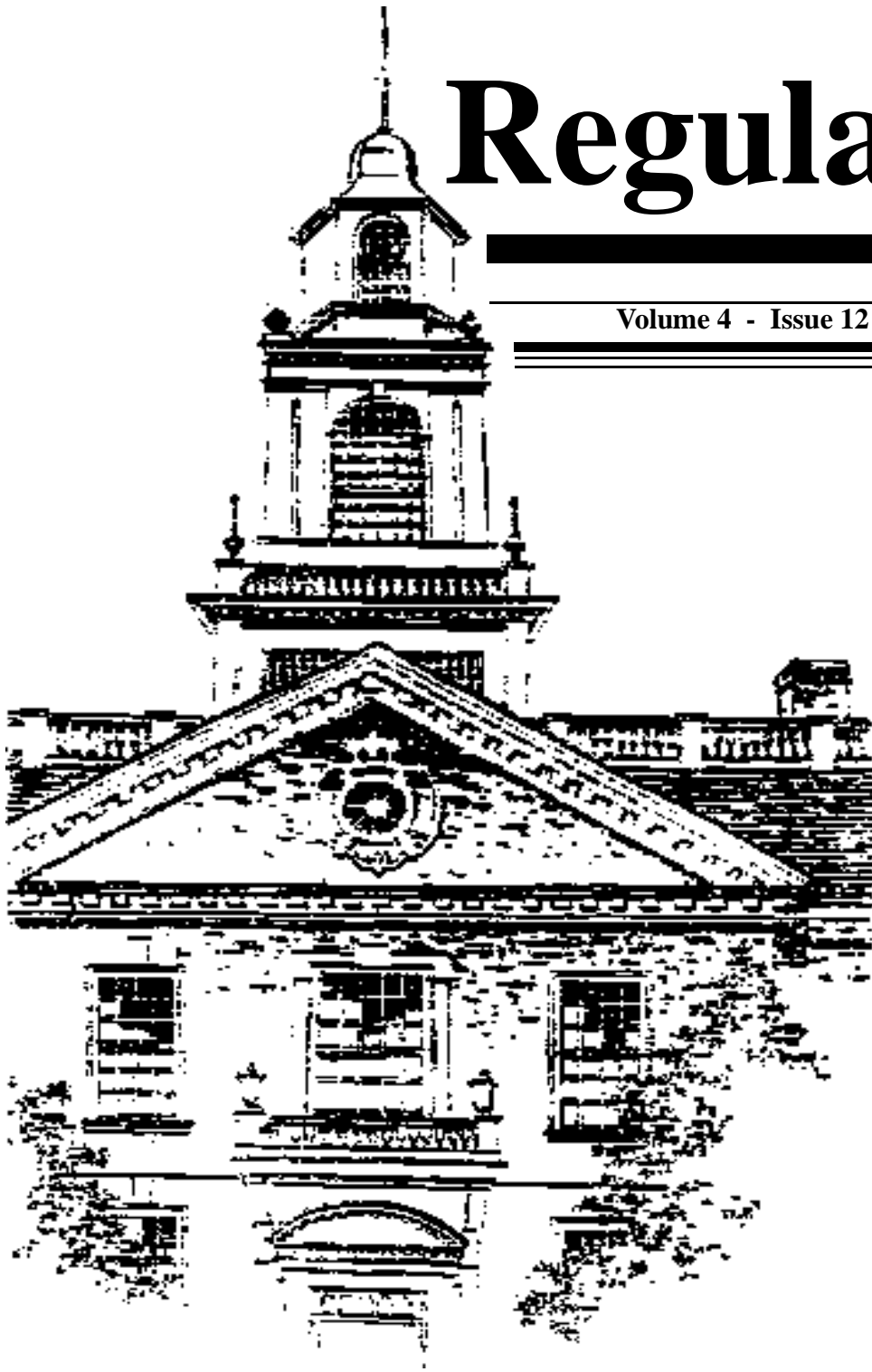

Delaware Register of Regulations



Issue Date: June 1, 2001

Volume 4 - Issue 12

Pages 1871 - 2004

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Pursuant to 29 Del. C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before May 15, 2001.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

4 DE Reg. 769 - 775 (11/1/00)

Refers to Volume 4, pages 769 - 775 of the Delaware Register issued on November 1, 2000.

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title.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

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

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

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

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

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

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

Except as provided in the preceding section,

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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AUGUST 1	JULY 15	4:30 P.M.
SEPTEMBER 1	AUGUST 15	4:30 P.M.
OCTOBER 1	SEPTEMBER 15	4:30 P.M.
NOVEMBER 1	OCTOBER 15	4:30 P.M.

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Symbol Key

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

Emergency Regulations

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

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

Statutory Authority: 7 Delaware Code,
Section 903, (7 **Del.C.** §903)



In Re: Adoption of an amendment to Tidal Finfish Regulation No. 4 without notice of hearing to adjust the minimum size, creel limit and eliminate the closed fishing season for summer flounder during the remainder of 2001.

Order No. 2001-F-0017

AUTHORITY

Pursuant to 29 **Del.C.** §10119, The Department of Natural Resources and Environmental Control is adopting an amendment to Tidal Finfish Regulation No. 4, **SUMMER FLOUNDER SIZE LIMITS; POSSESSION LIMITS; SEASONS** without prior notice or public hearing to eliminate any closed recreational fishing season for summer flounder in order to minimize the economic impact on the

recreational fishing industry. 7 **Del.C.** §903, authorizes the Department to adopt regulations concerning species of finfish that spend part or all of their life cycle within the tidal waters of this State provided, that such regulations are consistent with interstate fishery management plans developed for the protection and conservation of said finfish.

REASON FOR EMERGENCY ORDER

On April 10, 2001, I signed an EMERGENCY ORDER No. 2001-F-0015 that amended Tidal Finfish Regulation No. 4, **SUMMER FLOUNDER SIZE LIMITS; POSSESSION LIMITS; SEASONS** by closing the recreational summer flounder fishery, effective 12:01AM on April 12, 2001 and reopening it at 12:01AM on May 26, 2001 through midnight, September 4, 2001 with a 17 inch minimum size limit and a creel limit of five per day. This was in response to the most recent compliance requirements established by the Atlantic States Marine Fisheries Commission which stipulates that Delaware must reduce recreational landings of summer flounder in 2001 by 48% relative to Delaware's 1998 recreational landings. At that time, public opinion preferred the smallest size, a creel limit of no less than 4 and no closure during the summer. The effected public's opinions have expressed dismay for any fishing closure due to its adverse effects on tourism, loss of bait and tackle business, cancellation of charter boat fishing reservations and loss of fishing opportunity. The majority of public comments have been to not have any closure in the recreational summer flounder fishery and instead implement larger minimum size limits. Consequently, this order establishes a 17.5 inch minimum size limit, a creel limit of 4 and no closed recreational fishing season is acceptable, although regrettable, to many of the public responding to the

Department. This option also is acceptable to the Atlantic States Marine Fisheries Commission to meet Delaware's 48% reduction requirement in 2001.

The summer flounder is over fished according to the definition of over fishing in the Summer Flounder Fishery management Plan. Delaware must comply with this plan. Failure to do so could result in a complete closure of the summer flounder fishery in Delaware according to the provisions of the Atlantic Coastal Fisheries Cooperative Management Act. The Department has determined an imminent peril to the recreational summer flounder fishery if the stock of summer flounder continues to be over fished. The Department also has determined an imminent peril to the economy of the recreational fishing industry with a prolonged closure of the summer flounder fishing season. Consequently, I am canceling Emergency Order No. 2001-F-0015, effective immediately, and adopting in lieu thereof this Emergency Order to minimize the economic impact on the recreational fishing industry in Delaware. Tidal Finfish Regulation No. 4 is amended to open the recreational fishing season for summer flounder, effective 12:01AM May 5, 2001, with a minimum size limit of 17.5 inches, total length, and a four (4) fish daily creel limit.

EFFECTIVE DATE OF ORDER

This order shall take effect at 12:01AM on May 5, 2001 and shall remain in effect for 120 days.

PETITIONS FOR RECOMMENDATIONS

The Department will receive, consider and respond to petitions by any interested person for recommendations or revision of this Order. Petitions should be presented to the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901.

ORDER

It is hereby ordered, the 4th day of May, 2001, that the above referenced amendment to Tidal Finfish Regulation No. 4, a copy of which is hereby attached, is adopted pursuant to 29 **Del.C.** §10119 and supported by the evidence attached hereto.

Nicholas A. DiPasquale, Secretary
Department of Natural Resources
and Environmental Control.

