wager as void and the underage player shall not be entitled to any winning payouts or a refund of amounts bet. In the event a person illegally on the premises or a self-barred person attempts to claim any winning payout, the sports lottery agent will also treat the wager as void and the person shall not be entitled to any winning payouts or a refund of amounts bet. This policy prohibiting persons underage, persons illegally entering the premises, and persons self-barred from winning prizes shall be prominently displayed on the premises of the sports lottery agent.
- 7.5 Agents shall redeem credit slips presented by a player in accordance with procedures proposed by the agent and approved by the Director prior to the opening of the premises for sports lottery wagering. Such procedures shall be modified at the direction of the Director in his or her sole discretion at any time. Players claiming winning payouts may be required to present sufficient identification as required by the agency.
- 7.6 Credit slips may be redeemed by a player at the designated place on the premises where the sports lottery is located during the one year redeeming period commencing on the date that the last wagered event occurred.
- 7.7 No credit slip or winning ticket shall be redeemed more than one (1) year from the date that the last wagered event occurred. Funds reserved for the payment of a credit slip or expired winning ticket shall be paid into the State Lottery Fund if unredeemed one year from the date that the last wagered event occurred. The one-year redemption policy in this regulation shall be prominently displayed on the premises of the sports lottery agent.
- 7.8 No payment for a credit slip may be made unless the credit slip meets the following requirements:
- 7.8.1 It is presented on a fully legible, valid, printed credit slip on paper approved by the agency, containing the information as required;
- 7.8.2 It is not mutilated, altered, unreadable, or tampered with in any manner, or previously paid;
- 7.8.3 It is not counterfeit in whole or in part; and
- 7.8.4 It is presented by a person authorized to play.
- 7.9 Method of Payment - The management of each licensed agent shall designate employees authorized to redeem credit slips during the hours of operation. Credits shall be immediately paid in cash or by check when a player presents a credit slip for payment meeting the requirements of this section.
- 7.10 Restrictions on Payment - Agents may only redeem credit slips from sports lottery machines located on its premises.
- 7.11 Redeemed Tickets Defaced - All credit slips redeemed by a licensed agent shall be marked or defaced in a manner that prevents any subsequent presentment and payment.
- 7.12 Liability for Malfunction - The agency and the State of Delaware are not responsible for any sports lottery machine malfunction or for any error by the agent that causes credit to be wrongfully awarded or denied to players.
- 7.13 Sports lottery machines shall not be operated or available for play on Christmas, or after 4:00 a.m. on Easter.

---

# PROPOSED REGULATIONS

---

## **8.0 Accounting and Distribution Procedures**

- 8.1 The technology provider will provide an accounting mechanism for the sports lottery system as a whole, which mechanism shall achieve compliance with the standards of integrity, security and control established by the agency.
- 8.2 Each agent and technology provider shall submit to the Director such financial and operating information as the Director shall require from time to time at such times and in such format as the Director shall specify. For purposes of submission of this and other information, each agent shall have a computer on the premises which is suitable for this purpose.
- 8.2.1 Each agent, unless specifically exempted by the Agency, shall file weekly, monthly, quarterly, and annual reports and statistical data in a format specified by the Director. The data may be used by the Agency to evaluate the financial position and operating performance of individual sports lottery agents and to compile information regarding the performance and trends of the sports lottery industry in the State of Delaware.
- 8.2.2 Each agent, unless specifically exempted by the Agency, shall at its own expense, cause its annual financial statements to be audited in accordance with generally accepted auditing standards by an independent certified public accountant licensed to practice in the State of Delaware.
- 8.2.3 The annual financial statement shall be prepared on a comparative basis for the current and prior fiscal year, and shall present the sports lottery agent's present financial position and results of operations in conformity with generally accepted accounting principles.
- 8.2.4 The Agency may periodically prescribe a set of standard reporting forms and instructions to be used by each sports lottery agent for filing the weekly, monthly, and quarterly reports.
- 8.2.5 Each sports lottery agent and technology provider, unless specifically exempted by the Agency, shall conduct its sports lottery operations to meet the minimum requirements set forth in the Agency's Minimum Internal Control Standards (MICS).
- 8.3 The agency or its designated agents shall have the right to audit the books and records including without limitation tax returns and IRS withholding and reporting records of any agent and each technology provider. To such end, the agents and technology providers shall fully cooperate with whomever undertakes the audit.
- 8.4 All proceeds, net of proceeds returned to players, from the operation of the sports lottery shall be electronically transferred daily or weekly at the discretion of the Lottery Director into a designated State Lottery account by the agent. To the extent, if any, that such daily or weekly remission cannot be achieved due to the unavailability of bank services, the remission shall be made on the first day that such services are available. Agents shall furnish to the agency all information and bank authorizations required to facilitate the timely transfer of monies to the State lottery fund. Agents shall provide the agency thirty (30) days advance notice of any proposed account changes in order to assure the uninterrupted electronic transfer of funds.
- 8.6 The agency is not responsible for resolving net proceeds discrepancies which are differences between actual money collected and the amount shown on the billing statement. Further, the agency is not responsible for the loss or theft of money prior to its deposit in the agency's account in the bank.
- 8.7 Agents shall comply with all prescribed Federal requirements for tax withholding, recording and reporting, including, without limitation, those requirements relating to the transfer of funds withheld from player winnings from the agents to the tax authorities.
- 8.8 Any discrepancy regarding settlement of accounts will be resolved by the Director as he or she deems appropriate.

## **9.0 Maintenance of Sports Lottery Machines**

- 9.1 No sports lottery machine may be placed in operation in Delaware until the technology provider has provided its personnel with sufficient and appropriate training in the service and repair of each of its approved sports lottery machine models.

- 9.2 Each technology provider shall service and maintain its sports lottery machines, current software, and associated equipment in the manner and condition required by the agency and in accordance with its contractual arrangements.
- 9.3 Technology providers shall provide the agency or its designee upon request with a master key for access into each locked compartment of each sports lottery machine placed in operation.

## **10.0 Standards for Advertising, Marketing and Promotional Materials**

- 10.1 All advertising, marketing and promotional materials, related to the sports lottery or referencing the sports lottery, to be utilized by an agent or person acting on behalf of the agent shall be submitted to the agency for review and approval prior to use, except that such materials need not be submitted for review and approval if identical materials have been previously submitted and approved. Materials are not identical for purposes of this provision if they vary in any respect, such as in the size of a billboard.
- 10.2 The agency shall review any materials submitted pursuant to this section and approve their use unless in the judgment of the agency such materials, if used, would result in an appearance which reflects adversely on the agency, would reasonably be expected to offend a substantial number of people, contain inaccurate or misleading information, or otherwise be inappropriate.

## **11.0 Enforcement**

- 11.1 The license of a sports lottery agent or technology provider may be suspended or revoked for the following reasons:
- 11.1.1 Failure of the agent to file with the Director the information required pursuant to 29 **Del.C.** §4820(a); and
- 11.1.2 For cause, such as, but not limited to falsifying any application for license or report to the agency; failure to report information required by the regulations; the material violation of the regulations; or any conduct by the licensee, or any of its owners, officers, directors, partners, key employees, or sports lottery operations employees, which undermines the public confidence in the sports lottery system or serves the interest of organized gambling or crime and criminals in any manner. A license may be revoked for an unintentional violation of any Federal, State or local law, rule or regulation provided that the violation is not cured within a reasonable time as determined by the Director, or a longer period where the sports lottery agent has made diligent efforts to cure. For purposes of this provision, the licensee is deemed to be familiar with all the provisions of these regulations and unintentional violations shall not include violations which the agent or technology provider asserts are unintentional because of lack of awareness of these regulations. Likewise, for purposes of this provision, diligent efforts to cure shall not constitute a defense to a suspension or revocation of the license arising out of situations where the violation would not have occurred had the licensee exercised diligent efforts to comply with the requirements when they were first applicable.
- 11.2 Prior to the revocation or suspension of any license, the agency shall notify the licensee of the intended revocation or suspension of the license, and the reasons therefor. No revocation or suspension shall be effective until a final order is issued pursuant to the following procedure, except when the public welfare clearly requires emergency action and the agency's order so states. The notice of the intended revocation or suspension shall comply with any applicable requirements of the Delaware Administrative Procedures Act and, at a minimum, afford the licensee with an opportunity for a hearing.
- 11.3 If the licensee desires a hearing, it shall provide the agency with a written statement within ten days of receipt of the notice which contains the following:
- 11.3.1 A clear and concise assignment of each error which the licensee alleges to have been committed in the tentative determination to suspend or revoke the license. Each assignment of error should be listed in a separately numbered paragraph.

---

## PROPOSED REGULATIONS

---

- 11.3.2 A clear and concise statement of the facts on which the licensee relies in support of each assignment of error.
- 11.3.3 A prayer setting forth the relief sought.
- 11.3.4 The signature of the licensee or an officer authorized to request the hearing.
- 11.3.5 A verification by the licensee or counsel for the licensee that the statements contained in the statement are true.
- 11.4 The Secretary of Finance with respect to petitions filed by agents, and the Director with respect to petitions filed by technology providers, shall appoint a hearing officer within a reasonable time of receipt of the statement referenced in the preceding paragraph. Notice of the hearing shall be given at least 20 days before the date it is to be held.
- 11.5 The licensee may appear individually, by legal counsel, or by any other duly authorized representative. In the absence of the licensee, written evidence of a representative's authority shall be presented to the hearing officer in a form satisfactory to the hearing officer.
- 11.6 The licensee or his duly authorized representative, may, with the approval of a hearing officer, waive the hearing and agree to submit the case for decision on the record, with or without a written brief. Such a waiver or agreement shall be in writing and placed in the record.
- 11.7 The licensee shall be given an opportunity for argument within the time limits fixed by the hearing officer following submission of the evidence. The hearing officer, upon request of the licensee, may accept briefs in lieu of argument. The briefs shall be filed within ten days after the hearing date or within such other time as fixed by the hearing officer.
- 11.8 The hearing officer may admit any relevant evidence, except that it shall observe the rules of privilege recognized by law. The hearing officer may exclude any evidence which is irrelevant, unduly repetitious, or lacking a substantial probative effect.
- 11.9 A record shall be made of all hearings and all witnesses shall be sworn and subject to cross examination.
- 11.10 Following the conclusion of the hearing and within ten days of the receipt of the transcript thereof, or within such other time as fixed by the hearing officer but in no event later than forty-five days following the hearing, the hearing officer shall in proceedings involving agents prepare a final decision, including his or her findings of fact and conclusions of law, and the order signed by the hearing officer shall be final. A copy of said order shall be served upon the licensee and any attorney of record in person or by registered or certified mail. In proceedings involving technology providers, the hearing officer shall submit his or her recommendations to the Director for decision.
- 11.11 Notwithstanding the procedures set forth herein regarding technology providers, there shall be no right of hearing or judicial review allowed with respect to decisions involving technology providers unless otherwise provided by law.
- 11.12 Whoever violates the Lottery chapter 29 **Del.C.** Ch. 48, or any Lottery rule or regulation duly promulgated thereunder, or any condition of a license issued pursuant to 29 **Del.C.** §4805, or any Administrative Order issued pursuant to Lottery statutes or Regulations shall be punishable as follows:
- 11.12.1 If the violation has been completed, by a civil penalty imposed by Superior Court, which by 29 **Del.C.** §4823 shall have jurisdiction of civil penalty actions brought pursuant to this section, of not less than \$1000 nor more than \$10,000 for each completed violation. Each day of a continued violation shall be considered as a separate violation if, on each such day, the violator has knowledge of the facts constituting the violation and knows or should know that such facts constitute or may constitute a violation. Lack of knowledge regarding such facts or violation shall not be a defense to a continued violation with respect to the first day of its occurrence.
- 11.12.2 If the violation is continuing or there is a substantial likelihood that it will reoccur, the Director may also seek a temporary restraining order, preliminary injunction, or permanent injunction in the Court of Chancery, which shall have jurisdiction of an action for such relief.
- 11.12.3 In his discretion, the Director may impose an administrative penalty of not more than \$1,000 for each administrative penalty for each violation. Each day of continued violation shall be considered as a separate violation if the violator has knowledge of the facts constituting the violation and



knows or should know that such facts constitute or may constitute a violation. Lack of knowledge regarding such facts or violations shall not be a defense to a continued violation with respect to the first day of its occurrence. Prior to the assessment of an administrative penalty, written notice of the Director's proposal to impose such penalty shall be given to the violator, and the violator shall have 30 days from receipt of such notice to request a public hearing. Any public hearing, if requested, shall be held prior to the imposition of the penalty and shall be governed by §10125 of Title 29. If no hearing is timely requested, the proposed penalty shall become final and shall be paid no later than 60 days from receipt of the notice of proposed penalty. Assessment of an administrative penalty shall take into account the circumstances, nature, and gravity of the violation, as well as any prior history of violations, the degree of culpability, the economic benefit to the violator resulting from the violation, any economic loss to the State, and such other matters as justice may require. In the event of nonpayment of an administrative penalty within 30 days after all legal appeal rights have been waived or otherwise exhausted, a civil action may be brought by the Director in Superior Court for the collection of the penalty, and for interest, from the date payment was due, attorneys' fees and other legal costs and expenses. The validity or amount of such administrative penalty shall not be subject to review in an action to collect the penalty. Any penalty imposed after a public hearing is held pursuant to this subsection shall be appealable to Superior Court, and such appeal shall be governed by §10142 of Title 29.

11.12.4 In his discretion, the Director may endeavor to obtain compliance with requirements of the Lottery chapter, 29 Del.C. Ch. 48, by written Administrative Order. Such order shall be provided to the responsible party, shall specify the complaint, and propose a time for correction of the violation. It may also provide an opportunity for a public hearing at which the Director shall hear and consider any submission relevant to the violation, corrective action, or the deadline for correcting the violation.

11.13 The Director shall enforce Ch. 48, 29 Delaware Code and any rules, regulations, or Administrative Orders issued thereunder.

11.14 Any interest, costs or expenses collected by the Lottery under actions instituted by 29 Del.C. §4823 or these regulations shall be appropriated to the State Lottery Office to carry out the purposes of 29 Del.C. Ch. 48.

## **12.0 Employee License Procedure**

12.1 The license applicant, licensee, or sports lottery agent or technology provider employee will contact the State Bureau of Identification (SBI) or the Delaware State Police Video Lottery Enforcement Unit to make arrangements for fingerprint processing.

12.1.1 The applicant will complete the license application form for a Sports Lottery license as required by the Lottery and VLEU.

12.1.2 The completed license application form will be reviewed and witnessed by the applicant's human resources personnel or designee.

### **12.2 Rehires/Transfers**

12.2.1 A licensee that voluntarily ends his or her employment or is terminated while in good standing with a former employer may apply for a new Sports Lottery license in the following manner:

12.2.1.1 Applicants will be required to follow the procedures in Sports Lottery Regulations 12.1-12.8 if twelve (12) months or more have passed since the end of the applicant's former employment.

12.2.1.2 Applicants will be required to follow the procedures in Sports Lottery Regulations 12.1-12.8, except for the fingerprinting requirements, if less than twelve (12) months but more than thirty (30) days have passed since the end of the applicant's prior employment.

12.2.1.3 Applicants will be required to complete a License Application Update Form including a release of information waiver form and submit to a new background investigation if less than thirty (30) days have passed since the end of the applicant's prior employment.

---

## PROPOSED REGULATIONS

---

- 12.2.2 Transfers. Licensees transferring employment from one licensed entity to another licensed entity under these Sports Lottery Regulations will be required to complete a License Application Update Form and submit to a new background investigation including a release of information waiver form.
- 12.3 A fee is required to be paid for state and federal processing of fingerprint cards and criminal history cards and criminal history records. The fee is set by the State Bureau of Identification and payment is to be made directly to that agency.
- 12.4 An applicant must complete fingerprint cards/process with the necessary personal information, and sign an Authorization for Release of Information form to release criminal history to the VLEU. At the time of the processing, the applicant must show proof of identification to complete the criminal history request and pay the appropriate fee.
- 12.4.1 The applicant must contact the VLEU and submit the completed license application form and fingerprint verification/receipt for processing. No investigation will proceed without a copy of the SBI fingerprinting receipt.
- 12.4.2 Investigators assigned to the VLEU will conduct an initial investigation to determine the suitability of the applicant. If the applicant is approved, a temporary license may, at the discretion of the Director, be issued at that time pending SBI's final report. This temporary license is valid for thirty (30) days from the issue date.
- 12.4.3 A waiver will be signed by the applicant indicating that should an unfavorable criminal history background check be received by the VLEU, including any detrimental information or failure to fully disclose criminal history, the applicant's temporary license may be revoked. If revoked, the applicant will then be required to respond to VLEU within five (5) working days for another interview.
- 12.4.4 Should the Director determine the applicant is to be fully licensed, the permanent license badge will be delivered to the appropriate agent for delivery to the employee. The employee upon receipt of the permanent license badge shall turn in his temporary badge to the agent representative who in turn shall destroy the badge.
- 12.5 Certified copies of the criminal history record will be forwarded to the Video Lottery Enforcement Unit.
- 12.6 The State Bureau of Identification shall act as the intermediary for the receipt of the federal criminal history record checks performed by the Federal Bureau of Investigation. The State Bureau of Identification shall forward the results of these federal record checks to the attention of the VLEU in a confidential manner.
- 12.7 A person subject to 29 **Del.C.** §4807A shall have the opportunity to respond to the Lottery Director regarding any information obtained prior to a determination of suitability for licensure. Such a response shall be made within ten (10) working days of the person's receipt of the criminal background information from the Lottery. The determination of suitability for licensure shall be made by the Lottery pursuant to the factors listed in 29 **Del.C.** §4807A regarding an applicant's criminal history. The Lottery will also consider the factors contained in 29 **Del.C.** Ch. 48 and these Sports Lottery Regulations in considering applications for licensure. The Lottery will consider the truthfulness of the applicant, licensee, or employee in disclosing their criminal history. Under 29 **Del.C.** §4805(a)(16)(17), the Lottery Director shall consider the background of key employees or sports lottery operations employees in order to determine if the person's reputation, habits, and associations pose a threat to the public interest of the State or to the reputation of or effective regulation and control of the sports lottery. It is specifically provided, pursuant to 29 **Del.C.** §4805(a)(16)(17), that any person convicted of any felony, a crime involving gambling, or a crime of moral turpitude within ten (10) years prior to applying for a license or at any time thereafter shall be deemed unfit. The Director may determine whether the licensing standards of another state are comprehensive, thorough and provide similar adequate safeguards and, if so, may in the Director's discretion, license an applicant already licensed in such state without the necessity of a full application and background check. The Delaware State Police shall conduct the security, fitness, and background checks required by §4805(a)(16)(17) and the Sports Lottery Regulations. The Director may deny a license application if an applicant fails to provide the required information necessary for the Lottery and the VLEU to determine and evaluate the applicant's background as required by 29 **Del.C.** §4805(a)(16)(17).

- 12.8 The Lottery shall communicate the results of the determination of suitability in writing, to the license applicant or licensee within thirty (30) days of receipt of the criminal history information, unless extenuating circumstances require a longer period. If the Lottery determines that an applicant has satisfied the licensing requirements of Sports Lottery Regulation 12.7, the applicant will be issued a Sports Lottery License. If a determination is made to deny a person licensure, the person shall have an opportunity to appeal for reconsideration as set out below.
- 12.8.1 Appeal shall be initiated by a person notified that he/she is being denied a license pursuant to 29 Del.C. §4807A and Sports Lottery Regulation 11.3 by submitting a request for a hearing to the Director within ten (10) working days of the receipt of the written notice.
- 12.8.2 The appeal shall be reviewed by the Lottery Director and the person shall be given the right to be heard by the Director or the Director's designee within thirty (30) working days of the receipt of the letter of appeal, unless extenuating circumstances require a longer period. Any hearing will be pursuant to the procedures in the Sports Lottery Regulations 11.5-11.11, whichever is applicable.
- 12.8.3 A written decision shall be rendered by the Director or the Director's designee within thirty (30) working days of the hearing unless extenuating circumstances require a longer period. All decisions made by the Lottery under this appeal procedure are final.
- 12.8.4 A person determined to be unsuitable for licensure pursuant to these Regulations shall be prohibited from reapplying for licensure for a period of twelve (12) months.
- 12.8.5 Every license issued by the Lottery shall bear thereon the distinguishing number assigned to the licensee and shall contain the name and photograph of the licensee. The license shall also contain the name of the sponsoring employer, agent, or technology provider.
- 12.8.6 The Sports Lottery License is the property of the Lottery. The Sports Lottery license shall be returned to the Lottery or the VLEU if the Director issues a decision to suspend or revoke a person's license to participate in sports lottery operations. A license may be revoked or suspended for violations of 29 Del.C. Ch. 48 or these Sports Lottery Regulations.
- 12.9 The Lottery or the Video Lottery Enforcement Unit will communicate the results of suitability in writing regarding an employee to either the sports lottery agent or technology provider employing said individual. The Lottery will provide a copy of the criminal history record to the employee upon request.
- 12.10 All records pertaining to criminal background checks, pursuant to 29 Del.C. §4807A and copies of suitability determinations of applicants for licensure, shall be maintained in a confidential manner, including, but not limited to the following:
- 12.10.1 Access to criminal background check records, and letters of reference accompanying out-of-state criminal background checks, and determinations of suitability of applicants shall be limited to the Director and designated personnel;
- 12.10.2 All such records shall be kept in locked, fireproof cabinets;
- 12.10.3 No information from such records shall be released without the signed release of the applicant.
- 12.11 All licensees will prominently display their license while on duty or acting in their official capacity at the approved sports lottery facility.
- 12.12 License renewal. The Lottery license shall expire and be renewable on the last day of the month on the third anniversary of the issuance date. At a minimum of sixty (60) days prior to expiration, each licensee shall contact the VLEU and submit a new and updated license application form (and fingerprints) for a background investigation. The background investigation will follow the procedures set forth in Sports Lottery Regulations 12.7-12.8
- 12.13 Terminations/End of Employment. The Lottery license is the property of the Lottery and shall be returned to the Lottery or the VLEU when the licensee's employment is either terminated involuntarily by the employer or terminated at the request of the employee.
- 12.14 Any person licensed under these Sports Lottery Regulations or any employee who has submitted a license application shall notify the VLEU within seventy-two hours of any change in his/her criminal history information. This subsequent criminal history information shall be used by the Lottery in making a determination about the person's continued suitability as a licensee or employee of a sports lottery agent or other licensed entity.

12.15 Any employee who currently holds a valid video lottery license shall not be required to be re-licensed for the sports lottery.

### **13.0 Self-Excluded Players**

13.1 A “self-excluded person” means any person whose name is included, at his or her request, on the self-exclusion list maintained by the Lottery Director or Deputy Director.

13.2 “Self-exclusion list” means a list of names of persons who, pursuant to this subchapter, have voluntarily agreed to be excluded from all sports lottery agent premises and to be prohibited from collecting any winnings or recovering any losses at all licensed sports lottery agents.

#### **13.3 Request for Self-Exclusion**

13.3.1 Any person may have his or her name placed on the self-exclusion list by submitting a request for self-exclusion in the form and manner required by these Sports Lottery Regulations.

13.3.2 Any person requesting placement on the self-exclusion list shall submit in person, a completed request for self-exclusion as required in this Regulation. The request shall be delivered to the Delaware State Lottery Office, 1575 McKee Road, Dover, DE. Any person submitting a self-exclusion request shall be required to present valid identification credentials containing his or her signature and a photograph and general physical description. Any person requesting self-exclusion pursuant to these Regulations shall be required to have his or her photograph taken by the VLEU upon submission of the request.

13.3.3 A request for self-exclusion shall be in a form prescribed by the Lottery which form shall include:

13.3.3.1 The following identifying information concerning the person submitting the request for self-exclusion:

13.3.3.1.1 Name, including any aliases or nicknames;

13.3.3.1.2 Date of birth;

13.3.3.1.3 Address of current residence.

13.3.3.1.4 Telephone number of current residence;

13.3.3.1.5 Social security number;

13.3.3.1.6 A physical description of the person, including height, weight, gender, hair color, eye color, and any other physical characteristic that may assist in the identification of the person;

13.3.3.2 The length of minimum self-exclusion requested by the person:

13.3.3.2.1 One year;

13.3.3.2.2 Five years; or

13.3.3.2.3 Lifetime;

13.3.3.3 A waiver and release which shall release and forever discharge the State of Delaware, its employees, and agents, and all sports lottery agents, and their employees and agents from any liability to the person requesting self-exclusion and his or her heirs, administrators, executors, and assigns for any harm, monetary or otherwise, which may arise out of or by reason of any act or omission relating to the request for self-exclusion or request for removal from the self-exclusion list, including:

13.3.3.3.1 Its processing or enforcement;

13.3.3.3.2 The failure of a sports lottery agent to prevent sports lottery play by a self-excluded person, or the failure by the agent to restore the ability of self-excluded person to play sports lottery.

13.3.3.3.3 Permitting a self-excluded person to engage in sports lottery play at a sports lottery agent’s premises while on the list of self-excluded persons; and

13.3.3.3.4 Disclosure of the information contained in the self-exclusion request or list, except for a willfully unlawful disclosure of such information.

13.3.3.4 The signature of the person submitting the request for self-exclusion indicating acknowledgement of the following statement:

"I am voluntarily requesting exclusion from all gaming activities at all licensed Delaware sports lottery agents. I certify that the information provided above is true and accurate, and that I have read and understand and agree to the waiver and release included with this request for self-exclusion. I am aware that my signature below authorizes the Lottery and the VLEU to direct all licensed sports lottery agents to prohibit my access to all sports lottery facilities in accordance with this request and unless I have requested to be excluded for life, until such time as the Lottery removes my name from the self-exclusion list in response to my written request to terminate my voluntary self-exclusion. I am aware and agree that during any period of self-exclusion, I shall not collect any winnings or recover any losses resulting from any sports lottery play at all licensed sports lottery agents premises, and that any money or thing of value obtained by me from, or owed to me by a sports lottery agent as a result of sports lottery play by me while on the self-exclusion list, shall be subject to forfeiture."

13.3.3.5 The type of identification credentials examined containing the signature of the person requesting self-exclusion, and whether said credentials included a photograph and general physical description of the person; and

13.3.3.6 The signature of an authorized Lottery employee accepting the request, indicating that the signature of the person on the request for self-exclusion appears to agree with that contained on his or her identification credentials and that any photograph and physical description of the person appears to agree with his or her actual appearance.

#### 13.4 Self-exclusion list.

13.4.1 The Lottery shall maintain the official self-exclusion list and shall notify each sports lottery agent of any addition to or deletion from the list by mailing a notice to each sports lottery agent. The Lottery may provide copies of the official self-exclusion list to the VLEU.

13.4.2 Each sports lottery agent shall maintain its own copy of the self-exclusion list and shall establish procedures to ensure that its copy of the self-exclusion list is updated and that all appropriate employees and agents of the sports lottery agent are notified of any addition to or deletion from the list within forty eight (48) hours after the notice is mailed by the Lottery or VLEU. The notice mailed by the Lottery/VLEU shall include the name and date of birth of any person whose name shall be removed from self-exclusion list and the following information concerning any person whose name shall be added to the self-exclusion list:

13.4.2.1 Name, including any aliases or nicknames;

13.4.2.2 Date of birth;

13.4.2.3 Address of current residence;

13.4.2.4 Telephone number of current residence;

13.4.2.5 Social security number;

13.4.2.6 A physical description of the person, including height, weight, gender, hair color, eye color, and any other physical characteristic that may assist in the identification of the person; and

13.4.2.7 A copy of the photograph taken by the Lottery or VLEU.

13.4.3 Information furnished to or obtained by the Lottery or VLEU shall be deemed confidential and not be disclosed except in accordance with these Regulations.

13.4.4 No sports lottery agent or employee or agent thereof shall disclose the name of, or any information about, any person who has requested self-exclusion to anyone other than employees of the agent whose duties and functions require access to such information. Notwithstanding the foregoing, a sports lottery agent may disclose the name of and information about a self-excluded person to appropriate employees of another sports lottery agent for the purpose of alerting other sports lottery agents that a self-excluded person has tried to play sports lottery or obtain access to the premises of a sports lottery agent.

#### 13.5 Duties of Sports Lottery Agent

---

## PROPOSED REGULATIONS

---

13.5.1 Each sports lottery agent shall establish procedures that are designed, to the greatest extent practicable, to:

13.5.1.1 Permit appropriate employees of the sports lottery agent to identify a self-excluded person when present in a sports lottery facility and, upon such identification, notify:

13.5.1.1.1 Those employees of the sports lottery designated to monitor the presence of the self-excluded persons;

13.5.1.1.2 Designated representatives of the Lottery and the VLEU.

13.5.1.2 Refuse access to the premises for any self-excluded person;

13.5.1.3 Deny check cashing privileges, player club membership, complimentary goods and services, and other similar privileges and benefits to any self-excluded person;

13.5.1.4 Ensure that self-excluded persons do not receive, from the sports lottery agent any solicitations, targeted mailings, telemarketing promotions, player club materials or other promotional materials relating to sports lottery activities at the sports lottery agent's premises;

13.5.2 Each sports lottery agent shall submit to the Lottery and the VLEU, a copy of its procedures established to comply with these self-exclusion regulations within thirty (30) days of the effective date of these Regulations. The agent's procedures will be incorporated into the agent's internal control submission with the agency. Any amendments to said procedures shall be submitted to the Lottery and the VLEU at least three business days prior to the implementation. If the Lottery and the VLEU do not object to said procedures or amendments thereto, such procedures or amendments shall be deemed to be approved.

### 13.6 Removal from Self-Exclusion List

13.6.1 Except for those persons choosing a lifetime self-exclusion, any self-excluded person may, upon the expiration of the period of self-exclusion requested pursuant to Sports Lottery Regulation 13.3, request removal of his or her name from the self-exclusion list by submitting, in person, a completed request for removal as required in subsection (2) below. The request shall be delivered to the Lottery Office, 1575 McKee Road, Dover, DE. Any person submitting a request for removal from the list shall be required to present valid identification credentials containing his or her signature and a photograph and general physical description.

13.6.2 A request for removal from the self-exclusion list shall be in a form prescribed by the Lottery, which form shall include:

13.6.2.1 The identifying information specified in Sports Lottery Regulation 13.3;

13.6.2.2 The signature of the person requesting removal from the self-exclusion list indicating acknowledgement of the following statement: "I certify that the information that I have provided above is true and accurate. I am aware that my signature below constitutes a revocation of my previous request for self-exclusion, and I authorize the Lottery to permit all sports lottery agents to reinstate my sports lottery privileges at licensed sports lottery premises;"

13.6.2.3 The type of identification credentials examined containing the signature of the person requesting removal from the self-exclusion list, and whether said credentials included a photograph and general physical description of the person; and,

13.6.2.4 The signature of a Lottery or VLEU employee authorized to accept such request, indicating that the signature of the person on the request for removal from the self-exclusion list appears to agree with that contained on his or her identification credentials and that any photograph and physical description appears to agree with his or her actual appearance.

13.6.3 The Lottery shall delete the name of the person requesting the removal from the self-exclusion list and notify each sports lottery agent of such removal by mailing a notice to each sports lottery agent.

---

## 14.0 Severability

The sections and subsections of these rules and regulations shall be deemed severable. Should any section or subsection be deemed by judicial opinion or legislative enactment to be invalid, unconstitutional or in any manner contrary to the laws of the State of Delaware, then such opinion or enactment shall invalidate only that particular section or subsection of these rules and regulations and all other sections shall remain in full force and effect.

---

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

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

### PUBLIC NOTICE

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 administrative policies in the Division of Social Services Manual (DSSM).

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, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by July 31, 2009.

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

### SUMMARY OF PROPOSED CHANGE

The proposed change described below amends administrative policies in the Division of Social Services Manual (DSSM) regarding Civil Rights Program requirements.

#### Statutory Authority

- 45 CFR Part 80, Title VI of the Civil Rights Act of 1964

#### Summary of Proposed Change

DSSM 1006.6: The rule is being removed as part of a project to clarify and simplify the Division of Social Services (DSS) policy manual. This rule is not needed. DSS publicizes its Civil Rights Program on its application and other printed material. Posters about Civil Rights are located in every DSS office location statewide.

#### DSS PROPOSED REGULATION #09-22

#### REVISION:

#### 1006.6 ~~Civil Rights Program and Public Relations~~

~~The general public, including citizens interested in public welfare and civil rights, will be informed as widely as possible of the Civil Rights Program of the Division.~~

~~Informational releases will be given to the daily newspapers in Wilmington, and to the weekly or daily newspapers in the rest of the State. Similar information will be given to all radio stations in Delaware and, if acceptable, to the television station in Wilmington.~~

~~Organizations interested in learning more about the Civil Rights Program of the Division will be furnished speakers from the administrative staff of the Department on request to the Director.~~

~~Posters will be displayed in all offices of the Division notifying all persons that assistance and services are provided by the Division to all eligible persons without regard to race, color, national origin, sex, religious creed, age, disability, political beliefs, or retaliation. RESERVED~~

**11 DE Reg. 325 (09/01/07)**

## DEPARTMENT OF JUSTICE DIVISION OF SECURITIES

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

### PUBLIC NOTICE

In compliance with the State's Administrative Procedures Act (APA—Title 29, Chapter 101 of the **Delaware Code**) and section 7325(b) of Title 6 of the **Delaware Code**, the Division of Securities of the Delaware Department of Justice hereby publishes notice of a proposed revision to the Rules and Regulations Pursuant to the Delaware Securities Act. The Division proposes hereby to add a new Rule 800.

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

James B. Ropp, Securities Commissioner  
Department of Justice  
State Office Building, 5th Floor 820 N. French Street  
Wilmington, DE 19801

The comment period on the proposed regulation will be held open for a period of thirty days from the date of the publication of this notice in the *Delaware Register of Regulations*.

### Summary of the Proposed Revision

The Securities Division proposes to add a new Rule 800 to govern the use of senior specific designations and certifications by persons (1) offering, selling or purchasing securities; or (2) providing advice as to the value of or the advisability of investing in, purchasing, or selling securities. The proposed revision is consistent with the model regulation as drafted by the North American Securities Administrators Association ("NASAA"). The provision is being proposed to protect the public from misleading senior specific designations and certifications.

### Rules and Regulations Pursuant to the Delaware Securities Act (Break in Continuity of Sections)

#### Part H. Provisions Applicable to Broker-Dealers, Agents, Investment Advisers and Investment Adviser Representatives

#### §800. Senior Specific Designations.

- (a) The use of a senior specific certification or designation by any person in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person shall be a dishonest and unethical practice within the meaning of section 7316(a)(7) of the Act. The prohibited use of such certifications or professional designation includes, but is not limited to, the following:
- (1) use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;
  - (2) use of a nonexistent or self-conferred certification or professional designation;



- (3) use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and
- (4) use of a certification or professional designation that was obtained from a designating or certifying organization that:
  - (A) is primarily engaged in the business of instruction in sales and/or marketing;
  - (B) does not have reasonable standards or procedures for assuring the competency of its designees or certificants;
  - (C) does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or
  - (D) does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.
- (b) there is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of paragraph (a)(4) above when the organization has been accredited by:
  - (1) The American National Standards Institute; or
  - (2) The National Commission for Certifying Agencies; or
  - (3) an organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.
- (c) In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:
  - (1) use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and
  - (2) the manner in which those words are combined.
- (d) (1) For purposes of this rule, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:
  - (A) indicates seniority or standing within the organization; or
  - (B) specifies an individual's area of specialization within the organization.
- (2) For purposes of this subsection, financial services regulatory agency includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.
- (e) Nothing in this rule shall limit the Commissioner's authority to enforce existing provisions of law.

---

## DEPARTMENT OF STATE

### DIVISION OF PROFESSIONAL REGULATION

400 Delaware Gaming Control Board

Statutory Authority: 28 Delaware Code, Sections 1122 (a) (28 **Del.C.** §§1122 (a))  
24 **DE Admin. Code** 401, 404

#### PUBLIC NOTICE

#### A. Type of Regulatory Action Required

Amendment to Existing Regulations

## B. Synopsis of Subject Matter of the Regulation

The Delaware Gaming Board will seek public comments on the issue of whether its current Rule 1.0, Rule 4.6.1 and Rule 3.3 in 24 **DE Admin. Code** 401 should be amended. The rules relate to various definitions and to the manner of winning funds in the cookie jar or container and to the retention of copies of licenses by the Gaming office. The Board proposes to change the definition of "Cookie Jar Bingo" as it appears therein, and delete Rule 4.6.1 as its provisions will now be contained in the definition. The Board also intends to amend the section relating to retention of copies to indicate that the Board's office will not retain two copies of every license.

The Board will also propose to add a new section to 24 **DE Admin. Code** 404 to provide for limits in Texas Hold 'Em tournaments as called for by recent legislation amending chapter 18 of Title 28.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before July 31, 2009 to: Delaware Gaming Control Board, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904. A copy of these regulations is available from the above address or may be viewed at the Division of Professional Regulation business office at the same address.

## C. Summary of Proposal

Currently, the definition of "cookie jar bingo" involves a chance for a player to pay a fee into a jar or container to obtain a chance to win the funds contained therein. The Board wishes to clarify and expand that definition.