REGISTER NOTICE SAN# 2000-19

1. TITLE OF THE REGULATIONS:
TIDAL FINFISH REGULATIONS

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

The Department proposes to continue an amendment to TIDAL FINFISH REGULATION No.4, SUMMER FLOUNDER SIZE LIMITS; POSSESSION LIMITS; SEASONS, previously implemented by Emergency Order No. 2001-F-0015 on May 5, 2001 that increases the minimum size of summer flounder to 17.5 inches, reduces the creel limit to 4 per day and opens the recreational fishing season on May 5, 2001.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

Delaware is required to reduce recreational landings of summer flounder by 48% relative to the 1998 landings in Delaware to remain in compliance with the fishery management plan for summer flounder approved by the Atlantic States Marine Fisheries Commission. Failure to do so could result in a complete closure of the summer flounder fisheries in Delaware.

**4. STATUTORY BASIS OR LEGAL AUTHORITY
TO ACT:**

7 **Del.C.** § 903 (e)(2)(a)

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

None

6. NOTICE OF PUBLIC COMMENT:

Individuals may present their comments or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover DE 19901, (302) 739-3441. A public hearing on this proposed amendment will be held on June 28, 2001 at 7:30 PM in the DNREC Auditorium, 89 Kings Highway, Dover, DE 19901. The record will remain open for written comments until 4:30 PM, July 2, 2001.

7. PREPARED BY:

Charles A. Lesser, (302)739-3441, May 7, 2001

EMERGENCY AMENDMENT TO:

**TIDAL FINFISH REGULATION 4. SUMMER
FLOUNDER SIZE LIMITS; POSSESSION LIMITS;
POSSESSION LIMITS; SEASONS.**

a) It shall be unlawful for any recreational fisherman

or any commercial hook and line fisherman to take and reduce to possession or to land ~~any~~ summer flounder at any time ~~during the period beginning at 12:01 AM on January 1 and continuing through midnight on May 25 and during the period beginning at 12:01 AM on September 5 and continuing through midnight on December 31. effective 12:01AM on May 5, 2001.~~

b) It shall be unlawful for any recreational fisherman to have in possession more than ~~five (5)~~ four (4) summer flounder at or between the place where said summer flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

c) It shall be unlawful for any person, other than qualified persons as set forth in paragraph (f) of this regulation, to possess any summer flounder that measure less than ~~seventeen (17)~~ seventeen and one-half (17.5) inches between the tip of the snout and the furthest tip of the tail.

d) It shall be unlawful for any person, while on board a vessel, to have in possession any part of a summer flounder that measures less than ~~seventeen (17)~~ seventeen and one-half (17.5) inches between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed.

e) Is omitted intentionally.

f) Notwithstanding the size limits and possession limits in this regulation, a person may possess a summer flounder that measures no less than fourteen (14) inches between the tip of the snout and the furthest tip of the tail and a quantity of summer flounder in excess of the possession limit set forth in this regulation, provided said person has one of the following:

1) A valid bill-of-sale or receipt indicating the date said summer flounder were received, the amount of said summer flounder received and the name, address and signature of the person who had landed said summer flounder;

2) A receipt from a licensed or permitted fish dealer who obtained said summer flounder; or

3) A bill of lading while transporting fresh or frozen summer flounder.

g) Is omitted intentionally.

h) It shall be unlawful for any commercial finfisherman to sell, trade and or barter or attempt to sell, trade and or barter any summer flounder or part thereof that is landed in this State by said commercial fisherman after a date when the de minimis amount of commercial landings of summer flounder is determined to have been landed in this State by the Department. The de minimis amount of summer flounder shall be 0.1% of the coast wide commercial quota as set forth in the Summer Flounder Fishery Management Plan approved by the Atlantic States Marine Fisheries Commission.

i) It shall be unlawful for any vessel to land more than 200 pounds of summer flounder in any one day in this State.

j) It shall be unlawful for any person, who has been issued a commercial foodfishing license and fishes for summer flounder with any food fishing equipment other than a gill net, to have in possession more than ~~five (5)~~ four (4) summer flounder at or between the place where said summer flounder were caught and said persons personal abode or temporary or transient place of lodging.

Symbol Key

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

Proposed Regulations

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

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
DELAWARE REAL ESTATE COMMISSION**

24 DE Admin. Code 2900

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

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Section 2905(a)(1), the Delaware Real Estate Commission proposes to revise its Rules and Regulations. The proposed amendments revise the rules and regulations regarding advertising and the maintenance of offices located in this State. Substantive changes to the rules regarding advertising include requiring the business name that is registered with the Commission and the office phone number of the broker of record to be contained in most advertisements, clarifying that the rules apply to advertisements on the Internet, and adding a new rule to address offers to purchase property by licensees. In addition, the proposed revisions clarify that each office location in this State, including a branch or home office, is to be registered with and approved by the Commission.

A public hearing will be held on the proposed Rules and Regulations on Thursday, August 9, 2001 at 9:00 a.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Commission will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Commission in care of Joan O'Neill at the above address. The final date to

submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Joan O'Neill at the above address by calling (302) 739-4522, extension 219.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

Real Estate Commission

Statutory Authority: 24 **Del.C.** 2905

- 1.0 Introduction
- 2.0 Requirements for Obtaining a Salesperson's License
- 3.0 Requirements for Obtaining a Real Estate Broker's License
- 4.0 Reciprocal Licenses
- 5.0 Escrow Accounts
- 6.0 Transfer of Broker or Salesperson
- 7.0 Business Transactions and Practices
- 8.0 Renewal of Licenses
- 9.0 Availability of Rules and Regulations
- 10.0 Disclosure
- 11.0 Hearings
- 12.0 Inducements
- 13.0 Necessity of License
- 14.0 Out of State Land Sales Applications
- 15.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

1.0 Introduction**1.1 Authority**

1.1.1 Pursuant to 24 **Del.C.** §2905, the Delaware Real Estate Commission is authorized and empowered and hereby adopts the rules and regulations contained herein.

1.1.2 The Commission reserves the right to make any amendments, modifications or additions hereto, that, in its discretion are necessary or desirable.

1.1.3 The Commission reserves the right to grant exceptions to the requirements of the rules and regulations contained herein upon a showing of good cause by the party requesting such exception, provided such exception is not inconsistent with the requirements of 24 **Del.C.** Ch. 29.

1.2 Applicability

1.2.1 The rules and regulations contained herein, and any amendments, modifications or additions hereto are applicable to all persons presently licensed as real estate brokers or real estate salespersons, and to all persons who apply for such licenses.

1.3 Responsibility

1.3.1 It is the responsibility of the employing broker to insure that the rules and regulations of the Commission are complied with by licensees. Every broker is responsible for making certain that all of his or her sales agents are currently licensed, and that their agents make timely application for license renewal. A broker's failure to meet that responsibility may result in a civil fine against the broker of up to \$ 1,000.00 per agent.

1.3.2 Each office location shall be under the direction of a broker of record, who shall provide complete and adequate supervision of that office. A broker serving as broker of record for more than one office location within the State shall apply for and obtain an additional license in his name at each branch office. The application for such additional license shall state the location of the branch office and the name of a real estate broker or salesperson licensed in this State who shall be in charge of managing the branch office on a full time basis.

A broker shall not serve as broker of record unless said broker has been actively engaged in the practice of real estate, either as a licensed salesperson or a licensed broker, for the preceding three (3) years.

Where an unforeseen event, such as a resignation or termination from employment, death, emergency, illness, call to military service or training, or a sanction imposed by the Commission causes or necessitates the removal of the sole licensed broker in an office, arrangements may be made with the Commission for another broker to serve as broker of record for said office on a temporary basis.

The employment of a sales manager, administrative manager, trainer, or other similar administrator shall not relieve the broker of record of the responsibilities contained and defined herein.

1.1.3 The failure of any licensee to comply with the

Real Estate Licensing Act and the rules and regulations of the Commission may result in disciplinary action in the form of a reprimand, civil penalty, suspension or revocation of the broker's and/or salesperson's license.

2.0 Requirements for Obtaining a Salesperson's License

The Commission shall consider any applicant who has successfully completed the following:

2.1 Course

2.1.1 The Commission shall consider any applicant who has successfully completed an accredited course in Real Estate Practice.

2.1.2 Effective May 1, 1978, all real estate courses shall be limited to thirty-five (35) students in each class. This applies to both day and night courses. All other regulations regarding real estate courses are issued under the "Guidelines for Fulfilling the Delaware Real Estate Education Requirements". The Commission reserves the right to grant exception to this limitation.

2.2 Examination

2.2.1 Within twelve (12) months of completing an accredited course, the applicant must make application to the Commission by submitting a score report showing successful completion of the examination required by the Commission. The applicant must forward all necessary documentation to the Commission to be considered for licensure.

2.2.2 An applicant may sit for the examination a maximum of three (3) times after successful completion of an approved course in real estate practice. If an applicant fails to pass the examination after three (3) attempts at such, the applicant shall be required to retake and successfully complete an approved course in real estate practice before being permitted to sit for the examination again.

2.3 Ability to conduct business

2.3.1 The Commission reserves the right to reject an applicant based on his or her inability to transact real estate business in a competent manner or if it determines that the applicant lacks a reputation for honesty, truthfulness and fair dealings.

2.3.2 The minimum age at which a salesperson's license can be issued is eighteen (18).

2.4 Fees

The Commission shall not consider an application for a salesperson's license unless such application is submitted with evidence of payment of the following fees:

2.4.1 Salesperson's application fee established by the Division of Professional Regulation pursuant to 29 **Del.C.** §8807(d).

3.0 Requirements for Obtaining a Real Estate Broker's License

The Commission shall consider the application of any person for a broker's license upon completion of the

following:

3.1 Course

3.1.1 The Commission shall consider the application of any person for a license after said applicant has successfully completed an accredited course.

3.1.2 Effective May 1, 1978, all courses shall be limited to thirty-five (35) students in each class.

3.2 Experience

3.2.1 A salesperson must hold an active license in the real estate profession for five (5) continuous years immediately preceding application for a broker's license. If the licensee fails to renew his or her license by the expiration date but then makes an application for reinstatement within sixty (60) days of the expiration of the license and the Commission otherwise approves the application for reinstatement, the five-years' continuity will not be broken.

See 4 DE Reg. 846 (11/01/00)

3.2.2 The applicant shall submit to the Commission a list of at least thirty (30) sales or other qualified transactions, showing dates, location, purchaser's name and seller's name. These sales must have been made by the applicant within the previous five (5) years through the general brokerage business and not as a representative of a builder, developer, and/or subdivider. Transactions involving time-shares, leases, or property management are not qualified transactions for purposes of obtaining a real estate broker's license. The Commission reserves the right to waive any of the above requirements, upon evidence that the applicant possesses sufficient experience in the real estate business or demonstrates collateral experience to the Commission.

3.2.3 The list of thirty (30) sales or other qualified transactions and/or the variety of the licensee's experience must be approved by the Commission.

3.3 Examination

3.3.1 Within twelve (12) months of completing an accredited course, the applicant must submit a score report showing successful completion of the examination required by the Commission and submit all necessary documentation including the credit report required by Paragraph E of this rule to the Commission to be considered for licensure.

3.4 Ability to conduct business

3.4.1 The Commission reserves the right to reject an applicant based on his or her ability to transact real estate business in a competent manner or if it determines that the applicant lacks experience, a reputation for honesty, truthfulness and fair dealings.

3.4.2 The minimum age at which a person can be issued a broker's license is twenty-three (23).

3.5 Credit Report

3.5.1 Each applicant shall submit a credit report from an approved credit reporting agency, which report shall be made directly to the Commission.

3.6 Fees

The Commission shall not consider an application for a broker's license unless such application is submitted with evidence of payment of the following fees:

3.6.1 Broker's application fee established by the Division of Professional Regulation pursuant to 29 **Del.C.** §8807(d).

4.0 Reciprocal Licenses

4.1 Requirements

4.1.1 A non-resident of this State who is duly licensed as a broker in another state and who is actually engaged in the business of real estate in the other state may be issued a nonresident broker's license under 24 **Del.C.** §2909(a).

4.1.2 A non-resident salesperson who is duly licensed as a salesperson in another state and who is actually engaged in the business of real estate in the other state may be issued a non-resident salesperson's license provided such non-resident salesperson is employed by a broker holding a broker's license issued by the Commission.

4.1.3 The Commission, at its discretion, may issue a non-resident broker's or salesperson's license without the course and examination required by Rules 2.2 or 3.3 provided the non-resident broker or salesperson passed an equivalent course and examination in his/her resident state and provided that such other state extends the same privilege to Delaware real estate licensees.

5.0 Escrow Accounts

5.1 All moneys received by a broker as agent for his principal in a real estate transaction shall be deposited within three (3) banking days after a contract of sale or lease has been signed by both parties, in a separate escrow account so designated, and remain there until settlement or termination of the transaction at which time the broker shall make a full accounting thereof to his or her principal.

5.2 All moneys received by a salesperson in connection with a real estate transaction shall be immediately delivered to the appropriate broker. A licensee shall not accept, as a good faith or earnest money deposit in connection with a real estate transaction, a photocopy, facsimile, or other copy of a personal check or draft, nor shall a licensee accept as a good faith or earnest money deposit a check or draft that is postdated.

See 4 DE Reg. 457 (9/1/00)

5.3 A broker shall not co-mingle money or any other property entrusted to him with his money or property, except that a broker may maintain up to \$100.00 of his/her own funds in the escrow account to cover bank service charges and to maintain the minimum balance necessary to avoid the account being closed.

5.4 A broker shall maintain in his office a complete record of all moneys received or escrowed on real estate transactions, including the sources of the money, the date of

receipt, depository, and date of deposit; and when a transaction has been completed, the final disposition of the moneys. The records shall clearly show the amount of the broker's personal funds in escrow at all times.

5.5 An escrow account must be opened by the broker in a bank with an office located in Delaware in order to receive, maintain or renew a valid license.

5.6 The Commission may summarily suspend the license of any broker who fails to comply with 5.4, who fails to promptly account for any funds held in escrow, or who fails to produce all records, books, and accounts of such funds upon demand. The suspension shall continue until such time as the licensee appears for a hearing and furnishes evidence of compliance with the Rules and Regulations of the Commission.

5.7 Interest accruing on money held in escrow belongs to the owner of the funds unless otherwise stated in the contract of sale or lease.

6.0 Transfer of Broker or Salesperson

6.1 All licensees who transfer to another office, or brokers who open their own offices, but who were associated previously with another broker or company, must present a completed transfer form to the Commission signed by the individual broker or company with whom they were formerly associated, before the broker's or salesperson's license will be transferred. In addition all brokers who are non-resident licensees must also provide a current certificate of licensure.

6.2 The Commission reserves the right to waive this requirement upon a determination of good cause.

6.3 All brokers of record who move the physical location of their office shall notify the Commission in writing at least 30 days, or as soon as practical, prior to such move by filing a new office application.

7.0 Business Transactions and Practices

7.1 Written Listing Agreements

7.1.1 Listing Agreements for the rental, sale, lease or exchange of real property, whether exclusive, co-exclusive or open shall be in writing and shall be signed by the seller or owner.

7.2 Copy of agreements

7.2.1 Every party to a listing agreement, agreement of purchase and sale, or lease shall be furnished with an executed copy of such contract or contracts. It shall be the responsibility of the licensee to deliver an executed copy of the agreements to the principals within a reasonable length of time after execution.

7.3 Advertising

7.3.1 ~~Any licensee who advertises, on signs, newspapers or any other media, property personally owned and/or property in which a licensee has any ownership interest, and said property is not listed with a broker, must~~

~~include in the advertisement that he/she is the owner of said property and that he/she is a real estate licensee. Any licensee who advertises in newspapers, the Internet, or any other media, property personally owned and/or property in which the licensee has any ownership interest must include in the advertisement the complete business name that has been registered with the Commission, and office phone number of the broker of record under whom he/she is licensed, that he/she is the owner of said property, and that he/she is a real estate licensee. This subsection does not apply to signs.~~

~~7.3.2 Any licensee who advertises in newspapers or any other media, property personally owned and/or property in which the licensee has any ownership interest, and said property is listed with a broker, must include in the advertisement the name of the broker under whom he/she is licensed, that he/she is the owner of said property, and that he/she is a real estate licensee. This subsection does not apply to signs. Any licensee who advertises on signs, newspapers, the Internet, or any other media an offer to purchase property must include in the advertisement that he/she is a real estate licensee.~~

~~7.3.3 Any licensee who advertises, by signs, newspaper, the Internet, or any other media, any property for sale, lease, exchange, or transfer that is listed with a broker must include in the advertisement the complete business name that has been registered with the Commission, and office phone number of the broker of record under whom the licensee is licensed.~~

~~7.3.4 All advertisements for personal promotion of licensees must include the complete business name that has been registered with the Commission, and office phone number of the company broker of record under whom the licensee is licensed.~~

7.4 Separate Office

~~7.4.1 Each licensed broker who is a resident of this State shall maintain an office in this State approved by the Commission in which to transact real estate business. Applicants for broker's licenses and those presently licensed must maintain separate offices in which to conduct the real estate business. No licensee shall transact real estate business at any office location unless an office application has been filed with and approved by the Commission. Nothing contained herein, however, shall preclude said persons from sharing facilities with such other businesses as insurance, banking, or others that the Commission shall deem compatible.~~

~~7.4.2 If a broker maintains more than one place of business within the State, the broker shall apply for and obtain approval by the Commission for each office location.~~

~~7.4.3 Any Where the office is located in a private home must be approved by the Commission and have, said office must have a separate entrance and must be approved by the Commission. The broker must place a permanent sign~~

indicating the name under which the office is licensed registered with the Commission in a conspicuous location.