## D. Summary of Proposal

Rule 3.3 currently calls for the Gaming Board office to retain two copies of all license issued. This is no longer necessary and the rule should be changed as follows.

## E. Summary of Proposal

Recent amendments to the statute governing Texas Hold "Em tournaments, 28 **Del.C.**, chapter 18, give the Board the authority to set monetary limits for tournament prizes. The Board proposes to create a new rule to set the prize limits.

## 401 Regulations Governing Bingo

### 1.0 Definitions

**"Bingo"** A game of chance played for prizes with cards bearing numbers or other designations, five or more in one line, the holder covering numbers as objects similarly numbered are drawn from a receptacle and the game being won by the person who first covers a previously designated arrangement of numbers on such a-card.

**"Bingo Statute"** The statutory law concerning bingo, as contained in 28 **Del.C.**, §1101 et. seq.

**"Board"** The Delaware Gaming Control Board.

**"Color Coded"** A different color for each of the five letters of the word "BINGO."

**"Cookie Jar Bingo"** A game of chance in which players pay a set fee into a cookie jar or other container and receive a number which entitles the player to ~~entry into a later drawing for the total funds deposited by all other players in the cookie jar or container~~ a chance to win the total funds in the cookie jar or container. At the start of the event, a bingo number shall be drawn which shall serve as the "cookie jar number." That number shall be posted for all players to see. During the games played on that occasion, if a player achieves bingo when the cookie jar number is drawn, the player shall win the funds in the cookie jar or container. If no one achieves bingo when the cookie jar number is drawn, the funds in the jar shall not be awarded. An organization may not otherwise offer a cookie jar game and may not designate the last game of the night or any other particular game as a cookie jar game at which the funds will be awarded without a person achieving bingo when the cookie jar number is drawn.

Any amounts in any cookie jar bingo games shall not be included in any prize money limitations contained in these rules. An organization may not have more than two cookie jar bingo pots at any one

time. The first jar must be awarded before a third jar can be started. If two cookie jar pots each contain the maximum amount of money allowed by law, the first jar must be awarded at the same event at which the second jar reaches the allowable maximum. If the first jar has not been awarded by the final game of the night, a special final bingo game of "full card" or "black out" bingo using a separate, single card, shall be played and the jar will be won by the first person who covers all spaces on their entire card.

**"Districts"** Those districts mentioned in Article II, 917A of the Delaware Constitution.

**"Equipment"** The receptacle and color coded numbered objects to be drawn from it, the master board upon which such objects are placed as drawn, the cards or sheets bearing numbers or other designations to be covered and the objects used to cover them, the boards or signs, however operated, used to announce or display the numbers or designations as they are drawn, public address systems, tables, chairs, and other articles essential to the operation, conduct and playing of bingo.

**"Game"** The game of bingo.

**"Instant Bingo"** A game of chance played with sealed or covered cards which must be opened in some fashion by the holder such that the cards reveal instantly whether the holder has won a prize. This type of game includes but is not limited to games commonly known as "rip-offs" or "Nevada pull-tabs."

**"Member in Charge"** A bona fide, active member of the "Qualified Organization" in charge of, and primarily responsible for the conduct of the game on each occasion.

**"Occasion"** A single gathering or session at which a series of successive bingo games (regular, special, or otherwise) is played, not to exceed forty (40) in number.

**"Proceeds"** The gross income received from all activities engaged in or on occasion when bingo is played, less only, such actual expenses incurred as are authorized in the Bingo Statute and these Rules and Regulations.

**"Qualified Organization"** A volunteer fire company, veterans organization, religious or charitable organization, or fraternal society that is operated in a manner so as to come within the provisions of Section 170 of the U.S. Secretary of the Treasury.

**"Week"** means a seven day period beginning on Sunday and ending on Saturday.

**2 DE Reg. 1224 (01/01/99)**

**12 DE Reg. 357 (09/01/08)**

## **2.0 Applications For Bingo License**

- 2.1 Original applications shall be filed upon:
  - 2.1.1 the first application of an organization for a license;
  - 2.1.2 after the first application and upon a subsequent change in the organization's charter or bylaws; or
  - 2.1.3 in the event of a subsequent application after a prior refusal, suspension, or revocation by the Board.
- 2.2 Supplemental applications for bingo licenses shall be filed in all instances except those covered by the original application. All promotional give-away events, as defined under 28 **Del.C.** §1139(h)(2), must be listed on an applicant's application for licensure, giving the dates of the promotional give-away events. If the event is not listed on the application, no promotional give-away event can be conducted.
- 2.3 All original and supplemental applications shall be filed with the Secretary of the Board at least six (6) weeks prior to the date of the occasion.
  - 2.3.1 An application must be submitted in advance of the proposed date of the function as to allow the Board to consider the application at two consecutive board meetings before deciding to approve or deny the application.
- 2.4 No applications (original or supplemental) shall be accepted unless the applicant, at the time of the filing, attaches a check or money order for the full amount of the fees payable by law for each occasion requested. In the event an application is refused by the Board, the application fees shall be refunded in

full to the applicant. There shall be a license fee of \$15 for each occasion on which bingo is conducted under a license.

- 2.5 No application shall be received by the Commission unless it clearly shows that the applicant is located in and seeks to conduct the game in a district which has approved the licensing of bingo by referendum, and on premises owned or regularly leased by the applicant. If the applicant desires to conduct games on premises specially leased for the occasion, a separate written request therefor (together with supporting reasons) shall accompany the application. The Board reserves the right to accept or reject any application for the conduct of games on specially leased premises. Organization conducting a Function shall prepare and have available on the premises a list of all persons taking part in the management or operation of the Function. Such list shall be maintained as part of the licensee's records of the Function and shall be made available to any member or agent of the Board or law enforcement officer.

**2 DE Reg. 1224 (1/1/99)**

**8 DE Reg. 531 (10/01/04)**

**12 DE Reg. 357 (09/01/08)**

### **3.0 Bingo Licenses**

- 3.1 Upon receiving an application, the Board shall make an investigation of the merits of the application. The Board shall consider the impact of the approval of any license application on existing licensees within the applicant's geographical location prior to granting any new license. The Board may deny an application if it concludes that approval of the application would be detrimental to existing licensees.
- 3.2 The Board may issue a license only after it determines that:
- 3.2.1 The applicant is duly qualified to conduct games under the State Constitution, statutes, and regulations.
- 3.2.2 The members of the applicant who intend to conduct the bingo games are bona fide active members of the applicant and are persons of good moral character and have never been convicted of a crime involving moral turpitude.
- 3.2.3 The bingo games are to be conducted in accordance with the provisions of the State Constitution, statutes, and regulations.
- 3.2.4 The proceeds are to be disposed of as provided in the State Constitution and statutes.
- 3.2.5 No salary, compensation or reward whatever will be paid or given to any member under whom the game is conducted. If the findings and determinations of the Board are to the effect that the application is approved, the Secretary shall execute a license for the applicant.
- 3.3 The license shall be issued ~~in triplicate~~. The original thereof shall be transmitted to the applicant. ~~Two copies shall be retained by the Commission for its files.~~
- 3.4 If the findings and determinations of the Commission are to the effect that the application is denied, the Secretary shall so notify the applicant by certified mail of the reasons for denial, and shall refund any application fees submitted.
- 3.5 In the event of a request for an amendment of a license, the request shall be promptly submitted to the Commission in writing, and shall contain the name of the licensee, license number, and a concise statement of the reasons for requested amendment. The Commission may grant or deny the request, in its discretion, and may require supporting proof from the licensee before making any determination. The Commission may require the payment of an additional license fee before granting the request. The licensee shall be notified of the Commission's action by appropriate communication, so that the licensee will not be unduly inconvenienced.
- 3.6 No license shall be effective for a period of more than one year from the date it was issued.
- 3.7 No license shall be effective after the organization to which it was granted has become ineligible to conduct bingo under any provision of Article II, §17A of the Delaware Constitution.
- 3.8 No license shall be effective after the voters in any District designated in Article II, §17A of the Constitution have decided against bingo in a referendum held pursuant to that section and subchapter II of the Bingo Statute.

- 3.9 No bingo licensee licensed prior to July 14, 1998, shall conduct more than ten (10) bingo events in any calendar month and no bingo licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998) shall conduct more than one (1) bingo event per week. A bingo licensee who was licensed prior to July 14, 1998 whose license lapses for six (6) months or more due to non-renewal or suspension or any other reason shall, upon licensing thereafter, be considered a licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998).
- 3.10 The license application shall contain a full and fair description of the prize and the appraised value of the prize. In lieu of submitting an appraisal, the applicant or licensee may submit the full retail value of the prize. In cases where the applicant or licensee purchases the prize from a third party, the Board may require that the applicant or licensee arrange for an independent appraisal of the value of the prize from a person licensed to render such appraisals, or if there is no person licensed to render such appraisals, from a person qualified to render such appraisals.
- 2 DE Reg. 1224 (1/1/99)**  
**3 DE Reg. 1692 (6/1/00)**  
**4 DE Reg. 334 (8/1/00)**

#### **4.0 Conduct of Bingo**

- 4.1 The officers of a licensee shall designate a bona fide, active member to be in charge of and primarily responsible for the conduct of the game of chance on each occasion. The member in charge shall supervise all activities on the occasions for which he is in charge and shall be responsible for the making of the required report thereof. The member in charge shall be familiar with the provisions of the Bingo Statute, and these rules and regulations.
- 4.2 The room where any game is being held, operated, or conducted, or where it is intended that any game shall be held, operated, or conducted, or where it is intended that any equipment be used, shall at all times be open to inspection by the appropriate law enforcement officers and agents of the District in which the premises are situated, and to the Board and its agents and employees. Bingo games shall not be commenced prior to 1:30 p.m. and the operation of a function shall be limited to six hours. Instant bingo is permitted during any event sponsored by the organization that is licensed to conduct it, regardless of the day or time.
- 4.3 No person under the age of eighteen (18) shall be permitted in any bingo game, the prize for which is money. No person under the age of 18 shall be permitted to participate in any instant bingo game. No person under the age of sixteen (16) shall participate in any game of bingo nor shall such person conduct or assist in the conduct of the playing of any game of bingo, except that persons no younger than the age of fourteen (14) may act as waiters and waitresses in the handling of food or drinks at an occasion on which a licensee conducts bingo.
- 4.4 No organization licensed prior to enactment of 71 **Del. Law** 444 (July 14, 1998), may hold, operate, or conduct bingo more often than ten (10) days in any calendar month. No bingo licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998) shall conduct more than one bingo event per week. A bingo licensee licensed prior to the enactment of 71 **Del. Laws** 444 (July 14, 1998), whose license lapses for six (6) months or more due to nonrenewal or suspension or any other reason shall, upon licensing thereafter, be considered a licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998).
- 4.5 The Board and its duly authorized agents and employees may examine the books and records of any licensee, so far as those books and records relate to any transaction connected with the holding, operating, and conducting of the game of bingo, and may examine any manager, officer, director, agent, member, employee, or assistant of the licensee under oath in relation to the conduct of the game of bingo.
- 4.6 No prize greater in an amount or value than \$250 shall be offered or given any single game and the aggregate amount or value of all prizes offered or given in all games played on a single occasion shall not exceed \$1,000. All winners shall be determined and all prizes shall be awarded in any game played on any occasion within the same calendar day as that upon which the game is played. The value of any promotional giveaways, which shall be no more than \$500 per annum to be distributed at

an organizational anniversary date and no more than three (3) holiday dates per year, shall not be counted towards the dollar amounts described in this section. However, a licensee may offer inducements, including but not limited to cookie-jar bingo games that do not exceed \$500 per game per night, free refreshments, and free transportation of players to and from bingo events, to attract bingo players to the bingo event, provided that the fair market value of inducements is limited to 15% of the total amount of all other prizes offered or given during the bingo event.

- 4.6.1 ~~Any amounts in any cookie-jar bingo games shall not be included in the limitations of this section or in any prize money limitations. A bingo licensee may not have more than two \$500 cookie-jar bingo pots at any one time which are to be awarded to players. The licensee must award the first cookie-jar bingo pot before it may start a third cookie-jar bingo pot. In the event that a licensee has a first cookie-jar bingo pot of \$500 and then accrues a second cookie-jar bingo pot of \$500, the licensee must award the first cookie-jar pot to a player on the occasion at which the second cookie-jar pot reaches the \$500 limit. On such occasion, if the first cookie-jar pot is not awarded by the end of the occasion, the licensee shall conduct a final special bingo game of "full card" or "black out" bingo using a separate, single card, and the first \$500 cookie-jar shall be won by the player or players who first covers all spaces on their entire card.~~
- 4.7 Two or more organizations may not hold games of bingo at the same place on the same day. Unless a bingo licensee has been licensed prior to the enactment of 71 **Del. Laws** 444 (July 14, 1998), only one licensed organization may hold bingo games in a licensed organization's building during any given week.
- 4.8 No alcoholic beverages shall be permitted in the room from the time the bingo hall opens until the conclusion of the last bingo game of the occasion.
- 4.9 All games shall be conducted with equipment that is owned absolutely by the licensee or that is leased for fees not in excess of those allowable under the Schedule of Rental for leasing of equipment on file with the Board. Equipment shall include playing cards. If the licensee uses cards that are for more than one session of playing bingo, these cards should be identified as the property of the licensee.
- 4.10 All winners shall be determined and all prizes shall be awarded in any game played on any occasion within the same calendar day as that upon which the game is played.
- 4.11 When more than one player is found to be the winner on the call of the same number in the same game, the designated prize shall be divided equally as possible; and when division is not possible, substitute prizes, whose aggregate value shall not exceed that of the designated prize, shall be awarded; but such substitute prizes shall be of equal value to each other.
- 4.12 The equipment used in the playing of bingo and the method of play shall be such that each card shall have an equal opportunity to be a winner. The objects drawn shall be essentially equal as to size, shape, weight, and balance, and as to all other characteristics that may control their selection, and all shall be present in the receptacle before each game is begun. All numbers shall be announced so as to be visible or audible to all players present.
- 4.13 The particular arrangement of numbers required to be covered in order to win the game shall be clearly described and announced to the players immediately before each game is begun.
- 4.14 No arrangement of numbers shall be required to be covered in order to win the game other than the following:
- 4.14.1 one unspecified horizontal row;
  - 4.14.2 one unspecified vertical row;
  - 4.14.3 one unspecified full diagonal row;
  - 4.14.4 one unspecified row (horizontal, vertical, or diagonal);
  - 4.14.5 Two or more of the foregoing, forming a specified arrangement;
  - 4.14.6 The entire card;
  - 4.14.7 Four corners;
  - 4.14.8 Eight spaces surrounding the free space.

- 
- 4.15 Within the limits contained in 28 **Del.C.** §1132(b), alternate prizes may be offered depending upon the number of calls within which bingo is reached, provided the application for the bingo license and the license so specify.
  - 4.16 Any player shall be entitled to call for a verification of all numbers drawn at the time a winner is determined, and for a verification of the objects remaining in the receptacle and not yet drawn. The verification shall be made in the immediate presence of the member designated to be in charge on the occasion, but if such member is also the announcer, then in the immediate presence of an officer of the licensee.
  - 4.17 No licensee shall conduct more than forty (40) games on a single occasion.
  - 4.18 In the playing of bingo, no person who is not physically present in the room where the game is actually conducted shall be allowed to participate as a player in the game.
  - 4.19 Within the limits contained in 28 **Del.C.** §1132(6), the prizes offered may be varied depending upon the number of people who attend the occasion, provided the application for bingo license and license so specify. If a licensee avails itself of the provisions of this rule, it must announce at the beginning of each game the number of people present and the prizes to be awarded.
  - 4.20 The entire proceeds of the games of bingo must be used solely for the promotion or achievement of the purposes of the licensee.
  - 4.21 Any local rules adopted by the licensee that affect the conduct of the players or the awarding of prizes shall be prominently posted in at least four locations within the area where the bingo games are conducted.
  - 4.22 The licensee shall be permitted to reserve seats within the area where the bingo games are conducted to provide for the special needs of handicapped persons, and the licensee shall ensure that the remaining seats are made available to the players on an equal basis.
  - 4.23 A licensee may charge an admission fee to a game event in any room or area in which a game is to be conducted. The admission fee shall entitle the game player (a) to a card enabling the player to participate without additional charge in all regular games to be played under the license at the event, or (b) to free refreshments. The licensee may charge an additional fee to a game player for a single opportunity to participate in a special game to be played under license at the event.
  - 4.24 No person shall conduct or assist in conducting any game except an active member of the organization to which the license is issued.
  - 4.25 No item of expense shall be incurred or paid in connection with the conduct of the game except shall be incurred or paid in connection with the conduct of the game except such as are bona fide items of a reasonable amount for merchandise furnished or services rendered which are reasonably necessary for the conduct of the game.

**2 DE Reg. 1224 (1/1/99)**

**2 DE Reg. 1761 (4/1/99)**

**12 DE Reg. 357 (09/01/08)**

## **5.0 Reports After the Function**

- 5.1 When no game is held on a date a licensee is authorized to hold such game, a report to that effect shall be filed with the Board.
- 5.2 Within 15 days of the last day of the function, the member-in-charge shall submit a report to the Board that includes all information required by 28 **Del.C.** §1140(a).
- 5.3 If a licensee fails to timely file a report or if a report is not properly verified, or not fully, accurately, and truthfully completed, no further license shall be issued to the licensee and any existing license shall be suspended until such time as the deficiency has been corrected.

**11 DE Reg. 516 (10/01/07)**

**12 DE Reg. 357 (09/01/08)**

**6.0 Suspension and Revocation of Licenses**

- 6.1 Proceedings to suspend or to revoke a license shall be brought by notifying the licensee of the ground thereof and the date set forth for a hearing thereon. The Commission may stop the operation of a game pending hearing, in which case the hearing must be held within five (5) days after such action.
- 6.2 When suspension or revocation proceedings are begun before the Commission, it shall hear the matter and make written findings in support of its decision. The licensee shall be informed of the decision and of the effective date of the suspension or revocation.
- 6.3 When a license is suspended or revoked, the licensee shall surrender up the license to the Board on or before that effective date set forth in the notice of decision. In no case shall any license be valid beyond the effective date of suspension or revocation, whether surrendered or not.
- 6.4 Upon finding of the violation of these rules and regulations or the Bingo Statute, such as would warrant the suspension or revocation of a license, the Board may in addition to any other penalties which may be imposed, declare the violator ineligible to conduct a game of bingo and to apply for a license under said law for a period not exceeding thirty (30) months thereafter. Such declaration of the ineligibility may be extended to include, in addition to the violator, any of its subsidiary organizations, its parent organization and any other organization having a common parent organization or otherwise affiliated with the violator, when in the opinion of the Board, the circumstances of the violation warrant such action.

**7.0 Severability**

If any provision of these Regulations or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of these Regulations and the applicability of such provisions to other persons or circumstances shall not be affected thereby.

**2 DE Reg. 1224 (1/1/99)**

**404 Regulations Governing No Limit Texas Hold'em Poker**

**1.0 Reports After the Function**

- 1.1 Within 30 days of the last day of the function, the member-in-charge shall submit a report to the Board that includes all information required by 28 **Del.C.** §1140(a).
- 1.2 When no function is held on a date a licensee is authorized to hold such a function, a report to that effect shall be filed with the Board.
- 1.3 If a licensee fails to timely file a report or if a report is not properly verified, no further license shall be issued to the licensee and any existing license shall be suspended until such time as the deficiency has been corrected.

**2.0 Limitation of Texas Hold'em Tournaments**

The Board interprets the phrase "with each tournament by the sponsoring organization to be held at least 75 days apart" in 28 **Del.C.** §1827 to mean that no sponsoring organization may conduct a subsequent tournament less than 75 days from the date of their immediately prior tournament.

**12 DE Reg. 357 (9/01/08)**

**3.0 Re-buys**

The statutory provisions of 28 **Del.C.** §1825 and 28 **Del.C.** §1826(2) do not harmonize. Consequently, the Board has determined that re-buys are optional.

**11 DE Reg. 516 (10/01/07)**



## 4.0 Application

An application must be submitted sufficiently in advance of the proposed date of the function as to allow the Board to consider the application at two consecutive board meetings before deciding whether to approve or deny the application.

**12 DE Reg. 357 (9/01/08)**

## 5.0 Prize Amount

No prize greater in amount or value than \$5,000 shall be offered or given in any single tournament and the aggregate amount or value of all prizes offered or given in any single tournament shall not exceed \$13,000.

---

### DIVISION OF PROFESSIONAL REGULATION

#### 2500 Board of Pharmacy

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

#### PUBLIC NOTICE

The Delaware Board of Pharmacy ("the Board"), in accordance with 24 **Del.C.** § 2509, is proposing to amend regulations 1.0 Pharmacist Licensure Requirements, 3.0 Pharmacy Requirements, 5.0 Dispensing, 11.0 Pharmaceutical Services in Nursing Homes and 15.0 Automated Pharmacy Systems. In addition, the Board is proposing to add new regulations 18.0 Storage and Dispensing of Medical Gases, 20.0 Technicians: Qualifications, Training and Duties and 21.0 Specialty Institutional Pharmacy Licenses.

A public hearing is scheduled for Wednesday, August 19, 2009, at 10:00 a.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, DE 19904.

Members of the public may offer verbal comments on the proposal at the hearing. Written comments may be submitted to the Board prior to the hearing care of Nancy Fields, Administrative Specialist II, at the above address.

Written comments may be submitted until the public hearing begins. Anyone wishing to obtain a copy of the proposal or to make comments at the public hearing should contact Nancy Fields at the above address or call (302) 677-7318.

The Board will consider promulgating the proposed changes immediately following the public hearing.

#### 2500 Board of Pharmacy

## 1.0 Pharmacist and Pharmacy Licensure Requirements

### 1.1 Definitions

Words and terms defined in Delaware Code Title 1, Section 302 and Title 24, Section 2502 of the Delaware Code are applicable to these regulations. The following additional words and terms, when used within these regulations, shall have the following meaning unless the context clearly indicates otherwise or an alternate definition has been given:

"Automated Data Processing System (ADPS)" means a system utilizing computer software and hardware for the purposes of recordkeeping.

"Cell" means any container that holds the medication for automatic dispensing.

"Central Prescription Processing" means the processing by a pharmacy of a request from another pharmacy to fill or refill a prescription drug order or to perform processing functions such as dispensing, DUR, claims adjudication, refill authorizations, and therapeutic interventions.

---

# PROPOSED REGULATIONS

---

**"Common Database"** means a file or database created by an ADPS that enables authorized users to have common access to this file regardless of physical location.

**"Compounding"** means the art of the extemporaneous preparation and manipulation of drugs as a result of a practitioner's prescription order or initiative based on the practitioner-patient-pharmacist relationship in the course of professional practice, including the preparation of drugs in anticipation of drug orders based on routine, regularly observed prescribing patterns. Reconstitution of oral solutions is not considered compounding.

**"Computer"** means a programmable electronic device, capable of multifunctions including but not limited to storage, retrieval and processing of information.

**"Controlled Substance"** means those drug items regulated by Federal (CSA of 1970) and/or State Controlled (dangerous) Substances Act.

**"CRT"** means a Cathode Ray Tube used to impose visual information on a screen.

**"Delivery"** means the transfer of a dispensed prescription to the ultimate user (patient) or his/her agent.

**"Dispensing"** means to furnish or deliver a drug to an ultimate user by or pursuant to the lawful order of a practitioner; including the preparation, packaging, labeling or compounding necessary to prepare the drug for that delivery.

**"Downtime"** means that period of time when a computer is not operable.

**"Facsimile (FAX) Prescription"** means a facsimile prescription is an order which is transmitted by an electronic device over telephone lines which sends an exact copy image to the receiver (pharmacy).

**"New Medication"** means a medication not previously dispensed by the pharmacy for the ultimate user.

**"Patient Counseling"** means the offer to discuss the patient's prescription made by the pharmacist or the pharmacist's designee in a face-to-face communication with the patient or his agent, unless in the professional judgment of the pharmacist it is deemed impracticable and in such instances, it would be permissible for the offer to counsel to be made through alternative means.

**"Pertinent Patient Medication Information"** means information which increases the patient's ability to minimize the risks and enhance the benefits of drug use. The type of information the pharmacist should consider is contained in the latest edition of USP DI "Advice for the Patient."

**"Prescriber"** means a practitioner authorized to prescribe and acting within the scope of this authorization.

**"Prescription"** or **"Prescription drug order"** means the lawful written or verbal order of a practitioner for a drug, but does not include an order for medication which is dispensed for immediate administration to the ultimate user, (e.g., an order to dispense a drug to a bed patient for immediate administration in a hospital is not a prescription.)

**"Printout"** means a hard copy produced by computer that is readable without the aid of any special device.

**"Reduced to Writing"** means the preparation of a paper document containing all the information required for a written prescription including the State requirement for drug product selection;

For a refill authorization, it may be handled as a new prescription as in above, or by placing on the original prescription or the patient profile (whichever document is consistently used to document refills) the date, a statement "O.K. for 'x' number of additional refills", or words of similar import, and the pharmacist's initials. In no instance, shall the refill authorizations exceed the legal limits established by State and Federal laws.

If the prescriber authorizing additional refills differs from the prescriber whose name appears on the signature line of the original prescription, then that authorization is considered a new prescription and must be handled as described above.

**"Regulatory Agency"** means any Federal or State agency charged with enforcement of pharmacy or drug laws and regulations.

"Stop Date" means a date established by an appropriate authority which indicates when medication will no longer be administered or dispensed in the absence of a specific time period directed by the prescriber.

## 1.42 Examination Requirements

- 1.42.1 In order to be eligible for examination for licensure, an applicant must provide proof of completion of all requirements for graduation from an approved school or college. An approved school or college of pharmacy is an institution which has established standards in its undergraduate degree program which are at least equivalent to the minimum standards for accreditation established by the American Council on Pharmaceutical Education. Provided, however, that graduates of schools or colleges of pharmacy located outside of the United States, which have not established standards in their respective undergraduate degree programs which are at least equivalent to the minimum standards for accreditation established by the American Council on Pharmaceutical Education, shall be deemed eligible for examination for licensure by providing evidence satisfactory to the Board of Pharmacy of graduation from such school or college and by successfully passing an equivalency examination recognized by the Board of Pharmacy. Certification by the National Association of Boards of Pharmacy (NABP) Foreign Pharmacy Graduate Examination Committee (FPGEC) meets the equivalency examination requirement.
- 1.42.2 Candidates must obtain a passing grade as determined by the National Association of Boards of Pharmacy (NABP) on the North American Pharmacist Licensure Examination (NAPLEX) and the Multistate Pharmacy Jurisprudence Examination for Delaware (MPJE) to be eligible for a license to practice. A candidate must take an examination within 365 days of the determination of eligibility by the Board. The Secretary will supply the grades obtained to the candidate upon receipt of a written request from that person.
- 1.42.3 The Board will re-confirm the eligibility of an applicant who fails the NAPLEX. The applicant shall be entitled to take a re-examination at least ninety-one (91) days following the date of the failure. If an applicant has failed the examination three times, he/she shall be eligible to re-take the NAPLEX, provided that he/she produces evidence of working full-time as an intern for a period of six months or has attended an accredited college of pharmacy as a registered student for a minimum of one semester consisting of 12 credits during the interim. A certification of satisfactory completion of such work shall be furnished by the Dean of the College or the preceptor as the case may be.
- 1.42.4 The Board will re-confirm the eligibility of an applicant who fails the MPJE. The applicant shall be entitled to re-take the MJPE at least thirty-one (31) days following the date of the failure. If an applicant has failed the examination three times, he or she shall be eligible to re-take the examination, provided that he or she produces evidence of working full-time as an intern for a period of three months or has completed a one semester college course on jurisprudence.

## 1.23 Practical Experience Requirements

- 1.23.1 An applicant for registration as an intern must submit an application for registration of Internship after entering the first professional year of college of pharmacy which includes an "Affidavit of Class Standing" and "Affidavit of Preceptor." This application must be obtained from the Board of Pharmacy. If the applicant is a graduate of a foreign pharmacy school, he/she must produce evidence that he/she has passed an equivalency examination by the Board.
- 1.23.2 Persons who register as interns in the State of Delaware shall, in accordance with the requirements of 24 **Del.C.** §2515, complete not less than 1500 hours of Board approved practical experience under the supervision of a licensed pharmacist. A minimum of 1000 hours shall be obtained in the community or hospital settings. The remaining 500 hours may be obtained in other recognized fields of practice, e.g.: Industrial Pharmacist, Drug Information Pharmacist, Military Pharmacist, Mail Order Pharmacist, HMO Pharmacist, Consultant Pharmacist (Nursing Home, Infusion, Medicaid DUR, Etc.), Home Health Care Pharmacist (may include Durable Medical Equipment, etc.), Nuclear Pharmacist, Compliance Pharmacist, Government Pharmacist, Clinical Pharmacist, Contracted Pharmacy Services.

- 1.23.3 Practical experience must be acquired under the supervision of a licensed pharmacist known as a Preceptor. The Preceptor must be a pharmacist licensed in this State or any other State and must have a minimum of two years of pharmacy practice. A pharmacist affiliated with a College of Pharmacy shall serve as the preceptor for a student participating in the coordinated practical experience program. The Preceptor must certify that the intern has successfully completed all the requirements outlined in the Responsibilities of the Intern professional assessment form.
- 1.23.4 Practical experience acquired in another State is acceptable if the State Board in which the applicant acquired the hours submits a letter of certification, or if the applicant's preceptor completes the Delaware State Board of Pharmacy's Affidavit of Intern Experience form. Applicants who have not completed all the practical experience requirements, but who have graduated from an accredited college or have been certified by the NABP Foreign Pharmacy Graduate Examination Committee are eligible to take the examination. However, applicants will not be fully licensed until all the requirements of the Statutes and Regulations are completed.
- 1.23.5 The hours accrued during the College of Pharmacy Practical Experience Program may be applied to the 1500 hours total. These hours shall be recorded on the College Practical Experience Affidavit supplied by the Board. Registration as an intern in this State is not required for school experience.
- 1.23.6 An intern must notify the Board of Pharmacy in writing within ten (10) days of a change or preceptor. A change of preceptor affidavit must be completed and filed with the Board.
- 1.34 Continuing Education Requirements
- 1.34.1 A pharmacist must acquire 3.0 C.E.U.'s (30 hours) per biennial licensure period. No carry over of credit from one registration period to another period is permitted.
- 1.34.2 Hardship - Hardship exemptions may be granted by the Board of Pharmacy upon receipt of evidence that the individual was unable to complete the requirements due to circumstances beyond his control.
- 1.34.3 Criteria for Hardship Exemption as Recommended by the Board of Pharmacy:
- 1.34.3.1 Applicant must notify the Board in writing concerning the nature of the hardship and the time needed for an extension. In case of medical disability, a letter from the physician with supporting documentation to corroborate the condition and the length of time of extension needed.
- 1.34.3.2 The Board of Pharmacy will review requests.
- 1.34.3.3 The Board will notify the registrant of its decision.
- 1.34.4 Persons who are newly licensed after the registration period begins, must complete continuing education units proportional to the total number of continuing education units required for the biennial licensure renewal. (1.25 hours/per month).
- 1.45 Continuing Professional Educational Programs
- 1.45.1 Topics of Study
- Topics of study shall be subject matter designed to maintain and enhance the contemporary practice of pharmacy.
- 1.45.2 Approved Provider
- 1.45.2.1 Any provider approved by ACPE.
- 1.45.2.2 In-state organization which meets criteria approved by the Board.
- 1.45.3 Application for Delaware State Provider
- 1.45.3.1 Any in-state organization may apply to the Board on forms provided by the Board for initial qualification as an approved provider. The Board shall accept or reject any such application by written notice to such organization within 60 days after receipt of its application. If an organization is approved, the Board will issue a certificate or other notification of qualification to it, which approval shall be effective for a period of two years and shall be renewable upon the fulfillment of all requirements for renewal as set forth by the Board.

- 1.45.3.2 The Board may revoke or suspend an approval of a provider or refuse to renew such approval if the provider fails to maintain the standards and specifications required. The Board shall serve written notice on the provider by mail or personal delivery at its address as shown on its most current application specifying the reason for suspension, revocation, or failure to renew. The provider so affected shall, upon written request to the Board within ten days after service of the notice, be granted a prompt hearing before the Board at which time it will be permitted to introduce matters in person, or by its counsel, to defend itself against such revocation, suspension, or failure to renew, in accordance with the provisions set forth in the State's Administrative Procedures Act.
- 1.45.4 Criteria for Approval of Delaware State Providers. Only applicants who are located within the State of Delaware are eligible. Such Continuing Education providers shall provide evidence of ability to meet the following criteria or approval as a Continuing Pharmaceutical Education Provider. Other persons must apply through ACPE for approval or be acceptable to other Boards of Pharmacy that certify continuing education for relicensure.
- 1.45.4.1 Administration and Organization
- 1.45.4.1.1 The person who is in charge of making sure that the program meets the quality standards must have a background in the administration of education programs.
- 1.45.4.1.2 There shall be an identifiable person or persons charged with the responsibility of administering the continuing pharmaceutical education program.
- 1.45.4.1.3 Such personnel shall be qualified for such responsibilities by virtue of experience and background.
- 1.45.4.1.4 If an approved provider presents programs in co-sponsorship with other non-approved provider(s), the approved provider has the total responsibility for assurance of quality of that program. If more than one approved provider co-sponsors a program, they have the joint responsibility for assuring quality.
- 1.45.4.1.5 Administrative Requirements include:
- 1.45.4.1.5.1 The development of promotional materials which state:
- 1.45.4.1.5.1.1 Educational objectives.
- 1.45.4.1.5.1.2 The target audience.
- 1.45.4.1.5.1.3 The time schedule of the activities.
- 1.45.4.1.5.1.4 Cost to the participant/covered items.
- 1.45.4.1.5.1.5 Amount of C.E. credit which will be awarded.
- 1.45.4.1.5.1.6 Credentials of the faculty, presenters, and speakers.
- 1.45.4.1.5.1.7 Self-evaluation instruments.
- 1.45.4.1.5.2 Compliance with a quantitative measure for C.E. credit.
- 1.45.4.1.5.2.1 The number of C.E.U.'s to be awarded for successful completion shall be determined by the provider and reported in the promotional materials.
- 1.45.4.1.5.2.2 In cases where the participants' physical presence is required, C.E. credit will only be awarded for that portion of the program which concerns itself with the lecture(s), evaluation and question and answer segments.
- 1.45.4.1.5.2.3 The measure of credit shall be a fifty-minute contact hour. In the case of other programs such as home study courses, the amount of credit awarded shall be determined by assessing the amount of time the activity would require for completion by the participant if delivered in a more formal and structured format.
- 1.45.4.1.5.2.4 The provider must provide the Board upon request with appropriate records of successful participation in previous continuing education activities.
- 1.45.4.1.5.2.5 The provider must present to the participant a form or certificate as documentation of the completion of the program. The form must be at least 4" x 6" and no larger than 8 1/2" x 11". That certificate must show the name, address, and license number of the participant, the name of the provider, the title and date of

- the program, the number of credits earned, and an authorized signature from the provider.
- 1.45.4.2 Program Faculty. The selection of program faculty must be based upon proved competency in the subject matter and an ability to communicate in order to achieve a learning experience.
- 1.45.4.3 Program Content Development
- 1.45.4.3.1 Such programs shall involve effective advance planning. A statement of educational goals and/or behaviors must be included in promotional materials. Such objectives and goals must be measurable and accessible to evaluation. In determining program content, providers shall involve appropriate members of the intended audience in order to satisfy the educational needs of the participants. All programs of approved providers should pertain to the general areas of professional pharmacy practices which should include, but not be limited to:
- 1.45.4.3.1.1 The social, economic, behavioral, and legal aspects of health care,
- 1.45.4.3.1.2 the properties and actions of drugs and drug dosage forms,
- 1.45.4.3.1.3 the etiology, characteristics, therapeutics and prevention of the disease state,
- 1.45.4.3.1.4 pharmaceutical monitoring and management of patients.
- 1.45.4.3.2 All ancillary teaching tools shall be suitable and appropriate to the topic.
- 1.45.4.3.3 All materials shall be updated periodically to include up-to-date-practice setting.
- 1.45.4.3.4 It is the responsibility of the provider to be sure that the programs are continuously upgraded to meet educational objectives of the Practice of Pharmacy. The needs of the pharmacist participant must be considered in choosing the method of delivery. Innovation in presentations is encouraged within the limits of budget resources and facilities. Whatever method of delivery is used, it must include the participation of the pharmacist as much as possible within the program, i.e. questions and answers, workshops, etc.
- 1.45.4.4 Facilities. The facilities shall be adequate for the size of the audience, properly equipped (all appropriate audio/-visual media materials), well lighted and ventilated to induce a proper learning experience.
- 1.45.4.5 Evaluation. Effective evaluation of programs is essential and is the responsibility of both the provider and participant.
- 1.45.4.5.1 Participant - Some evaluation mechanisms must be developed by the provider to allow the participant to assess his/her own achievement per the program.
- 1.45.4.5.2 Provider evaluation - a provider shall also develop an instrument for the use of the participant in evaluating the effectiveness of the program including the level of fulfillment of stated objectives.
- 1.45.5 Criteria for Awarding Continuing Education Credits. Individual programs must meet the criteria for provider approval in order to be considered. In those cases where the provider is not an ACPE provider, nor a Board of Pharmacy approved provider, a registrant may complete an application provided by the Board for approval of individual programs.
- 1.45.5.1 In order to receive full credit for non-ACPE approved programs of one-to-two hour lengths, evidence of a post test must be presented. An automatic 25% deduction if no post test presented.
- 1.45.5.2 In order to receive full credit for non ACPE approved programs of three or more hours in length, evidence of a pre and post test must be presented. Automatic 25% deduction if no pre and post test presented.
- 1.45.5.3 Credit will be assigned only for the core content of the program which explicitly relates to the contemporary practice of Pharmacy.
- 1.45.5.4 A maximum of 2 credit hours will be awarded for First Aid, attendance at a Board of Pharmacy meeting and CPR/BCLS courses one time only per registration period.