7.5 Compensation

7.5.1 Licensees shall not accept compensation from more than one party to a transaction, even if permitted by law, without timely disclosure to all parties to the transaction.

7.5.2 When acting as agent, a licensee shall not accept any commission, rebate, or profit on expenditures made for his principal-owner without the principal's knowledge and informed consent.

7.6 Duty to Cooperate

7.6.1 Brokers and salespersons shall cooperate with all other brokers and salespersons involved in a transaction except when cooperation is not in the client's best interest. The obligation to cooperate does not include the obligation to share commissions or to otherwise compensate another broker or salesperson.

8.0 Renewal of Licenses

8.1 Renewal Required by Expiration Date on License

8.1.1 In order to qualify for license renewal as a real estate salesperson or broker in Delaware, a licensee shall have completed 15 hours of continuing education within the two year period immediately preceding the renewal. The broker of record for the licensee seeking renewal shall certify to the Commission, on a form supplied by the Commission, that the licensee has complied with the necessary continuing education requirements. This certification form shall be submitted by the licensee together with his/her renewal application and renewal fee. The broker of record shall retain for a period of one (1) year, the documents supporting his/her certification that the licensee has complied with the continuing education requirement. A licensee who has not paid the fees and/or met the requirements for the renewal of his or her license by the expiration date shown thereon, shall not list, sell, lease or negotiate for others after such date.

8.2 Delinquency Fee

8.2.1 If a licensee fails to renew his or her license prior to the expiration date shown thereon, he or she shall be required to pay the full license fee and an additional delinquency fee equal to one half of the license fee. If a licensee fails to renew his or her license within 60 days of the expiration date shown thereon, the license shall be cancelled.

8.2.2 Failure to receive notice of renewal by a licensee shall not constitute a reason for reinstatement.

8.3 Reinstatement of License

8.3.1 A cancelled license shall be reinstated only after the licensee pays the necessary fees, including the delinquency fee, and passes any examinations required by the Commission. If the licensee fails to apply for renewal within 6 months of the cancellation date, the licensee shall

be required to take the state portion of the examination. If the licensee fails to apply for renewal before the next renewal period commences (two years), the licensee shall be required to pass both the state and the national portions of the examination.

8.3.2 No person whose license has been revoked will be considered for the issuance of a new license for a period of at least two (2) years from the date of the revocation of the license. Such person shall then fulfill the following requirements: he or she shall attend and pass the real estate course for salespersons; take and pass the Commission's examination for salespersons; and any other criteria established by the Commission. Nothing above shall be construed to allow anyone to take the course for the purpose of licensing until after the waiting period of two (2) years. Nothing contained herein shall require the Commission to issue a new license upon completion of the above mentioned requirements, as the Commission retains the right to deny any such application.

9.0 Availability of Rules and Regulations

9.1 Fee Charge for Primers

9.1.1 Since licensees are required to conform to the Commission's Rules and Regulations and the Laws of the State of Delaware, these Rules and Regulations shall be made available to licensees without charge. However, in order to help defray the cost of printing, students in the real estate courses and other interested parties may be required to pay such fee as stipulated by the Division of Professional Regulation for the booklet or printed material.

10.0 Disclosure

10.1 A licensee who is the owner, the prospective purchaser, lessor or lessee or who has any personal interest in a transaction, must disclose his or her status as a licensee to all persons with whom he or she is transacting such business, prior to the execution of any agreements and shall include on the agreement such status.

10.2 Any licensee advertising real estate for sale stating in such advertisement, "If we cannot sell your home, we will buy your home", or words to that effect, shall disclose in the original listing contract at the time he or she obtains the signature on the listing contract, the price he will pay for the property if no sales contract is executed during the term of the listing. Said licensee shall have no more than sixty (60) days to purchase and settle for the subject property upon expiration of the original listing or any extension thereof.

10.3 A licensee who has direct contact with a potential purchaser or seller shall disclose in writing whom he/she represents in any real estate negotiation or transaction. The disclosure as to whom the licensee represents should be made at the 1st substantive contact to each party to the negotiation or transaction. In all cases such disclosure must be made prior to the presentation of an offer to purchase. A

written confirmation of disclosure shall also be included in the contract for the real estate transaction.

10.3.1 The written confirmation of disclosure in the contract shall be worded as follows:

10.3.1.1 With respect to agent for seller: "This broker, any cooperating broker, and any salesperson working with either, are representing the seller's interest and have fiduciary responsibilities to the seller, but are obligated to treat all parties with honesty. The broker, any cooperating broker, and any salesperson working with either, without breaching the fiduciary responsibilities to the seller, may, among other services, provide a potential purchaser with information about the attributes of properties and available financing, show properties, and assist in preparing an offer to purchase. The broker, any cooperating broker, and any salesperson working with either, also have the duty to respond accurately and honestly to a potential purchaser's questions and disclose material facts about properties, submit promptly all offers to purchase and offer properties without unlawful discrimination."

10.3.1.2 With respect to agent for buyer: "This broker, and any salesperson working for this broker, is representing the buyer's interests and has fiduciary responsibilities to the buyer, but is obligated to treat all parties with honesty. The broker, and any salesperson working for the broker, without breaching the fiduciary responsibilities to the buyer, may, among other services, provide a seller with information about the transaction. The broker, and any salesperson working for the broker, also has the duty to respond accurately and honestly to a seller's questions and disclose material facts about the transaction, submit promptly all offers to purchase through proper procedures, and serve without unlawful discrimination."

10.3.1.3 In the case of a transaction involving a lease in excess of 120 days, substitute the term "lessor" for the term "seller", substitute the term "lessee" for the terms "buyer" and "purchaser", and substitute the term "lease" for "purchase" as they appear above.

10.4 If a property is the subject of an agreement of sale but being left on the market for backup offers, or is the subject of an agreement of sale which contains a right of first refusal clause, the existence of such agreement must be disclosed by the listing broker to any individual who makes an appointment to see such property at the time such appointment is made.

11.0 Hearings

11.1 When a complaint is filed with the Commission against a licensee, the status of the broker of record in that office shall not change.

11.2 There shall be a maximum of one (1) postponement for each side allowed on any hearing which has been scheduled by the Commission. If any of the parties are absent from a scheduled hearing, the Commission

reserves the right to act based upon the evidence presented.

12.0 Inducements

12.1 Real Estate licensees cannot use commissions or income received from commissions as rebates or compensation paid to or given to Non-licensed Persons, partnerships or corporations as inducements to do or secure business, or as a finder's fee.

12.2 This Rule does not prohibit a real estate broker or salesperson from giving a rebate or discount or any other thing of value directly to the purchaser or seller of real estate. The real estate broker or salesperson, however, must be licensed as a resident or non-resident licensee by the Commission under the laws of the State of Delaware.

12.3 A real estate broker or salesperson has an affirmative obligation to make timely disclosure, in writing, to his or her principal of any rebate or discount that may be made to the buyer.

13.0 Necessity of License

13.1 For any property listed with a broker for sale, lease or exchange, only a licensee shall be permitted to host or staff an open house or otherwise show a listed property. That licensee may be assisted by non-licensed persons provided a licensee is on site. This subsection shall not prohibit a seller from showing their own house.

13.2 For new construction, subdivision, or development listed with a broker for sale, lease or exchange, a licensee shall always be on site when the site is open to the general public, except where a builder and/or developer has hired a non-licensed person who is under the direct supervision of said builder and/or developer for the purpose of staffing said project.

14.0 Out of State Land Sales Applications

14.1 All applications for registration of an out of state land sale must include the following:

14.1.1 A completed license application on the form provided by the Commission.

14.1.2 A \$100 filing fee made payable to the State of Delaware.

14.1.3 A valid Business License issued by the State of Delaware, Division of Revenue.

14.1.4 A signed Appointment and Agreement designating the Delaware Secretary of State as the applicant's registered agent for service of process. The form of Appointment and Agreement shall be provided by the Commission. In the case of an applicant which is a Delaware corporation, the Commission may, in lieu of the foregoing Appointment and Agreement, accept a current certificate of good standing from the Delaware Secretary of State and a letter identifying the applicant's registered agent in the State of Delaware.