## 1.45.5.5 Credit for Instructors of Continuing Education

- 1.45.5.5.1 Any pharmacist whose primary responsibility is not the education of health professionals, who leads, instructs or lectures to groups of nurses, physicians, pharmacists or others on pharmacy related topics in organized continuing education or inservice programs, shall be granted continuing education credit for such time expended during actual presentation, upon adequate documentation to the Delaware Board of Pharmacy.
- 1.45.5.5.2 Any pharmacist whose primary responsibility is the education of health professionals shall be granted continuing education credit only for time expended in leading, instructing, or lecturing to groups of physicians, pharmacists, nurses or others on pharmacy related topics outside his/her formal course responsibilities (that is, lectures or instructions must be prepared specifically for each program) in a learning institution.
- 1.45.5.5.3 Credit for presentations of in-service training programs or other lectures shall be granted only for topics meeting the criteria for continuing pharmacy education, and shall be granted only once for any given program or lecture. (Any topic completely revised would be eligible for consideration.)
- 1.45.5.5.4 A maximum of 6 hours (0.6 C.E.U.'s) in this category may be applied toward fulfilling the total biennial continuing education requirements.

## 1.45.5.6 Credit for On the Job Training:

- 1.45.5.6.1 The Board of Pharmacy does not as a general rule encourage the submission of "on the job training" for fulfilling the continuing education requirements. All programs meeting this definition shall be reviewed on an individual basis.
- 1.45.5.6.2 All programs that are submitted for credit must meet the criteria for continuing pharmacy education.
- 1.45.5.6.3 No credit shall be awarded for programs required by an employer for continued employment of the employee. (Examples OSHA training, Infection Control Education required by JCAHO.)
- 1.45.5.6.4 A maximum of 4 hours (0.4 C.E.U.'s) in this category may be applied toward fulfilling the total biennial continuing education requirements.

1.56 The Verification of Continuing Education - A pharmacist shall retain the supporting documentation, such as certification of completion for a minimum of six years. The Board will randomly audit the documentation of at least 10% of licensed pharmacists every biennial term. Supporting documentation may be requested for up to six years. Pharmacists who were not selected for audit do not send supporting documentation to the Board. Submitting a false documentation may constitute grounds for discipline under 24 **Del.C.** §2518 (a)(1).

## 1.67 Reciprocal Requirements

1.67.1 An applicant for licensure by reciprocity shall be of good moral character and shall:

- 1.67.1.1 submit proof that he or she was qualified for licensure in Delaware at the time of initial licensure by examination;
- 1.67.1.2 submit proof of licensure in good standing from each state where he or she is or has been licensed; and
- 1.67.1.3 obtain a passing score on the MPJE on the laws applicable in this State as provided in Regulation 1.1.

1.67.2 Reciprocity applicants who took examinations after June 1, 1979, must have passed the NAPLEX or an examination deemed equivalent by the Board and obtained scores required for applicants for licensure by examination.

1.67.3 Applicants who are licensed by reciprocity must begin accruing continuing education units at a rate of 1.25 hours/per month beginning with the month of licensure.

1.78 Late Renewal - If a pharmacist license or pharmacy permit expire for failure to renew before the deadline, the license or permit may be renewed at any time within the 60 days immediately following

expiration upon application and payment of the renewal fee and a late fee. In accordance with 24 Del.C. §§2507 and 2526, it is unlawful for a licensee or permittee to practice or operate while their license or permit is expired. All late pharmacist license renewals will be audited for compliance with the CE renewal requirement.

- 1.9 Pharmacy Licenses. Pharmacy licenses shall include retail, hospital, nuclear and specialty institutional pharmacy licenses.

*(Break in Continuity of Sections)*

**3.0 Pharmacy Requirements**

3.1 Pharmacist in Charge

3.1.1 Application for permit to operate a pharmacy in the State of Delaware must be on a form approved by the Board. The form shall include the statement to be signed by the pharmacist in charge, "I understand that I am responsible for conducting and managing the prescription department in compliance with applicable State and Federal laws."

3.1.2 The Board interprets the responsibilities of the Pharmacist-in-Charge to include, but not be limited to the following:

3.1.2.1 Maintain necessary pharmaceutical equipment and reference texts in accordance with the State Board of Pharmacy requirements.

3.1.2.2 Maintain records required by the Uniform Controlled Substances Act and other relevant State and Federal regulations.

3.1.2.3 Maintain proper security of particular pharmacy operation during and after normal business hours.

3.1.2.4 Establish procedures within operation that maintain standard of practice as it relates to the dispensing of pharmaceuticals and refusal to dispense pharmaceuticals based on the religious, moral, or ethical beliefs of the dispensing pharmacist. These procedures shall include proper supervision of supportive personnel and delegation of authority to another pharmacist when not on duty.

3.1.2.5 The pharmacist on duty is directly responsible for his own actions.

3.1.2.6 Notify the Board of Pharmacy in writing within 10 days of termination as pharmacist-in-charge.

3.2 Owner's Affidavit. The owner or owners and, in the case of a corporation, an authorized official of the corporation must present an affidavit properly notarized containing the statement, "I hereby swear or affirm that the foregoing statements are correct and do hereby agree to abide by the pharmacy laws of the State of Delaware and to all rules and regulations of the Delaware State Board of Pharmacy." The Board must be notified within 10 days of change of ownership.

3.3 Equipment and Reference Materials.

3.3.1 Equipment: Each pharmacy shall have all equipment appropriate to the individual pharmacy practice and to the care of the patients served.

3.3.1.1 All equipment must be clean and must be maintained in such a manner that allows the pharmacist to accurately weigh, measure and compound ingredients.

3.3.1.2 Equipment may include such things as prescription scale, metric graduates, mortars and pestles, filter paper, spatulas, funnel, stirring rod, ointment slab or papers, distilled water, and prescription/physician order files.

3.3.2 References: Each pharmacy shall maintain a library of the latest edition and supplements of current reference sources, either hard copy or electronically accessible, appropriate to the individual pharmacy practice and to the care of the patients served. References must:

3.3.2.1 Provide information on the therapeutic use, dosing, pharmacology, adverse effects, and interactions of drugs dispensed.

3.3.2.2 Provide information helpful in the counseling of patients on the use of drugs dispensed.



- 3.3.2.3 Enable the pharmacist to properly compound medicines within accepted standards of pharmacy practice.
  - 3.3.2.4 Include a listing of therapeutic equivalents for drugs dispensed.
  - 3.3.2.5 Include current Delaware and Federal laws and regulations governing pharmacy and controlled substances.
  - 3.3.2.6 Provide any other information necessary to the safe and effective practice of pharmacy for the specific practice setting.
- 3.4 Physical Facilities. Have sufficient size, space, sanitation, and environmental control for adequate distribution, dispensing and storage of drugs and devices. Such facilities shall include:
- 3.4.1 A dispensing area of adequate size and space for proper compounding, dispensing and storage of drugs and devices, to ensure the safety and well being of the public and pharmacy personnel.
  - 3.4.2 Sufficient environmental control, i.e. lighting, ventilation, heating and cooling to maintain the integrity of drugs and devices. The area in which drugs and devices are stored shall be accurately monitored using control devices to maintain room temperature between 59 degrees and 86 degrees Fahrenheit.
  - 3.4.3 The pharmacy department or prescription area must contain a sink with hot and cold running water. It must be large enough to accommodate the equipment ~~required by the Board so that the utensils can be properly washed and sanitized~~ appropriate to the individual pharmacy practice.
  - 3.4.4 Suitable refrigeration with appropriate monitoring device. Refrigerators and freezers (where required) will be maintained within the USP/NF range:
    - Refrigerator - 36 degrees to 46 degrees Fahrenheit
    - Freezer - Minus 13 degrees to plus 14 degrees Fahrenheit.

~~A sign with letters not less than 3/4" in height in the vicinity of the prescription department visible to the public which shows the name of the pharmacists employed at that pharmacy or the name of the pharmacist on duty.~~
- 3.5 Building Standards. An application to operate a new pharmacy must include (3) copies of floor plans drawn to scale of the proposed prescription department. The floor plans must include the following:
- 3.5.1 The requirements listed in ~~§2534(f)(1) through (4)~~ 2533(e).
  - 3.5.2 An area which assures patient privacy will be provided to facilitate counseling. This area must afford the patient privacy from auditory detection by any unauthorized person or persons. An area partitioned by a 5 foot divider on 2 sides with a minimum of 9 square feet would satisfy this requirement in most settings.
  - 3.5.3 The floor plans shall include the location of the sink, all doors, storage room, approved Schedule II controlled substance safe or cabinet, and the method of securing the prescription department from floor to ceiling, when the prescription department is closed and the remainder of the store is open.
  - 3.5.4 The floor plans must include the type of alarm system to be installed, and the name, address and phone number of alarm provider. The alarm system, as required by Regulation 5 of the Delaware Controlled Substance Act, must be reviewed and approved for compliance by the Office of ~~Narcotics and Dangerous Drugs~~ Controlled Substances.
  - 3.5.5 The above requirements shall also apply for any remodeling or change of location of the prescription department. The pharmacist-in-charge or applicant for permit must submit the floor plans requirements to the Delaware Board of Pharmacy and the Office of Narcotics and Dangerous Drugs prior to any construction and at least 15 days prior to the next scheduled Board of Pharmacy meeting for its review.
- 3.6 Security. When the pharmacist is not physically present and the operation is open for business, the pharmacy department shall be physically or electronically secured from floor to ceiling. The partitioned off section required by 24 ~~Del.C. §2534~~ 2533 must be five feet high measured from the floor. A conspicuous sign with letters not less than three inches in height, reading "PRESCRIPTION LABORATORY TEMPORARILY CLOSED, NO PROFESSIONAL SERVICES RENDERED," or words of similar import, must be posted in the front section of the operation or in front of the prescription area, room or partitioned off section where it can be seen by the public.

- 3.7 Board Interview. Applicants for permit to operate a pharmacy in the State of Delaware must appear before the Board for an interview. The owner or authorized official must be present in addition to the pharmacist-in-charge. Whenever there is a change of pharmacist-in-charge, if that person has never held that position in the State of Delaware, he/she must appear before the Board for an interview within ninety days after assuming the position.
- 3.8 Technician Support. At all times that the pharmacy department is open for business, there shall be at least one technician immediately available in the facility to assist in the pharmacy at the pharmacist's request. A schedule of technician support shall be readily available to the pharmacists at all times.

*(Break in Continuity of Sections)*

## 5.0 Dispensing

### 5.1 Definitions

~~“Agent” An employee of the pharmacy supervised by the pharmacist or a person acting on behalf of the ultimate user.~~

~~“Automated Data Processing System (ADP)” A system utilizing computer software and hardware for the purposes of recordkeeping.~~

~~“Cell” Any container which holds the medication for automatic dispensing.~~

~~“Central Prescription Processing” The processing by a Pharmacy of a request from another Pharmacy to fill or refill a prescription drug order or to perform processing functions such as dispensing, DUR, claims adjudication, refill authorizations and therapeutic interventions.~~

~~“Common Data Base” A file or data base created by ADP that enables authorized users to have common access to this file regardless of physical location.~~

~~“Compounding” The art of the extemporaneous preparation and manipulation of drugs as a result of a practitioner's prescription order or initiative based on the practitioner/patient/pharmacist relationship in the course of professional practice, including the preparation of drugs in anticipation of drug orders based on routine, regularly observed prescribing patterns. Pharmaceutical compounding must be in compliance with FFDCGA Section 503A and any regulations promulgated by FDA concerning compounding, pertaining to this section.~~

~~“Computer” Programmable electronic device, capable of multifunctions including but not limited to storage, retrieval and processing of information.~~

~~“Controlled Substance” Those drug items regulated by Federal (CSA of 1970) and/or State Controlled (dangerous) Substances Act.~~

~~“CRT” Cathode Ray Tube used to impose visual information on a screen.~~

~~“Delivery” The transfer of a dispensed prescription to the ultimate user (patient) or his/her agent.~~

~~“Dispensing” To furnish or deliver a drug to an ultimate user by or pursuant to the lawful order of a practitioner; including the preparation, packaging, labeling or compounding necessary to prepare the drug for that delivery.~~

~~“Downtime” That period of time when a computer is not operable.~~

~~“Facsimile (FAX) Prescription” A facsimile prescription is an order which is transmitted by an electronic device over telephone lines which sends an exact copy image to the receiver (pharmacy).~~

~~“Final Container” is that which holds the article, designed to hold a quantity of drug product intended for administration as a single dose, multiple dose, or a single finished device intended for use promptly after the container is opened.~~

~~“New Medication” A medication not previously dispensed by the pharmacy for the ultimate user.~~

~~“Patient Counseling” The offer to discuss the patient's prescription made by the pharmacist or the pharmacist's designee in a face to face communication with the patient or his/her agent, unless in the professional judgment of the pharmacist it is deemed impracticable and in such instances, it would be permissible for the offer to counsel to be made through alternative means.~~

~~“**Pertinent Patient Medication Information**” Information which increases the patient's ability to minimize the risks and enhance the benefits of drug use. The type of information the pharmacist should consider is contained in the latest edition of USP DI "Advice for the Patient."~~

~~“**Prescriber**” A practitioner authorized to prescribe and acting within the scope of this authorization.~~

~~“**Prescription**” An order for medication which is dispensed to or for an ultimate user, but does not include an order for medication which is dispensed for immediate administration to the ultimate user, (e.g., an order to dispense a drug to a bed patient for immediate administration in a hospital is not a prescription.) A written order from a practitioner authorized to prescribe and acting within the scope of this authorization, (other terminology: prescription order) or a telephone order reduced to writing by the pharmacist.~~

~~“**Printout**” A hard copy produced by computer that is readable without the aid of any special device.~~

~~“**Reduced to Writing**”~~

~~For new prescriptions this means the preparation of a paper document containing all the information required for a written prescription including the State requirement (Section 2553) for drug product selection;~~

~~For a refill authorization, it may be handled as a new prescription as in above, or by placing on the original prescription or the patient profile (whichever document is consistently used to document refills) the date, a statement "O.K. for 'x' number of additional refills", or words of similar import, and the pharmacist's initials. In no instance, shall the refill authorizations exceed the legal limits established by State and Federal laws.~~

~~If the prescriber authorizing additional refills differs from the Prescriber whose name appears on the signature line of the original prescription, then that authorization is considered a new prescription and must be handled as described above.~~

~~“**Regulatory Agency**” Any Federal or State agency charged with enforcement of pharmacy or drug laws and regulations.~~

~~“**Stop Date**” A date established by an appropriate authority which indicates when medication will no longer be administered or dispensed in the absence of a specific time period directed by the prescriber.~~

~~“**Supportive personnel**” A person who is not registered as an intern or pharmacist with the Board who may perform tasks as authorized by this Regulation.~~

- 5.21 The practice of dispensing shall include, but not be limited to the following acts which shall be performed only by a pharmacist, or a pharmacy intern or student participating in an approved College of Pharmacy coordinated, practical experience program under the direct supervision of a pharmacist.
- 5.21.1 Receive oral prescriptions and reduce them immediately to writing.
  - 5.21.2 Certification of the prescription order - (This involves authenticating the prescription, confirming proper dosage and instructions, and reviewing for incompatibility, etc.)
  - 5.21.3 The pharmacist, intern or student who dispenses the original prescription shall hand-sign or initial the prescription. Initials mechanically or electronically generated are acceptable in lieu of the above provided that the individual verifies either on a daily printout or in a bound log book daily that the information on the prescription is correct. The verification must be hand-signed and dated by the individual.
- 5.32 Patient Counseling
- 5.32.1 Before dispensing or delivering a new medication to a patient or his or her agent, a pharmacist or pharmacy intern under the direct supervision of the pharmacist, shall conduct a prospective drug review. A pharmacist or pharmacy intern or student participating in an approved College of Pharmacy coordinated practical experience program and working under the direct supervision of the pharmacist, shall conduct a prospective drug review. A prospective drug review may be conducted before refilling a prescription to the extent deemed appropriate. A prospective drug review shall include screening for potential drug therapy problems due to therapeutic duplication, drug-drug interactions, including serious interactions with over-the-counter drugs, drug-disease contraindications, if disease is known, incorrect drug dosage or duration of drug treatment,

drug-allergy interactions, and clinical abuse or misuse based on available information received by the pharmacist.

- 5.32.2 A pharmacist, or a pharmacy intern or student participating in an approved College of Pharmacy coordinated practical experience program and working under the direct supervision of a pharmacist shall, with each new medication dispensed, provide verbal counseling to the patient or the patient's agent on pertinent medication information. The counseling may include, but not be limited to the following:
- 5.32.2.1 the name and description of the prescribed drug;
  - 5.32.2.2 the dosage and the dosage form;
  - 5.32.2.3 the method and route of administration;
  - 5.32.2.4 the duration of the prescribed drug therapy;
  - 5.32.2.5 any special directions and precautions for preparation, administration, and use by the patient that the pharmacist determines are necessary;
  - 5.32.2.6 common severe side effects or adverse effects or interactions and therapeutic contraindications that may be encountered, how to avoid them, and what actions should be taken if they occur;
  - 5.32.2.7 patient techniques for self-monitoring of the drug therapy;
  - 5.32.2.8 proper storage;
  - 5.32.2.9 prescription refill information;
  - 5.32.2.10 the action to be taken in the event of a missed dose; and
  - 5.32.2.11 current over-the-counter medication use.
- 5.32.3 This section does not apply to a pharmacist dispensing drugs for inpatient use in a hospital or other institution where the drug is to be administered by a nurse or other appropriate health care provider.
- 5.32.4 Nothing in this section requires a pharmacist or pharmacy intern or student participating in an approved College of Pharmacy coordinated practical experience program and working under the direct supervision of a pharmacist, to provide patient counseling when a patient or the patient's agent refuses the counseling. There must be a record in a uniform place that documents a patient's acceptance or refusal of counseling.
- 5.32.5 If the dispensed prescription is delivered by an agent of the pharmacy when the pharmacist is not present (i.e. home delivery, pharmacist off duty and non-resident pharmacies) written or printed information shall be included with the prescription. The patient or his/her agent shall be informed that the pharmacist will be available for consultation.

#### 5.4 Supportive personnel

##### 5.4.1 Qualifications and training

- 5.4.1.1 ~~The pharmacist in charge is responsible for ensuring proper training of all supportive personnel. The actual training may be delegated to a pharmacist or other trained supportive personnel.~~
- 5.4.1.2 ~~The areas of training required are to be determined by the pharmacist in charge and will be appropriate to the practice site and responsibilities assigned to the supportive personnel. Areas of training shall include:~~
  - 5.4.1.2.1 ~~general drug and dosage form knowledge~~
  - 5.4.1.2.2 ~~medical terminology~~
  - 5.4.1.2.3 ~~pharmaceutical calculations~~
  - 5.4.1.2.4 ~~prescription labeling requirements~~
  - 5.4.1.2.5 ~~general filling/dispensing responsibilities~~
  - 5.4.1.2.6 ~~patient profile record system requirements~~
  - 5.4.1.2.7 ~~requirements for patient counseling~~
  - 5.4.1.2.8 ~~confidentiality~~

- 5.4.1.2.9 safety practices
- 5.4.1.2.10 inventory functions
- 5.4.1.2.11 knowledge of applicable State and Federal Statutes and Regulations
- 5.4.1.2.12 other site specific parameters
- 5.4.1.3 ~~The general content of the training program must be maintained in the policy and procedure manual.~~
- 5.4.1.4 ~~Documentation of successful training in specific areas by oral or written evaluation will be maintained and will be available for inspection by the Board of Pharmacy.~~
- 5.4.2 ~~Supervision. Supportive personnel must be supervised by a registered pharmacist who will be responsible for the activities of these persons.~~
- 5.4.3 ~~Activities allowed~~
  - 5.4.3.1 ~~Supportive personnel will be allowed to perform only those duties permitted by this regulation.~~
  - 5.4.3.2 ~~Supportive personnel may aid in the dispensing of prescriptions as authorized in Section 2513 under the supervision of a pharmacist by performing the following tasks:~~
    - 5.4.3.2.1 ~~Obtaining the medication from stock.~~
    - 5.4.3.2.2 ~~Typing the label after the pharmacist has interpreted the directions.~~
    - 5.4.3.2.3 ~~Counting, pouring and selecting prefabricated medications and selecting individual prepackaged unit dose medication provided that these are not in conflict with the state and federal law (Federal Comprehensive Controlled Substances Act) and that a final check by the pharmacist is made after the medication is placed in the final container prior to dispensing and administration to the patient. There will be a final check by a licensed pharmacist prior to dispensing and administration, except where the Board of Pharmacy grants, in writing, an exemption for good cause shown.~~
  - 5.4.3.3 ~~Compounding is the responsibility of the pharmacist or pharmacy intern under the direct supervision of the pharmacist. All compounding must be in compliance with FFDC A Section 503A and any regulations promulgated by FDA concerning compounding pertaining to this section. The pharmacist may utilize the assistance of supportive personnel if the following is performed:~~
    - 5.4.3.3.1 ~~The formulation is developed by the pharmacist before proceeding with the compounding.~~
    - 5.4.3.3.2 ~~The compounding ingredients are checked by the pharmacist before proceeding with the compounding.~~
    - 5.4.3.3.3 ~~Every weight and measurement is checked by the pharmacist before proceeding with the compounding.~~
    - 5.4.3.3.4 ~~The finished product is checked by the pharmacist before dispensing.~~
    - 5.4.3.3.5 ~~A log is maintained showing the identity of the person actually compounding the medication and the identity of the pharmacist who has performed each of the checks indicated above for each step of the procedure. If policies and procedures are in place ensuring adequate checks by the pharmacist per regulation, the requirement for a log will be waived.~~
  - 5.4.3.4 ~~Only supportive personnel or persons being trained as supportive personnel as required by this regulation, may perform the activities defined by this regulation.~~
- 5.54 ~~Automatic Dispensing Devices. If any automatic counting device is used by a pharmacy, each cell shall have clearly displayed thereon, the date filled, the name of the drug, the batch number, the manufacturer's name, and the expiration date of the particular batch number. No drug can be added to the cell until the present supply is depleted.~~
- 5.65 ~~Authorization for renewal of prescriptions. A prescription written for medication which, pursuant to State and Federal law, may be sold, dispensed, or furnished only upon prescription, shall not be renewed without specific authorization of the prescriber. The pharmacist shall in his/her professional~~

judgment refill prescriptions in keeping with the number of doses ordered and the directions for use. Refills beyond one year of the date of the original prescription shall not be dispensed without further authorization of the prescriber.

**5.76** Mandatory Patient Profile Record System

5.76.1 A patient profile record system must be maintained at all pharmacies for persons for whom prescriptions are dispensed. The patient profile system shall be devised so as to entitle the immediate retrieval of information necessary to enable the dispensing pharmacist to identify previously dispensed medication at the time a prescription is presented for dispensing.

5.76.2 The following information shall be recorded by a pharmacist or designee:

5.76.2.1 The family name and first name of the person for whom the medication is intended (the patient);

5.76.2.2 The address of the patient and phone number;

5.76.2.3 The patient's age, or date of birth, and gender;

5.76.2.4 The original date the medication is dispensed pursuant to the receipt of a prescriber's prescription;

5.76.2.5 The number or designation identifying the prescription;

5.76.2.6 The prescriber's name;

5.76.2.7 The name, strength, quantity, directions and refill information of the drug dispensed;

5.76.2.8 The initials of the dispensing pharmacist and the date of dispensing medication as a renewal (refill) if said initials and such date are not recorded on the original prescription;

5.76.2.9 If the patient refuses to give all or part of the required information, the pharmacist shall so indicate and initial in the appropriate area.

5.76.2.10 Pharmacist comments relevant to the patient's drug therapy, including any other information peculiar to the specific patient or drug.

5.76.3 The pharmacist or pharmacy intern under the direct supervision of a pharmacist shall attempt to ascertain and shall record any allergies and idiosyncrasies of the patient and any chronic disease states and frequently used over-the-counter medication as communicated to the pharmacist by the patient. If the answer is none, this must be indicated on the profile.

5.76.4 Upon receipt of a new prescription, a pharmacist, pharmacy intern, or student participating in a College of Pharmacy practical experience program under the direct supervision of a pharmacist must examine the patient's profile record before dispensing the medication to determine the possibility of a harmful drug interaction or reaction. Upon recognizing a potential harmful reaction or interaction, the pharmacist shall take appropriate action to avoid or minimize the problem with shall, if necessary, include consultation with the prescriber.

5.76.5 A patient profile record must be maintained for a period of not less than one year from the date of the last entry in the profile record unless it is also used as a dispensing record.

**5.87** Exchange of Valid Non-Controlled Prescriptions Between Pharmacies

5.87.1 Verbal Exchange of Prescriptions - When a pharmacy receives a verbal request for a prescription transfer, it may be honored provided that:

5.87.1.1 The request comes from a registered pharmacist.

5.87.1.2 The copy is immediately reduced to writing and contains the information required on a written prescription as listed in Regulation 5.0, and includes the first and last name of the pharmacist transmitting the information.

5.87.1.3 The prescription used for refills must be clearly identified as a copy.

5.87.1.4 The copy shows the date and the file number of the original prescription and indicates the name and address of the pharmacy providing the copy.

5.87.1.5 The copy shows the last date of dispensing.

5.87.1.6 Only the actual number of refills remaining are indicated.

- 
- 5.87.1.7 A notation indicating a copy was given and refills are no longer valid must be placed on either the original prescription or patient profile. The document used must be the same one used for the recording of refills per the pharmacy's policy.
- 5.87.2 A copy prepared or transmitted that does not meet the requirements of this Regulation is deemed to be an invalid prescription.
- 5.87.3 Written copies of prescriptions are for information only and are not valid for refilling.
- 5.98 Automated Data Processing Systems
- 5.98.1 Profiles. When ADP's are used to maintain patient profile records, all the requirements of Delaware Pharmacy Regulation 5.0 must be met.
- 5.98.2 Prescription (Drug Order) Information. Prescription information (drug order) shall include, but not be limited to:
- 5.98.2.1 Original dispensing date
- 5.98.2.2 Name and address of patient (patient location if in an institution)
- 5.98.2.3 Name of prescriber
- 5.98.2.4 DEA number of prescriber in the case of a controlled substance
- 5.98.2.5 Name, strength, dosage form and quantity, (or Stop Date), and route of administration if other than oral form of drug prescribed
- 5.98.2.6 Renewals authorized
- 5.98.2.7 Directions of use for patient
- 5.98.3 Records of Dispensing. Records of dispensing for original and refill prescriptions are to be made and kept by pharmacies for three years. Information must be immediately accessible for a period of not less than one year from the date of last entry. Information beyond one year but up to three years from the date of last entry may be maintained off-line but must be produced no later than five days upon request from proper authorities. The information shall include, but not be limited to:
- 5.98.3.1 Quantity dispensed
- 5.98.3.2 Date of dispensing
- 5.98.3.3 Serial Number (or equivalent if an institution)
- 5.98.3.4 The identification of the pharmacist responsible for dispensing
- 5.98.3.5 Record of renewals to date
- 5.98.3.6 Name and strength of medicine
- 5.98.4 Record Retrieval (Documentation of Activity). Any such ADP system must provide via CRT display and or hard copy printout a current history of all authorized prescription activity. This information shall include, but not be limited to:
- 5.98.4.1 Serial number of prescription (equivalent if an institution)
- 5.98.4.2 Date of processing
- 5.98.4.3 Quantity dispensed
- 5.98.4.4 The identification of the pharmacist responsible for dispensing
- 5.98.4.5 Medication dispensed
- 5.98.5 Auxiliary Recordkeeping System. An auxiliary recordkeeping system shall be established for the documentation of renewals if the ADP is inoperative for any reason. The auxiliary system shall insure that all renewals are authorized by the original prescription and that the maximum number of renewals are not exceeded. When the ADP is restored to operation, the information regarding prescriptions dispensed and renewed during the inoperative period shall be entered into the automated data processing system.
- 5.98.6 Common Data Base. Two or more pharmacies may establish and use a common data file or base to maintain required or pertinent dispensing information. Pharmacies using such a common file are not required to transfer prescriptions or information for dispensing purposes between or among pharmacies participating in the same common prescription file or data base; provided however, any such common file must contain complete and adequate records of such prescription and

renewals dispensed. Where common data base is used, this shall not be considered a transfer under Board Regulation 5.0 for non-controlled substances.

5.98.7 Transfer of Prescriptions via ADP. A pharmacist may transfer a prescription electronically (ADP) for Schedule III, IV, or V controlled substances to another pharmacy for renewal purposes in accordance with Title 21, Code of Federal Regulations Section 1306.26. A pharmacist may transfer a prescription electronically (ADP) for non-controlled drug for renewal purposes in accordance with current State Regulations.

5.98.7.1 Any pharmacy using ADP must comply with all applicable State and Federal regulations.

5.98.7.2 A pharmacy shall make arrangements with the supplier of data processing services or materials to assure that the pharmacy continues to have adequate and complete prescription and dispensing records if the relationship with such supplier terminates for any reason. A pharmacy shall assure continuity in maintenance of records.

5.98.7.3 The computer record shall reflect the fact that the prescription order has been transferred, the name of the pharmacy to which it was transferred, the date of transfer, the name of the pharmacist transferring information, and any remaining refill information, if applicable.

5.98.7.4 The pharmacist receiving the transferred prescription drug order shall reduce it to writing with the following information:

5.98.7.4.1 Write the word "TRANSFER" on the face of the transferred prescription.

5.98.7.4.2 Provide all information required to be on the prescription drug order pursuant to State and Federal laws and regulations.

5.98.7.5 To maintain the confidentiality of patient's prescriptions (drug orders) or other pertinent records, there must exist adequate safeguards of security. This shall also pertain to prevent non-user access.

#### 5.409 Electronic Transmission of Prescriptions

5.409.1 All Prescription Drug Orders communicated by way of Electronic Transmission shall:

5.409.1.1 be transmitted directly to a Pharmacist in a licensed Pharmacy of the patient's choice with no intervening Person having access to the Prescription Drug Order;

5.409.1.2 identify the transmitter's phone number for verbal confirmation, the time and date of transmission, and the identity of the Pharmacy intended to receive the transmission, as well as any other information required by Federal or State law;

5.409.1.3 be transmitted by an authorized Practitioner or his designated agent; and

5.409.1.4 be deemed the original Prescription Drug Order provided it meets the requirements of this subsection.

5.409.2 The prescribing Practitioner may authorize his agent to communicate a Prescription Drug Order orally or by way of Electronic Transmission to a Pharmacist in a licensed Pharmacy, provided that the identity of the transmitting agent is included in the order.

5.409.3 The Pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of the Prescription Drug Order communicated by way of Electronic Transmission consistent with existing Federal or State laws and rules.

5.409.4 All electronic equipment for receipt of Prescription Drug Orders communicated by way of Electronic Transmission shall be maintained so as to ensure against unauthorized access.

5.409.5 Persons other than those bound by a confidentiality agreement pursuant to Section 2.A. (2)(k) shall not have access to Pharmacy records containing Confidential Information or personally identifiable information concerning the Pharmacy's patients.

5.409.6 Controlled substance prescriptions may only be electronically transmitted via a facsimile.

5.409.7 Facsimile prescriptions must meet the following requirements in addition to the above listed electronic Transmission requirements.

5.409.7.1 The prescription order shall include the fax number of the transmitter, the number of transmitted pages, the name, phone number, and electronic number of the pharmacy



intended to receive the transmission, and a confidentiality statement in bold type stating the electronic transmission should not be seen by unauthorized persons.

- 5.409.7.2 Unless the prescription is written for a schedule II controlled substance, the prescriber should not issue the written prescription to the patient.
- 5.409.7.3 A facsimile transmitted prescription order must be reduced to writing, unless received as a non-fading document, with a notation that the order was received by facsimile.
- 5.409.7.4 The receiving facsimile machine must be in the prescription department to protect patient-pharmacist-authorized prescriber confidentiality and security.
- 5.409.7.5 Both non-controlled and controlled substance prescriptions may be transmitted via facsimile following state and federal requirements. All prescription orders for controlled substances shall be hand-signed by the practitioner.

## 5.4410 Return of Medications and Supply

- 5.4410.1 Prescriptions and items of personal hygiene shall not be accepted for return or exchange by any pharmacist or pharmacy after such prescription or items of personal hygiene have been taken from the premises where sold, distributed or dispensed.
- 5.4410.2 Products under the direct control of a health care professional which are packaged in manufacturer unit dose or tamper-proof unopened bulk containers, tamper proof seal in tact, including unused multi-dose punch cards, may be redispensed in accordance with expiration dating in customized patient medication package. Partially used products may not be redispensed. Nothing in this regulation precludes the Federal laws and regulations.

## 5.4211 Centralized Prescription Processing

- 5.4211.1A Pharmacy may perform or outsource centralized prescription processing, services provided the parties:
  - 5.4211.1.1 have the same owner; or
  - 5.4211.1.2 have a written contract outlining the services to be provided and the responsibilities and accountabilities of each party in fulfilling the terms of said contract in compliance with federal and state laws and regulations; and
  - 5.4211.1.3 share a common electronic file or have appropriate technology to allow access to sufficient information necessary or required to fill or refill a prescription drug order.
- 5.4211.2 The parties performing or contracting for centralized prescription processing services shall maintain a policy and procedures manual and documentation that implementation is occurring in a manner that shall be made available to the Board for review upon request and that includes, but is not limited to, the following:
  - 5.4211.2.1 A description of how the parties will comply with federal and state laws and regulations;
  - 5.4211.2.2 The maintenance of appropriate records to identify the responsible pharmacist(s) in the dispensing and counseling processes;
  - 5.4211.2.3 The maintenance of a mechanism for tracking the prescription drug order during each step in the dispensing process;
  - 5.4211.2.4 The maintenance of a mechanism to identify on the prescription label all pharmacies involved in dispensing the prescription drug, order;
  - 5.4211.2.5 The provision of adequate security to protect the confidentiality and integrity of patient information;
  - 5.4211.2.6 The maintenance of a quality assurance program for pharmacy services designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, and resolve identified problems.
- 5.4211.3 In addition to the requirements of 24 **Del.C.** §2536, all drugs dispensed to a patient that have been filled via a centralized prescription processing system shall bear a label containing an identifiable code that provides a complete audit trail of the dispensing of the drug and pharmaceutical care activities.

5.4312 Compounded medications for office use.

5.4312.1 On the order of a practitioner, compounded products may be sold to the practitioner for use in his or her office to administer to individual patients, but not for resale.

*(Break in Continuity of Sections)*

**11.0 Pharmaceutical Services in Nursing Homes**

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

**11.2 General Requirements**

11.2.1 Each facility shall provide a cabinet or medication carts for individual patient medications. These storage units shall be of sufficient size and located where easily accessible. They shall be locked when not in use and the key and/or code for the storage unit shall be carried by or be accessible only to registered nurses, licensed practical nurses, or pharmacists. Controlled substances storage shall be in compliance with State and Federal statutes and regulations.

11.2.2 Internal medications must be stored separately from external medications.

11.2.3 Medications requiring refrigeration must be stored within the USP/NF refrigeration temperature range of 36 to 46 degrees Fahrenheit.

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

11.2.5 No persons except properly authorized personnel shall handle or administer medications.

11.2.6 Schedule II substances shall be secured under two locks in securely fixed boxes or drawers in the medication storage area, medication cart, or emergency use medication supplies.