14.1.5 The name and address of the applicant's resident broker in Delaware and a completed Consent of

Broker form provided by the Commission. Designation of a resident broker is required for all registrations regardless of whether sales will occur in Delaware.

14.1.6 A bond on the form provided by the Commission in an amount equal to ten (10) times the amount of the required deposit.

14.1.7 Copies of any agreements or contracts to be utilized in transactions completed pursuant to the registration.

14.2 Each registration of an out of state land sale must be renewed on an annual basis. Each application for renewal must include the items identified in sub-sections 14.1.2 through 14.1.4 of Rule 14.0 above and a statement indicating whether there are any material changes to information provided in the initial registration. Material changes may include, but are not limited to, the change of the applicant's resident broker in Delaware; any changes to the partners, officers and directors' disclosure form included with the initial application; and any changes in the condition of title.

14.3 If, subsequent to the approval of an out of state land sales registration, the applicant adds any new lots or units or the like to the development, then the applicant must, within thirty days, amend its registration to include this material change. A new registration statement is not required, and the amount of the bond will remain the same.

15.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

15.1 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.

15.2 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.

15.3 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).

15.4 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.

15.5 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 (h) of this section.

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

15.6.1 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.

15.6.2 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.

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

15.6.4 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.

15.6.5 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.

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

15.6.7 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.

15.6.8 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.

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

15.6.10 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.

15.6.11 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.

15.6.12 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.

DIVISION OF PROFESSIONAL REGULATION**BOARD OF FUNERAL SERVICES**

24 DE Admin. Code 3100

Statutory Authority: 24 Delaware Code,
Section 3105(a)(1) (24 **Del. C.** § 3105(a)(1))

The Delaware Board of Funeral Services, in accordance with 24 **Del.C.** §3105(a)(1) has proposed changes to its rules and regulations. The changes clarify Rule 4.0 relating to establishment permits by defining terms and clarifying the statutory exemptions. A proposed change to Rule 9.2 requires continuing education to be related to the practice of funeral services.

A public hearing will be held at 10:00 a.m. on July 25, 2001 in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Funeral Services, 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.

Board of Funeral ServicesStatutory Authority: 24 **Del.C.** 3105(a)(1)

- 1.0 Duties of the Officers
- 2.0 Licensure Requirements
- 3.0 Federal Trade Commission Regulations
- 4.0 Establishment Permits
- 5.0 Duplicate Certificate
- 6.0 Suspension - Revocation or Lapse of Funeral Director's License
- 7.0 Cash Advance
- 8.0 Code of Ethics
- 9.0 Continuing Education Regulations

10.0 Treatment Option for Chemically Dependent or Impaired Professionals

1.0 Duties of the Officers

1.1 The President shall preside at all meetings, call meetings, sign certificates with other Boardmembers or other forms that may be required by him or her by law.

1.2 In the absence of the President, the Secretary shall preside at the meetings and call meetings when the President is absent. However, the signatory duties of the President may not be transferred to the Secretary.

1.3 In accordance with 29 **Del.C.** §8807, the Division of Professional Regulation shall maintain and keep all records of licensed funeral directors in the State of Delaware issuing a number and date to each license.

1.4 The Division shall also cause to be collected all fees including license application fees, renewal fees or any other fee required to be paid in accordance with the provisions of 24 **Del.C.** Ch. 31, et.seq.

1.5 In accordance with the Freedom of Information Act, 29 **Del.C.** §10004(c), the Division of Professional Regulation shall publish an agenda of all meetings which shall include the time, dates and places of said meetings and an agenda. The Board shall also give public notice of the regular meetings and its intent to hold an executive session closed to the public at least seven days in advance. However, the agenda may be subject to change to include additional items not on the agenda including executive sessions closed to the public which arise at the time of the Board's meeting.

1.6 The Division of Professional Regulation shall insure that accurate and detailed minutes of all business to come before the Board at all Board meetings be transcribed in accordance with 29 **Del.C.** §8807 and 24 **Del.C.** §3103(d).

2.0 Licensure Requirements

2.1 Requirements for licensing of those applying for a Funeral Director's license in the State of Delaware. The qualifications of applicants for licensure as funeral director are contained in 24 **Del.C.** §3107(a)(1)-(9) and 24 **Del.C.** §3109.

2.2 An applicant who has attended a school or college fully accredited by the American Board of Funeral Service Education "ABFSE" or its successor and who, after attending such ABFSE accredited school or college, has received an Associate degree or its equivalent in mortuary science, wherein such "degree" required the successful completion of at least sixty (60) semester credit hours, shall be eligible for licensure as a funeral director in accordance with the educational requirements contained within 24 **Del.C.** §3107. The applicant shall request that a copy of an official transcript be sent to the Board.

2.3 The equivalent of an Associate Degree as that term is used in 24 **Del.C.** §3107 and herein is a certificate in

mortuary science that required a minimum of thirty (30) semester credit hours. In addition to said certificate, sufficient semester credit hours earned from a regionally accredited institution of postsecondary education, so that the applicant has earned a total of at least sixty (60) semester credit hours, are required.

2.4 The Division, upon request of a registered intern or applicant seeking licensure via reciprocity, shall administer the State examination required by 24 **Del.C.** §3107(a)(3) based solely upon the laws and regulations of Delaware which may govern, impact on, and relate to the profession including preneed funeral service contracts, consumer protection law and regulations, and laws and regulations governing crematories and cemeteries.. An applicant for full licensure, whether via initial or reciprocal licensure, shall be deemed to have successfully passed the state examination with a minimum grade of 70%. The national examination required by 24 **Del.C.** §3107(a)(2) may be taken before or during the internship.

2.5 As required by 24 **Del.C.** §3107(a)(4), an applicant other than one seeking licensure via reciprocity shall satisfactorily complete an internship of one year's duration in a licensed Delaware funeral establishment under the auspices of a licensed Delaware funeral service practitioner. In order for an applicant to apply for an internship, the applicant shall have certified on a form approved by the Board that he or she has graduated from an accredited high school or its equivalent, and has received an Associate Degree or its equivalent in mortuary science, consisting of sixty (60) credit hours, from a school fully accredited by the ABFSE or its successor. Satisfactory completion of an internship requires a minimum of twenty-five (25) embalming reports and four (4) completed quarterly work reports evidenced by a notarized statement by the sponsor. An intern may be given one extension of his or her internship for an additional year.

See 4 DE Reg. 159 (7/1/00)

3.0 Federal Trade Commission Regulations

A licensed funeral director in the State of Delaware shall comply with all Federal Trade Commission Regulations governing the pricing of funeral services and merchandise and the method of payment for funeral services as defined under 24 **Del.C.** §3101(7). Upon the issuance of a funeral director's license, a licensed funeral director represents that he/she is familiar with all Federal Trade Commission rules and regulations and shall abide by the same. A licensee may be subject to discipline pursuant to 24 **Del.C.** Ch.31, et seq. if these rules or regulations have been violated by the licensee.

4.0 Establishment Permits

~~4.1 The requirements for the issuance, continuance, and proper maintenance of a funeral establishment permit are~~

~~contained in 24 Del.C. §3117. In accordance with 24 Del.C. §3117(a)(2), the funeral establishment shall be conducting funeral services from a building that is appropriate as defined in 24 Del.C. §3101(5). All establishments, both newly issued and those grandfathered by 24 Del.C. §3117 (a)(1), shall in said building have preparation rooms which shall be locked. Licensed funeral directors shall exercise full control over preparation rooms and supplies.~~

~~4.2 All funeral establishments provided a permit in accordance with the requirements of 24 Del.C. §3117 shall, in addition to conforming with all safety requirements of the State Department of Health and Social Services, provide the following:~~

~~4.2.1 A room for the preparation and embalming of human remains;~~

~~4.2.2 Said preparation room shall contain embalming equipment and supplies.~~

~~4.3 Funeral Establishment Permit: Circumstances for Termination and Continuation:~~

~~4.3.1 The statutory requirements for the issuance of a funeral establishment permit are contained in 24 Del.C. §3117.~~

~~4.3.2 To be exempt from the provisions of 24 Del.C. §3117(a)(2), the funeral establishment shall have been maintained, operated and conducted on a continuous basis prior to September 6, 1972 until the present date. Further, only the record owner of the funeral establishment shall be entitled to obtain said exemption. No assignment of the exemption rights contained in 24 Del.C. §3121 (a)(2) is permitted and no other licensed funeral director may apply for or be assigned said rights.~~