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

**11.3 Emergency Use Medications**

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

11.3.2 ~~Interim use medications for the purposes of this Regulation shall be those non-injectable medications which may be required to meet the immediate therapeutic needs of patients, as determined by the prescriber, and which are not available from any other authorized source in sufficient time to prevent risk or harm to patients by delay resulting from obtaining such drugs from other sources.~~

11.3.23 ~~It is the responsibility of the facility and provider pharmacy to determine the supply of emergency use medication and interim use medication that are to be stocked as well as documenting their the number of boxes and location(s) within the facility. Stock supply of interim use medication shall not exceed sixty (60) medications without the prior review and approval of the Board or its designee. A list Emergency use and interim use medications lists of current contents must be attached to the medication supply.~~

11.3.34 ~~Accountability for emergency use medications and interim use medications.~~

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

- 11.3.34.2 The provider pharmacy is responsible for the accuracy of all emergency use and interim use medications at the time of the filling of the medication. This check must also include any medication that became available when the medication is accessed. Records documenting use of an emergency medication or interim medication must be kept for a minimum of 2 years at the provider pharmacy with a copy at the facility and must be readily available for inspection by the Board.
- 11.3.34.3 Failure to comply with these procedures can result in the suspension or denial of the use of emergency use and/or interim use medications.
- 11.3.34.4 Violations of accountability procedures for emergency use and/or interim use medications may result in review proceedings before the Board.
- 11.3.45 There must be an accountability procedure at the facility for needles and syringes.
- 11.4 Return Medication Procedures.
- 11.4.1 All unused portions of any patient's discontinued prescription medication shall be immediately isolated. Non-controlled medication shall be destroyed or returned to the pharmacist or provider pharmacy supplying pharmaceutical services within 72 hours with the appropriate notation of disposition. The notation shall include the date, quantity, and name and strength of the medication.
- 11.4.2 Medications for hospitalized patients must be isolated, and may be held until the patient's return or permanent discharge.
- 11.4.3 Destruction of discontinued controlled patient medication and discharged or deceased patient's controlled medication shall be jointly performed by two authorized licensed personnel within 72 hours of the discontinuation of the medication or discharge of the patient. A record of the destruction must be signed by both parties and kept at the facility for 2 years.
- 11.5 Labeling
- 11.5.1 Labels on controlled substances must show the actual refill date and amount of medication dispensed.
- 11.5.2 The provider pharmacy must maintain prescription records required by State and Federal law in addition to a readily retrievable record of the actual refills, amount dispensed and accountability of the amounts used.
- 11.5.3 A pharmacy providing prescriptions for use in a nursing home may label the prescription, "to be administered according to current physician's orders.
- 11.5.4 A change in a medication order that involves a direction change must be communicated to the pharmacy within 24 hours, and the labeling on medication currently in the facility may be handled in the following ways:
- 11.5.4.1 A licensed nurse or pharmacist may apply an accessory label to the medication which denotes that there has been a direction change.
- 11.5.4.2 A label(s) with new directions may be requested from the pharmacy and applied to the current medication supply by a licensed nurse or pharmacist.
- 11.6 Duties of Consultant Pharmacist
- 11.6.1 A consultant pharmacist to a nursing home in the State of Delaware must be licensed to practice pharmacy in the State of Delaware. The consultant pharmacist shall be responsible for the general supervision of the nursing home pharmaceutical services and the direct supervision of registered pharmacy interns, who may assist in chart reviews. Supervision of chart reviews by a pharmacy intern must be documented by the supervising pharmacist.
- 11.6.2 The consultant pharmacist shall provide the administrator of a nursing home with a statement indicating those minimum professional services that will be provided. This statement shall be incorporated into the nursing home Pharmacy Policy and Procedure Manual.
- 11.6.3 The consultant pharmacist must notify the Board in writing within ten days of starting as a consultant in the State.
- 11.6.3.1 If the consultant pharmacist has not served in that position in the State of Delaware, he/she must appear before the Board for an interview within ninety days after assuming that position.

- 11.6.4 The consultant pharmacist shall be responsible for written policies and procedures which shall include, but not be limited to:
- 11.6.4.1 Procedures for administering the services outlined in the statement of proposed services.
  - 11.6.4.2 Policies governing practitioner medication orders, medication errors, automatic stop orders, medications for patient discharge and leave of absence.
  - 11.6.4.3 Policies and procedures necessary to insure the safe use, administration, control and accountability of all drugs through out the nursing home in compliance with State and Federal laws.
  - 11.6.4.4 Policies and procedures outlining the destruction of wastage for all controlled medications.
  - 11.6.4.5 Policies governing appropriate storage of medications, an effective drug recall procedure and labeling of all prescription drugs and biologicals in accordance with State and Federal requirements. For registered out-of-state providers an additional labeling requirement is having the toll-free telephone number on the prescription labels.
  - 11.6.4.6 Policies and procedures governing patient drug regimen review, which shall include procedures for reporting irregularities, and documenting that such reviews have been performed. The provider pharmacy is to receive copies of all practitioners' orders to be reviewed with the information on the patient profiles.
- 11.6.5 If the nursing home has a pharmacy or quality related committee the consultant pharmacist shall serve on that committee.
- 11.6.6 The consultant pharmacist or designated pharmacy staff shall make inspections of each nursing station and related drug storage areas at least monthly. A pharmacy support person may assist with inspection under the direct supervision of a pharmacist.
- 11.6.6.1 Nursing station inspections must include, but are not limited to, documentation of the following:
    - 11.6.6.1.1 medication storage area(s) (59 to 86 degrees Fahrenheit) and refrigerator temperatures (36 to 46 degrees Fahrenheit);
    - 11.6.6.1.2 security of all drugs;
    - 11.6.6.1.3 proper labeling, including any accessory or cautionary instructions;
    - 11.6.6.1.4 proper expiration dating;
    - 11.6.6.1.5 cleanliness;
    - 11.6.6.1.6 emergency use medication supplies are properly maintained.
  - 11.6.6.2 A copy of these inspection reports must be maintained at the facility for two years.
- 11.6.7 The consultant pharmacist shall review the drug regimen of each patient monthly at the facility. Documentation of the review is accomplished in the following manner:
- 11.6.7.1 If the pharmacist determines that there are no irregularities in the patient's drug regimen, he/she must note in the patient's chart that he/she has reviewed the drug regimen, found no irregularities, and sign and date this notation. This documentation must remain on the patients' charts for a minimum of 12 months.
  - 11.6.7.2 If the pharmacist determines that there are irregularities, he/she must prepare a drug regimen review report which includes any pertinent information such as the patient's diagnosis(es), the drug regimen, any pertinent laboratory findings, dietary considerations, etc., and his/her recommendations for improving the drug therapy of the patient. This written recommendation shall be forwarded to the attending practitioner, with the original documentation maintained in the patient chart.
  - 11.6.7.3 Nursing unit inspections and a summary report of patient drug regimen reviews must be submitted to the Director of Nursing and the Administrator monthly.
- 11.6.8 The consultant pharmacist is responsible for the accountability of all medications. A random sample will be done monthly to identify overages or shortages of any medications. Documentation will be made of irregularities and will include date of audit, patient identification, a listing of overages or shortages, and an explanation if known. A plan for correction will be included in the

documentation where appropriate. Documentation will be maintained for a period of 12 months at the facility.

- 11.6.9 The consultant pharmacist shall be responsible for providing information to the nursing home staff, as may be appropriate or required, to ensure safety, understanding and compliance with policies and procedures pertaining to pharmacy-related activities and concerns.
- 11.6.10 The consultant pharmacist shall assume all other responsibilities required of a consultant pharmacist as set forth in any State or Federal statutes or regulations as enacted or amended or may be enacted or amended.

## 7 DE Reg. 914 (01/01/04)

### *(Break in Continuity of Sections)*

## **18.0 Storage and Dispensing of Medical Gases**

- 18.1 The following rules are included to address those areas specific to the medical gases specialty practice.

"Medical gas" means those gases and liquid oxygen intended for human consumption as per the standards of the U.S.P.

"Medical gas dispenser" A person or entity who sells medical gases directly to a patient in Delaware.

"Medical gas distributor" A person or entity who is licensed to distribute medical gases to another facility that is authorized to possess medical gases.

"Order" means an order issued by a licensed practitioner legally authorized to order medicinal gases.

### 18.2 Licensure and Registration

- 18.2.1 Any person that dispenses medical gas directly to patients by sale shall register with the Board of Pharmacy pursuant to 24 Del.C. §2523. Applications for registration under this Regulation shall be on a form supplied by the Board and accompanied by a fee determined by the Board. The registration shall be renewed bi-ennially as determined by the Board.

18.2.1.1 A medical gas dispenser may refill cylinders for a patient provided that the licensee is registered by the FDA.

- 18.2.2 Distributors of medical gas who distribute to non-patient entities shall obtain a distributor license from the Board of Pharmacy pursuant to 24 Del.C. §2540.

### 18.3 Order Requirements

#### 18.3.1 Verbal orders:

18.3.1.1 Verbal orders shall be reduced to writing.

18.3.1.2 Verbal orders are only valid for oxygen and no other medical gases.

18.3.1.3 Verbal orders shall be reviewed by a licensed healthcare professional authorized to administer oxygen to a patient. This review shall be performed within 72 hours.

18.3.1.4 The order is valid for the length of time authorized by the prescriber. If the duration is not specified the order is valid for one year.

### 18.4 Policy and Procedure Requirements

- 18.4.1 Written policy and procedures must be available for review and shall include but not be limited to the following areas:

18.4.1.1 Storage and handling

18.4.1.2 Oxygen Safety

18.4.1.3 Orders

18.4.1.4 Labeling

18.4.1.5 Record keeping

18.4.1.6 Patient education

18.4.1.7 Security

- 18.4.1.8 Recall
- 18.4.1.9 Quarantine
- 18.4.1.10 Loss/theft

#### 18.5 Training Requirements

- 18.5.1 Personnel shall be trained in areas to comply with standards dictated by the United States Pharmacopoeia, the Food Drug Administration, the Department of Transportation, the Occupational Safety and Health Administration, the Board of Pharmacy, any other applicable requirement under State and Federal law and any implementing rules or regulations regarding storage, packaging, labeling, shipping, dispensing, transfilling, distributing and repackaging of medical gas.
- 18.5.2 Documentation of training required by this Regulation shall be readily available for inspection. The documentation shall be kept for three years from the date of last employment.

#### 18.6 Storage and Handling Requirements

- 18.6.1 Storage and handling of medical gas shall follow the manufacturer's labeling requirements.
- 18.6.2 Labeling shall include the manufacturer's label and a lot number on the cylinder in accordance with the Federal Food Drug and Cosmetic Act under Title 21 of the Code of Federal Regulation.

#### 18.7 Record Keeping Requirements

- 18.7.1 The original order shall be kept and be readily retrievable for a minimum of three years after the date of the last dispensing.
- 18.7.2 Records shall include but not be limited to:
  - 18.7.2.1 Name, address and telephone number of the patient
  - 18.7.2.2 Name, address and telephone number of licensed practitioner
  - 18.7.2.3 Item and quantity dispensed
  - 18.7.2.4 Date of dispensing

#### 18.8 Inspections

- 18.8.1 Inspections are conducted unannounced, during normal business hours, in accordance with 24 Del.C. §2534.

### **19.0 Technicians: Qualifications, Training, and Duties**

#### 19.1 Qualifications and Training

- 19.1.1 Pharmacy Technicians shall successfully complete a training program. Training shall begin immediately upon initiation of employment and be completed within 90 days. Once training is commenced the technician in training may work in the pharmacy under the direct supervision of a pharmacist or a trained technician.
  - 19.1.1.1 The pharmacist-in-charge is responsible for ensuring proper training of all supportive personnel. The actual training may be delegated to a pharmacist or other trained supportive personnel.
  - 19.1.1.2 The areas of training required are to be determined by the pharmacist-in-charge and will be appropriate to the practice site and responsibilities assigned to the technicians. Training should be a minimum of 10 hours of didactic training in the following areas:
    - 19.1.1.2.1 general drug and dosage form knowledge
    - 19.1.1.2.2 medical terminology
    - 19.1.1.2.3 pharmaceutical calculations
    - 19.1.1.2.4 prescription labeling requirements
    - 19.1.1.2.5 general filling/dispensing responsibilities
    - 19.1.1.2.6 patient profile record system requirements
    - 19.1.1.2.7 requirements for patient counseling
    - 19.1.1.2.8 confidentiality

- 19.1.1.2.9 safety practices
- 19.1.1.2.10 inventory functions
- 19.1.1.2.11 knowledge of applicable State and Federal Statutes and Regulations
- 19.1.1.2.12 other site-specific parameters

- 19.1.1.3 The general content of the training program must be maintained in the policy and procedure manual.
- 19.1.1.4 Documentation of successful training in specific areas by oral or written evaluation will be maintained and will be available for inspection by the Board of Pharmacy.
- 19.1.1.5 Supervision. Supportive personnel must be supervised by a registered pharmacist who will be responsible for the activities of these persons.

19.1.2 Certified pharmacy technicians must be at least 18 years of age, successfully complete a certified training program approved by the Board of Pharmacy and successfully pass the PTCB Exam or other national technician certification exam approved by the Board of Pharmacy. Only certified pharmacy technicians may assist the pharmacist by reconstituting oral solutions and contacting the prescriber or their agent to obtain refill authorization or other patient or prescription information of a non-clinical nature, or assisting the pharmacist with compounding.

## 19.2 Allowed Activities

- 19.2.1 Except in emergency situations for short periods where staff is unavailable only pharmacy technicians and certified pharmacy technicians may assist the pharmacist or deliver prescriptions in the pharmacy to a patient or the patient's agent.
- 19.2.2 Pharmacy technicians and certified pharmacy technicians may carry out any pharmacy-related duty assigned to them by their supervising pharmacist except for those activities specifically excluded by 24 Del.C. §§2507(b) and 2502(19).

## 20.0 Specialty Institutional Pharmacy Licenses.

- 20.1 Specialty institutional pharmacies are those institutional pharmacies which provide specialized pharmacy services restricted in scope of practice and designed to provide certain health care pharmacy services that are not generally obtainable from other pharmacy permittees. Specialty institutional pharmacies include but are not limited to short term or primary care treatment modalities that have pharmacies on site such as outpatient chemotherapy centers, primary treatment centers, free standing emergency rooms, rapid in/out surgical centers and certain county health programs.
- 20.2 Labeling and record keeping requirements shall be kept in accordance with Regulation 9.9 through 9.13.

**\*Please note that no changes were made to the remaining sections of the regulation, therefore, they are not being published. A copy of the proposed regulation is available at**

**<http://regulations.delaware.gov/register/july2009/final/13 DE Reg 57 07-01-09.htm>**

---

### **DIVISION OF PROFESSIONAL REGULATION**

Statutory Authority: 24 Delaware Code, Section 3805 (a) (24 Del.C. §3805 (a))  
24 DE Admin. Code 3800

The Delaware State Board of Dietetics/Nutrition (the "Board") in accordance with 24 Del.C. §3805(a) has proposed amendments to its rules and regulations as the result of the enactment in the 144th General Assembly of House Bill 38, as amended, providing for the licensure of dietitians and nutritionists in the State of Delaware.

A public hearing was held on April 17, 2009 at 1:45 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public offered comments. As a result

of the public comment the Board determined to make both substantive and non-substantive changes to the proposed regulations originally published in the Register of Regulations at 12 DE Reg 1179 on March 1, 2009.

A further public hearing will be held on August 7, 2009 at 1:45 p.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 State Board of Dietetics/Nutrition, 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.

## **3800 ~~Committee on~~ State Board of Dietetics/Nutrition**

### **1.0 Qualifications of Applicants**

#### **1.1 Major Course of Study**

- 1.1.1 ~~An equivalent~~ A major course of study [24 ~~Del.C. §3806(f) (2)~~] must include 3 semester credits with content in biochemistry, 3 semester credits with content in human physiology, and 12 semester credits of courses with major content in human nutrition and/or dietetics including 3 semester credits in nutrition and disease or diet therapy.

#### **1.2 Foreign Degrees:**

- 1.2.1 An agency authorized to validate foreign academic degrees equivalent to the Baccalaureate or Master's Degree conferred by a regionally accredited college or University in the U.S. includes the following:

~~International Consultants of Delaware, Inc., (109 Barksdale Professional Center, Newark, DE 49744) P.O. Box 8629, Philadelphia, PA 19101 - www.icdel.com~~

~~IERF Credentials Evaluation Services, Inc., (P.O. Box 66940, Los Angeles, CA 90066) 3665 Culver City, CA 90231-3665) - www.ierf.org~~

~~World Education Services, Inc., (P.O. Box 745, Old Chelsea 5087 Bowling Green Station, New York, NY 40044 10274-5087) - www.wes.org~~

~~Education Credential Evaluators, Inc., (P.O. Box 92970 5140740, Milwaukee, WI 53202-0970 53203-3470) -www.ece.org~~

~~Josef Silny & Associates, International Education Consultants, (P.O. Box 248233 Coral Gables, FL 33124) 7107 SW 102 Ave. Miami, FL 33173) - www.jsilny.com~~

#### **1.3 Examination**

- 1.3.1 ~~The cost of the examination is borne by the applicant.~~
- 1.3.2 ~~Satisfactory completion of the registration examination established by the Committee. [24 ~~Del.C. §3806(a)(2)~~].~~
- 1.3.2.1 ~~The passing score established by the Commission on Dietetic Registration.~~
- 1.3.3 ~~Another national examination may be approved by the Committee. The Committee shall use the following criteria:~~
- 1.3.3.1 ~~It shall be a national validated examination, the primary objective of which is to measure minimum professional competency in dietetics and/or nutrition. In order to take the examination, the candidate is required to have a minimum of a baccalaureate degree and collegiate level coursework in nutrition conferred by a regionally accredited college or university in the U.S.~~
- 1.3.3.2 ~~The approval of the Director of Professional Regulation is also required if another examination is adopted.~~

#### **1.3 Supervised Practice**



1.4 1.3.1 Proof of ~~professional completion of supervised~~ practice experience of 900 hours [24 ~~Del.C. §3806(a)(3)~~] ~~may be: is required and may be demonstrated by documenting completion of a Commission on Accreditation for Dietetic Education (CADE) program. CADE is the accrediting agency for the American Dietetic Association (ADA); or~~

1.4 Proof of professional practice experience of 900 hours [24 ~~Del.C. §3806(a)(3)~~] may be:

1.4.1 a program ~~ADA-approved or ADA-accredited by the Commission on Dietetic Registration of The American Dietetic Association currently called~~

1.4.1.1 an ~~accredited dietetic internship~~

1.4.1.2 an ~~approved professional practice program~~

1.4.1.3 an ~~accredited coordinated program~~

OR

1.43.2 At least 900 hours of supervised participation in nutrition services. The scope of activities may include observation, but must include direct client/patient involvement. The 900 hours must be concurrent ~~to~~ with and/or following completion of the academic requirements for certification and need not be a paid experience. The following will define the equivalent professional practice experience and verification necessary:

1.43.2.1 Each supervisor shall have administrative responsibility for the area of the professional practice experience OR provide a letter from the area's administrator showing approval for him/her to officially function as a supervisor of the applicant's experience for the purposes of this chapter.

1.43.2.2 The supervisor shall have access to relevant patient/client records in the site of the professional practice experience. In order to guide the applicant and to have a basis for evaluation, the supervisor shall review performance by periodic observation, either directly or by some recording of the nutrition services.

1.43.2.3 If there is more than one supervisor and/or facility for different parts of the experience, information and verification of each part is required.

1.43.2.4 The applicant shall provide to the ~~Committee~~ Board for each supervisor/facility

1.43.2.4.1 the name and address of the facility providing the professional practice experience and name of the area within the facility where the professional practice experience occurred.

1.43.2.4.2 the name, address, phone and title of the official supervisor who is supervising the qualifying experience for purpose of obtaining the certification. The supervisor for the purpose of certification may be different than the administrative supervisor of the unit in the facility.

1.43.2.4.3 a summary of the nature of nutrition services performed, along with dates and hours spent performing them.

1.43.2.4.4 evidence that the supervisor was either a registered dietitian, a licensed dietitian or a certified dietitian/nutritionist or a certified nutrition specialist in Delaware or any other state at the time of supervision; or the supervisor was a licensed ~~physician~~ health care professional or individual with a doctoral degree from an accredited college or university with expertise in human nutrition. A copy of the current license, certification, or registration must be provided.

1.43.2.4.5 the applicant will send the description of the qualifying experience noted above to the professional practice experience supervisor for verification.

1.43.2.4.6 Each supervisor must review the evidence provided by the applicant and verify that the information is true including

1.43.2.4.6.1 that the applicant participated in nutrition services under his/her supervision, indicating the total number of hours.

1.43.2.4.6.2 that the applicant performed the nutrition services at a satisfactory level and followed the Code of Ethics in the course of this qualifying experience.

# PROPOSED REGULATIONS

OR

1.4.3 ~~Documented work experience: If you are applying under 24 Del.C. §3806(A)(3)b, the requirements for documentation are the same as Equivalent Professional Practice Experience, except that the number of hours is different.~~

## 1.4 Examination

1.4.1 The satisfactory completion of the registration examination established by the Commission on Dietetic Registration (CDR), the examination of the Certification Board for Nutrition Specialists (CBNS) or another national examination acceptable to the Board and approved by the Director of Professional Regulation is required. [24 Del.C. §3806(a)(4)].

1.4.1.1 The passing score shall be the passing score established by the exam provider.

1.4.2 The cost of the examination shall be borne by the applicant.

1.5 ~~Graduate Degrees: "Persons presenting evidence of a Master's degree or Doctorate degree" as specified in 24 Del.C. §3806(d) "shall provide evidence that the degree is in nutrition, nutrition education, nutrition science or a major closely related to human nutrition. "The major closely related to human nutrition" shall include either as part of the degree or in courses taken in addition to the degree a minimum of 3 semester credits with content in biochemistry, 3 semester credits with content in human physiology, and 12 semester credits of courses with major content in human nutrition and/or dietetics including 3 semester credits in nutrition and disease or diet therapy. All qualifying degrees and courses shall be from a college or university accredited through regional accrediting agency recognized by the U.S. Department of Education at the time the degree was earned or when courses were taken. Individuals seeking a waiver under the provisions of 24 Del. C. §3806(f) of the qualifications for licensure specified in 24 Del. C. §3806(a)(1)-(4) and 24 Del. C. §3806(b) must document at least 10 years or greater work experience in the field of nutrition as defined in 24 Del. C. §3802(3) acceptable to the Board.~~

## 2.0 Reciprocity

2.1 The Board may grant licensure to registered, certified or licensed dietitians/nutritionists holding a valid license issued by another jurisdiction whose standards of licensure are equal to or greater than those of 24 Del.C. Ch. 38.

2.2 The applicant shall include, as part of the application, copies of state licensing and/or practice statutes and regulations pertaining to the practice of dietetics and nutrition for each jurisdiction through which he/she is seeking reciprocity.

2.3 The Applicant shall include letters of good standing from all jurisdictions in which the applicant is licensed or registered.

2.4 "Standards of licensure," as used in 24 Del.C. §3807, shall refer to the qualifications of applicants set forth at §3806.

## 23.0 Continuing Professional Education

23.1 ~~"Continuing professional education" (CPE) as specified in Dietetics/Nutrition Certification the Dietician/Nutritionist Licensure Act, 24 Del.C. §3808, must meet the content requirements of The American Dietetic Association for CPE credit. One hour of CPE credit shall be given for each hour of CPE activity.~~

23.1.1 ~~To renew his or her certification license a GDN LDN must obtain thirty (30) hours of CPE during each two year certification period.~~

23.1.1.1 ~~CPE requirements shall be prorated for new CDNs LDNs as follows: If the new GDN LDN has been certified licensed less than 1 year, CPE is not required for renewal, if the new GDN LDN has been certified licensed for more than 1 year but less than 2 years, half of the 30 CPE hours (15 hours) are required. If certified licensed for 2 or more years, the full 30 hours of CPE is required.~~

- 2.1.1.2 ~~Due to the shortened time period of the October 1, 2007 – May 31, 2009 certification period, only 25 CPE hours must be earned during that period to qualify for renewal on May 31, 2009.~~
- ~~23.1.1.32~~ Extensions of time: An extension of time to complete CPE requirements will be granted to any ~~CDN LDN~~ who can demonstrate to the ~~Committee Board~~ an acceptable cause. The ~~CDN LDN~~ must petition the ~~Committee Board~~ for an extension. Should the ~~Committee Board~~ deny the request, the ~~CDN LDN~~ must complete the requirements to maintain ~~certification licensure~~. Examples of circumstances for which the ~~Committee Board~~ may grant extensions of time include, but are not limited to, prolonged illness or extended absence from the country.
- ~~23.2~~ Proof of continuing education is satisfied with an attestation by the ~~certificate holder licensee~~ that he or she has satisfied the requirements of Rule ~~23.0~~.
- ~~23.2.1~~ Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion may be submitted.
- ~~23.2.2~~ ~~Certificate holders Licensees~~ selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule ~~23.3~~.
- ~~23.3~~ Random audits will be performed by the ~~Committee Board~~ to ensure compliance with the CPE requirements.
- ~~23.3.1~~ The ~~Committee Board~~ will notify ~~CDNs LDNs~~ within sixty (60) days after the ~~certificate license~~ renewal date that they have been selected for audit.
- ~~23.3.2~~ ~~CDNs LDNs~~ selected for random audit shall be required to submit verification within ten (10) days of receipt of notification of selection for audit.
- ~~23.3.3~~ Verification shall include such information necessary for the ~~Committee Board~~ to assess whether the course or other activity meets the CPE requirements in Rule ~~23.0~~, which may include, but is not limited to, the following information:
- ~~23.3.3.1~~ Proof of attendance. While course brochures may be used to verify contact hours, they are not considered to be acceptable proof for use of verification of course attendance.
- ~~23.3.3.2~~ Date of CPE course;
- ~~23.3.3.3~~ Instructors of CPE course;
- ~~23.3.3.4~~ Sponsor of CEU course;
- ~~23.3.3.5~~ Title of CPE course; and
- ~~23.3.3.6~~ Number of hours of CPE course.
- ~~23.3.4~~ The CPE activities must be performed within the two year period prior to renewal of ~~certification licensure~~. If an activity overlaps two renewal periods, the date of completion of the activity determines the date in which the activity can be reported.
- ~~23.3.5~~ The current document published by CDR/ADA, describing CPE guidelines for registered dietitians shall be used as a guide to interpret requirements of CDR/ADA for CPE.
- ~~23.3.6~~ The ~~Committee Board~~ will accept the decisions of CDR and ~~CBNS~~ for appropriateness of CPE activities and reserves the right to approve or disapprove any other activity deemed appropriate for CPE, using current CDR/ADA standards as criteria.
- ~~23.3.7~~ The ~~Committee Board~~ may establish maximum hours allowed for any type of activity in the two-year period.
- ~~23.3.7.1~~ A maximum of 15 CPE hours shall be allowed for selfstudy programs.
- ~~23.3.7.2~~ A maximum of 6 CPE hours shall be allowed for exhibits.
- ~~23.3.7.3~~ A maximum of 10 CPE hours shall be allowed for poster presentations.
- ~~3.4~~ The Board shall review all documentation requested of any licensee shown on the audit list. If the Board determines the licensee has met the requirements, the licensee's license shall remain in effect. If the Board initially determines the licensee has not met the requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. This hearing will be conducted to determine if there are any extenuating circumstances justifying the apparent

noncompliance with these requirements. Unjustified noncompliance of these regulations shall be considered grounds for discipline in the practice of dietetics and nutrition, pursuant to 24 Del.C. §3811. The minimum penalty for unjustified noncompliance shall be a letter of reprimand.

- 3.5 Any licensee denied renewal or disciplined pursuant to these rules and regulations may contest such ruling by filing an appeal pursuant to the Administrative Procedures Act.

11 DE Reg. 226 (08/01/07)

### 3.0 **Renewal of Certification**

~~Beginning on October 1, 2007, CDN certification shall expire biennially on May 31 of odd-numbered years.~~

~~11 DE Reg. 226 (08/01/07)~~

### 4.0 **Licensure-Renewal**

- 4.1 The biennial licensure period expires on May 31 of every odd-numbered year. A licensee may have his/her license renewed by submitting a renewal application to the Board by the renewal date and upon payment of the renewal fee prescribed by the Division of Professional Regulation (Division) along with an attestation of completion of the continuing education requirements. License renewal may be accomplished online at the Division's website: [www.dpr.delaware.gov](http://www.dpr.delaware.gov).

- 4.2 Any licensee who fails to renew his/her license by the renewal date may reactivate his/her license during the one (1) year period immediately following the license expiration date provided the licensee pays a late fee in addition to the prescribed renewal fee, submits an application on an appropriate form to the Board and provides proof that he/she completed the required continuing education.

- 4.3 No LDN will be permitted to renew his/her license once the one-year period has expired but the former licensee may re-apply under the same conditions that govern applicants for licensure under 24 Del.C. Ch. 38.

### 45.0 **Code of Ethics. [24 Del.C. §3811(a)(4).]**

- 45.1 The ~~CDN~~ LDN provides professional service with objectivity and with respect for the unique needs and values of individuals, avoiding discrimination on the basis of race, creed, gender, national origin, age or disability.
- 45.2 The ~~CDN~~ LDN accurately presents professional qualifications and credentials and does not permit the use of these credentials by an unqualified person.
- 45.3 The ~~CDN~~ LDN remains free of conflict of interest and promotes or endorses products/services in a manner that is neither false nor misleading.
- 45.4 The ~~CDN~~ LDN assumes responsibility and accountability for personal competence in practice through continuing professional education and adherence to accepted standards of practice.
- 45.5 The ~~CDN~~ LDN shall recognize and exercise professional judgment within the limits of his/her qualifications and shall not accept or perform professional responsibilities which the ~~CDN~~ LDN is not qualified to perform.
- 45.6 The ~~CDN~~ LDN practices nutrition/dietetics based on scientific principles and current substantiated information without personal bias, enabling clients to make informed decisions.
- 45.7 The ~~CDN~~ LDN maintains the confidentiality of information obtained from clients and maintains records relating to services provided to a client in the course of a professional relationship.
- 45.8 The ~~CDN~~ LDN conducts himself/herself with honesty, integrity and fairness, advertises services in a factual, straightforward manner, and fulfills professional commitments in good faith.
- 45.9 The ~~CDN~~ LDN shall not engage in dietetic practice while under the influence of alcohol or drugs which impair the provision of such practice.
- 45.10 The ~~CDN~~ LDN shall be responsible for reporting alleged misrepresentation or violations of the Code of Ethics to the State ~~Committee~~ Board of Dietetics/Nutrition.

---

## 6.0 Crimes Substantially Related To Provision Of Dietetic/Nutrition Services.

- 6.1 For the purposes of this section the following definition shall apply:
- 6.1.1 **"Conviction"** 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 §1024 of Title 10 (domestic violence diversion program) or by §4764 of Title 16 (first offenders controlled substances diversion program). Including 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.
- 6.2 Conviction of any of the following crimes in Title 11, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit the following crimes, is deemed to be a crime substantially related to the provision of Dietetics/Nutrition services as a Certified Dietitian and/or Nutritionist in the State of Delaware without regard to the place of conviction:
- ~~6.2.1 Homicide~~
  - ~~6.2.2 Assault~~
  - ~~6.2.3 Criminal Sexual Abuse~~
  - ~~6.2.4 Tax Evasion~~
  - ~~6.2.5 Kidnapping~~
  - ~~6.2.6 Theft and all related offenses~~
  - ~~6.2.7 Embezzlement~~
  - ~~6.2.8 Child pornography~~
  - ~~6.2.9 Forgery~~
  - ~~6.2.10 Identity theft~~
  - ~~6.2.11 Insurance fraud~~
  - ~~6.2.12 Bribery~~
  - ~~6.2.13 Perjury~~
  - ~~6.2.14 Abuse—any abuse of a person or animal~~
  - ~~6.2.15 Counterfeiting~~
  - ~~6.2.16 Tampering with consumer products~~
  - ~~6.2.17 Hate crimes~~
  - ~~6.2.18 False or fraudulent statements~~
  - ~~6.2.19 Kick Back schemes~~
  - ~~6.2.20 Abduction or unlawful restraint~~
  - 6.2.1 §501 Criminal solicitation in the third degree
  - 6.2.2 §502 Criminal solicitation in the second degree
  - 6.2.3 §503 Criminal solicitation in the first degree
  - 6.2.4 §511 Conspiracy in the third degree
  - 6.2.5 §512 Conspiracy in the second degree
  - 6.2.6 §513 Conspiracy in the first degree
  - 6.2.7 §601 Offensive touching; Class A Misdemeanor
  - 6.2.8 §602 Menacing;
  - 6.2.9 §603 Reckless endangering in the second degree;
  - 6.2.10 §604 Reckless endangering in the first degree;
  - 6.2.11 §605 Abuse of a pregnant female in the second degree;
  - 6.2.12 §606 Abuse of a pregnant female in the first degree;
  - 6.2.13 §611 Assault in the third degree;
  - 6.2.14 §612 Assault in the second degree;
  - 6.2.15 §613 Assault in the first degree;

- 6.2.16 §615 Assault by abuse or neglect;
- 6.2.17 §621 Terroristic threatening;
- 6.2.18 §625 Unlawfully administering drugs;
- 6.2.19 §626 Unlawfully administering controlled substance or counterfeit substance or narcotic drugs;
- 6.2.20 §629 Vehicular assault in the first degree;
- 6.2.21 §630 Vehicular homicide in the second degree;
- 6.2.22 §630A Vehicular homicide in the first degree;
- 6.2.23 §631 Criminally negligent homicide;
- 6.2.24 §632 Manslaughter;
- 6.2.25 §633 Murder by abuse or neglect in the second degree;
- 6.2.26 §634 Murder by abuse or neglect in the first degree;
- 6.2.27 §635 Murder in the second degree;
- 6.2.28 §636 Murder in the first degree;
- 6.2.29 §645 Promoting suicide.

#### Sexual Offenses

- 6.2.30 §763 Sexual harassment;
  - 6.2.31 §764 Indecent exposure in the second degree;
  - 6.2.32 §765 Indecent exposure in the first degree;
  - 6.2.33 §766 Incest;
  - 6.2.34 §767 Unlawful sexual contact in the third degree;
  - 6.2.35 §768 Unlawful sexual contact in the second degree;
  - 6.2.36 §769 Unlawful sexual contact in the first degree;
  - 6.2.37 §770 Rape in the fourth degree;
  - 6.2.38 §771 Rape in the third degree;
  - 6.2.39 §772 Rape in the second degree;
  - 6.2.40 §773 Rape in the first degree;
  - 6.2.41 §776 Sexual extortion;
  - 6.2.42 §777 Bestiality;
  - 6.2.43 §778 Continuous sexual abuse of a child;
  - 6.2.44 §780 Female genital mutilation.
  - 6.2.45 §781 Unlawful imprisonment in the second degree;
  - 6.2.46 §782 Unlawful imprisonment in the first degree;
  - 6.2.47 §783 Kidnapping in the second degree;
  - 6.2.48 §783A Kidnapping in the first degree;
  - 6.2.49§791 Acts constituting coercion;
- 6.3 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:
- 6.3.1 §801 Arson in the third degree;
  - 6.3.2 §802 Arson in the second degree;
  - 6.3.3 §803 Arson in the first degree;
  - 6.3.4 §811 Criminal mischief, Felony.
  - 6.3.5 §820 Trespassing with intent to peer or peep into a window or door of another;
  - 6.3.6 §824 Burglary in the third degree;
  - 6.3.7 §825 Burglary in the second degree;
  - 6.3.8 §826 Burglary in the first degree;
  - 6.3.9 §828 Possession of burglar's tools or instruments facilitating theft;

## Robbery

- 6.3.10 §831 Robbery in the second degree;
  - 6.3.11 §832 Robbery in the first degree.
  - 6.3.12 §835 Carjacking in the second degree;
  - 6.3.13 §836 Carjacking in the first degree;
  - 6.3.14 §840 Shoplifting; Felony
  - 6.3.15 §841 Theft;
  - 6.3.16 §846 Extortion;
  - 6.3.17 §854 Identity theft;
  - 6.3.18 §860 Possession of shoplifter's tools or instruments facilitating theft;
  - 6.3.19 §861 Forgery
  - 6.3.20 §862 Possession of forgery devices;
  - 6.3.21 §871 Falsifying business records;
  - 6.3.22 §873 Tampering with public records in the second degree;
  - 6.3.23 §876 Tampering with public records in the first degree;
  - 6.3.24 §877 Offering a false instrument for filing;
  - 6.3.25 §878 Issuing a false certificate;
  - 6.3.26 §903 Unlawful use of credit card; Felony.
  - 6.3.27 §903 A Re-encoder and scanning devices;
  - 6.3.28 §906 Deceptive business practices;
  - 6.3.29 §907B Criminal impersonation of a police officer;
  - 6.3.30 §908 Unlawfully concealing a will;
  - 6.3.31 §909 Securing execution of documents by deception;
  - 6.3.32 §913 Insurance fraud;
  - 6.3.33 §913A Health care fraud;
- 6.4 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:
- 6.4.1 §1100 Dealing in children;
  - 6.4.2 §1101 Abandonment of child;
  - 6.4.3 §1102 Endangering the welfare of a child;
  - 6.4.4 §1105 Endangering the welfare of an incompetent person;
  - 6.4.5 §1106 Unlawfully dealing with a child;
  - 6.4.6 §1107 Endangering children;
  - 6.4.7 §1108 Sexual exploitation of a child;
  - 6.4.8 §1109 Unlawfully dealing in child pornography;
  - 6.4.9 §1111 Possession of child pornography;
  - 6.4.10 §1112 Sexual offenders; prohibitions from school zones.
  - 6.4.11 §1112A Sexual solicitation of a child;
  - 6.4.12 §1113 Criminal non-support and aggravated criminal non-support.
  - 6.4.13 §1325 Cruelty to animals;
  - 6.4.14 §1326 Animals; fighting and baiting prohibited;
  - 6.4.15 §1327 Maintaining a dangerous animal, felony;
- 6.5 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:
- 6.5.1 §1201 Bribery;

- 6.5.2 §1203 Receiving a bribe;
  - 6.5.3 §1207 Improper influence;
  - 6.5.4 §1211 Official misconduct
  - 6.5.5 §1212 Profiteering
  - 6.5.6 §1221 Perjury in the third degree;
  - 6.5.7 §1222 Perjury in the second degree;
  - 6.5.8 §1223 Perjury in the first degree;
  - 6.5.9 §1233 Making a false written statement: class
  - 6.5.10 §1240 Terroristic threatening of public officials or public servants
  - 6.5.11 §1245 Falsely reporting an incident, felony;
  - 6.5.12 §1250 Offenses against law-enforcement animals;
  - 6.5.13 §1254 Assault in a detention facility;
  - 6.5.14 §1256 Promoting prison contraband, felony;
  - 6.5.15 §1257A Use of an animal to avoid capture, felony;
  - 6.5.16 §1261 Bribing a witness;
  - 6.5.17 §1262 Bribe receiving by a witness;
  - 6.5.18 §1263 Tampering with a witness;
  - 6.5.19 §1263A Interfering with child witness;
  - 6.5.20 §1264 Bribing a juror;
  - 6.5.21 §1265 Bribe receiving by a juror;
  - 6.5.22 §1266 Tampering with a juror;
  - 6.5.23 §1267 Misconduct by a juror;
  - 6.5.24 §1269 Tampering with physical evidence;
  - 6.5.25 §1273 Unlawful grand jury disclosure;
- 6.6 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.
- 6.6.1 §1302 Riot;
  - 6.6.2 §1304 Hate crimes;
  - 6.6.3 §1312 Aggravated harassment;
  - 6.6.4 §1312A Stalking, felony;
  - 6.6.5 §1313 Malicious interference with emergency communications;
  - 6.6.6 §1331 Desecration;
  - 6.6.7 §1332 Abusing a corpse;
  - 6.6.8 §1333 Trading in human remains and associated funerary objects.
  - 6.6.9 §1335 Violation of privacy;
  - 6.6.10 §1338 Bombs, incendiary devices, Molotov cocktails and explosive devices;
  - 6.6.11 §1339 Adulteration;
  - 6.6.12 §1340 Desecration of burial place.
  - 6.6.13 §1341 Lewdness;
  - 6.6.14 §1351 Promoting prostitution in the third degree;
  - 6.6.15 §1352 Promoting prostitution in the second degree;
  - 6.6.16 §1353 Promoting prostitution in the first degree;
  - 6.6.17 §1355 Permitting prostitution;



6.6.18 §1361 Obscenity; acts constituting;

6.6.19 §1365 Obscene literature harmful to minors

6.7 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:

6.7.1 §4751 Prohibited acts A;

6.7.2 §4752 Prohibited acts B;

6.7.3 §4752A Unlawful delivery of noncontrolled substance;

6.7.4 §4753A Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, L.S.D., or designer drugs;

6.7.5 §4754A Possession and delivery of noncontrolled prescription drug (felony);

6.7.6 §4755 Prohibited acts E;

6.7.7 §4756 Prohibited acts;

6.7.8 §4757 Hypodermic syringe or needle; delivering or possessing (felony); disposal (felony);

6.7.9 §4761 Distribution to persons under 21 years of age;

6.7.10 §4761A Purchase of drugs from minors;

6.7.11 §4767 Distribution, delivery, or possession of controlled substance within 1,000 feet of school property;

6.7.12 §4768 Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship;

6.7.13 §4774 Drug Paraphernalia (felony).

6.8 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:

6.8.1 §1442 Carrying a concealed deadly weapon;

6.8.2 §1443 Carrying a concealed dangerous instrument;

6.8.3 §1444 Possessing a destructive weapon;

6.8.4 §1445a Unlawfully dealing with a dangerous weapon (felony);

6.8.5 §1446 Unlawfully dealing with a switchblade knife;

6.8.6 §1447 Possession of a deadly weapon during commission of a felony;

6.8.7 §1447A Possession of a firearm during commission of a felony;

6.8.8 §1448 Possession and purchase of deadly weapons by persons prohibited;

6.8.9 §1448A Criminal history record checks for sales of firearms

6.8.10 §1449 Wearing body armor during commission of felony;

6.8.11 §1450 Receiving a stolen firearm;

6.8.12 §1451 Theft of a firearm;

6.8.13 §1452 Unlawfully dealing with knuckles-combination knife;

6.8.14 §1453 Unlawfully dealing with martial arts throwing star;

6.8.15 §1454 Giving a firearm to person prohibited;

6.8.16 §1455 Engaging in a firearms transaction on behalf of another;

6.8.17 §1456 Unlawfully permitting a minor access to a firearm;

6.8.18 §1457 Possession of a weapon in a Safe School and Recreation Zone;

6.8.19 §1458 Removing a firearm from the possession of a law enforcement officer;

6.8.20 §1459 Possession of a weapon with a removed, obliterated or altered serial number;

6.8.21 §1504 Organized Crime & Racketeering;

6.8.22 §3532 Acts of Intimidation;

# PROPOSED REGULATIONS

- 6.8.23 §3533 Aggravated act of intimidation;
- 6.8.24 §3534 Attempt to Intimidate;  
Other Crimes
- 6.8.25 Title 16 §1136 Violations - neglect or abuse of patient or resident of nursing facilities;
- 6.8.26 Title 23 §2302 - Operation of a vessel or boat while under the influence of intoxicating liquor or drugs (Felony under §2305);
- 6.8.27 Title 30 §571 Attempt to evade or defeat tax;
- 6.8.28 Title 30 §572 Failure to collect or pay over tax;
- 6.8.29 Title 30 §574 Fraud and false statements (felony);
- 6.8.30 Title 31 §§1003,1004 and 1005 (felony under §1007);
- 6.8.31 Title 21 §2810 Driving after judgment prohibited;
- 6.8.32 Title 21 §4177 Driving a vehicle while under the influence or with a prohibited alcohol content, (felony);
- 6.8.33 Title 21 §4177J Drinking while driving prohibited;
- 6.8.34 Title 21 §6704 Receiving or transferring stolen vehicle
- 6.8.35 Title 21 §6705 Removed, falsified or unauthorized identification number on vehicle, bicycle or engine; removed or affixed license/registration plate with intent to misrepresent identify, (felony);
- 6.8.36 Title 7 §1717 Unauthorized Acts against a Service Guide or Seeing Eye Dog. (class D felony);
- 6.8.37 Title 11 §2402 Interception of Communications Generally; Divulging Contents of Communications;
- 6.8.38 Title 11 §2403 Manufacture, Possession or Sale of Intercepting Device;
- 6.8.39 Title 11 §2410 Breaking and Entering, Etc. to Place or Remove Equipment;
- 6.8.40 Title 11 §2412 Obstruction, Impediment or Prevention of Interception;
- 6.8.41 Title 11 §2421 Obtaining, Altering or Preventing Authorized Access;
- 6.8.42 Title 11 §2422 Divulging Contents of Communications;
- 6.8.43 Title 11 §2431 Installation and Use Generally [of pen trace and trap and trace devices];
- 6.8.44 Title 11 §8523 Penalties [Criminal History Record Information-penalties for violation of reporting provision re: SBI], (felony);
- 6.8.45 Title 11 §8562 - for failure of child-care provider to obtain information [Criminal History Record Information] required under §8561 or for those providing false information;
- 6.8.46 Title 11 §8572 [Providing false information when seeking employment in a public school];
- 6.8.47 Title 16 §914 Penalty for Violation [of reporting requirements involving abuse under §903];
- 6.8.48 Title 16 §2513 Penalties [relating to improper health-care decisions] (falsification, destruction of a document to create a false impression that measures to prolong life have been authorized);
- 6.8.49 Title 16 §7112 Penalties [for violations of chapter [Sale, Use, Etc., of Explosive Materials other than §7103] (felony);
- 6.8.50 Title 23 §2303 Operation of a Vessel or Boat while under the Influence of Intoxicating Liquor and/or Drugs (Felony);
- 6.8.51 Title 31 §3913 Violations [knowing or reckless abuse of an infirm adult];
- 6.9 Any crime which is a violation of Title 24, Chapter 38 (Dietetics and Nutrition Practice Act) as it may be amended from time to time.
- 6.310 Crimes substantially related to the provision of services as a Certified Dietitian and/or Nutritionist LDN 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.
- 8 DE Reg. 1288 (03/01/05)**
- 11 DE Reg. 226 (07/01/07)**

---

## **57.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals**

- 57.1** 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.
- 57.2** 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.
- 57.3** 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).
- 57.4** 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.
- 57.5** 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 subsection 5.8 of this section.
- 57.6** The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:
- 57.6.1** 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.
- 57.6.2** 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.
- 57.6.3** Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.
- 57.6.4** 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.

- 57.6.5 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.
- 57.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.
- 57.7 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.
- 57.8 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.
- 57.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.
- 57.10 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.
- 57.11 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.
- 57.12 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.
-

---

## Symbol Key

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. **[Bracketed Bold language]** indicates text added at the time the final order was issued. ~~**[Bracketed stricken through]**~~ indicates language deleted at the time the final order was issued.

## Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the **Register of Regulations**. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

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

---

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF MEDICAID AND MEDICAL ASSISTANCE Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

### ORDER

### 1915(c) Home and Community-Based Services Waiver for the Elderly and Disabled

#### Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Medicaid & Medical Assistance initiated proceedings to submit an application to the Centers for Medicare and Medicaid Services (CMS) for renewal of its Home and Community-Based Services waiver entitled, Elderly and Disabled Waiver Services, for an additional five years. 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 May 2009 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2009 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### Summary of Proposal

As a reminder, the proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) announces its intent to submit to the Centers for Medicare and Medicaid Services (CMS) the State's application for a renewal of Delaware's Home and Community-Based Services waiver entitled, Elderly and

---

Disabled Services Waiver Program, for an additional five years. This request is being filed pursuant to Section §1915(c) of the Social Security Act.

**Statutory Authority**

- Social Security Act §1915(c), *Provisions Respecting Inapplicability and Waiver of Certain Requirements of this Title*;
- 42 CFR §441, Subpart G, *Home and Community-Based Services Waiver Requirements*

**Background**

The Medicaid Home and Community-Based Services (HCBS) waiver program is authorized in §1915(c) of the Social Security Act. The program permits a State to furnish an array of home and community-based services that assist Medicaid beneficiaries to live in the community and avoid institutionalization. The State has broad discretion to design its waiver program to address the needs of the waiver's target population. Waiver services complement and/or supplement the services that are available to participants through the Medicaid State plan and other federal, state and local public programs as well as the supports that families and communities provide.

The Centers for Medicare and Medicaid Services (CMS) recognizes that the design and operational features of a waiver program will vary depending on the specific needs of the target population, the resources available to the State, service delivery system structure, State goals and objectives, and other factors. A State has the latitude to design a waiver program that is cost-effective and employs a variety of service delivery approaches, including participant direction of services.

Delaware's Elderly & Disabled (E&D) Waiver was originally approved in 1985. Newly-established waiver programs are in effect for a period of three years, and existing waivers are in effect for five years. The E&D Waiver is approaching the conclusion of its current five-year effective period. The current demonstration, project #0136.90, is in effect through June 30, 2009. In order to continue providing services under this waiver after June 30, 2009, Delaware must submit a renewal application to the Centers for Medicare and Medicaid Services (CMS).

**Summary of Proposal**

The Division of Medicaid and Medical Assistance (DMMA) is in the process of renewing its home and community-based waiver for elderly and disabled waiver services and is announcing a thirty-day public comment period on the waiver extension. The State intends no significant changes in benefits or the population served during the renewal period.

Eligibility requirements, types of services provided, number of available slots, and other key program elements will remain the same. One new development for this renewal, however, is the implementation of a more extensive quality improvement strategy. Since the last renewal application several years ago, CMS has increased requirements for states to develop and implement quality improvement strategies for waiver programs. This renewal application conforms to these requirements and contains provisions for various aspects of a quality improvement strategy, including data collection, data aggregation, and remediation & improvement methodologies. Responsibility for the quality improvement strategy lies with the Division of Services for Aging and Physical Disabilities (DSAAPD), the E&D Waiver administering/operating agency, and the Division of Medicaid and Medical Assistance (DMMA), the oversight agency. The direct impact of the quality improvement strategy on participants and providers will be minimal. (Providers and a sample of participants will be asked questions during brief telephone surveys conducted annually.) Indirectly, all parties involved should benefit from improved efficiency and service delivery approaches which are expected results from the quality improvement strategy.

The renewal application proposes that Delaware will continue providing services under the E&D Waiver from July 1, 2009 through June 30, 2014.

The provisions of this waiver are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

---

## Summary of Comments Received with Agency Response

The Governors Advisory Council for Exceptional Citizens (GACEC) offered the following condensed observations and recommendations summarized below. DSAAPD and DMMA have considered each comment and responds as follows:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Services for Aging and Adults with Physical Disabilities' (DSAAPD) April 14, 2009 letter responding to comments from the State Council for Persons with Disabilities (SCPD) regarding the renewal application for a §1915 (c) Home and Community-Based Waiver (Elderly & Disabled Waiver). Council truly appreciates the Division's consideration of their comments and is respectfully re-submitting the following important issues which remain "unresolved" with DSAAPD's April 14<sup>th</sup> response (italicized). GACEC infers that its observations will be shared with CMS.

1. GACEC strongly objects to the lack of inclusion of participant direction opportunities. Excluding participant direction from the waiver is obviously disfavored by CMS, is inconsistent with the Money Follows the Person Program, and maintains an outdated model.

DSAAPD shared intention to amend after approval from CMS.

**Agency Response:** DSAAPD is in strong agreement that self-direction needs to be incorporated into the E&D Waiver. We fully recognize that self-direction is a highly effective model for service delivery and that it has worked successfully in Delaware's Personal Attendant Services Program and in many programs in other states. Research indicates that it can be included in Delaware's E&D Waiver.

In preparation for developing this renewal application, DSAAPD staff researched self-direction models, reviewed waiver requirements, consulted with CMS staff, and drew up tentative plans for self-directed services in the E&D Waiver.

Ultimately, despite all of the good reasons to include self-direction in the renewal application, we decided to postpone these plans. The principle reason was an administrative reality that could not be overcome before July 1, the implementation date of the renewal. Specifically, the development of self-directed components into the waiver would involve certain re-structuring within the Medicaid Management Information System (MMIS), which handles the processing of claims and payments. It was not realistic to obtain cost estimates for programming fees or get the actual programming accomplished before the renewal date.

Fortunately, waivers can be amended at any time to adjust the service package and/or other aspects of waiver operations. As soon as the renewal application is in effect, we plan to begin the process of amending the E&D Waiver to include self-direction. CMS has been made aware of this intention and is in agreement that this is the best avenue to pursue in light of the amount of time and costs involved in the development and implementation of self-directed services.

2. DHSS allows ninety days to complete the level of care determination for an existing Medicaid beneficiary. See p. 33 (App. B, Sec. B-6.f.). DHSS could consider a shorter time frame.

DSAAPD opted to retain 90-day standard to "allow for unusual circumstances".

**Agency Response:** A shorter time frame is preferable, but the maximum allows for unusual circumstances which might occur.

3. The services menu is relatively "bare-bones" (p. 44 (App. C, Sec. C-1a)). There are only five authorized services: adult day services, personal care, respite, personal emergency response systems, and specialized medical equipment and supplies. The scarcity of services deflects persons to nursing homes.

DSAAPD noted it is "willing to consider additional services and supports, but must operate within budgetary constraints."

**Agency Response:** We are in agreement about the importance of community-based services in deflecting institutionalization. CMS allows other services under waivers, and we are willing to consider additional services and supports, but must operate within budgetary constraints.

4. DHSS disallows the provision of personal care by relatives and guardians. See p. 46 (App. C, Sec. C-1/3 and p. 58 (App. C, Sec. C-2e). This is objectionable. In other contexts (e.g. PAS program), DSAAPD has authorized compensated relative caregivers.

DSAAPD plans to pursue the inclusion of service delivery by relatives and guardians as a component of self-direction when the waiver is amended.

**Agency Response:** DSAAPD plans to pursue the inclusion of service delivery by relatives and guardians as a component of self-direction when the waiver is amended.

5. DHSS disallows the provision of respite by relatives and guardians. See p. 48 (App. C, Sec. C-1/3) and p. 55 (App. C, Sec. C-2c). This is objectionable.

DSAAPD plans to pursue the inclusion of service delivery by relatives and guardians as a component of self-direction when the waiver is amended.

**Agency Response:** See agency response to #4 above.

6. The "Service Definition" of "personal emergency response systems" is unduly limiting. It only allows a PERS if linked to a "response center staffed by trained professionals". DSAAPD is exclusively adopting a rigid, outdated, and unduly expensive service model.

DSAAPD would like to consider these cost-saving suggestions and can perhaps incorporate changes in an amended waiver application.

**Agency Response:** DSAAPD would like to consider these cost-saving suggestions and can perhaps incorporate changes in an amended waiver application. (DSAAPD has begun to research these options.)

7. DHSS recites that the administration of medication is limited to medical personnel who are professionally licensed. See p. 104 (App.G, Sec. G-3c. This is not entirely accurate. For settings outside of assisted living and nursing homes (e.g. adult day settings), a waiver participant can delegate administration to non-medical personnel. See Title 24 **Del.C.** §1921(a)(19).

This section of the application applies only to the administration of medication in assisted living and nursing home facilities.

As a follow-up, the GACEC requests clarification as to why the Division responded that this section only applies to assisted living and nursing home facilities, or why a section pertaining to such facilities is included in a Home and Community Based Services Waiver application.

**Agency Response:** Instructions for completing Appendix G-3 of the waiver application indicate: "This appendix must be completed when waiver services are furnished to participants who are served in licensed or unlicensed living arrangements where a provider has round-the-clock responsibility for the health and welfare of residents. The Appendix does not need to be completed when waiver participants are served exclusively in their own private residences or in the home of a family member."

In general, Medicaid waivers can pay for services on a regular basis in community-based residential facilities, such as assisted living. In addition, waivers can pay for short-term respite services in community-based facilities as well as in nursing homes.

One of the services included in the E&D Waiver is respite care. Under the E&D Waiver, respite care services are available in an individual's residence or in an assisted living facility or in a nursing home. Responses provided



---

in Appendix G-3 pertain to the administration of medication in assisted living or nursing facilities for participants receiving short-term respite care in those settings.

Thank you again for your comments and for your interest in helping us to improve the E&D Waiver. We look forward to working with advocacy groups such as yours as we further develop the waiver in the months ahead.

### Findings of Fact:

The Department finds that the proposed changes as set forth in the May 2009 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation regarding the five-year extension of the Elderly and Disabled 1915(c) Waiver is adopted and shall be final effective July 10, 2009.

Rita M. Landgraf, Secretary, DHSS

**\*Please note that no changes were made to the regulation as originally proposed and published in the May 2009 issue of the *Register* at page 1362 (12 DE Reg. 1362). Therefore, the final regulation is not being published. The application is available in PDF format at the following link:**

[1915\(c\).pdf](#) [1915\(c\) Home and Community-Based Services Waiver for the Elderly and Disabled](#)

---

### 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 provide information of public interest with respect to the Child Care Subsidy Program regarding *Special Needs*. The Department's proceedings 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 public comment pursuant to 29 **Delaware Code** Section 10115 in the May 2009 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2009 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### Summary of Proposed Change

The proposed change described below amends Child Care Program policies in the Division of Social Services Manual (DSSM) regarding *Special Needs*. The purpose of this change is to clarify policy for individuals with special child care needs.

#### Statutory Authority

- 45 CFR Part 98, *Child Care and Development Fund*
- 45 CFR §98.20, *A child's eligibility for child care services*

---

**Summary of Proposed Change**

**DSSM 11003.7.8, *Special Needs*:** The changes clarify and improve the readability and usability of the rule regarding child care services for eligible children with special needs. This includes removing examples and outdated language.

**Summary of Comments Received With Agency Response and Explanation of Changes**

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. DSS has considered each comment and responds as follows.

First, the Division is deleting all four examples which appear in the current regulation. The Division may wish to consider retention of some examples. Examples two and three could be retained since one addresses the special needs of a caretaker and the other addresses the special needs of a child. In other contexts (e.g. Section 11003.9.3), the Division includes eight clarifying examples, which are instructive to agency workers and applicants.

**Agency Response:** The examples were removed from the policy because with the policy rewritten for clarification, there is no need for them. The examples were confusing, and over time become inaccurate and misleading.

Second, DSS is deleting a cross reference on waiver of fees: "See section 11004.7 to determine eligibility for waiving the parent fee." Since children with special needs are considered a priority under 45 C.F.R. 98.44(b), DSS may wish to consider retaining the cross reference to facilitate positive eligibility determinations.

**Agency Response:** The section under revision is about Special Needs Childcare and in no way addresses waiving of fees. You cited 45 CFR 98.44(b) which addresses priority of care which is unrelated to waiving of fees. Because the receipt of Special Needs Care does not equate to waiving of any fees it is appropriate to remove that reference.

Third, a regulation contains the following sentence: "If the parent/caretaker meets the need criteria as listed in 11003.8, the family will not be eligible for Special Needs Child Care unless the child requires care that cannot be provided in a regular day care." This is not accurate. For example, parents do not have to demonstrate that a 13-18 year old child's needs cannot be met in a regular day-care setting. See "Children with Special Needs" section. Moreover, it may not be age-appropriate to place a 16-17 year old in a "regular day care" even if a day care were willing to mix populations.

**Agency Response:** Your last comment addresses an inaccuracy in the statement, "If the parent/caretaker meets the need criteria listed in 111003.8, the family will not be eligible for Special Needs Child Care unless the child requires care that cannot be provided in a regular day care." After review, DSS agrees that there is an inaccuracy in the statement and has made the following revision to clarify the text:

"If the parent/caretaker meets the need criteria as listed in 11003.8, the family will not be eligible for Special Needs Child Care unless the child under age 13 requires care that cannot be provided in a regular day care."

**Findings of Fact:**

The Department finds that the proposed changes as set forth in the May 2009 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Child Care Subsidy Program policies regarding *Special Needs* is adopted and shall be final effective July 10, 2009.

Rita M. Landgraf, Secretary, DHSS

---

## DSS FINAL ORDER REGULATION #09-24

### REVISION:

#### 11003.7.8 Special Needs Children

~~The designation of special needs impacts both eligibility and parent fees.~~

~~See section 11004.7 to determine eligibility for waiving the parent fee.~~

##### Eligibility

~~A family can be eligible for Child Care for a child that is between ages 13 and under 19 if the child has a special need that requires child care. This would mean the child is unable to care for himself physically or emotionally, or Division of Family Services (DFS) has referred the child for care due to a protective need.~~

~~Families with special needs children or adults must meet the need for services and income eligibility.~~

~~EXAMPLE: A financially eligible family with two working parents requests child care for their 14 year old child with Downs Syndrome. The 14 year old is incapable of caring for himself due to the Downs Syndrome. They would be eligible for Child Care due to the special needs of the child.~~

~~The special need of a child or an adult that directly results in the need for child care can in itself be the need for care when determining eligibility as long as they meet financial eligibility.~~

~~EXAMPLE: A financially eligible family of four with a working Father and a stay at home Mother requests child care for their 12 month old child with a developmental delay. In this case if it is verified that the child needs child care services to assist in increasing the development of the child, they would be eligible.~~

~~EXAMPLE: A financially eligible family of four with a working Father and a stay at home Mother requests child care for their two children ages 2 and 4. The mother was involved in a car accident and is unable to get out of bed. The special need of this mother would be the need for care.~~

~~All special needs for both the child and adult must be verified by using the Special Needs form.~~

~~Special circumstances within a family may be considered on a case by case basis when determining the need for child care. These cases must be approved by the Child Care Administrator.~~

~~EXAMPLE: Two older grandparents have custody of their 4 yr. old grandchild. The grandmother is unable to care for the child due to health reasons and the grandfather would like to look for work. There is no need for care since the grandfather is in the home. The circumstances of this four year old could qualify the grandparents for special needs child care. In this case still try to get a special needs form filled out that would address the 4 yr. olds need to be in a day care setting with other children to enhance the child's social and emotional development.~~

##### Division of Family Services

~~DFS cases meet the need for service due to the DFS referral. DFS cases do not need to meet financial eligibility. DFS cases that are non citizens and do not meet our citizenship criteria are eligible for services due to the DFS referral. DCIS II Child Care Sub system would place these cases in Category 51.~~

~~Parent fees may be waived for DFS cases on a case by case basis, with supervisory approval.~~

~~**9 DE Reg. 572 (10/01/05)**~~

~~**10 DE Reg. 1007 (12/01/06)**~~

45 CFR 98.20

##### Eligibility

Families requesting Special Needs Child Care must be technically and financially eligible.

**EXCEPTION:** DFS referrals do not have to meet financial criteria.

If the parent/caretaker meets the need criteria as listed in 11003.8, the family will not be eligible for Special Needs Child Care unless the child [under age 13] requires care that cannot be provided in a regular day care.

To be eligible for Special Needs care the parent/caretaker or child must meet the definition of need as explained below.

**Children with Special Needs:**

A child that is 13 through 18 years of age may be eligible for Special Needs Child Care if the child's physical, medical or emotional condition is such that he is unable to care for himself. Children under age 13 may qualify for Special Needs Child Care if they have a need that cannot be met in a regular day-care setting. Children 13 years of age and older are only eligible for Special Needs Childcare.

Documentation of the condition may be provided on the Special Needs Form or any other written correspondence submitted by a physician or medical professional with the authority to do so.

**Adults with Special Needs:**

A parent/caretaker may be eligible for Special Needs Child Care services if the parent has a condition which makes the parent/caretaker unable to care for his/her child.

Documentation of the condition may be provided on the Special Needs Form or any other written correspondence submitted by a physician or medical professional with the authority to do so.

**Families with Protective Child Care Needs**

Children referred by the Division of Family Services (DFS) may be eligible for Special Needs Child Care.

A child that is active with and referred by DFS for child care:

1. is considered to have met the need criteria;
2. does not have to meet the financial criteria;
3. may receive child care regardless of citizenship status.

**9 DE Reg. 572 (10/01/05)**

**10 DE Reg. 1007 (12/01/06)**

---

**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 provide information of public interest with respect to the Child Care Subsidy Program regarding *Absent Days*. The Department's proceedings 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 public comment pursuant to 29 **Delaware Code** Section 10115 in the May 2009 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2009 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**Summary of Proposed Change**

The proposed change described below amends Child Care Program policies in the Division of Social Services Manual (DSSM) regarding *Absent Days*. The purpose of this change is to clarify the *Absent Day Policy* as it relates to the number of absent days authorized and who cannot get paid absent days.

## Statutory Authority

- 45 CFR Part 98, *Child Care and Development Fund*

## Summary of Proposed Change

Amended **DSSM 11006.4.1**, *Absent Day Policy* clarifies that providers will not be paid for holidays that occur before the start date of the authorization. The Division of Social Services (DSS) may pay for up to five absent days in a month.

## Summary of Comments Received With Agency Response and Explanation of Changes

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. DSS has considered each comment and responds as follows.

First, the current regulation authorizes payment for holidays if a child attended at least one day during the month. The amendment clarifies that no payment will be made if the holiday actually precedes the start date of the authorization at that provider's site. This is ostensibly a justified limitation.

**Agency Response:** The absent day policy clarification as stated in the amended regulation is sufficient. The application of this policy will be an appropriate and fair process.

Second, the current regulation has two standards. One sentence authorizes payment for up to five absent days per month. Another sentence indicates that the number of paid absent days is indicated on a DSS authorization form. The amended regulation effectively authorizes compensation for the lower of the following: 1) the specific number of paid absent days listed on each child's Authorization form; or 2) the number of absent days authorized in one week (up to a maximum of five days per month). For clarity, in Section 11006.4.1, second sentence, Council recommends that DSS consider inserting "paid" between "of" and "absent". Alternately, DSS may wish to consider the following substitute for the second and third sentences in Section 11006.4.1:

***DSS pays for absent days based on the lower of the following: 1) the specific number of paid absent days listed on each child's Authorization form; or 2) the number of absent days authorized in one week (up to a maximum of five days per month).***

We would like to emphasize the importance of ensuring that regulations regarding the language in the authorization forms are consistent.

**Agency Response:** There are not two standards. DSS authorizes payment for up to five absent days per month. The other sentence indicates how a client is informed of his or her specific number of paid absent days. The number of paid absent days per month is the same as the number of authorized care days in one week (up to a maximum of five). If a client is authorized for 3 days of child care per week DSS will authorize 3 paid absent days per month. For clarity we are accepting your recommended language change. The revised text reads:

"The number of paid absent days per month is the same as the number of days authorized for care in one week (up to a maximum of five days per month)."

## Findings of Fact:

The Department finds that the proposed changes as set forth in the May 2009 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Child Care Subsidy Program policies regarding *Absent Days* is adopted and shall be final effective July 10, 2009.

Rita M. Landgraf, Secretary, DHSS

**DSS FINAL ORDER REGULATION #09-23****REVISION:****11006.4.1 Absent Day Policy**

~~Payments are made~~ DSS pays for up to five absent days per month. The number of [paid] absent days per month is the same as the number of days authorized [for care] in one week (up to a maximum of five [days per month]). The specific number of paid absent days is indicated on each child's ~~Form 618d~~ Authorization Form.

~~EXAMPLE: A child is authorized to attend three days a week. Therefore, the provider will be paid for up to three absent days a month.~~

Payment may be made for the major holidays listed in the contract for any child who attended at least one day during the month. No payment is made to a provider for a holiday that occurs before the start date of the authorization at that provider's site.

---

**DEPARTMENT OF INSURANCE**

Statutory Authority: 18 Delaware Code, Sections 314 and 1111 (18 **Del.C.** §§314 and 1111)  
18 **DE Admin. Code** 305

**ORDER**

Proposed changes to Regulation 305 relating to Actuarial Opinion and Memoranda were published in the *Delaware Register of Regulations* on May 1, 2009. The comment period remained open until June 1, 2009. There was no public hearing on the proposed changes to Regulation 305. Public notice of the proposed changes to Regulation 305 in the *Register of Regulations* was in conformity with Delaware law.

**Summary of the Evidence and Information Submitted**

Comment was received from the American Council of Life Insurers. The comment pointed out a numbering error. The comment also questions the need for three requirements that are not found in the NAIC Model. While the specific requirements may require companies to "go a step further" than would be required by adoption of the NAIC Model, the requirements are recommended by Department actuaries and are sound. The paragraph numbering error has been corrected. The purpose of the proposed amendment is to update requirements for actuarial reporting and provide guidance relative to the adequacy of reserves.

**Findings of Fact**

Based on Delaware law and the record in this docket, I make the following findings of fact:

The requirements of the amended Regulation 305 best serve the interests of the public and of insurers and comply with Delaware law.

---

## Decision and Effective Date

Based on the provisions of 18 Del.C. §§ 314, 1111 and 29 Del.C. §§ 10113-10118 and the record in this docket, I hereby adopt Regulation 305 as amended and as may more fully and at large appear in the version attached hereto to be effective on July 11, 2009.

## Text and Citation

The text of the proposed amendments to Regulation 305 last appeared in the *Register of Regulations* Vol. 12, Issue 11, pages 1381-1392.

**IT IS SO ORDERED** this 2nd day of June 2009.

Karen Weldin Stewart, CIR-ML  
Insurance Commissioner

## 305 Actuarial Opinion and Memorandum Regulation

### (Break in Continuity of Sections)

## **7.0 Description of Actuarial Memorandum Including an Asset Adequacy Analysis and Regulatory Asset Adequacy Issues Summary**

### 7.1 General

- 7.1.1 In accordance with 18 Del.C. §1111 (c), the appointed actuary shall prepare a memorandum to the company describing the analysis done in support of his or her opinion regarding the reserves. The memorandum shall be made available for examination by the Commissioner upon his or her request but shall be returned to the company after such examination and shall not be considered a record of the insurance department or subject to automatic filing with the Commissioner.
- 7.1.2 In preparing the memorandum, the appointed actuary may rely on, and include as a part of his or her own memorandum, memoranda prepared and signed by other actuaries who are qualified within the meaning of Section 5B of this regulation, with respect to the areas covered in such memoranda, and so state in their memoranda.
- 7.1.3 If the Commissioner requests a memorandum and no such memorandum exists or if the Commissioner finds that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board or the standards and requirements of this regulation, the Commissioner may designate a qualified actuary to review the opinion and prepare such supporting memorandum as is required for review. The reasonable and necessary expense of the independent review shall be paid by the company but shall be directed and controlled by the Commissioner.
- 7.1.4 The reviewing actuary shall have the same status as an examiner for purposes of obtaining data from the company and the work papers and documentation of the reviewing actuary shall be retained by the Commissioner; provided, however, that any information provided by the company to the reviewing actuary and included in the work papers shall be considered as material provided by the company to the Commissioner and shall be kept confidential to the same extent as is prescribed by law with respect to other material provided by the company to the Commissioner pursuant to the statute governing this regulation. The reviewing actuary shall not be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the insurer pursuant to this regulation for any one of the current year or the preceding three (3) years.
- 7.1.5 In accordance with 18 Del.C. §1111 (c), the appointed actuary shall prepare a regulatory asset adequacy issues summary, the contents of which are specified in ~~6-0~~ 7.3]. The regulatory asset

adequacy issues summary will be submitted no later than March 15 of the year following the year for which a statement of actuarial opinion based on asset adequacy is required. The regulatory asset adequacy issues summary is to be kept confidential to the same extent and under the same conditions as the actuarial memorandum.

**7.2** Details of the Memorandum Section Documenting Asset Adequacy Analysis

When an actuarial opinion is provided, the memorandum shall demonstrate that the analysis has been done in accordance with the standards for asset adequacy referred to in this regulation and any additional standards under this regulation. It shall specify:

**7.2.1** For reserves:

**7.2.1.1** Product descriptions including market description, underwriting and other aspects of a risk profile and the specific risks the appointed actuary deems significant;

**7.2.1.2** Source of liability in force;

**7.2.1.3** Reserve method and basis;

**7.2.1.4** Investment reserves;

**7.2.1.5** Reinsurance arrangements;

**7.2.1.6** Identification of any explicit or implied guarantees made by the general account in support of benefits provided through a separate account or under a separate account policy or contract and the methods used by the appointed actuary to provide for the guarantees in the asset adequacy analysis;

**7.2.1.7** Documentation of assumptions to test reserves for the following:

**7.2.1.7.1** Lapse rates (both base and excess);

**7.2.1.7.2** Interest crediting rate strategy;

**7.2.1.7.3** Mortality;

**7.2.1.7.4** Policyholder dividend strategy;

**7.2.1.7.5** Competitor or market interest rate;

**7.2.1.7.6** Annuitization rates;

**7.2.1.7.7** Commissions and expenses; and

**7.2.1.7.8** Morbidity.

The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumptions.

**7.2.2** For assets:

**7.2.2.1** Portfolio descriptions, including a risk profile disclosing the quality, distribution and types of assets used for each analysis basis;

**7.2.2.2** Investment and disinvestment assumptions;

**7.2.2.3** Source of asset data;

**7.2.2.4** Asset valuation bases; and

**7.2.2.5** Documentation of assumptions made for:

**7.2.2.5.1** Default costs;

**7.2.2.5.2** Bond call function;

**7.2.2.5.3** Mortgage prepayment function;

**7.2.2.5.4** Determining market value for assets sold due to disinvestment strategy; and

**7.2.2.5.5** Determining yield on assets acquired through the investment strategy.

The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumptions.

**7.2.3** For each analysis basis:

**7.2.3.1** Methodology;



- 7.2.3.2 Rationale for inclusion or exclusion of different blocks of business and how pertinent risks were analyzed;
- 7.2.3.3 Rationale for degree of rigor in analyzing different blocks of business (include in the rationale the level of "materiality" that was used in determining how rigorously to analyze different blocks of business);
- 7.2.3.4 Criteria for determining asset adequacy (include in the criteria the precise basis for determining if assets are adequate to cover reserves under "moderately adverse conditions" or other conditions as specified in relevant actuarial standards of practice); and
- 7.2.3.5 Whether the impact of federal income taxes was considered and the method of treating reinsurance in the asset adequacy analysis; and
- 7.2.3.6 Suitability of assets used in support of the liabilities included in the analysis basis.
- 7.2.4 Summary of material changes in methods, procedures, or assumptions from prior year's asset adequacy analysis;
- 7.2.5 Summary of results; and
- 7.2.6 Conclusions.
- 7.3** Details of the Regulatory Asset Adequacy Issues Summary
  - 7.3.1 The regulatory asset adequacy issues summary shall include:
    - 7.3.1.1 Descriptions of the scenarios tested (including whether those scenarios are stochastic or deterministic) and the sensitivity testing done relative to those scenarios. If negative ending surplus results under certain tests in the aggregate, the actuary should describe those tests and the amount of additional reserve as of the valuation date which, if held, would eliminate the negative aggregate surplus values. Ending surplus values shall be determined by either extending the projection period until the in force and associated assets and liabilities at the end of the projection period are immaterial or by adjusting the surplus amount at the end of the projection period by an amount that appropriately estimates the value that can reasonably be expected to arise from the assets and liabilities remaining in force.
    - 7.3.1.2 The extent to which the appointed actuary uses assumptions in the asset adequacy analysis that are materially different than the assumptions used in the previous asset adequacy analysis;
    - 7.3.1.3 The amount of reserves and the identity of the product lines that had been subjected to asset adequacy analysis in the prior opinion but were not subject to analysis for the current opinion;
    - 7.3.1.4 Comments on any interim results that may be of significant concern to the appointed actuary; Under the level interest rate scenario, the appointed actuary should specify the amount of additional reserve as of the valuation date which, if held, would eliminate all negative interim surplus values.
    - 7.3.1.5 The methods used by the actuary to recognize the impact of reinsurance on the company's cash flows, including both assets and liabilities, under each of the scenarios tested; and
    - 7.3.1.6 Whether the actuary has been satisfied that all options whether explicit or embedded, in any asset or liability (including but not limited to those affecting cash flows embedded in fixed income securities) and equity-like features in any investments have been appropriately considered in the asset adequacy analysis.
  - 7.3.2 The regulatory asset adequacy issues summary shall contain the name of the company for which the regulatory asset adequacy issues summary is being supplied and shall be signed and dated by the appointed actuary rendering the actuarial opinion.
- 7.4** Conformity to Standards of Practice. The memorandum shall include a statement:

"Actuarial methods, considerations and analyses used in the preparation of this memorandum conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis for this memorandum."