~~4.3.3 If a licensed funeral director relocates or otherwise moves a funeral establishment that has been granted an exemption pursuant to the provision of 24 Del.C. §3117(a)(2) from its original location, the exemption allowed under 24 Del.C. §3117(a)(2) shall immediately become null and void. For purposes of this section the term "move" or "relocate" is defined as to place such establishment outside the original building's location at its exact address of record unless the building where the funeral establishment permit is contained is renovated.~~

~~4.1 The Board shall issue and renew establishment permits as provided in 24 Del.C. §3117. As used herein, an establishment is the building or structure where the practice of providing funeral services is conducted.~~

~~4.2 Unless exempt under 24 Del.C. §3101(b), the building in which funeral services are provided shall contain a room having the fixtures necessary for the care and preparation of human remains for funeral service, burial, entombment or cremation.~~

~~4.2.1 A satellite funeral establishment is a place where the practice of providing funeral services is conducted at a location separate from the primary place of business.~~

~~4.2.2 A satellite funeral establishment retains the~~

~~exemption only so long as it is continuously operated as an adjunct to the primary place of business.~~

~~4.3 Unless exempt under 24 Del.C. §3117(a)(2), a funeral establishment shall have a licensed funeral director in charge full time therein.~~

~~4.3.1. A funeral director is in charge full time so long as the director is on the premises when funeral services are being provided.~~

~~4.3.2 A business operating in a funeral establishment since September 6, 1972 retains an exemption under 24 Del.C. § 3117(a)(2) only so long as the record owner of the business does not change.~~

~~4.4 All funeral establishments shall conform with the health and safety regulations promulgated by agencies of the State of Delaware have regulatory authority.~~

5.0 Duplicate Certificate

Any licensed funeral director may obtain a duplicate funeral director's certificate upon proof of satisfactory evidence to the Board that the original has been lost or destroyed and a payment of a fee as set by the Division of Professional Regulation.

6.0 Suspension - Revocation or Lapse of Funeral Director's License

During any period a licensed funeral director's license has lapsed, been revoked or suspended by the Board in accordance with 24 Del.C. §§3111 or 3114, no other licensed funeral director in the State of Delaware may register death certificates or secure burial permits for the licensee whose license has been revoked, suspended or has lapsed. Nor shall the licensee whose license has lapsed, been revoked or suspended by the Board, be able to register death certificates or secure burial permits. The Board may notify the Division of Public Health, the Department of Health and Social Services, the Medical Examiner's Office or other appropriate state or federal agency that said funeral director is prohibited from practicing funeral services as defined by 24 Del.C. Ch. 31.

7.0 Cash Advance

7.1 A licensed funeral director in the State of Delaware is prohibited from billing or causing to be billed any item that is referred to as a "cash advance" item unless the net amount paid for such item is for funeral services in the same amount as is billed by the funeral director. A cash advance item is payment made by the funeral director for the consumer to a third party including but not limited to cemetery fees, crematory fees, death certificates and florists.

7.2 The effective date of these regulations is the 6th day of December, 1989 in accordance with 29 Del.C. §10118 (b).

7.3 The following rules are adopted by the board as a supplement to the Rules and Regulations governing the State

Board of Funeral Services, previously adopted and promulgated on the 6th day of December, 1989 pursuant to 24 **Del.C.** §3105 (a)(1) and the Administrative Procedures Act, 29 **Del.C.** §10115.

8.0 Code of Ethics

8.1 The following is adopted as the code of ethics for all funeral service licensees in the State of Delaware.

8.1.1 As funeral directors, we herewith fully acknowledge our individual and collective obligation to the public, especially to those we serve, our mutual responsibilities for the proper welfare of the funeral services profession.

8.1.2 To the public we pledge: vigilant support of public health laws; proper legal regulations for the members of our profession; devotion to high moral and service standards; conduct befitting good citizens, honesty in all offerings of service and merchandise to the public and all business transactions.

8.1.3 To those we serve we pledge: confidential business and professional relationships; cooperation with the customs, laws, religions and creeds; observance of all respect due to the deceased; high standards of confidence and dignity in conduct of all services; truthful representation of all services and merchandise.

8.1.4 To our profession we pledge: support of high educational standards and proper licensing law; encouragement of scientific research; adherence to sound business practices; adoption of improved technique; observance of all the rules of fair competition and maintenance of favorable personnel relations.

9.0 Continuing Education Regulations

9.1 Board Authority

9.1.1 This rule is promulgated under the authority of 24 **Del.C.** §3105 which grants the Board of Funeral Services (hereinafter "the Board") authority to provide for rules for continuing funeral services education as a prerequisite for license renewal.

9.2 Requirements

9.2.1 Every licensed funeral director in active practice shall complete at least 10 hours/credits of approved continuing education (hereinafter "CE") during the two year licensure period prior to the time of license renewal. All CE credit hours must further the licensee's skills and understanding in the field of funeral services. Licensees who earn more than the required amount of CE credit hours during a given licensure period may carry over no more than 50% of the total CE credit hours required for the next licensure period.

9.2.2 When a Delaware licensee on inactive status files a written application to return to active practice with the Board, the licensee shall submit proof of having completed the required CE credit hours for the period just prior to the

request to return to active practice.

9.2.3 Upon application for renewal of a license, a funeral director licensee shall submit to the Board proof of completing the required number of CE credit hours.

9.3 Waiver of the CE Requirement

9.3.1 The Board has the power to waive any part of the entire CE requirement for good cause if the licensee files a written request with the Board. For example, exemptions to the CE requirement may be granted due to health or military service. Application for exemption shall be made in writing to the Board by the applicant for renewal. The Board shall decide the merits of each individual case at a regularly scheduled meeting.

9.3.2 Newly licensed funeral directors, including those newly licensed by reciprocity, are exempt during the time from initial licensure until the commencement of the first full licensure period.

9.4 Continuing Education Program Approval

9.4.1 Each contact hour (at least fifty minutes) is equivalent to 1.0 CE credit hour. One college credit hour is equivalent to 5 CE credit hours.

9.4.2 Eligible program providers or sponsors include but are not limited to, educational institutions, government agencies, professional or trade associations and foundations and private firms.

9.4.3 Sources of CE credits include but are not limited to the following:

- Programs sponsored by national funeral service organizations.
- Programs sponsored by state associations.
- Program provided by local associations.
- Programs provided by suppliers.
- Independent study courses for which there is an assessment of knowledge.
- College courses.

9.4.4 The recommended areas include but are not limited to the following:

- Grief counseling
- Professional conduct, business ethics or legal aspects relating to practice in the profession.
- Business management concepts relating to delivery of goods and services.
- Technical aspects of the profession.
- Public relations.
- After care counseling.

9.4.5 Application for CE program approval shall include the following:

9.4.5.1 Date and location.

9.4.5.2 Description of program subject, material and content.

9.4.5.3 Program schedule to time segments in subject content areas for which approval of, and determination of credit is required.

9.4.5.4 Name of instructor(s), background,

expertise.

9.4.5.5 Name and position of person making request for program approval.

9.4.6 Requests for CE program approval shall be submitted to the Board on the application provided by the Board. Application for approval may be made after the program; however, if the program is not approved, the applicant will be notified and no credit given.

9.4.7 Approval of CE credits and program formats by the Committee shall be valid for a period of two years from the date of approval. Changes in any aspect of the approved program shall render the approval invalid and the presenter will be responsible for making reapplication to the Committee.

9.4.8 Upon request, the Board shall mail a current list of all previously approved programs.

9.5 Continuing Education Committee

9.5.1 The Board of Funeral Services shall appoint a committee known as the Continuing Education Committee. The Committee shall consist of the following who shall elect a chairperson:

9.5.1.1 One (1) Board member (non-licensed).

9.5.1.2 One (1) non-Board member who shall be a licensed funeral director who is owner/operator of a funeral establishment.

9.5.1.3 One (1) non-Board member who shall be a licensed funeral director who does not own or operate a funeral establishment.

9.5.2 Membership on this Committee shall be on a rotating basis, with each member serving a three year term and may be eligible for reappointment. The Committee members shall continue to serve until a new member is appointed.

9.5.3 The Continuing Education Committee shall oversee matters pertaining to continuing education and make recommendations to the Board with regard to approval of submitted programs for CE by licensees and with regard to the Board's review of audited licensees. The Board shall have final approval on all matters.