- 7.5 Use of Assets Supporting the Interest Maintenance Reserve and the Asset Valuation Reserve  
An appropriate allocation of assets in the amount of the interest maintenance reserve (IMR), whether positive or negative, shall be used in any asset adequacy analysis. Analysis of risks regarding asset default may include an appropriate allocation of assets supporting the asset valuation reserve (AVR); these AVR assets may not be applied for any other risks with respect to reserve adequacy. Analysis of these and other risks may include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support.  
The amount of the assets used for the AVR shall be disclosed in the table of reserves and liabilities of the opinion and in the memorandum. The method used for selecting particular assets or allocated portions of assets shall be disclosed in the memorandum.
- 7.6 Required Interest Scenarios
- 7.6.1 For the purpose of performing the asset adequacy analysis required by this regulation, the qualified actuary is expected to follow standards adopted by the Actuarial Standards Board; nevertheless, the appointed actuary must consider in the analysis the effect of at least the following interest rate scenarios:
- 7.6.1.1 Level with no deviation;
- 7.6.1.2 Uniformly increasing over ten (10) years at a half percent per year and then level;
- 7.6.1.3 Uniformly increasing at one percent per year over five (5) years and then uniformly decreasing at one percent per year to the original level at the end of ten (10) years and then level;
- 7.6.1.4 An immediate increase of three percent (3%) and then level;
- 7.6.1.5 Uniformly decreasing over ten (10) years at a half percent per year and then level;
- 7.6.1.6 Uniformly decreasing at one percent per year over five (5) years and then uniformly increasing at one percent per year to the original level at the end of ten (10) years and then level; and
- 7.6.1.7 An immediate decrease of three percent (3%) and then level.
- 7.6.2 For these and other scenarios which may be used, projected interest rates for a five (5) year Treasury Note need not be reduced beyond the point where the five (5) year Treasury Note yield should be at fifty percent (50%) of its initial level.
- 7.6.3 The beginning interest rates may be based on interest rates for new investments as of the valuation date similar to recent investments allocated to support the product being tested or be based on an outside index, such as Treasury yields, of assets of the appropriate length on a date close to the valuation date. Whatever method is used to determine the beginning yield curve and associated interest rates should be specifically defined. The beginning yield curve and associated interest rates should be consistent for all interest rate scenarios.
- 7.7 Documentation
- 7.7.1 Documentation. The appointed actuary shall retain on file, for at least seven (7) years, sufficient documentation so that it will be possible to determine the procedures followed, the analyses performed, the bases for assumptions and the results obtained.

## **8.0 Effective Date**

This Regulation is effective ~~June~~ July 11, 2009.

**\*Please note that no additional changes were made to the regulation as originally proposed and published in the May 2009 issue of the *Register* at page 1397 (12 DE Reg. 1397). Therefore, the entire final regulation is not being published. A copy of the final regulation is available at:**

**<http://regulations.delaware.gov/register/july2009/final/13 DE Reg 102 07-01-09.htm>**

---

## DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

### 400 Delaware Gaming Control Board

Statutory Authority: 28 Delaware Code, Sections 1122 (a) (28 **Del.C.** §§1122 (a))  
24 **DE Admin. Code** 401, 402, 403 and 404

### ORDER

On May 14, 2009 Governor Markell signed Senate Bills 30 and 31 which amended several sections of Title 28 related to Nonprofit Charitable Gambling and No Limit Texas Hold'em Poker.

Consequently, the Board determined to use the informal process under the *Section 10113 (a)(5)* Delaware Administrative Procedures Act ("APA"), 29 **Del.C.** §10113(a)(5) in order to adopt these amendments to its regulations. The informal procedure allows state agencies to promulgate "amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulation."

In conclusion, the following findings and conclusions are entered:

1. The Board, acting through this Order, adopts as a final regulation the changes to regulations 401 Regulations Governing Bingo, 402 Regulations Governing Raffles, 403 Regulations Governing Charitable Gambling other than Raffles and 404 Regulations Governing No Limit Texas Hold'em Poker under 28 **Del.C.** §§1122 (a) , and 29 **Del.C.** §10113(a)(5) insofar as the amendments to the regulations are made to be consistent with the changes in the basic law;

2. These amendments to the Regulations are exempt from the public hearing and notice requirements that otherwise would apply to the promulgation of a regulation, and it is appropriate to reflect a change in law as soon as possible.

So Ordered this 5th day of June 2009.

Deborah Messina, Chair  
James Greene, Vice Chair  
Thomas Trader, Member  
Brad Barrie, Member  
Sharon McDowell, Member

### 401 Regulations Governing Bingo

#### 1.0 Definitions

**"Bingo"** A game of chance played for prizes with cards bearing numbers or other designations, five or more in one line, the holder covering numbers as objects similarly numbered are drawn from a receptacle and the game being won by the person who first covers a previously designated arrangement of numbers on such a-card.

**"Bingo Statute"** The statutory law concerning bingo, as contained in 28 **Del.C.**, §1101 et. seq.

**"Board"** The Delaware Gaming Control Board.

**"Color Coded"** A different color for each of the five letters of the word "BINGO."

**"Cookie Jar Bingo"** A game of chance in which players pay a set fee into a cookie jar or other container and receive a number which entitles the player to entry into a later drawing for the total funds deposited by all other players in the cookie jar or container.

**"Districts"** Those districts mentioned in Article II, 917A of the Delaware Constitution.

**"Equipment"** The receptacle and color coded numbered objects to be drawn from it, the master board upon which such objects are placed as drawn, the cards or sheets bearing numbers or other

designations to be covered and the objects used to cover them, the boards or signs, however operated, used to announce or display the numbers or designations as they are drawn, public address systems, tables, chairs, and other articles essential to the operation, conduct and playing of bingo.

**“Game”** The game of bingo.

**“Instant Bingo”** A game of chance played with sealed or covered cards which must be opened in some fashion by the holder such that the cards reveal instantly whether the holder has won a prize. This type of game includes but is not limited to games commonly known as “rip-offs” or “Nevada pull-tabs.”

**“Member in Charge”** A bona fide, active member of the "Qualified Organization" in charge of, and primarily responsible for the conduct of the game on each occasion.

**“Occasion”** A single gathering or session at which a series of successive bingo games (regular, special, or otherwise) is played, not to exceed forty (40) in number.

**“Proceeds”** The gross income received from all activities engaged in or on occasion when bingo is played, less only, such actual expenses incurred as are authorized in the Bingo Statute and these Rules and Regulations.

**“Qualified Organization”** A volunteer fire company, veterans organization, religious or charitable organization, or fraternal society that is operated in a manner so as to come within the provisions of Section 170 of the U.S. Secretary of the Treasury.

**“Week”** means a seven day period beginning on Sunday and ending on Saturday.

**2 DE Reg. 1224 (01/01/99)**

**12 DE Reg. 357 (09/01/08)**

## 2.0 Applications For Bingo License

- 2.1 Original applications shall be filed upon:
  - 2.1.1 the first application of an organization for a license;
  - 2.1.2 after the first application and upon a subsequent change in the organization's charter or bylaws; or
  - 2.1.3 in the event of a subsequent application after a prior refusal, suspension, or revocation by the Board.
- 2.2 Supplemental applications for bingo licenses shall be filed in all instances except those covered by the original application. All promotional give-away events, as defined under 28 **Del.C.** §1139(h)(2), must be listed on an applicant's application for licensure, giving the dates of the promotional give-away events. If the event is not listed on the application, no promotional give-away event can be conducted.
- 2.3 All original and supplemental applications shall be filed with the Secretary of the Board at least six (6) weeks prior to the date of the occasion.
  - 2.3.1 An application must be submitted in advance of the proposed date of the function as to allow the Board to consider the application at two consecutive board meetings before deciding to approve or deny the application.
- 2.4 No applications (original or supplemental) shall be accepted unless the applicant, at the time of the filing, attaches a check or money order for the full amount of the fees payable by law for each occasion requested. In the event an application is refused by the Board, the application fees shall be refunded in full to the applicant. There shall be a license fee of \$15 for each occasion on which bingo is conducted under a license.
- 2.5 No application shall be received by the Commission unless it clearly shows that the applicant is located in and seeks to conduct the game in a district which has approved the licensing of bingo by referendum, and on premises owned or regularly leased by the applicant. If the applicant desires to conduct games on premises specially leased for the occasion, a separate written request therefor (together with supporting reasons) shall accompany the application. The Board reserves the right to accept or reject any application for the conduct of games on specially leased premises. Organization conducting a Function shall prepare and have available on the premises a list of all persons taking part in the management or operation of the Function. Such list shall be maintained as part of the licenses,

records of the Function and shall be made available to any member or agent of the Board or law enforcement officer.

**2 DE Reg. 1224 (1/1/99)**

**8 DE Reg. 531 (10/01/04)**

**12 DE Reg. 357 (09/01/08)**

### **3.0 Bingo Licenses**

- 3.1 Upon receiving an application, the Board shall make an investigation of the merits of the application. The Board shall consider the impact of the approval of any license application on existing licensees within the applicant's geographical location prior to granting any new license. The Board may deny an application if it concludes that approval of the application would be detrimental to existing licensees.
- 3.2 The Board may issue a license only after it determines that:
  - 3.2.1 The applicant is duly qualified to conduct games under the State Constitution, statutes, and regulations.
  - 3.2.2 The members of the applicant who intend to conduct the bingo games are bona fide active members of the applicant and are persons of good moral character and have never been convicted of a crime involving moral turpitude.
  - 3.2.3 The bingo games are to be conducted in accordance with the provisions of the State Constitution, statutes, and regulations.
  - 3.2.4 The proceeds are to be disposed of as provided in the State Constitution and statutes.
  - 3.2.5 No salary, compensation or reward whatever will be paid or given to any member under whom the game is conducted. If the findings and determinations of the Board are to the effect that the application is approved, the Secretary shall execute a license for the applicant.
- 3.3 The license shall be issued in triplicate. The original thereof shall be transmitted to the applicant. Two copies shall be retained by the Commission for its files.
- 3.4 If the findings and determinations of the Commission are to the effect that the application is denied, the Secretary shall so notify the applicant by certified mail of the reasons for denial, and shall refund any application fees submitted.
- 3.5 In the event of a request for an amendment of a license, the request shall be promptly submitted to the Commission in writing, and shall contain the name of the licensee, license number, and a concise statement of the reasons for requested amendment. The Commission may grant or deny the request, in its discretion, and may require supporting proof from the licensee before making any determination. The Commission may require the payment of an additional license fee before granting the request. The licensee shall be notified of the Commission's action by appropriate communication, so that the licensee will not be unduly inconvenienced.
- 3.6 No license shall be effective for a period of more than one year from the date it was issued.
- 3.7 No license shall be effective after the organization to which it was granted has become ineligible to conduct bingo under any provision of Article II, §17A of the Delaware Constitution.
- 3.8 No license shall be effective after the voters in any District designated in Article II, §17A of the Constitution have decided against bingo in a referendum held pursuant to that section and subchapter II of the Bingo Statute.
- 3.9 No bingo licensee licensed prior to July 14, 1998, shall conduct more than ten (10) bingo events in any calendar month and no bingo licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998) shall conduct more than one (1) bingo event per week. A bingo licensee who was licensed prior to July 14, 1998 whose license lapses for six (6) months or more due to non-renewal or suspension or any other reason shall, upon licensing thereafter, be considered a licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998).
- 3.10 The license application shall contain a full and fair description of the prize and the appraised value of the prize. In lieu of submitting an appraisal, the applicant or licensee may submit the full retail value of the prize. In cases where the applicant or licensee purchases the prize from a third party, the Board

may require that the applicant or licensee arrange for an independent appraisal of the value of the prize from a person licensed to render such appraisals, or if there is no person licensed to render such appraisals, from a person qualified to render such appraisals.

**2 DE Reg. 1224 (1/1/99)**

**3 DE Reg. 1692 (6/1/00)**

**4 DE Reg. 334 (8/1/00)**

#### 4.0 Conduct of Bingo

- 4.1 The officers of a licensee shall designate a bona fide, active member to be in charge of and primarily responsible for the conduct of the game of chance on each occasion. The member in charge shall supervise all activities on the occasions for which he is in charge and shall be responsible for the making of the required report thereof. The member in charge shall be familiar with the provisions of the Bingo Statute, and these rules and regulations.
- 4.2 The room where any game is being held, operated, or conducted, or where it is intended that any game shall be held, operated, or conducted, or where it is intended that any equipment be used, shall at all times be open to inspection by the appropriate law enforcement officers and agents of the District in which the premises are situated, and to the Board and its agents and employees. Bingo games shall not be commenced prior to 1:30 p.m. and the operation of a function shall be limited to six hours. Instant bingo is permitted during any event sponsored by the organization that is licensed to conduct it, regardless of the day or time.
- 4.3 No person under the age of eighteen (18) shall be permitted in any bingo game, the prize for which is money. No person under the age of 18 shall be permitted to participate in any instant bingo game. No person under the age of sixteen (16) shall participate in any game of bingo nor shall such person conduct or assist in the conduct of the playing of any game of bingo, except that persons no younger than the age of fourteen (14) may act as waiters and waitresses in the handling of food or drinks at an occasion on which a licensee conducts bingo.
- 4.4 No organization licensed prior to enactment of 71 **Del. Law** 444 (July 14, 1998), may hold, operate, or conduct bingo more often than ten (10) days in any calendar month. No bingo licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998) shall conduct more than one bingo event per week. A bingo licensee licensed prior to the enactment of 71 **Del. Laws** 444 (July 14, 1998), whose license lapses for six (6) months or more due to nonrenewal or suspension or any other reason shall, upon licensing thereafter, be considered a licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998).
- 4.5 The Board and its duly authorized agents and employees may examine the books and records of any licensee, so far as those books and records relate to any transaction connected with the holding, operating, and conducting of the game of bingo, and may examine any manager, officer, director, agent, member, employee, or assistant of the licensee under oath in relation to the conduct of the game of bingo.
- 4.6 No prize ~~greater~~ in an amount or value greater than \$250 shall be offered or given in any single game and the aggregate amount or value of all prizes offered or given in all games played on a single occasion shall not exceed ~~\$1,000~~ \$1,250. All winners shall be determined and all prizes shall be awarded in any game played on any occasion within the same calendar day as that upon which the game is played. The value of any promotional giveaways, which shall be no more than \$500 per annum to be distributed at an organizational anniversary date and no more than three (3) holiday dates per year, shall not be counted towards the dollar amounts described in this section. However, a licensee may offer inducements, including but not limited to cookie-jar bingo games that do not exceed \$500 per game per night, free refreshments, and free transportation of players to and from bingo events, to attract bingo players to the bingo event, provided that the fair market value of inducements is limited to 15% of the total amount of all other prizes offered or given during the bingo event.
- 4.6.1 Any amounts in any cookie-jar bingo games shall not be included in the limitations of this section or in any prize money limitations. A bingo licensee may not have more than two \$500 cookie jar bingo pots at any one time which are to be awarded to players. The licensee must award the first

cookie jar bingo pot before it may start a third cookie jar bingo pot. In the event that a licensee has a first cookie jar bingo pot of \$500 and then accrues a second cookie jar bingo pot of \$500, the licensee must award the first cookie jar pot to a player on the occasion at which the second cookie jar pot reaches the \$500 limit. On such occasion, if the first cookie jar pot is not awarded by the end of the occasion, the licensee shall conduct a final special bingo game of "full card" or "black out" bingo using a separate, single card, and the first \$500 cookie jar shall be won by the player or players who first covers all spaces on their entire card.

- 4.7 Two or more organizations may not hold games of bingo at the same place on the same day. Unless a bingo licensee has been licensed prior to the enactment of 71 **Del. Laws** 444 (July 14, 1998), only one licensed organization may hold bingo games in a licensed organization's building during any given week.
- 4.8 No alcoholic beverages shall be permitted in the room from the time the bingo hall opens until the conclusion of the last bingo game of the occasion.
- 4.9 All games shall be conducted with equipment that is owned absolutely by the licensee or that is leased for fees not in excess of those allowable under the Schedule of Rental for leasing of equipment on file with the Board. Equipment shall include playing cards. If the licensee uses cards that are for more than one session of playing bingo, these cards should be identified as the property of the licensee.
- 4.10 All winners shall be determined and all prizes shall be awarded in any game played on any occasion within the same calendar day as that upon which the game is played.
- 4.11 When more than one player is found to be the winner on the call of the same number in the same game, the designated prize shall be divided equally as possible; and when division is not possible, substitute prizes, whose aggregate value shall not exceed that of the designated prize, shall be awarded; but such substitute prizes shall be of equal value to each other.
- 4.12 The equipment used in the playing of bingo and the method of play shall be such that each card shall have an equal opportunity to be a winner. The objects drawn shall be essentially equal as to size, shape, weight, and balance, and as to all other characteristics that may control their selection, and all shall be present in the receptacle before each game is begun. All numbers shall be announced so as to be visible or audible to all players present.
- 4.13 The particular arrangement of numbers required to be covered in order to win the game shall be clearly described and announced to the players immediately before each game is begun.
- 4.14 No arrangement of numbers shall be required to be covered in order to win the game other than the following:
  - 4.14.1 one unspecified horizontal row;
  - 4.14.2 one unspecified vertical row;
  - 4.14.3 one unspecified full diagonal row;
  - 4.14.4 one unspecified row (horizontal, vertical, or diagonal);
  - 4.14.5 Two or more of the foregoing, forming a specified arrangement;
  - 4.14.6 The entire card;
  - 4.14.7 Four corners;
  - 4.14.8 Eight spaces surrounding the free space.
- 4.15 Within the limits contained in 28 **Del.C.** §1132(b), alternate prizes may be offered depending upon the number of calls within which bingo is reached, provided the application for the bingo license and the license so specify.
- 4.16 Any player shall be entitled to call for a verification of all numbers drawn at the time a winner is determined, and for a verification of the objects remaining in the receptacle and not yet drawn. The verification shall be made in the immediate presence of the member designated to be in charge on the occasion, but if such member is also the announcer, then in the immediate presence of an officer of the licensee.
- 4.17 No licensee shall conduct more than forty (40) games on a single occasion.

- 4.18 In the playing of bingo, no person who is not physically present in the room where the game is actually conducted shall be allowed to participate as a player in the game.
- 4.19 Within the limits contained in 28 **Del.C.** §1132(6), the prizes offered may be varied depending upon the number of people who attend the occasion, provided the application for bingo license and license so specify. If a licensee avails itself of the provisions of this rule, it must announce at the beginning of each game the number of people present and the prizes to be awarded.
- 4.20 The entire proceeds of the games of bingo must be used solely for the promotion or achievement of the purposes of the licensee.
- 4.21 Any local rules adopted by the licensee that affect the conduct of the players or the awarding of prizes shall be prominently posted in at least four locations within the area where the bingo games are conducted.
- 4.22 The licensee shall be permitted to reserve seats within the area where the bingo games are conducted to provide for the special needs of handicapped persons, and the licensee shall ensure that the remaining seats are made available to the players on an equal basis.
- 4.23 A licensee may charge an admission fee to a game event in any room or area in which a game is to be conducted. The admission fee shall entitle the game player (a) to a card enabling the player to participate without additional charge in all regular games to be played under the license at the event, or (b) to free refreshments. The licensee may charge an additional fee to a game player for a single opportunity to participate in a special game to be played under license at the event.
- 4.24 No person shall conduct or assist in conducting any game except an active member of the organization to which the license is issued.
- 4.25 No item of expense shall be incurred or paid in connection with the conduct of the game except shall be incurred or paid in connection with the conduct of the game except such as are bona fide items of a reasonable amount for merchandise furnished or services rendered which are reasonably necessary for the conduct of the game.

**2 DE Reg. 1224 (1/1/99)**

**2 DE Reg. 1761 (4/1/99)**

**12 DE Reg. 357 (09/01/08)**

## **5.0 Reports After the Function**

- 5.1 When no game is held on a date a licensee is authorized to hold such game, a report to that effect shall be filed with the Board.
- 5.2 Within ~~45~~ 30 days of the last day of the function, the member-in-charge shall submit a report to the Board that includes all information required by 28 **Del.C.** §1140(a).
- 5.3 If a licensee fails to timely file a report or if a report is not properly verified, or not fully, accurately, and truthfully completed, no further license shall be issued to the licensee and any existing license shall be suspended until such time as the deficiency has been corrected.

**11 DE Reg. 516 (10/01/07)**

**12 DE Reg. 357 (09/01/08)**

## **6.0 Suspension and Revocation of Licenses**

- 6.1 Proceedings to suspend or to revoke a license shall be brought by notifying the licensee of the ground thereof and the date set forth for a hearing thereon. The Commission may stop the operation of a game pending hearing, in which case the hearing must be held within five (5) days after such action.
- 6.2 When suspension or revocation proceedings are begun before the Commission, it shall hear the matter and make written findings in support of its decision. The licensee shall be informed of the decision and of the effective date of the suspension or revocation.
- 6.3 When a license is suspended or revoked, the licensee shall surrender up the license to the Board on or before that effective date set forth in the notice of decision. In no case shall any license be valid beyond the effective date of suspension or revocation, whether surrendered or not.



- 6.4 Upon finding of the violation of these rules and regulations or the Bingo Statute, such as would warrant the suspension or revocation of a license, the Board may in addition to any other penalties which may be imposed, declare the violator ineligible to conduct a game of bingo and to apply for a license under said law for a period not exceeding thirty (30) months thereafter. Such declaration of the ineligibility may be extended to include, in addition to the violator, any of its subsidiary organizations, its parent organization and any other organization having a common parent organization or otherwise affiliated with the violator, when in the opinion of the Board, the circumstances of the violation warrant such action.

## 7.0 Severability

If any provision of these Regulations or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of these Regulations and the applicability of such provisions to other persons or circumstances shall not be affected thereby.

2 DE Reg. 1224 (1/1/99)

## 402 Regulations Governing Raffles

These regulations shall apply to any raffle conducted under 28 Del.C. §1130 in which the value of the prize or prizes to be awarded is \$5,000 or more or in which the ticket price is \$5.00 or more for a single drawing for prizes, or \$15.00 or more for a series of drawings for prizes occurring on a periodic schedule exceeding one month. These regulations are issued pursuant to the authority granted the Delaware Gaming Control Board in 28 Del.C. §1122(2).

2 DE Reg. 1224 (1/1/99)

## 1.0 Definitions

“**Board**” The Delaware Gaming Control Board.

“**Prize**” Any item or items chosen by a Sponsoring Organization as the subject of a raffle, which the organization announces it will award to a person selected by chance from among those purchasing tickets to the raffle.

“**Qualified Member**” For the purposes of eligibility to participate in managing or otherwise assisting in the operation of raffle, a person is a bona fide member of the licensed organization only when he or she:

Has become a member prior to the commencement of the function and such membership was not dependent upon, or in any way related to the payment or consideration to participate in, any gambling activity; and

Has held full and regular membership status in the licensed organization for a period of not less than three (3) consecutive months prior to the subject function; and

Has paid any reasonable initiation or admission fees for membership, and/or any dues, consistent with the nature and purpose of the licensed organization and with the type of membership obtained and is not in arrears in payment of any such fees or dues; and

Has met all other conditions required by the licensed organization for membership and is in all respects a member in good standing at the time of the subject function; and

Is a bona fide member of a bona fide charitable or bona fide nonprofit organization affiliated with or auxiliary to his or her sponsoring organization, or to which his or her own organization is auxiliary, when he or she meets all of the standards set out above respecting his or her own organization.

“**Raffle**” A form of lottery in which a number of persons buy one or more chances attempting to win the same prize. Any game such as so called "Nevada cards" or "pull cards" where the amount of the prize is determined by the contents of the ticket purchased are not raffles.

“**Related Party**” Includes:

An officer, director, or trustee (or an individual having powers or responsibilities similar to those of officers, directors, or trustees) of the organization.

A spouse other than a spouse who is legally separated from the individual under a decree of divorce or separate maintenance; a child including legally adopted children; grandchildren; parents; and grandparents of parties described in (a) above.

A corporation, trust, estate or partnership more than 35% of which is owned or held by any of the preceding.

**“Sponsoring Organization”** Any veterans, religious, or charitable organization, volunteer fire company or fraternal society as defined in Article II, §17A or §17B of the State Constitution.

## 2.0 Disclosure

- 2.1 In any raffle conducted pursuant to 28 **Del.C.** §1130, the sponsoring organization must disclose the following information on the raffle ticket itself:
  - 2.1.1 A full and fair description of the prize;
  - 2.1.2 The appraised value of the prize;
  - 2.1.3 If there is a minimum number of tickets to be sold, what the minimum is and the procedure to be employed to secure a refund in the event the minimum is not reached;
  - 2.1.4 The drawing date for the raffle;
  - 2.1.5 The exact nature of the charitable purpose for which the proceeds will be used.

## 3.0 Obligations of the Sponsoring Organization

- 3.1 If for any reason the raffle is not completed and a prize is not awarded on the scheduled drawing date, the sponsoring organization must take all steps necessary to notify ticket purchasers of that fact and return all money received from ticket purchasers within thirty days.
- 3.2 No member or employee, or immediate family member of a member or employee, of a sponsoring organization who has been directly involved in the promotion or operation of a raffle shall be permitted to purchase tickets to the raffle or win the prize. The sale of tickets alone shall not constitute the promotion and operation of a raffle for purposes of this section. Nothing in this section prohibits the award of a prize to a person for selling a winning ticket.
- 3.3 The sponsoring organization shall take such steps as are necessary under the circumstances to insure that each ticket purchaser has a chance to be selected as the prize winner and that prize winner is selected in an entirely random manner.
- 3.4 In cases where the sponsoring organization purchases the prize from a third party, the Board may require that the sponsoring organization arrange for an independent appraisal of the value of the prize from a person licensed to render such appraisals, or if there is no applicable licensing requirement, from a person qualified to render such appraisals.
- 3.5 If the sponsoring organization purchases a prize from a related party, the price to be paid must be at cost or substantially less than the appraised value of the prize.
- 3.6 No sponsoring organization or its employees, members, agents or servants, shall give away tickets to a raffle without receiving the full established price for them unless all members of the public have an equal chance to receive bonus chances or books of chances when buying a certain number of chances or books of chances.
- 3.7 The sponsoring organization shall structure the raffle in such a way that it may reasonably be anticipated that the sponsoring organization will retain a percentage of the gross proceeds which is reasonable under the circumstances and shall retain all of the net proceeds (gross proceeds minus the direct expenses of the raffle) for the purpose specified in their application under 28 **Del.C.** §1130.

## 4.0 Record Keeping, Financial Control

- 4.1 A record keeper shall be designated from among the members of the organization as defined in 1.0 **“Qualified Member”** and shall have been a member for a minimum of two (2) years prior to the

commencement of the raffle. The record keeper or his designee shall be responsible for the keeping and distribution of raffle tickets to be sold, the safekeeping of paid-for and completed ticket stubs, and the maintenance of the records prescribed by this section during and after the completion or suspension of the raffle for a period of at least two years.

- 4.2 The raffle ticket shall have at least two parts, one of which is to be retained by the purchaser, and the other to be retained by the record keeper. The record keeper's part must at a minimum contain the purchaser's name, address, and telephone number. All such parts shall be imprinted with sequential serial numbers commencing with the numeral "1" through the maximum number of tickets to be sold.
- 4.3 The record keeper shall maintain and periodically update as the need arises, the following types of records:
  - 4.3.1 all documents, bills of sale, agreements, appraisals or other documents concerning the purchase of the article or articles to be raffled;
  - 4.3.2 all permits, licenses, and any other documents prescribed or required by law as necessary for the lawful conduct of a raffle;
  - 4.3.3 a list or access to a list of all persons authorized to sell raffle tickets or participating in any way in the promotion or operation of the raffle. If raffle tickets are given to one person to sell and this person recruits other persons to help sell raffle tickets, the record keeper need only keep a list of those persons to whom the record keeper has directly distributed raffle tickets.
  - 4.3.4 a ledger book or other suitable record keeping device listing the number of tickets distributed, and the number of tickets returned as sold.
  - 4.3.5 the ticket stubs used to conduct the drawing for a period of not less than six months.
- 4.4 Financial records shall be maintained by the record keeper sufficient to show:
  - 4.4.1 the current amount of proceeds received on account of the raffle;
  - 4.4.2 all expenses related to the conduct of the raffle including printing costs, advertising costs, lawyers fees, appraisal costs, insurance premiums, and any other costs reasonably attributable to the raffle.

## **5.0 Violations of Regulations**

Failure to comply with any of the Regulations shall subject the violator to suspension or revocation of any valid license issued under 28 **Del.C.** §1130 and criminal prosecution.

## **6.0 Application**

- 6.1 All applications for a license to conduct a raffle shall be submitted on Form BCC-2 at least six (6) weeks prior to the date of the function. The information supplied must include the name, address, and phone number of the sponsoring organization, the prize to be awarded, the value of the prize, the maximum number of tickets to be sold, the cost of each raffle ticket, the date the prize will be awarded, the exact nature of the charitable purpose for which the proceeds will be used, and the name, address and phone number of the person in charge of the organization, and the person designated to be the record keeper for the raffle.
  - 6.1.1 An application must be submitted sufficiently in advance of the proposed date of the function as to allow the Board to consider the application at two consecutive board meetings before deciding to approve or deny the application.
- 6.2 There shall be a license fee of \$15 for each raffle application submitted to the Board for approval.
- 6.3 The Board shall make an investigation of the qualifications of each applicant and the merits of each application. The Board shall consider the impact, if any, of the approval of a new raffle license application on existing licensees within the applicant's geographical location prior to granting the approval, and may deny the application if it concludes that approval of the application would be detrimental to existing licensees.
- 6.4 The Board may issue a license only after it determines that:

- 6.4.1 The applicant is duly qualified to conduct raffles under the State Constitution, statutes, and rules and regulations governing raffles; and
  - 6.4.2 The member or members of the applicant who intend to conduct the games are bona fide active members of the applicant and are persons of good moral character and have never been convicted of crimes involving moral turpitude; and
  - 6.4.3 The proceeds are to be disposed of as provided in the State Constitution and statutes; and
  - 6.4.4 No salary, compensation or reward whatever will be paid or given to any member under whom the game is conducted.
- 6.5 No raffle license application shall be effective for a period of more than one year from the date it was issued.
- 6.6 No raffle license shall be effective after the organization to which it was granted has become ineligible to conduct the game under any provision of Article II, §17A or §17B of the State Constitution.

**2 DE Reg. 1224 (1/1/99)**

**12 DE Reg. 357 (09/01/08)**

## **7.0 Reports After the Drawing**

Within ~~fifteen (15)~~ thirty (30) days of the date for awarding the prize as specified in the license application, the record keeper shall furnish in writing to the Board, the name and address of each person to whom a prize was awarded, the gross receipts derived from the selling of raffle tickets, and the total expenses incurred for the raffle.

## **8.0 Suspension & Revocation of Licenses**

- 8.1 Proceedings to suspend or to revoke a license shall be brought by notifying the licensee of the ground thereof and the date set forth for hearing thereon. The Board may stop the operation of a raffle pending a hearing, in which case the hearing must be held within five (5) days after such action.
- 8.2 The Board shall cause the notice of hearing to be served personally on an officer of the licensee or the member in charge of the conduct of the raffle or to be sent by registered or certified mail to the licensee at the address shown in the license. All hearing procedures shall be subject to the requirements of the Administrative Procedures Act, 29 **Del.C.** §10131.
- 8.3 When suspension or revocation proceedings are begun before the Board, it shall hear the matter and make written findings in support of its decision. The licensee shall be informed of the decision, and of the effective date of the suspension or revocation.
- 8.4 When a license is suspended or revoked, the licensee shall surrender up the license to the Board on or before that effective date set forth in the notice of the decision. In no case shall any license be valid beyond the effective date of suspension or revocation, whether surrendered or not.
- 8.5 Upon finding of the violation of these rules and regulations or the Delaware statutes, such as would warrant the suspension or revocation of a license, the Board may in addition to any other penalties imposed, declare the violator ineligible to conduct a raffle and to apply for a license under said law for a period not exceeding thirty (30) months thereafter. Such declaration of the ineligibility may be extended to include, in addition to the violator, any of its subsidiary organizations, its parent organization and any other organization having a common parent organization or otherwise affiliated with the violator, when in the opinion of the Board, the circumstances of the violation warrant such action.

**2 DE Reg. 1224 (1/1/99)**

## **9.0 Severability**

If any provision of these Regulations or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of these Regulations and the applicability of such provision to other persons or circumstances shall not be affected thereby.

---

**403 Regulations Governing Charitable Gambling Other Than Raffles****1.0 Definitions**

**“Board”** The Delaware Gaming Control Board.

**“Charitable Gambling”** Any game or scheme operated by an organization which has been in existence for two (2) years or longer in which chance is the dominant factor in determining the allocation of a prize, excluding slot machines, roulette, craps, baccarat games, or raffles as defined in the Board's Regulations for Raffles.

**“Function”** is a licensed event of Charitable Gambling maintained and conducted by a Sponsoring Organization for the disposal of awards of merchandise, cash, or its equivalent by means of **“Game”** as defined in this section. This includes without limitation thereto, so-called Las Vegas, Casino, or Monte Carlo Nights.

**“Game”** shall include without limitation card games such as draw poker, stud poker, or blackjack, devices such as big six wheels or similar devices, dice games other than craps, horse racing games, Nevada cards or pull tabs or any other activity similar to these mentioned games approved by the Board.

**“Gross Receipts”** means the total amount of money or other consideration received as admission fees, income from gambling and except for a bazaar, carnival, festival, or similar affair, from the sale of food and beverages from any one event.

**“Instant Bingo”** shall mean any game of chance played with sealed or covered cards which must be opened in some fashion by the holder, such that the cards reveal instantly whether the holder has won a prize. This game includes, but is not limited to games commonly known as “rip-offs” and “Nevada pull-tabs.”

**“Net Proceeds”** is Gross Receipts less license fee, prizes and reasonable and necessary expenses ordinarily incidental to the conduct of a function.

**“Sponsoring Organization”** Any veterans, religious, or charitable organization, volunteer fire company or fraternal society as defined in Article II, §17A or §17B of the State Constitution.

**2 DE Reg. 1224 (01/01/99)****2.0 Licensing List Required To Be Kept: Membership List**

- 2.1 Each licensed organization must maintain a list of its current membership by name, address, and a description of the type of membership in the organization which shall be kept available for inspection at all reasonable times.

**3.0 Conduct of Games****3.1 Workers.**

3.1.1 **Member in Charge.** Every Licensed Organization shall designate a bona fide, active member of the licensee to be in charge of and primarily responsible for each Function. The member-in-charge shall have been a member in good standing of the Sponsoring Organization for at least two (2) years. The member-in-charge shall supervise all activities and be responsible for the conduct of all games during the Function of which he is in charge, including the preparation of any financial reports required by law or these regulations. The member-in-charge or his qualified designee shall be present on the premises continually during the Function and shall be familiar with the provisions of these Regulations, and the terms of the license.

3.1.2 **List of Workers.** A Sponsoring Organization conducting a Function shall prepare and have available on the premises a list of all persons taking part in the management or operation of the Function. Such list shall be maintained as part of the licensee's records of the Function and shall be made available to any member or agent of the Board or law enforcement officer.

- ~~3.1.3 Participation of Worker Restricted. No person shall assist in the conduct of a Function except a bona fide member of the Sponsoring organization whose name appears on the lists required by §3.03(l)(b) of these Regulations.~~
- 3.1.43 Bona Fide Member. For the purposes of eligibility to participate in managing or otherwise assisting in the operation of a Function, a person is a bona fide member of the Sponsoring Organization only when he or she:
- 3.1.43.1 Has become a member prior to the commencement of the Function and such membership was not dependent upon, or in any way related to the payment of consideration to participate in, any gambling activity; and,
  - 3.1.43.2 Has held full and regular membership status in the Sponsoring Organization for a period of not less than three (3) consecutive months prior to the subject Function; and,
  - 3.1.43.3 Has paid any reasonable initiation or admission fees for membership, and/or any dues, consistent with the nature and purpose of the Sponsoring Organization and with the type of membership obtained and is not in arrears in payment of any such fees or dues; and,
  - 3.1.43.4 Has met all other conditions required by the Sponsoring Organization for membership and in all respects is a member in good standing at the time of the subject Function; and,
  - 3.1.43.5 Has met all of the standards set out above respecting his or her own organization, and he or she is a bona fide member of a bona fide charitable or bona fide nonprofit organization affiliated with or auxiliary to his or her Sponsoring Organization, or to which his or her own Sponsoring Organization is auxiliary; and,
  - 3.1.43.6 Has met all of the standards set out above respecting his or her own organization, and this organization has prior to July 6, 1984, assisted the Sponsoring Organization to conduct charitable gambling; and,
  - 3.1.43.7 Has met all of the standards set out above respecting his or her own Sponsoring Organization, and this organization is assisting another similar Sponsoring Organization (i.e. fire company assisting another fire company; fraternal society assisting another fraternal society; charitable, religious or veterans organization assisting another charitable, religious, or veterans organization) to conduct charitable gambling.
- 3.1.54 Identification Required. The member-in-charge and those assisting him in any capacity shall possess and display identification.
- 3.1.65 Officer Responsible for Gross Receipts. The Sponsoring Organization shall duly designate an officer of said organization to be in full charge and primarily responsible for the proper accounting, use and disposition of all Gross Receipts. Such officer's name shall appear on the list required under §3.03(1)(b) and such officer shall be a person other than the person designated member-in-charge pursuant to §3.03(l)(a).
- 3.1.76 Payment of Workers Prohibited. No unreasonable commission, salary, compensation, reward, recompense, reimbursement of expenses or gift or other consideration shall be paid directly or indirectly, to any person for conducting or assisting in the conduct of any Function. No tip, gratuity or gift or other consideration shall be given or accepted by any person conducting or assisting in the conduct of a Function either directly or indirectly, and one or more signs prohibiting tipping shall be or more signs prohibiting tipping shall be prominently displayed in each playing area. No person shall solicit or receive any gift or donation or other consideration directly or indirectly on the premises during the conduct of a Function. Nothing in this subsection prohibits any person from sharing food and beverages made available at the functions, or the collection of bar tips for the benefit of the Sponsoring Organization.

#### 4.0 Limitation of Participation of Certain Persons

No person directly or indirectly connected with the manufacture, sale, lease or distribution of gaming equipment or supplies, or the premises where the function is held if the premises are not owned by a Sponsoring Organization, or the agents, servants or employees of such person, shall conduct,

---

participate, advise or assist in the conduct of a Function or render any service to anyone conducting, participating or assisting in the conduct of a Function including preparation of any form relating thereto.

## **5.0 Equipment and Premises**

- 5.1 Ownership of Equipment. The licensed organization shall conduct games only with equipment owned by it, borrowed from another qualified Sponsoring Organization or which a lessor undertakes to provide by the terms of a written lease. The rental fee contained in such a lease shall be a sum certain and shall be commercially reasonable.
- 5.2 Equipment. Equipment used in the conduct of a bazaar must be maintained in good repair and sound working condition. Equipment shall be used and operated so that each player is given an equal opportunity to win.
- 5.3 The function shall be held on premises owned or regularly leased by the applicant. If the applicant desires to hold the function at other premises, a separate written request therefor (together with supporting reasons), shall accompany the application. The Board reserves the right to accept or reject any application for the conduct of a Function on specially leased or donated premises.

## **6.0 Operation of Games**

- 6.1 ~~The maximum initial wager permitted on any game at any function (with the exception of No Limit Texas Hold'em played under the provisions of 28 Del.C. §1801 et seq.) is one dollar, except that a wager of up to five dollars is permitted in blackjack, with doubling allowed. In other card game, the maximum ante is one dollar, and the maximum wager on any card for any draw is up to five dollars with three raises allowed.~~
- 6.21 House Rules. Prior to conducting a Function, each Licensed Organization shall develop a set of house rules which will govern the type, scope and manner of all games to be conducted. Among other information, these rules shall establish the maximum amount of wagers consistent with these regulations which may be placed by persons participating in games. In addition, the rules shall prohibit the giving of anything of value to any person involved in the management or operation of the Function and prohibit anyone involved in the management or operation of the Function from accepting anything of value. A copy of the rules shall be posted conspicuously on the premises where the Function is being conducted at all times during the occasion, and a copy thereof shall be made available upon request, to any law enforcement officer or agent of the Board. The maximum wager and a no tipping sign shall be displayed at the location of each game, so as to be conspicuous to those persons participating in said games. The rules for the individual games should be available on the premises for review upon request.
- 6.32 Monitoring of Poker Tables. An association which has obtained the proper license or permit to conduct poker shall assign one monitor during the playing of poker.

**11 DE Reg. 516 (10/01/07)**

**12 DE Reg. 357 (09/01/08)**

## **7.0 Prohibited Acts**

- 7.1 Wagering Among Participants Not Permitted. No Sponsoring organization shall permit, as part of a Function, a gambling activity which involves a wagering or other items of value by one participant directly against another participant, if the activity does not provide for some portion of the proceeds to go to the Sponsoring Organization. This rule shall not be construed to prohibit games wholly administered by the Sponsoring organization wherein the licensee collects wagers from among the participants and determines the winners and amount of prizes on a parimutuel basis.
- 7.2 Credit and Checks. No Sponsoring Organization may extend credit to any patron at a Function. No checks may be cashed for more than \$20 or received by the Sponsoring organization except for the receipt of checks in the exact amount for any admission charge.
- 7.3 Persons Under Age Eighteen. No person under eighteen years of age shall be permitted on that portion of the premises used for a Function.

- 7.4 Transaction of Certain Business Prohibited. No person who is directly or indirectly connected with the manufacture, sale or distribution of gaming equipment or supplies or his agents, servants or employees may be present during a Function for the transaction of business.
- 7.5 Workers Prohibited From Participating. Workers are prohibited from participating in games at any Function during which they participate as workers except that they may participate during their breaks if they continue to display their identification, except that if a Function is scheduled for more than one day, a worker may participate in games on any day on which he does not participate as a worker.

## 8.0 Limitation of Functions

- 8.1 No Sponsoring Organization shall conduct more than one Function in any single calendar month. Charitable games shall not commence prior to 1:30 p.m. The operation of a Function shall be limited to six (6) consecutive hours except as permitted by **§3.08(2)**. Instant bingo is permitted during any event sponsored by the organization that is licensed to conduct it, regardless of the time or time.
- 8.2 When a Function is conducted in conjunction with a bazaar, carnival, festival or similar affair scheduled for more than one day but less than ten consecutive days, the Function shall be considered one licensed event. The games may be operated during the hours when other activities of the bazaar, carnival, festival or similar affair are available to the public.

### 2 DE Reg. 1224 (1/1/99)

## 9.0 Record Keeping

- 9.1 Record Keeping. Accurate records and books shall be kept by each Sponsoring Organization including but not limited to detailed financial reports of the amount and source of proceeds, the members participating in the promotion and/or operation of the Function, all expenses and disbursements.
- 9.2 Access to Records. Board personnel shall at all times have access to all books and records of any Sponsoring organization required by subsection (a).
- 9.3 Period for Retention of Records. All records, books of account, bank statements and all other papers incidental to the operation of events by the Sponsoring Organization shall be retained and available for inspection by Board personnel for a period of two years from the close of the calendar year to which the records apply.
- 9.4 Expenses. Each Sponsoring Organization should incur only those expenses which are reasonable and necessary for the promotion and/or operation of a Function.

## 10.0 Violations of Regulations

- 10.1 Failure to comply with any of the Regulations shall be deemed a violation of 28 **Del.C.** Ch. 11.

## 11.0 Application

- 11.1 All applications for a license to conduct a Function shall be submitted on Form BCC-3. The information supplied must include the name, address, and phone number of the Sponsoring organization, a list of the games to be conducted, the wagering limit on each game, the date and time that the function will be held, the premises where the Function will be held, the owner of the premises, the name, address, and phone number of the designated member in charge and the person responsible for the proper accounting and the exact nature of the charitable purpose for which the proceeds will be used.
- 11.1.1 An application must be submitted sufficiently in advance of the proposed date of the function as to allow the Board to consider the application at two consecutive board meetings before deciding whether to approve or deny the application.
- 11.2 There shall be a license fee of \$15 for each occasion upon which the organization wishes to conduct charitable gambling under a license.
- ~~11.3 There shall be an annual license fee of \$300 for each organization sponsoring instant bingo games.~~
- 11.45 The Board shall make an investigation of the qualifications of each applicant and the merits of each application. The Board shall consider the impact, if any, of the approval of a new charitable gambling



license on existing licensees within the applicant's geographical location prior to granting the approval, and may deny the application if it concludes that approval of the application would be detrimental to existing licensees.

- 11.54 The Board may issue a license only after it determines that:
- 11.54.1 The applicant is duly qualified to conduct the charitable games under the State Constitution, statutes, and rules and regulations governing charitable gaming; and
  - 11.54.2 ~~The member or members of the applicant~~ person or persons who intend to conduct the games are ~~bona fide active members of the applicant and are~~ persons of good moral character and have never been convicted of crimes involving moral turpitude; and
  - 11.54.3 The proceeds are to be disposed of as provided in the State Constitution and statutes; and
  - 11.54.4 No unreasonable salary, compensation or reward whatever will be paid or given to any ~~member~~ person under whom the game is conducted.
- 11.65 No charitable gambling license shall be effective for a period of more than one year from the date it was issued.
- 11.76 No charitable gambling license shall be effective after the organization to which it was granted has become ineligible to conduct the game under any provision of Article II, §17A or §17B of the State Constitution.

**2 DE Reg. 1224 (1/1/99)**

**12 DE Reg. 357 (09/01/08)**

## **12.0 Reports After the Function**

- 12.1 Within ~~45~~ 30 days of the last day of the function, the member-in-charge shall submit a report to the Board that includes all information required by 28 **Del.C.** §1140(a).
- 12.2 When no function is held on a date a licensee is authorized to hold such a function, a report to that effect shall be filed with the Board.
- 12.3 If a licensee fails to timely file a report or if a report is not properly verified, no further license shall be issued to the licensee and any existing licensee shall be suspended until such time as the deficiency has been corrected.

**2 DE Reg. 1224 (1/1/99)**

**11 DE Reg. 516 (10/01/07)**

## **13.0 Suspension and Revocation of Licenses**

- 13.1 Proceedings to suspend or to revoke a license shall be brought by notifying the licensee of the ground thereof and the date set forth for hearing thereon. The Board may stop the operation of a charitable gaming function pending a hearing, in which case the hearing must be held within five (5) days after such action.
- 13.2 The Board shall cause the notice of hearing to be served personally on an officer of the licensee or the member in charge of the conduct of the function or to be sent by registered or certified mail to the licensee at the address shown in the license. All hearing procedures shall be subject to the requirements of the Administrative Procedures Act, 29 **Del.C.** §10131.
- 13.3 When suspension or revocation proceedings are begun before the Board, it shall hear the matter and make written findings in support of its decision. The licensee shall be informed of the decision, and of the effective date of the suspension or revocation.
- 13.4 When a license is suspended or revoked, the licensee shall surrender up the license to the Board on or before that effective date set forth in the notice of the decision. In no case shall any license be valid beyond the effective date of suspension or revocation, whether surrendered or not.
- 13.5 Upon a finding of a violation of these rules or of the appropriate statute, a license or permit may be suspended or revoked by the Board. In addition to any other penalty imposed, the Board may declare the violator to be ineligible to apply for a license or permit for a period not to exceed thirty (30) months. Such decision may be extended to include the violator's parent organization, subsidiary organization

or any organization having a common parent or otherwise affiliated with the violator, when in the opinion of the Board, the circumstances of the violation warrant such action.

**2 DE Reg. 1224 (1/1/99)**

**12 DE Reg. 357 (09/01/08)**

#### **14.0 Severability**

If any provision of these Regulations or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of these Regulations and the applicability of such provision to other persons or circumstances shall not be affected thereby.

### **404 Regulations Governing ~~No Limit~~ Texas Hold'em Poker**

#### **1.0 Reports After the Function**

- 1.1 Within 30 days of the last day of the function, the member-in-charge shall submit a report to the Board that includes all information required by 28 **Del.C.** §1140(a).
- 1.2 When no function is held on a date a licensee is authorized to hold such a function, a report to that effect shall be filed with the Board.
- 1.3 If a licensee fails to timely file a report or if a report is not properly verified, no further license shall be issued to the licensee and any existing license shall be suspended until such time as the deficiency has been corrected.

#### **2.0 Limitation of Texas Hold'em Tournaments**

- 2.1 The Board interprets the phrase "with each tournament by the sponsoring organization to be held at least ~~75~~ 70 days apart" in 28 **Del.C.** §1827 to mean that no sponsoring organization may conduct a subsequent tournament less than ~~75~~ 70 days from the date of their immediately prior tournament.

**12 DE Reg. 357 (9/01/08)**

#### **3.0 Re-buys**

- 3.1 The statutory provisions of 28 **Del.C.** §1825 and 28 **Del.C.** §1826(2) do not harmonize. Consequently, the Board has determined that re-buys are optional.

**11 DE Reg. 516 (10/01/07)**

#### **4.0 Application**

- 4.1 An application must be submitted sufficiently in advance of the proposed date of the function as to allow the Board to consider the application at two consecutive board meetings before deciding whether to approve or deny the application.

**12 DE Reg. 357 (9/01/08)**

---

## DIVISION OF PROFESSIONAL REGULATION

### 2930 Council on Real Estate Appraisers

Statutory Authority: 24 Delaware Code, Section 4006(a)(1) (24 **Del.C.** §4006(a)(1))  
24 **DE Admin. Code** 2930

#### ORDER

### 2930 Council on Real Estate Appraisers

The Delaware Council on Real Estate Appraisers ("the Council") was established to protect the general public from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered by the profession under its purview. The Council was further established to maintain minimum standards of practitioner competence in the delivery of services to the public. The Council is authorized, by 24 **Del.C.** §4006(a)(1), to make, adopt, amend and repeal regulations as necessary to effectuate those objectives.

Pursuant to 24 **Del.C.** §4006(a)(1), the Board has proposed a number of revisions to its rules and regulations. The Council proposes amendments to Rule 2.5, which addresses the Council's continuing education audit. The Council will audit a minimum of 25% of the licensees during each renewal period. In addition, Rule 2.5.4 is added to expressly give the Board authority to conduct hearings and impose the full range of sanctions available under 24 **Del.C.** §4016 when licensees fail to comply with continuing education requirements.

Several Rules concerning the specific continuing education requirements are also revised. Rule 2.5.4.2 is amended to state that, beginning on November 1, 2009, during each renewal period, all licensees must complete three hours of education on Delaware Law, Rules and Regulations. Currently, only two hours of education in this subject matter are required. Rule 2.5.10 is amended to clarify that the requirement that 14 hours of education per licensure period must be taken in a traditional classroom setting begins November 1, 2009. The provision that the seven hour USPAP update course must be taken in a classroom is stricken. Rule 2.5.11 is revised to state that all courses must be approved by the Council to qualify as continuing education.

Pursuant to the new Rule 2.5.13, a hardship provision is added, which will give the Council discretion to grant an extension for completion of continuing education in certain specified circumstances.

Finally, Rule 4.2.4 is amended for greater clarity. This Rule provides that, for a certain period of time, a licensee who has been sanctioned by the Council is prohibited from supervising trainees. The revisions clarify the parameters of this prohibition and add an exemption for licensees who were sanctioned prior to July 1, 2009.

Pursuant to 29 **Del.C.** §10115, notice of the public hearing and a copy of the proposed regulatory changes were published in the Delaware *Register of Regulations*, Volume 12, Issue 6 on December 1, 2008. Notice of the rescheduled hearing was published on February 1, 2009, in the Delaware *Register of Regulations*, Volume 12, Issue 8.

The Council originally published proposed revisions to its rules and regulations pertaining to continuing education in the Delaware *Register of Regulations* on May 1, 2008, Volume 11, Issue 11. A public hearing was held on June 17, 2008 and the Council approved the changes. Before the Council's decision was memorialized in a written order, further discussion led the Council to rescind its June 17, 2008 decision at its September 16, 2008 meeting.

The Council subsequently discussed further amendments to the rules and regulations, and as noted herein, proposed revisions were published in the Delaware *Register of Regulations*.

#### Summary of the Evidence and Information Submitted

A public hearing on the proposed rule revisions was held on March 17, 2009. No written comments were submitted. Mr. Earl Loomis commented at the hearing that the proposed revisions were clear as to the new requirements that licensees must take three hours of education on Delaware Law, Rules and Regulations and that 14 hours of education per licensure period must be taken in a traditional classroom setting.

**Findings of Fact**

The Board carefully reviewed and considered the proposed rule revisions and public comment.

The proposed amendments strengthen continuing education standards. Further, pursuant to the revisions, the Council will be given the authority to impose a full range of sanctions on licensees who do not comply with continuing education requirements. The Rule prohibiting licensees with disciplinary histories from supervising trainees is clarified. Therefore, the proposed revisions will serve to protect the public from unsafe practices and enhance practitioner competence.

The Council finds that adopting the amended rules and regulations 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.

**Decision and Effective Date**

The Council hereby adopts the proposed amendments to the rules and regulations to be effective 10 days following final publication of this Order in the *Register of Regulations*.

**Text and Citation**

The text of the revised rules and regulations remains as published in the Delaware *Register of Regulations*, Volume 12, Issue 6 on December 1, 2008.

**IT IS SO ORDERED** this 19th day of May 2009 by the Delaware Council on Real Estate Appraisers.

Steven Huston, Professional Member, Chairperson  
George Fantini, Professional Member, Vice-Chairperson  
Donald West, Professional Member  
Brad Levering, Professional Member  
Linda Carter, Public Member  
Richard Bauermeister, Public Member  
Arthur Cahall, Public Member

\* Please note that no changes were made to the regulation as originally proposed and published in the December 2008 issue of the *Register* at page 753 (12 DE Reg. 753). Therefore, the final regulation is not being published. A copy of the final regulation is available at:

<http://regulations.delaware.gov/register/july2009/final/13 DE Reg 123 07-01-09.htm>

---

**DIVISION OF PROFESSIONAL REGULATION****3500 BOARD OF EXAMINERS OF PSYCHOLOGISTS**

Statutory Authority: 24 Delaware Code, Section 3506(a)(1) (24 **Del.C.** § 3506(a)(1))  
24 **DE Admin. Code** 3500

**ORDER**

The Delaware Board of Examiners of Psychologists (“the Board”) was established to protect the general public from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered by the profession under its purview. The Board was further established to maintain minimum standards of practitioner competence in the delivery of services to the public. The Board is authorized, by 24 **Del.C.** §3506(a)(1), to make, adopt, amend and repeal regulations as necessary to effectuate those objectives.

Pursuant to 24 **Del.C.** §3506(a)(1), the Board has proposed a number of revisions to its rules and regulations.

The Board proposes amendments to Rule 10.0, which addresses the continuing education requirements for licensees. Effective as of the license renewal period beginning August 1, 2009, both psychologists and psychological assistants will be required to complete three hours of continuing education in ethics.

The Board also proposes an addition to Rule 13.0, pertaining to license renewal. The new Rule 13.5.3.7 expressly gives the Board the authority to conduct hearings and impose the full range of sanctions available under 24 **Del.C.** §3514 when licensees fail to comply with the continuing education requirements.

Pursuant to 29 **Del.C.** §10115, notice of the public hearing and a copy of the proposed regulatory changes were published in the *Delaware Register of Regulations*, Volume 12, Issue 11 on May 1, 2009.

### **Summary of the Evidence and Information Submitted**

A public hearing on the proposed rule revisions was held on June 1, 2009. No written or verbal comments were submitted.

### **Findings of Fact**

The Board carefully reviewed and considered the proposed rule revisions.

The proposed amendments strengthen continuing education standards and give the Board express authority to sanction licensees who do not comply with those standards. Therefore, the proposed revisions will serve to protect the public from unsafe practices and enhance practitioner competence.

The Board finds that adopting the amended rules and regulations 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.

### **Decision and Effective Date**

The Board hereby adopts the proposed amendments to the rules and regulations to be effective 10 days following final publication of this Order in the *Register of Regulations*.

### **Text and Citation**

The text of the revised rules and regulations remains as published in the *Delaware Register of Regulations*, Volume 12, Issue 11 on May 1, 2009.

**IT IS SO ORDERED** this 1st day of June 2009 by the Delaware Board of Examiners of Psychologists.

Dr. Gary Johnson, Professional Member, President  
Dr. Gordon DiRenzo, Professional Member, Vice President  
Eleanor Allione, Public Member  
Hollis Anglin, Public Member, Secretary  
Dr. Steve Eichel, Professional Member

Dr. Mark Fleming, Professional Member  
Dr. Marcia Halperin, Professional Member  
Joan McDonough, Public Member  
Andrew Slater, Public Member

\* **Please note that no changes were made to the regulation as originally proposed and published in the May 2009 issue of the *Register* at page 121 (12 DE Reg. 1397). Therefore, the final regulation is not being**

published. A copy of the final regulation is available at:

<http://regulations.delaware.gov/register/july2009/final/13 DE Reg 124 07-01-09.htm>

## STATE EMPLOYEE BENEFITS COMMITTEE

Statutory Authority: 29 Delaware Code, Sections 5210(4) and 9602(b)(4)  
(29 Del.C. §§5210(4) and 9602(b)(4))  
19 DE Admin. Code 2001

### ORDER

#### Employees Eligible to Participate in the State Group Health Insurance Program Eligibility and Enrollment Rules

Effective on July 1, 2009, under the authority of Title 29 of the **Delaware Code**, Section 9602(b)(4), the State Employee Benefits Committee is amending the Eligibility and Enrollment Rules regarding the Employees Eligible to Participate in the State Group Health Insurance Program to read as provided below. These amended rules were prepared by the Statewide Benefits Office and have been approved by the State Employee Benefits Committee with the consent of the State Employee Benefits Advisory Council. The amended rules are effective upon publication in the *Register of Regulations* in accordance with Senate Bill 300, Section 34.

#### 2001 Group Health Care Insurance Eligibility and Coverage Rules

##### 1.0 Authority

Pursuant to the authority vested in the State Employee Benefits Committee (SEBC) by 29 **Del.C.** §§ 5210(4), 9602(b)(4), the SEBC adopts these eligibility and coverage rules for the State of Delaware Group Health Insurance Program ("State Plan"). In the event of a conflict between these rules and the Delaware Code, the Delaware Code takes precedence over these rules.

- 1.1 An Employee or pensioner must meet one of the following definitions to be eligible for coverage under the State's plan:
  - 1.1.1 a permanent full-time employee (regularly scheduled 30 or more hours per week or 130 or more hours per month);
  - 1.1.2 an elected or appointed official as defined by 29 **Del.C.** §5201;
  - 1.1.3 a permanent part-time employee (regularly scheduled to work less than 130 hours per month);
  - 1.1.4 a limited term employee (as defined by Merit Rule 10.1);
  - 1.1.5 a pensioner receiving or eligible to receive a pension from the State;
  - 1.1.6 a per diem or contractual employee of the Delaware General Assembly who has been continuously employed for 5 years.
  - 1.1.7 a temporary employee (regularly scheduled 30 or more hours per week or 130 or more hours per month) as defined by 29 **Del.C.** §5207.
- 1.2 Those employees who meet the definition outlined in rule 1.1.1, 1.1.2, 1.1.4 and 1.1.5 are considered "regular officers and employees", or "eligible pensioners" as provided by 29 **Del.C.** §5202 and are to receive State Share contributions.
- 1.3 Short term disability beneficiaries receiving benefits under 29 **Del.C.** §5253(b) will be treated as "regular officers and employees" under these regulations. Long term disability beneficiaries receiving benefits under 29 **Del.C.** §5253(c) will be treated as "eligible pensioners" under these regulations.
- 1.4 Casual and seasonal and substitutes are not eligible for the State Plan.

- 
- 1.5 Newly employed school teachers become eligible employees when they start employment not when they sign their contract. (Review the Eligibility Table, see Appendix "A", for coverage start date dependent upon the September hire date). Temporary teachers who are re hired in September are eligible to elect coverage when re hired. Temporary teachers who are re hired in the next contract year are eligible to elect coverage when re hired without fulfilling another 3 month waiting period.
- 1.6 Employees or pensioners who are enrolled in Medicare Part D may not have prescription coverage in the State Plan.

**6 DE Reg. 690 (11/1/02)**

**12 DE Reg. 986 (01/01/09)**

## **2.0 Dependents Eligible to Participate**

- 2.1 Dependents must meet one of the following definitions to be eligible for enrollment in the State plan:
- 2.1.1 A regular officer's or employee's or eligible pensioner's:
- 2.1.1.1 legal spouse (Delaware law does not recognize common law or same sex marriage). Ex spouses may not be enrolled in the State's group health insurance program - even if a divorce decree, settlement agreement or other document requires an employee to provide coverage for an ex spouse
- IMPORTANT NOTE:** Spousal Coordination of Benefits Policy has been in effect since 1/1/93. The policy applies to a spouse who is eligible for health coverage through his/ her own employer. Spouses who work full time and are eligible for health coverage through their employer, but do not enroll under their employer's health plan, will have a reduction in benefits under the State Plan. A new Spousal Coordination of Benefits form must be completed each year during Open Enrollment or anytime throughout the year if the spouse's employment or insurance status changes. Employees should refer to the Statewide Benefits Office's website at <http://ben.omb.delaware.gov/documents/cob/index.shtm> or individual benefit booklets for each plan for more detailed information.
- 2.1.1.2 unmarried child/ren under age 21 (age 24 if a full time student), born to or legally adopted or placed for adoption by a regular officer, or employee or eligible pensioner or a regular officer or employee's or pensioner's legal spouse, as defined in 29 **Del.C.** §5201(a);
- 2.1.1.3 unmarried dependent child/ren under age 21 (age 24 if a full time student), not born to or legally adopted, but residing with a regular officer or employee or eligible pensioner in a regular parent child relationship, and who is dependent upon the regular officer or employee or eligible pensioner for at least fifty (50) percent support. A statement of support form must be completed by the regular officer or employee or eligible pensioner and forwarded to the employee's Benefit Representative or Human Resources Office with the request for coverage together with a copy of the legal guardianship, permanent guardianship or custody order for the dependent child. If a natural parent resides in the same household as the insured regular officer or employee or eligible pensioner, it will be deemed that a regular parent-child relationship does not exist unless the regular officer or employee or eligible pensioner has legal guardianship documents or has legally adopted the dependent child.
- 2.1.1.4 unmarried dependent child/ren who meet the criteria of sections 2.1.1.2 or 2.1.1.3 above, but who is over age 21 and incapable of self-support because of a mental or physical disability which existed before the child reached age 21. The child/ren must have been covered under employee's contract immediately preceding age 21, or age 24 if a full time student.
- IMPORTANT NOTE:** Dependent Coordination of Benefits (child/ren) form must be completed for each enrolled dependent upon enrollment, any time coverage changes, or upon request by the Statewide Benefits Office.
- 2.2 Eligible dependent child/ren covered under the health insurance plans of both parents will be primary to the parent's plan whose birthday is the first to occur during the calendar year. In the event the birth

dates are the same, the dependent child will be primary to the parent with the longest employment service. In the event birth dates and length of service are the same, the dependent child will be primary to the male parent's plan.

- 2.3 Adult Dependent Program - Provides a period of health care coverage up to age 24, if an adult dependent's coverage was terminated or will terminate due to his/her age; i.e., dependent was terminated from coverage effective December 31 in the year he/she turned 21 and is not a full-time student, or the end of the month in which he/she graduated from college and is not yet 24.
- 2.3.1 Eligibility Requirements. An Adult Dependent eligible to be covered under this program is a covered person's (employee's or pensioner's) child by blood or by law who meets all of the following:
- 2.3.1.1 Is less than 24 years of age;
  - 2.3.1.2 Is unmarried;
  - 2.3.1.3 Has no dependents of his/her own;
  - 2.3.1.4 Is either a resident of the State of Delaware or is enrolled as a full-time student at an accredited institution of higher learning; and
  - 2.3.1.5 Is not actually provided coverage as a named subscriber, insured, enrollee, or covered person under any other group or individual health benefits plan, group health plan, or church plan, or entitled to benefits under a state's Medical Assistance program.
- 2.3.2 If an Adult Dependent is no longer eligible to be covered under the health plan of the parent or legal guardian (referred to as covered person) because of his/her age, he/she is eligible to enroll in this program provided the covered person continues to have health care coverage through the State of Delaware. The Adult Dependent must contact the health care carrier within 30 days of their loss of coverage to enroll or may enroll during an Open Enrollment period. If an Adult Dependent is between the ages of 21 and 24 and is enrolled as a full-time student at an accredited institution of higher learning he/she is eligible to be covered under the health care coverage of the covered person and does not need to enroll in this program.
- 2.3.3 Program Requirements
- 2.3.3.1 Employee or pensioner must remain actively enrolled in a State of Delaware Group Health Insurance plan provided by one of the State designated health care providers.
  - 2.3.3.2 Adult Dependent must enroll in the same health care plan, which provides coverage to their parent or legal guardian who is an employee or pensioner with Group Health Insurance through the State of Delaware.
  - 2.3.3.3 Health care premiums must be paid directly to one of the State designated health care providers.
  - 2.3.3.4 Payroll deductions from the paycheck of the parent or legal guardian with group health insurance through the State are not an option.
- 2.3.4 End of Coverage. Coverage of an eligible Adult Dependent who enrolls in this Adult Dependent Program is provided until the earlier of the following:
- 2.3.4.1 Adult Dependent child no longer meets the definition of an Adult Dependent because he/she:
    - 2.3.4.1.1 Reaches 24 years of age;
    - 2.3.4.1.2 Marries;
    - 2.3.4.1.3 Has his/her own dependents;
    - 2.3.4.1.4 Is not a resident of the State of Delaware or is not enrolled as a full-time student at an accredited institution of higher learning; or
    - 2.3.4.1.5 Has his/her own coverage as a named subscriber, insured, enrollee, or covered person under another group or individual health benefits plan, group health plan, or church plan, or entitled to benefits under a state's Medical Assistance plan;



2.3.4.2 Date on which coverage ceases under the contract by reason of failure to make a timely payment of premium required under the contract. Payment of any premium is considered to be timely if made within 30 days after the due date; or

2.3.4.3 Date upon which coverage under the State Plan is terminated for the covered person (parent or legal guardian) of the eligible Adult Dependent.

**6 DE Reg. 690 (11/1/02)**

**12 DE Reg. 986 (01/01/09)**

### **3.0 Coverage**

3.1 Coverage of an eligible regular officer or employee and his/her eligible dependents will become effective on the first of the month following date of hire provided the employee submits a signed application within 30 days of the employee's date of hire or within 30 days of the employee becoming eligible for the State Share. Refer to Eligibility Table for specific coverage date options for employees who elect coverage when eligible for State Share.

3.1.1 Coverage may become effective on date of hire provided the employee submits a signed application within 30 days of the employee's date of hire. Premiums are not pro-rated.

**IMPORTANT NOTE:** Spousal Coordination of Benefits Policy became effective 1/1/93 for a spouse who is eligible for health coverage through his or her own employer. Spouses who work full time and are eligible for health coverage through their employer, but do not enroll under their employer's health plan, will have a reduction in benefits under the State Plan. Employees should refer to the individual benefit booklets for each plan for more detailed information or see <http://ben.omb.delaware.gov/documents/cob/index.shtml>.

3.2 Employees of the State of Delaware who are enrolled in a health insurance benefit plan must re-enroll in a plan of their choice during the Open Enrollment period as determined by the SEBC. Should such employee(s) neglect to re-enroll in the allotted time, said employee/s and any spouse or dependents shall be automatically re-enrolled in their previous plan as long as verification of employment is provided by the employee and the Statewide Benefits Office.

3.3 Employees or pensioners who cover their spouse on the State Plan must complete a Spousal Coordination of Benefits Policy Form during each annual Open Enrollment period as well as anytime there is a change in the spouse's employment or an insurance status change. Failure to supply the Spousal Coordination of Benefits form shall result in the spouse's medical claims being reduced to 20 percent and inability to have prescriptions filled.

**IMPORTANT NOTE:** Dependent Coordination of Benefits (child/ren) form must be completed for each enrolled dependent upon enrollment, any time coverage changes, or upon request by the Statewide Benefits Office.

3.4 If an employee elects not to enroll in the State Plan, the employee must complete and sign an application/enrollment form acknowledging the desire not to enroll by noting "waive" on the appropriate form.

3.5 Eligible employees who fail to submit a completed and signed application/enrollment form within 30 days of their date of hire or their date of eligibility for State Share may not join the State Plan until the next open enrollment period (usually May), unless the employee meets the requirements of Eligibility and Enrollment Rule 3.6.

3.6 Pursuant to a federal law, Health Insurance Portability and Accountability Act (HIPAA), if an employee declines enrollment for him or herself or their dependent/s (including the spouse) because of other health insurance coverage and later involuntarily loses the coverage, the State employee and/or spouse may be eligible to join the State Plan, without waiting for the next Open Enrollment period, as long as the request to enroll is made within 30 days of the loss of coverage. Necessary forms must be completed within 30 days of the request to enroll. If such a change is not made in the time period specified, the eligible employee/and or spouse must wait until the next Open Enrollment period.

3.6.1 The following list includes examples of loss of coverage or loss of eligibility for coverage rules under which an employee may request enrollment for him/her-self and for dependent/s:

- Loss of eligibility for coverage as a result of legal separation, divorce, death, termination of employment or reduction in the hours of employment;
  - Loss of eligibility for coverage provided through a Health Maintenance Organization (HMO) because the individual no longer resides, lives, or works in an HMO service area (regardless of whether the choice of the individual) and no other benefit package is available to the individual;
  - Loss of eligibility for coverage due to the cessation of dependent status;
  - Loss of coverage because an individual incurs a claim that meets or exceeds a lifetime limit on all benefits under the plan;
  - A plan discontinues a benefit package option and no other option is offered;
  - If the employer ceases making contributions toward the employee's or dependent's coverage, the employee or dependent will be deemed to have lost coverage and does not need to drop coverage to have special enrollment rights;
  - Exhaustion of Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage, except that an employee/dependent losing coverage under another plan is not required to elect COBRA under that plan before using their special enrollment rights to enroll with the State.
- 3.6.2 An increase in employee contribution, change of benefits or change of carrier of the spouse's plan shall not constitute loss of coverage, except where the other plan terminates employer contributions. Employees should contact their Benefit Representative or Human Resources Office and pensioners should contact Pension Office to ask specific questions about eligibility.
- 3.7 If an employee declines enrollment for him/her-self or his/her dependents (including the spouse) and later has a new dependent as a result of marriage, birth, adoption, or placement for adoption, the employee may be able to enroll him/her-self and his/her dependents provided that he/she request enrollment within 30 days after the marriage, birth, adoption, or placement for adoption. Necessary forms must be completed within 30 days of the request to enroll.
- 3.8 The eligible employee who is currently enrolled in a group health plan, may change his/her benefit plan upon the dependent's involuntary loss of coverage, pursuant to Eligibility and Enrollment Rule 3.06, and addition to the State's Plan, provided the request for enrollment is made within 30 days of the loss of dependent's coverage and necessary form must be completed within 30 days of the request. In addition, if the employee has a new dependent as a result of marriage, birth, adoption, or placement for adoption, the employee may change his/her benefit plan upon the addition of the dependent to the State Plan provided the request for enrollment is made within 30 days after the marriage, birth, adoption, or placement for adoption and the necessary paperwork is completed within 30 days of the request.
- 3.9 When husband and wife are eligible State employees, the two employees, or each eligible pensioner, and all eligible dependents may elect to enroll under one family contract. When the employees are both active, and an employee and spouse or family contract is chosen, the spouse whose birthday occurs earlier in the calendar year shall sign an application for coverage form requesting coverage. A change of agency is considered re-enrollment. (In the event the birth dates are the same, length of service and/or gender will be applied as described in Eligibility and Enrollment Rule 2.2.) Beginning with the effective date of these rules, State Share contributions for all new enrollments will be charged to the agency or organization whose employee enrolls for employee, employee and spouse, employee and child/ren or family coverage. Enrollments prior to February 1990 shall continue to be charged to the agency or organization as was previously determined.
- 3.9.1 Each regular officer or employee or each eligible pensioner may elect to enroll under a separate contract. Eligible dependent/s may be enrolled under either contract, but no dependent shall be enrolled more than once under the State Plan.
- 3.9.2 The increment of cost of the options selected by the two regular officers or employees or eligible pensioners, which exceeds the cost of two First State Basic family plans, shall be deducted by the Director of the Office of Management and Budget (OMB) from salary, pension or disability payments or checks.
- 3.10 When the spouse of an eligible regular officer or employee is a retired State of Delaware employee receiving a pension, and enrolled under separate individual contracts, the employing agency and the

Pension Office will carry the coverage for their respective employee/pensioner. If an Employee & Spouse, or a Family contract is chosen, the coverage will continue to be carried through the active employee's agency until such time that the Pensioner turns 65. The over age 65 spouse may continue to have the State Plan as primary payor of benefits with the contract to continue under the active employee's agency, or the spouse may choose Medicare as the primary payor through the Pension Office. Also see Eligibility and Enrollment Rules 4.8 and 4.12.