9.6 Certification of Continuing Education - Verification and Reporting

9.6.1 The program provider/sponsor has sole responsibility for the accurate monitoring of program attendance. Certificates of attendance shall be supplied by the program provider/sponsor and be distributed only at the completion of the program.

9.6.2 Verification of completion of an independent study program will be made with a student transcript.

9.6.3 The funeral director licensee shall maintain all original certificates of attendance for CE programs for the entire licensure period. Proof shall consist of completed CE form provided by the Board and shall be filed with the Board on or before thirty (30) days prior to the expiration date of the biennial renewal period.

9.6.4 Applications for renewal may be audited by the Board to determine whether or not the recommended requirements of continuing education have been met by the licensee.

9.6.5 If a licensee is found to be non-compliant in continuing education, the licensee's license shall lapse at the expiration of the present licensing period. The Board shall reinstate such license within twelve (12) months of such lapse upon presentation of satisfactory evidence of successful completion of continuing education requirements and upon payment of all fees due.

9.6.6 Programs approved for continuing education credit by another state funeral board other than Delaware shall be automatically approved for all Delaware licensees upon written application and verification of CE credits by the applicable state board.

10.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

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

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

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

10.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and

complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

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

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

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

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

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

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

administrative costs associated with the Voluntary Treatment Option.

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

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

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

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

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

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

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

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

DEPARTMENT OF EDUCATION

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

**EDUCATIONAL IMPACT ANALYSIS PURSUANT
TO 14 DEL. C. SECTION 122(d)****260 GENERAL APPEAL PROCEDURES FOR THE
CHILD AND ADULT CARE FOOD PROGRAMS OF
THE UNITED STATES DEPARTMENT OF
AGRICULTURE CACFP/USDA****A. TYPE OF REGULATORY ACTION REQUESTED**

New Regulation

**B. SYNOPSIS OF SUBJECT MATTER OF
REGULATION**

The Secretary of Education seeks approval of a new regulation, General Appeal Procedures for the Child and the Adult Care Food Programs of the United States Department of Agriculture CACFP/USDA. The regulation addresses the appeal procedures that must be followed for the Child and Adult Care Food Programs. The Federal Regulations require the Delaware Department of Education to establish these regulations.

C. IMPACT CRITERIA

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation addresses appeal procedures for the Child and Adult Care Food Programs not student achievement.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation addresses Appeal Procedures for the Child and Adult Care Food Programs not equity issues.

3. Will the new regulation help to ensure that all students' health and safety are adequately protected? The new regulation addresses Appeal Procedures for the Child and Adult Care Food Programs and may have an impact on health and safety issues as related to the school food service program.

4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation addresses Appeal Procedures for the Child and Adult Care Food Programs not students' legal rights.

5. Will the new regulation preserve the necessary authority and flexibility of decision makers at the local board and school level? The new regulation will not change the necessary authority and flexibility of decision makers at the local board and school level.

6. Will the new regulation place unnecessary

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

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

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

9. Is there a less burdensome method for addressing the purpose of the new regulation? Federal regulations require that we promulgate regulations at the state level.

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

**260 General Appeal Procedures for the Child and
Adult Care Food Programs of the United States
Department of Agriculture CACFP/USDA**

1.0 When a participating institution or agency seeks to appeal actions taken by the Delaware Department of Education pursuant to findings based on monitoring or administrative reviews the following shall apply:

1.1 The institution or agency shall be advised in writing of the grounds on which the Delaware Department of Education has based its action. The notice of action, which shall be sent by certified mail, return receipt requested shall also include a statement indicating that the institution has the right to appeal the action.

1.2 To initiate an appeal procedure, a written request for review shall be filed by the appellant not later than 15 calendar days from the date the appellant received the notice of action, and the Delaware Department of Education shall acknowledge the receipt of the request for appeal within 10 calendar days. Then, the following procedures shall pertain:

1.2.1 Within five (5) days of receipt of an appeal for review, the Delaware Secretary of Education, or his/her designee, shall appoint a review official who shall be selected from the approved list of hearing officers. The review official shall be an independent and impartial official

other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this section.

1.2.2 The appellant may refute the charges contained in the notice of action in person and by written documentation to the review official. In order to be considered, written documentation must be filed with the review official not later than 30 calendar days after the appellant received the notice of action. The appellant may retain legal counsel, or may be represented by another person. A hearing shall be held by the review official in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter of request for review. Failure of the appellant institution's representative to appear at a scheduled hearing shall constitute the appellant institution's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. A representative of the Delaware Department of Education shall be allowed to attend the hearing to respond to the appellant's testimony and to answer questions posed by the review official.

1.2.2.1 If the appellant does not specifically request a hearing in the letter of request for review, and the review official determines that a review of documentation is sufficient for resolution, the appellant and the Delaware Department of Education shall be advised of the official's determination.

1.2.2.2 If the appellant has requested a hearing, the appellant and the Delaware Department of Education shall be provided with at least 10 calendar days advance written notice, sent by certified mail, return receipt requested, of the time and place of the hearing.

1.2.3 Any information on which the Delaware Department of Education's action was based shall be available to the appellant for inspection from the date of receipt of the request for review.

1.2.4 The review official shall make a determination based on information provided by the Delaware Department of Education and the appellant, and on Program regulations.

1.2.5 Within 60 calendar days of the Delaware Department of Education's receipt of the request for review, the review official shall inform the State agency and the appellant of the determination of the review.

1.2.6 The Delaware Department of Education's action shall remain in effect during the appeal process. However, participating institutions and facilities may continue to operate under the Program during an appeal of termination, unless the action is based on imminent dangers to the health or welfare of participants.

1.2.7 The determination by the Delaware Department of Education's review official is the final administrative determination to be afforded to the appellant.

1.2.8 Appeals shall not be allowed on decisions made by the Food and Consumer Services, U.S. Department of Agriculture, on requests for exceptions to the claims submission deadlines stated in 7CFR Sec. 226.10(e) or requests for upward adjustments to claims.

1.2.9 In cases where an appeal results in the dismissal of a claim against an institution, which was asserted by the Delaware Department of Education, based upon Federal audit findings of the Food and Consumer Services, U.S. Department of Agriculture, may assert a claim against the Delaware Department of Education in accordance with the procedures outlined in 7CFR Sec. 226.14(c).

Authority: 7 CFR Sec. 226.6 State Agency Administrative Responsibilities, (k) Institution appeal procedures.

EDUCATIONAL IMPACT ANALYSIS PURSUANT TO 14 DEL. C. SECTION 122(d)

701 UNIT COUNT

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Secretary of Education seeks to amend the regulation 701 Unit Count. The sections being amended are 4.1.2 and 8.0. Section 4.1.2 adds the inclusion of repeating seniors who take three or more courses a day to the unit count. Also added to this section is a reference to the James H Groves In-school Program from 2.4.in regulation 915 James H. Groves High School. The amendment to section 8.0 describes the conditions for reinstatement in the Unit Count that are required for a special education student who is disqualified.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses the Unit Count system not achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses the Unit Count system not equity issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses the Unit Count system not students' health and safety.

4. Will the amended regulation help to ensure that all

students' legal rights are respected? The amended regulation addresses the Unit Count system not students' legal rights.

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

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

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

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

9. Is there a less burdensome method for addressing the purpose of the amended regulation? The issues must be addressed in the context of the regulation.

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

701 Unit Count

1.0 Forms and Record Keeping

1.1 All information submitted through the unit count process shall be on the forms provided by the Department of Education or in such other format as may be acceptable to the Department.

1.2 Each school shall maintain September enrollment records in a manner, which will allow for efficient enrollment audits by the Department of Education and the State Auditor of Accounts. At the end of September, each school shall assemble a comprehensive enrollment file that contains all necessary support materials to substantiate the enrollments reported. This file shall be retained in the school for at least three years.

1.3 Records to substantiate special education students included in the enrollment count shall contain:

student name, cohort age group, grade level, handicapping condition, name of special education teachers serving the student in September, and number of hours of special education services received during the last week of school in September. Individual student case studies, evaluations, and reports of specialists do not need to be maintained as part of the September 30 enrollment file. However, individual student files may be reviewed by the Department of Education or State Auditor of Accounts to ascertain that the students reported are bonafide special education students as per Regulation 925, Children with Disabilities.

2.0 Special Situations Regarding Enrollment

2.1 All exceptions and extenuating circumstances relating to the enrollment count are addressed to the Secretary of Education and shall be received by the Secretary for consideration prior to September 30.

2.2 Students with multiple handicaps shall be reported in the category that corresponds to their major handicapping condition.