**6 DE Reg. 690 (11/1/02)**

**12 DE Reg. 986 (01/01/09)**

**4.0 Changes In Coverage**

- 4.1 An eligible employee who elects to be covered on his/her EMPLOYMENT COVERAGE DATE may change coverage when the employee first becomes eligible for the State Share payment. (Examples: (1) An employee who at hire enrolls in the "First State Basic" plan may change to "Comprehensive PPO" (or another optional coverage) when beginning State Share contribution, without waiting for the next open enrollment period. (2) An employee who at hire enrolls for "Employee" coverage may change to "Employee and Child/ren", "Employee and Spouse", or "Family" coverage when he/she begins to receive State Share, without waiting for the next open enrollment period.
- 4.2 When a covered regular officer or employee or eligible pensioner marries, coverage for the spouse will become effective on the date of marriage, or first of the month following the date of marriage provided the regular officer or employee or eligible pensioner requests enrollment of the new spouse within 30 days of the date of the marriage and provides the necessary paperwork within 30 days of the request to enroll. A copy of valid marriage license must be provided. (Delaware law does not recognize common law or same sex marriage). Premiums are paid on a monthly basis and not pro rated; therefore, if a regular officer or employee or eligible pensioner adds the new spouse effective the date of the marriage, the regular officer or employee or eligible pensioner must remit the difference in employee contribution for the entire month. The regular officer or employee or eligible pensioner may submit a signed application within thirty (30) days prior to the date of marriage. If a request to enroll is not made within 30 days after the marriage, a covered regular officer or employee or eligible pensioner must wait until the next open enrollment period to add the spouse. A Spousal Coordination of Benefits Policy form must be completed when adding spouse to coverage.
- 4.3 Coverage for a child/ren born to a regular officer or employee or eligible pensioner or legal spouse who is covered under the State Plan will begin on the date of birth provided a request to enroll the child is made within 30 days of the date of birth and provided the necessary paperwork is received within 30 days of the request to enroll. A copy of a valid birth certificate must be provided. Premiums are paid on a monthly basis and not pro rated. If such a change is not made in the time period specified, a covered employee must wait until the next Open Enrollment period to add the child/ren. For an employee who has an existing Employee and Child, or Family type contract, the 30 day time period does not apply. However, the application to add the newborn child/ren must be made within a reasonable time period and copy of valid birth certificate provided.
- IMPORTANT NOTE:** Dependent Coordination of Benefits (child/ren) form must be completed for each enrolled dependent upon enrollment, any time coverage changes, or upon request by the Statewide Benefits Office.
- 4.4 Coverage for a child/ren legally adopted or placed for adoption with a regular officer or employee or eligible pensioner or legal spouse who is covered under the State Plan will begin on the date of adoption or placement for adoption provided a request to enroll for the child/ren is made within 30 days of the date of adoption or placement for adoption and provides the necessary paperwork within 30 days of the request to enroll.
- 4.4.1 A copy of a valid legal document attesting to the adoption or placement for adoption must be provided. Premiums are paid on a monthly basis and not pro rated. If such a change is not made in the time period specified, a covered employee must wait until the next Open Enrollment period to add the child. For an employee who has an existing Employee and Child/ren, or Family type contract, the 30 day time period does not apply. However, the application to add the newly adopted child must be made within a reasonable time period.

- 4.5 Coverage for an eligible dependent, other than a newborn child/ren, who becomes an eligible dependent after the employee has been enrolled, becomes covered on the first day of the month following eligibility provided the regular officer or employee or eligible pensioner requests enrollment within 30 days of eligible status. The necessary paperwork must be completed within 30 days of the request for enrollment. A copy of valid documentation of dependent status must be provided, i.e. legal guardianship, permanent guardianship, custody order. Applicable premiums must be paid.
- 4.6 An employee who transfers to another agency or school district may change his/her plan and coverage without waiting until the next Open Enrollment period if the transfer impacts the employee contribution to health benefits provided the employee makes the required change within 30 days of the transfer.
- 4.7 Changes in coverage can only be made at the annual Open Enrollment period, except:
- 4.7.1 A regular officer or employee or eligible pensioner is making a change due a qualifying event or Special Enrollment Right as previously outlined in Eligibility and Enrollment Rules 3.6 through 3.8;
- 4.7.2 In the case of divorce, if there is a "qualifying event" under Eligibility and Enrollment Rules 3.6 through 3.8, the regular officer or employee or eligible pensioner's coverage status may change, but the plan cannot unless Double State Share (DSS) is applicable;
- 4.7.3 The spouse of a regular officer or employee or eligible pensioner has become a State of Delaware employee entitled to State Share in which case the plan may be changed if an Employee and Spouse or Family contract is chosen;
- 4.7.4 A regular officer or employee or eligible pensioner may change coverage and/or plan if no longer entitled to DSS, provided application is made within 30 calendar days of the qualifying event; or
- 4.7.5 A regular officer or employee or eligible pensioner electing to drop health coverage or drop one or more dependents (including the spouse of such regular officer, employee, or eligible pensioner) from health coverage may drop coverage of dependents, under the following limited circumstances as per Section 125 of the Internal Revenue Service Code:
- “1 Change in status.
    - (i) Due to death of spouse.
    - (ii) Due to changes in employment status of the employee, the employee's spouse or dependent (e.g., commencement of employment, change of worksite or return from an unpaid leave of absence).
    - (iii) Change in the eligibility conditions for coverage under the spouse's or dependent's employer's plan.
    - (iv) Events that cause the employee's dependent to cease to satisfy the plan's eligibility requirements. (e.g. age, student status or similar circumstance).
    - (v) Change in the place of residence of the employee, spouse or dependent provided that in each of the circumstances described in subparagraphs (i) through (v), inclusive, the cessation of coverage for the dependent is on account of and corresponds with a change in status that affects eligibility for coverage under the plan.
  2. Judicial Order, Decree, or Judgment. Health coverage for one or more of dependent children may be dropped if a judicial order, decree, or judgment permits the cancellation of dependent child coverage, provided that the spouse, former spouse or another individual is required to cover such child and such coverage is in fact provided.
  3. Medicare or Medicaid Eligibility. If an employee, spouse, or dependent who is enrolled in an accident or health plan of the employer becomes entitled to coverage (i.e., becomes enrolled) under Part A or Part B of Title XVII of the Social Security Act (Medicare) (Public Law 89-97 (79 Stat. 291) or Title XIX of the Social Security Act (Medicaid) (Public Law 89-97 (79 Stat. 343), other than coverage consisting solely of benefits under Section 1928 of the Social Security Act (the program for distribution of pediatric vaccines), the regular officer, employee or eligible pensioner may for themselves or for their dependents make a prospective election change to cancel or reduce coverage of that employee or dependent under the health plan.

4. Change in Costs or Coverage. If the cost charged to an employee for health coverage significantly increases during a period of coverage, the regular officer, employee or eligible pensioner may make a corresponding change in election under the plan, including commencing participation in an option with a decrease in cost, or, in the case of an increase in cost, revoking an election for that coverage and, in lieu thereof, either receiving on a prospective basis coverage under another benefit package option providing similar coverage or dropping coverage if no other health plan option providing similar coverage is available. (For purposes of this paragraph, a cost increase or decrease refers to an increase or decrease in the amount of the elective contributions under the cafeteria plan, whether that increase or decrease results from an action taken by the employee (such as switching between full-time and part-time status) or from an action taken by an employer (such as reducing the amount of employer contributions for a class of employees).”
- 4.8 An eligible regular officer or employee or a legal spouse (eligible to receive State Share) who reaches age 65 and becomes eligible for Medicare shall continue to be covered under the State Plan as the primary payor of benefits.
- 4.8.1 Regular officers or employees ~~or eligible pensioners~~ and dependents eligible for Medicare, by reason of age or disability, must apply for Medicare Part A when first eligible regardless of their coverage under the State Plan. Also see Eligibility and Enrollment Rule 3.10.
- 4.8.2 If an employee or dependent covered under the State Plan becomes eligible for Medicare Parts A and B due to End Stage Renal Disease (ESRD), the covered individual must enroll in Medicare Parts A and B and these plans will be primary to the State Plan for the period of time as outlined in the Medicare guidelines. Employees with ESRD should contact their State Plan insurance carrier to discuss coverage options.
- 4.9 An employee who becomes eligible for pension or Long-Term Disability (LTD) may change their plan at the onset of receiving pension or LTD.
- 4.10 A regular officer or employee or eligible pensioner who is required by Court or Administrative Order to provide health insurance coverage for a child/ren shall be permitted to enroll under family or employee and child/ren coverage, any child/ren who is eligible for such coverage (without regard to any Open Enrollment restriction). If the employee is enrolled, but fails to make application to obtain coverage of the child/ren, the child/ren shall be enrolled under such family or employee and child/ren coverage upon application by the child/ren's other parent, the Division of Child Support Enforcement or Division of Social Services. The employee shall not disenroll (or eliminate coverage of) any child/ren unless the employer is provided satisfactory written evidence that:
- 4.10.1 The Court or Administrative Order is no longer in effect, or
- 4.10.2 The child/ren is or will be enrolled in comparable health coverage, which will take effect no later than the effective date of such disenrollment.
- 4.11 When a covered regular officer or employee or eligible pensioner divorces, coverage for the ex spouse will terminate on the day following the date of divorce. Premiums are paid on a monthly basis and not prorated. The regular officer or employee or eligible pensioner must remit the employee contribution for the plan, which included the spouse for the entire month. The regular officer or employee or eligible pensioner must submit a signed application within 30 days prior to or 30 days following the date of divorce. If DSS terminates as a result of the divorce, the regular officer or employee or eligible pensioner must pay the employee contribution for the entire month that the divorce occurred.
- 4.12 Pensioners and dependents eligible for Medicare, by reason of age or disability, must also enroll in Medicare Part A and B when first eligible for these plans and may enroll in the Medicare Supplement plan provided by the State Group Health Plan through the Pension Office. Also see Eligibility and Enrollment Rule 3.10.

**6 DE Reg. 690 (11/1/02)**

**12 DE Reg. 986 (01/01/09)**

## **5.0 Cost Of Coverage**

---

(Used to determine the amount of State Share contributed toward an employee's coverage and the amount of employee contributions required, if any.)

- 5.1 "Regular officers and employees" begin earning State Share contributions on the first of the month following three full months of employment. See Eligibility Table for specific information regarding State Share payments and employee payroll deductions for employees who elect coverage when eligible for State Share.
- 5.2 Permanent part-time, temporary per diem and contractual employees of the General Assembly as described in Eligibility and Enrollment Rule 1.01 are eligible to participate in the State Plan, but are not eligible for State Share. Therefore, any such employee joining the State Plan must pay the full cost of the health plan selected. Payment must be collected by the organization and forwarded to the Statewide Benefits Office by the first day of the month for which the employee's coverage becomes effective.
  - 5.2.1 If an existing full time state employee takes a limited term position, State Share shall continue.
  - 5.2.2 Casual and seasonal employees and substitutes are not eligible to participate in the State Plan, nor are they eligible for State Share.
- 5.3 When a husband and wife are both permanent full time active employees, they shall earn State Share contributions in accordance with the following:
  - 5.3.1 If they elect to enroll in two individual contracts, the increment of cost of the options selected by the two employees which exceeds the cost of two First State Basic family plans, shall be deducted by OMB from salary, pension or disability payments.
  - 5.3.2 If they elect to enroll in one employee and spouse or family contract, the increment of cost of the option selected by the employee that exceeds the cost of two First State Basic family plans, shall be deducted by OMB from salary, pension or disability payments.
- 5.4 When the spouse of an eligible employee is a retired State of Delaware employee receiving a monthly pension or a Disability Insurance Program (DIP) LTD beneficiary receiving an LTD check, each may enroll as two individual contracts, employee and spouse contract or a family contract. The increment of cost of the option selected by the employee that exceeds the cost of two First State Basic family plans, shall be deducted by OMB from salary, pension or disability payments. (A notation should be made in the employee's file that the spouse is a State of Delaware Pensioner or DIP LTD beneficiary). The Pension Office should be notified when the active employee terminates State Service.
- 5.5 An eligible employee who elects to be covered prior to becoming eligible for State Share must pay the full cost of coverage, State Share and employee share, until State Share begins.
- 5.6 If a regular officer, employee, eligible pensioner, or beneficiary selects coverage under any plan other than the First State Basic Plan, the employee is responsible for paying the additional cost, if any, over and above the cost of the same coverage class (individual, employee & child, employee & spouse, or family) under the First State Basic plan.
- 5.7 A regular officer or employee or eligible pensioner who is eligible for the State Share contribution may not receive the cash equivalent in lieu of the coverage itself.
- 5.8 Health coverage premiums are collected on a lag basis. (Example: January coverage is paid by deduction in the second pay of January plus deduction in the first pay of February). Each agency/school district/sub group is responsible for reconciling premiums to ensure that proper payment has been remitted. Payments, other than those made through OMB's automated payroll system, and all adjustments must be submitted in a timely manner to the Statewide Benefits Office. The State Plan will not be responsible for payment of premiums and/or claims if a signed enrollment form/confirmation statement/waiver is not in the employee file.
- 5.9 An eligible employee who returns from an authorized unpaid leave of absence is entitled to State Share payments upon return without fulfilling another three month waiting period. The employee must request enrollment by contacting their Human Resources Office within 30 days of return from leave of absence. State Share and coverage (if it has lapsed) begin on the date of return from leave of absence.

- 
- 5.10 Any regular officer or employee or eligible pensioner who fails to make payment for his/her share of the cost of health coverage when he/she is eligible to continue coverage and does not have sufficient salary from which payment can be deducted will have coverage canceled on the first day of the month ~~following any month~~ that a regular officer or employee or eligible pensioner fails to pay the required share for the coverage selected.
- 5.10.1 Family and Medical Leave Act (FMLA) regulations provide that employees have a 30 day grace period for late premium payments. The employer's obligation to maintain health coverage ceases if an employee's premium payment is more than 30 days late. Benefit Representative or Human Resources Offices should continue the employee's health coverage for the 30 day period provided under FMLA. The Benefit Representative or Human Resources Offices can then do a retroactive cancellation if the required employee contribution was not paid by the end of the 30 day grace period.
- 5.11 An employee who has a break in active employment due to authorized leave of absence, suspension, termination or unauthorized leave of absence without pay for a full calendar month, shall not be eligible for State Share for that calendar month and any subsequent calendar month that the employee is in a non pay status for the entire calendar month. In the case of an authorized leave of absence, an intermittent return to work or use of paid leave of less than five full days in one month, the employee shall not be entitled to State Share contributions. Full payment must be made for the month in order to retain coverage. Upon return, the employee is eligible for State Share without fulfilling another three month waiting period, provided the break was the result of any of the following:
- 5.11.1 an authorized leave of absence;
- 5.11.2 a suspension without pay;
- 5.11.3 termination or unauthorized leave of absence for a period less than 30 calendar days.  
Coverage begins on the date of employee's return to work.
- 5.12 State Share will be paid for employees drawing Workers' Compensation, provided the employee is not eligible for coverage from a subsequent employer. Such an employee must submit payment for the share of the coverage that would normally be deducted from his/her salary.
- 5.13 State Share will be paid for employees who are approved for Short Term and/or Long Term Disability through the State's DIP.
- 5.13.1 Employee's share of premium shall be deducted by OMB from employee's salary or DIP LTD check.
- 5.13.2 Employees whose STD claims are in a pending status are entitled to receive State Share.
- 5.13.3 Employees who are appealing a STD termination and/or benefit denial are eligible to receive State Share. If the appeal results in a denial, the employee is responsible for the State Share paid on his/her behalf while the claim was in a pending appeal status.
- 5.14 Any refund of State Share or employee share is subject to the following requirements:
- 5.14.1 An employee who has paid the State Share in order to insure continuation of health coverage and then later is found to have been eligible for receipt of State Share, is to be refunded the amount that was not paid by the State. The employee must make application for the refund within one calendar year of the date the employee paid the State Share to be refunded;
- 5.14.2 An employee who has paid the employee share then later is found to have been eligible for receipt of DSS is to be refunded the amount paid for employee share for a period not to exceed one calendar year. The employee seeking a refund must make application for the refund within one year of the date the employee paid the employee share to be refunded;
- 5.14.3 An employee who has paid the employee share for an ineligible dependent (for example following a divorce, death or exceeding the dependent age limits) is to be refunded the amount paid for employee share for a period not to exceed 60 days, provided that the employee seeking a refund must make application for the refund within 60 days of the date the employee paid the employee share to be refunded and further that the employee shall be liable for any amounts paid by the State Plan on behalf of the ineligible dependent until the employee provides notice to the Statewide Benefits Office of the dependent's ineligibility;

5.14.4 If an employee is terminated from employment and does not pay the employee share for the second half of the month in which terminated, coverage under the Plan is terminated as of the first of the month, any claims paid for that month will be reversed and a refund will be given, if employee makes request for refund within 60 days.

5.14.4<sup>5</sup> In any event, refunds of less than \$1.00 will not be made.

- 5.15 Teachers who are granted a sabbatical leave of absence are eligible for State Share while they are on such leave. Also see Eligibility and Enrollment Rule 6.3.
- 5.16 All employees whose positions are involuntarily terminated after they have been employed for a full calendar year who return to full time State employment within 24 months of their termination will be eligible for State Share without fulfilling another three month qualification period.
- 5.17 A temporary, casual, seasonal employee, or substitute who becomes a "Regular Officer or Employee" shall have his/her unbroken temporary, casual, seasonal, or limited term, provisional or permanent part time "Aggregate State Service" applied toward the three month qualification period for State Share contributions. The "Aggregate State Service" must immediately precede becoming a "Regular Officer or Employee". The temporary, casual, seasonal employee, or substitute must have worked each pay cycle for the three months prior to hire eligibility for state share - or last three full months of the school year prior to September hire.
- 5.18 State Share shall continue for a "Regular Officer or Employee" who is temporarily appointed to a position that results in a dual incumbency.
- 5.19 Any active employee who is also receiving a survivor's pension through the State of Delaware shall receive DSS. The increment of cost, which exceeds the cost of two First State Basic family plans, shall be deducted from employee's salary.
- 5.20 A regular officer or employee called to active duty with the National Guard or Reserve for other than training purposes shall continue to receive state share toward health insurance coverage for a period of up to two years. Employee's share must be remitted to Benefit Representative or Human Resources Office for further processing.

**6 DE Reg. 690 (11/1/02)**

**12 DE Reg. 986 (01/01/09)**

## **6.0 Continuation Of Coverage**

- 6.1 To continue coverage other than the First State Basic Plan, a covered employee must pay the difference between the State Share contribution and the cost of the coverage selected. Coverage will be terminated on the first day of the month employee did not make required payment.
- 6.2 An employee granted an unpaid authorized leave of absence can maintain membership in the group health plan by paying the full cost of coverage (State Share plus employee share) during the period of the leave as long as that leave of absence does not exceed two years. An employee who returns from an authorized leave of absence, whether he/she maintains coverage or not while on leave of absence, is authorized to receive State Share immediately upon return. (Eligibility for State Share begins upon return without fulfilling another three month qualification period). An employee on FMLA leave is entitled to have pre existing health insurance benefits (including the State Share) maintained while on an FMLA leave. If an employee was paying State Share and/or employee share of the premium payments prior to leave, the employee would continue to pay the same share during the leave period. Failure to make such payment within 30 days of the due date will result in termination of coverage.
- 6.3 Coverage other than the First State Basic Plan continues for teachers who are granted sabbatical leave provided they make the required payments for their share of the cost of their coverage; otherwise, their coverage reverts to the First State Basic Plan. (State Share continues while employee is on sabbatical leave.) Also see Eligibility and Enrollment Rule 5.15.
- 6.4 Employees leaving State employment, except for termination due to gross misconduct or whose application for LTD benefits under the DIP has been approved, are eligible for continuation under COBRA. Employees should contact their Benefits Representative or Human Resources Office for details of this continuation option.



- 6.5 An eligible employee or eligible dependent that loses coverage under the State Plan may continue coverage under COBRA. If a COBRA qualifying event occurs, the employee or the employee's dependent(s) must notify the employee's Benefit Representative or Human Resources Office or the State's COBRA Administrator to provide notice of the qualifying event within 60 days of its occurrence.
- 6.6 Upon expiration of the covered individual's COBRA eligibility, the individual may apply directly to the insurance company for a direct billed health insurance contract.

**12 DE Reg. 986 (01/01/09)****7.0 Termination Of Coverage**

- 7.1 Coverage ends on the last day of the month in which the employee terminates employment. A public school or higher education employee (less than 12 month employee) whose employment during a school year continues through the last scheduled work day of that school year shall retain coverage through August 31 of the same year so long as the required employee share has been paid. In the event an employee fails to make the required payment for any optional coverage selected, coverage will be terminated. If an employee works one day in the month in which he/she terminates, he/she shall earn State Share for the entire month. Coverage will be terminated on the first day of the month employee did not make required payment.
- 7.2 Coverage (and dependent coverage, if applicable) ends as of the end of the month in which the employee ceases to be an eligible employee for coverage (due to some change such as a reduction in the number of hours the employee works).
- 7.3 Coverage of dependents, except for dependents of pensioners and dependents eligible for a survivor's pension, ends as of the last day of the month of the employee's death. Dependents who lose coverage as a result of the employee's death are eligible for continuation under COBRA. Contact the State's COBRA administrator for details of this continuation option.
- 7.4 Ex spouses not employed by the State of Delaware are not eligible for coverage under the State Plan - even if a divorce decree, settlement agreement or other document requires an employee to provide coverage for an ex spouse. Coverage for the ex spouse will terminate on the day after the date of divorce. Premiums are paid on a monthly basis and not prorated. The regular officer or employee or eligible pensioner must remit the employee share for the plan which included the spouse for the entire month. The regular officer or employee or eligible pensioner must submit a signed application within 30 days prior to or 30 days following the date of divorce. If DSS terminates as a result of the divorce, each regular officer, employee or eligible pensioner must pay the employee contribution for the entire month that the divorce occurred. The State Plan will not be responsible for payment of claims when a dependent is no longer eligible for coverage.
- 7.5 Coverage for a dependent child/ren will end the earlier of the following:
- 7.5.1 December 31st of the year in which he/she reaches age 21. If a full time student, coverage will end on the earlier of the following: (1) the end of the month in which the dependent child is no longer a full time student, or (2) the end of the month in which the dependent child/ren attains age 24. Student certification must be updated each year between ages 21 and 24.
- 7.5.2 The last day of the month in which the child/ren marries;
- 7.5.3 The date the child/ren ceases to be dependent on you or your spouse for at least 50% support per Sections 2.1.1.3 and 2.1.1.4.
- 7.5.4 Adult Dependent Program coverage is as provided in Section 2.3.

**6 DE Reg. 690 (11/1/02)****6 DE Reg. 1515 (5/1/03)****12 DE Reg. 986 (01/01/09)****8.0 Reinstatement of Coverage**

- 8.1 Once a regular officer or employee or eligible pensioner has requested that his/ her coverage be canceled, he/she cannot rejoin the State Plan until the next annual Open Enrollment period unless such regular officer or employee or eligible pensioner qualifies for re-enrollment under the applicable exceptions to these Eligibility and Enrollment Rules.

- 8.2 An employee who returns from an authorized leave of absence not exceeding 24 months in duration who does not maintain coverage while on leave of absence, is permitted to enroll immediately upon return without waiting for the next Open Enrollment period, provided the employee requests enrollment within 30 days of return and completes the necessary paperwork required to enroll within 30 days of the request. Coverage will begin as of the date the employee returns from leave following completion of the necessary paperwork and payment of any required employee share. Premiums are paid on a monthly basis and are not prorated.
- 8.3 Employees whose positions are involuntarily terminated after they have been employed for a full year (or full school year) will be eligible for State Share immediately if they return to full time State employment within 24 months of termination.

**6 DE Reg. 690 (11/1/02)**

**12 DE Reg. 986 (01/01/09)**

## 9.0 Miscellaneous

- 9.1 It is the responsibility of the regular officer, employee or eligible pensioner to keep his/her Benefit Representative or Human Resources Office informed of any change of address or change in status which results in the adding or dropping of dependent/s (marriage, divorce, birth, death, adoption, etc.) that affects his/her health care coverage. In turn, it is the responsibility of the Benefit Representative or Human Resources Office to make ~~the make~~ the necessary changes in the appropriate payroll system, or to notify the Statewide Benefits Office of these changes. Failure to do so may affect eligibility of coverage or extent of coverage for any participant and could impose an extreme hardship on a regular officer or employee or eligible pensioner. The State Plan will not be responsible for payment of premiums and/or claims in the event of ineligibility and/or the absence of a signed enrollment form/confirmation statement in the regular officer or employee or eligible pensioner's file.
- 9.2 If any provision of these Rules and Regulations or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of the Rules and Regulations which can be given effect without the invalid provision or application, to that end the provisions of these Rules and Regulations are declared to be severable

**6 DE Reg. 690 (11/1/02)**

**12 DE Reg. 986 (01/01/09)**

## 10.0 Dental Plan

- 10.1 Employees electing to pay for and receive coverage under one of the Dental Plans should be aware of the following terms:
- 10.1.1 Dental is not affected by Double State Share (DSS) and dental insurance plans cannot be changed upon eligibility for DSS;
- 10.1.2 Employees may enroll in a dental plan during the first of month after being hired, becoming eligible, or 90 days after the first of the following month after being hired;
- 10.1.3 The Dental Plan's effective date is always the first of the month and not on event date as for the health plan;
- 10.1.4 Dental Plan refund rules are limited to 60 days or less because the Dental Plan is fully insured;
- 10.1.5 Dental Plan term dates are limited to 60 days or less;
- 10.1.6 Dental Plan will be terminated in the event that employee is 60 days delinquent in payment of Dental Plan premium and any paid claims in the same period will be reversed;
- 10.1.7 If an employee is terminated from employment and does not pay the Dental Plan premium for the second half of the month in which terminated, coverage under the Dental Plan is terminated as of the first of the month, any claims paid for that month will be reversed and a refund will be given, if employee makes request for refund within 60 days;
- 10.1.8 School district employees (except those of Delaware Technical and Community College) who are offered school district dental coverage are not eligible for coverage under the State Dental Plans;

- 10.1.9. Terminations in dental coverage can only be made during the annual Open Enrollment period, except that a regular officer or employee or eligible pensioner may elect to drop dental coverage for one or more dependents within the plan year due to same circumstances as noted in Section 4.75.
- 10.1.10 The employee's election of a dental insurance plan is binding for the plan year.
- 10.1.11 An employee on approved leave of absence without pay may waive participation in Dental Plan. Employee must notify his/her Benefit Representative or Human Resources Office of request as waive must be designated in the appropriate enrollment system. When employee returns to work, participation must be reinstated in the appropriate enrollment system to be effective the first of the month following employee's return to work.
- 10.1.12 An employee on approved leave of absence without pay may continue to participate in Dental Plan by making full payment of premium by end of each month or coverage will be terminated. Employee must make payment to Benefit Representative or Human Resources Office for further processing.

**12 DE Reg. 986 (01/01/09)**

**STATE OF DELAWARE GROUP HEALTH INSURANCE PROGRAM ELIGIBILITY TABLE**

Employee Start Date	Coverage Start Date (Employee pays the full cost)	Eligible for State Share
January 2 <sup>nd</sup> through February 1 <sup>st</sup>	February 1 <sup>st</sup>	May 1 <sup>st</sup>
February 2 <sup>nd</sup> through March 1 <sup>st</sup>	March 1 <sup>st</sup>	June 1 <sup>st</sup>
March 2 <sup>nd</sup> through April 1 <sup>st</sup>	April 1 <sup>st</sup>	July 1 <sup>st</sup>
April 2 <sup>nd</sup> through May 1 <sup>st</sup>	May 1 <sup>st</sup>	August 1 <sup>st</sup>
May 2 <sup>nd</sup> through June 1 <sup>st</sup>	June 1 <sup>st</sup>	September 1 <sup>st</sup>
June 2 <sup>nd</sup> through July 1 <sup>st</sup>	July 1 <sup>st</sup>	October 1 <sup>st</sup>
July 2 <sup>nd</sup> through August 1 <sup>st</sup>	August 1 <sup>st</sup>	November 1 <sup>st</sup>
August 2 <sup>nd</sup> through September 1 <sup>st</sup>	September 1 <sup>st</sup>	December 1 <sup>st</sup>
September 2 <sup>nd</sup> through October 1 <sup>st</sup>	October 1 <sup>st</sup>	January 1 <sup>st</sup>
October 2 <sup>nd</sup> through November 1 <sup>st</sup>	November 1 <sup>st</sup>	February 1 <sup>st</sup>
November 2 <sup>nd</sup> through December 1 <sup>st</sup>	December 1 <sup>st</sup>	March 1 <sup>st</sup>
December 2 <sup>nd</sup> through January 1 <sup>st</sup>	January 1 <sup>st</sup>	April 1 <sup>st</sup>

**DELAWARE RIVER BASIN COMMISSION**

The Delaware River Basin Commission will hold a public hearing and business meeting on Wednesday, July 15, 2009 beginning at 10:30 a.m. at the Northampton Community College's Fowler Family Southside Center, 511 East Third Street, 6<sup>th</sup> Floor, Room 605, Bethlehem, Pennsylvania. For more information visit the DRBC web site at [www.drbc.net](http://www.drbc.net) or contact Pamela M. Bush, Esq., Commission Secretary and Assistant General Counsel, at 609-883-9500 extension 203.

---

**DELAWARE STATE FIRE PREVENTION REGULATIONS****2009 Delaware State Fire Prevention Regulations  
NOTICE OF PUBLIC HEARING**

The Delaware State Fire Prevention Commission will hold a hearing pursuant to 16 **Del.C.** §6603 and 29 **Del.C.** 101 on Tuesday, August 18, 2009, at 1:00 P.M. in the Commission Chamber, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware. The Commission is proposing changes to the following Regulations.

Persons may view the proposed changes to the Regulations between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, at the Delaware State Fire Prevention Commission, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware, 19904, or Office of the State Fire Marshal located at the Delaware Fire Service Center, 1537 Chestnut Grove Road, Dover, Delaware, 19904, or the Regional State Fire Marshal's Offices located 2307 MacArthur Road, New Castle, Delaware and 22705 Park Avenue, Georgetown, Delaware, 19947. You can find the meeting announcement and proposed changes on the Delaware Website <http://www.delaware.gov/egov/calendar.nsf> or on the Delaware State Fire Marshal's Office webpage at [www.statefiremarshal.delaware.gov](http://www.statefiremarshal.delaware.gov) under the tabs "Services" and "Proposed Changes".

Persons may present their views in writing by mailing their views to the Commission at the above addresses prior to the hearing, and the Commission will consider those responses received before 9:00 a.m. on August 18, 2009, or by offering testimony at the Public Hearing. If the number of persons desiring to testify at the Public Hearing is large, the amount of time allotted to each speaker will be limited. There will be a reasonable fee charge for copies of the proposed changes or retrieve from the webpage for free.

---

**DEPARTMENT OF AGRICULTURE  
DIVISION OF ANIMAL HEALTH AND FOOD PRODUCTS INSPECTION  
PUBLIC NOTICE**

The Delaware Department of Agriculture repropose these regulations in accordance with the General Assembly's mandate to enforce Chapter 72 of Title 3 of the **Delaware Code** and to specify the means by which citizens of the State of Delaware may obtain a permit from the Delaware Department of Agriculture to possess, sell, or exhibit, exotic animals within the state.

These proposed regulations were considered at a public hearing on February 20, 2009 at 10:00 a.m. at the Department of Agriculture Building, Secretary's Conference Room. Public comments were received leading to substantive changes that are incorporated herein.

The Delaware Department of Agriculture solicits additional written comments from the public concerning these repropose regulations. Any such comments should be submitted to the State Veterinarian, Heather Hirst, DVM with a cc to the Assistant State Veterinarian, Caroline Hughes, VMD, at Delaware Department of Agriculture, 2320

S. DuPont Highway, Dover, DE 19901 on or before August 1, 2009. Copies of the proposed regulations are available on request.

---

**HARNESS RACING COMMISSION**  
**501 Harness Racing Rules and Regulations**  
**PUBLIC NOTICE**

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to change its Rule 7. The Commission will hold a public hearing on the proposed rule changes on August 11, 2009. Written comments should be sent to Hugh J. Gallagher, Administrator of Harness Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901. Written comments will be accepted for thirty (30) days from the date of publication in the *Register of Regulations* on July 1, 2009.

The proposed changes are for the purpose of updating Rule 7 and reflect current policies, practices and procedures. Copies are published online at the *Register of Regulations* website: [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml)

---

**DEPARTMENT OF FINANCE**  
**STATE LOTTERY OFFICE**  
**460 Sports Lottery Rules and Regulations**  
**PUBLIC NOTICE**

The Office of the State Lottery will seek public comments on proposed new rules governing a sports lottery. These regulations come as a result of recent legislation amending 29 **Del.C.**, Chapter 48, which directs the Director of the Lottery to promulgate rules for the features and attributes of a sports lottery.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before July 31 to: Delaware State Lottery Office, 1575 McKee Road, Suite 102, Dover, DE 19904. A copy of these regulations is available from the above address or may be viewed at the Lottery business office at the same address.

---

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF SOCIAL SERVICES**  
**1006.6 Civil Rights Program and Public Relations**  
**PUBLIC NOTICE**

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 administrative policies in the Division of Social Services Manual (DSSM).

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, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by July 31, 2009.

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

---

**DEPARTMENT OF JUSTICE**  
**DIVISION OF SECURITIES**  
**PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA—Title 29, Chapter 101 of the **Delaware Code**) and section 7325(b) of Title 6 of the **Delaware Code**, the Division of Securities of the Delaware Department of Justice hereby publishes notice of a proposed revision to the Rules and Regulations Pursuant to the Delaware Securities Act. The Division proposes hereby to add a new Rule 800.

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

James B. Ropp  
Securities Commissioner  
Department of Justice  
State Office Building, 5th Floor  
820 N. French Street  
Wilmington, DE 19801

The comment period on the proposed regulation will be held open for a period of thirty days from the date of the publication of this notice in the *Delaware Register of Regulations*.

---

**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**400 Delaware Gaming Control Board**  
**PUBLIC NOTICE**

The Delaware Gaming Board will seek public comments on the issue of whether its current Rule 1.0, Rule 4.6.1 and Rule 3.3 in 24 **DE Admin. Code** 401 should be amended. The rules relate to various definitions and to the manner of winning funds in the cookie jar or container and to the retention of copies of licenses by the Gaming office. The Board proposes to change the definition of "Cookie Jar Bingo" as it appears therein, and delete Rule 4.6.1 as its provisions will now be contained in the definition. The Board also intends to amend the section relating to retention of copies to indicate that the Board's office will not retain two copies of every license.

The Board will also propose to add a new section to 24 **DE Admin. Code** 404 to provide for limits in Texas Hold 'Em tournaments as called for by recent legislation amending chapter 18 of Title 28.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before July 31, 2009 to: Delaware Gaming Control Board, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904. A copy of these regulations is available from the above address or may be viewed at the Division of Professional Regulation business office at the same address.

---

**DIVISION OF PROFESSIONAL REGULATION**  
**2500 Board of Pharmacy**  
**PUBLIC NOTICE**

The Delaware Board of Pharmacy ("the Board"), in accordance with 24 **Del.C.** § 2509, is proposing to amend regulations 1.0 Pharmacist Licensure Requirements, 3.0 Pharmacy Requirements, 5.0 Dispensing, 11.0 Pharmaceutical Services in Nursing Homes and 15.0 Automated Pharmacy Systems. In addition, the Board is proposing to add new regulations 18.0 Storage and Dispensing of Medical Gases, 20.0 Technicians: Qualifications, Training and Duties and 21.0 Specialty Institutional Pharmacy Licenses.

A public hearing is scheduled for Wednesday, August 19, 2009, at 10:00 a.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, DE 19904.

Members of the public may offer verbal comments on the proposal at the hearing. Written comments may be submitted to the Board prior to the hearing care of Nancy Fields, Administrative Specialist II, at the above address.

Written comments may be submitted until the public hearing begins. Anyone wishing to obtain a copy of the proposal or to make comments at the public hearing should contact Nancy Fields at the above address or call (302) 677-7318.

The Board will consider promulgating the proposed changes immediately following the public hearing.

---

**DIVISION OF PROFESSIONAL REGULATION**  
**3800 Committee on Dietetics/Nutrition**  
**NOTICE OF PUBLIC HEARING**

The Delaware State Board of Dietetics/Nutrition (the "Board") in accordance with 24 Del.C. §3805(a) has proposed amendments to its rules and regulations as the result of the enactment in the 144th General Assembly of House Bill 38, as amended, providing for the licensure of dietitians and nutritionists in the State of Delaware.

A public hearing was held on April 17, 2009 at 1:45 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public offered comments. As a result of the public comment the Board determined to make both substantive and non-substantive changes to the proposed regulations originally published in the *Register of Regulations* at 12 DE Reg. 1179 on March 1, 2009.

A further public hearing will be held on August 7, 2009 at 1:45 p.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 State Board of Dietetics/Nutrition, 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.

---