2.3 Students included in the special education unit count under the placement provisions of Transfer Student or Emergency Temporary Placement or Change of Placement shall meet the evaluation and placement requirements found in Regulation 925, Children with Disabilities.

2.4 Students not assigned to a specific grade shall be reported in a grade appropriate for their age or their instructional level for purposes of the unit count.

3.0 Accounting for Students ~~n~~ Not in Attendance the Last Ten Days in September

3.1 For students not in attendance at school during the last 10 school days of September, the following information shall be on file to substantiate their inclusion in the enrollment count:

3.1.1 Reason for absence and date of last direct contact with student or parent.

3.1.2 Reason to believe that student will be returning to school before November 1st.

3.1.3 Districts and Charter Schools enrolling a within-state transfer student during the last ten school days of September shall notify the student's previous district of such enrollment. The notification shall be by fax with a follow-up letter to the previous district central office. The notification shall be clearly labeled Unit Count Transfer Students and include the student's name, grade, and previous school of attendance. A student enrolling with a formal notice of withdrawal from the previous district is exempted from this notification requirement. Failure to follow the notification procedure may result in including the same student in two different district enrollments and hence unit counts. If that occurs, the student will be disallowed from the receiving district's enrollment and unit count. Copies of the fax transmittals and follow-up letters shall be on file to substantiate the student's inclusion in the receiving district's enrollment and unit count.

4.0 Programs, Situations and Program Types that Qualify for Inclusion in the Unit Count

4.1 Students in the following programs, situations and program types shall qualify for inclusion in the enrollment count:

4.1.1 Delaware Adolescent Program, Inc. (DAPI): A student enrolled in DAPI on September 30 may be counted in the home school enrollment count. If enrolled the previous year in a special education program in the reporting school, the student may continue to be reported for the same level of special education service as was received during the previous year. If enrolled the previous year in a vocational program in the reporting school, the student may continue to be reported as enrolled in the next vocational course in the program series.

4.1.2 ~~Advanced placement in college: Students shall be enrolled and attend at least one full credit course in their high school.~~ Repeating seniors who are enrolled in school for a minimum number of instructional hours defined as three traditional courses or an equivalent time in a block schedule, shall be included in the unit count provided they meet the age and residency requirements. Students in the James H. Groves In-school Credit Program (2.4 in regulation 915 James H. Groves High school) and students in the Advanced Placement Program shall be enrolled and attend at least one full credit course in their high school to be included in the unit count provided they also meet the age and residency requirements.

4.1.3 Temporary medical problem, which precludes school attendance prior to November 1st.

4.1.4 Supportive home-bound instruction provided by the reporting school.

4.1.5 Stevenson House or New Castle County Detention Center: Students on a temporary basis pending disposition of case who are expected to return to school prior to November 1st.

4.1.6 Four-year old "gifted or talented" students recorded in the grade level enrollment group to which they are assigned.

4.1.7 All pre-kindergarten students with disabilities shall be counted as full-time special education students.

4.1.8 Students enrolled in residential facilities as of the last day of September. These students are included in the enrollment count of the district operating the instructional program in that facility. The facilities that are eligible shall be identified each year by the Department of Education.

4.1.9 Regular Programs - Regular programs include students who are enrolled in the regular elementary or secondary curriculum of the school, i.e., the core of the school subjects, which most students take.

4.1.10 Full-time Special Education Programs - Students who have been properly diagnosed, placed in a

special program, and receive instruction from a certified special education teacher for at least 12 1/2 hours per week. Special students must have appropriate supporting documentation on file as required by the Identification, Evaluation and Placement Process in Regulation 925, Children with Disabilities.

4.1.11 Part-time Special Education Programs - Part-time special education programs include students who receive less than 12-1/2 hours of instruction from a certified special education teacher, but meet all other criteria for full-time special education services. Part-time special education students, for unit computation, have their time apportioned between a regular student in a specified grade and a special student in a specified category.

4.1.11.1 The apportioning is accomplished by dividing the number of hours that each student receives instruction from a certified special education teacher by 15. For example, if a second grade Learning Disabled student receives 11.5 hours of special education service per week, the student is counted as a .77 LD student ($11.5/15 = .77$) and a .23 second grade regular student. This accounts for one Full-Time Equivalent Student ($.77 + .23 = 1.0$).

4.1.12 Vocational Programs - A maximum of 900 minutes of vocational time per week per student shall be credited toward the vocational unit determination. Students who attend full time, 900 minute vocational programs are not counted in any other vocational course. They have the maximum time allowed.

5.0 Programs and/or Situations that Do Not Qualify for the Unit Count

5.1 Students in the following programs and situations do not qualify for inclusion in the enrollment count:

5.1.1 Students who have not attended school during the last 10 days of September

5.1.2 Students who are enrolled in General Education Development (GED) programs

5.1.3 Students who are enrolled in other than Department of Education approved programs

5.1.4 Students who are transferred to a state residential facility during September shall not be included in the enrollment count of the District unless that District operates the facility's instructional program; otherwise the student must be treated as a withdrawal

6.0 Nontraditional High School Schedules: For unit count purposes if a special education student or a vocational student in a school utilizing nontraditional schedules receives during the course of the year the same amount of instruction the student would have received under a traditional class schedule, the district shall average the time and calculate instructional time on a weekly basis; providing however, that a vocational student receives a minimum of 300 minutes of instruction per week and a full-time special education student receives a minimum of 7.5 hours of

instruction per week.

The following exemplifies a situation with the required minimum minutes and hours for a full time vocational and/or special education student:

Fall Vocational = 300 minutes per week

Spring Vocational = 1500 minutes per week

$1800 / 2 = 900$ minutes per week

Fall Special Education = 7.5 hours per week

Spring Special Education = 17.5 hours per week

$= 25.0 / 2 = 12.5$ hours per week

7.0 Charter Schools

7.1 Charter schools shall be allowed the following options in calculating their unit count:

7.1.1 using the standard public school procedure: major fraction unit rounding rule in each category or

7.1.2 adding the fractional units in each category and using the major fraction unit rounding rule on the total

~~8.0 Unit Adjustments After Audit: If after the units are certified by the Secretary of Education, students are disqualified through the auditing process from the unit count, the units will be recalculated without those students. Other eligible students shall not be substituted for the disqualified students.~~ Unit Adjustments After Audit: If, after the units are certified by the Secretary of Education, a student is disqualified through the auditing process from the unit count, the units will be recalculated without that student. An other eligible student shall not be substituted for the disqualified student. A special education student who has been identified and is receiving special education services and is disqualified from the unit count due to irregularities contained within supporting documentation, may then be included in the appropriate regular enrollment category provided the student meets eligibility requirements. Only a student disqualified by the audit process may be reassigned to another unit category. In no event can this adjustment result in a net increase in units for a district.

EDUCATIONAL IMPACT ANALYSIS PURSUANT TO 14 DEL.C. SECTION 122(d)

1501 KNOWLEDGE, SKILLS AND RESPONSIBILITY BASED SUPPLEMENTS FOR EDUCATORS

A. TYPE OF REGULATORY ACTION REQUESTED

New Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, with the consent of the State Board of Education acting in cooperation and consultation with the Department of Education, seeks the approval of regulation 1501 Knowledge, Skills and Responsibility Based Supplements for Educators. The regulation includes the requirements for, and payment of salary supplements established by 14 Del.C. §1305. This regulation shall apply to the awarding of salary supplements as a percentage of the state portion of an educator's annual salary for gaining knowledge and skills that lead to more effective instruction, for achieving certification from the National Board for Professional Teaching Standards, or from an equivalent program, and/or for accepting additional responsibility supplements that impact student achievement.

C. IMPACT CRITERIA

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation addresses student achievement and requires that knowledge and skills lead to more effective instruction and that responsibility supplements impact student achievement.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation help ensure that all educators have access to high quality opportunities to acquire knowledge and skills that lead to more effective instruction.

3. Will the new regulation help to ensure that all students' health and safety are adequately protected? The new regulation addresses educator knowledge, skills, and responsibility based salary supplements, not health and safety issues.

4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation addresses educator knowledge, skills, and responsibility based salary supplements, not students' legal rights.

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

6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon

decision makers at the local board and school levels? The new regulation may require changes in reporting requirements at the local board and school levels, but these changes will be offset by a reduction in reporting requirements for professional development elsewhere in the system.

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

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

9. Is there a less burdensome method for addressing the purpose of the new regulation? 14 Del. C. requires that we promulgate this regulation.

10. What is the cost to the state and to the local school boards of compliance with the new regulation? The knowledge, skills, and responsibility based salary supplements are subject to an annual appropriation by the Legislature. The Department of Education shall provide for funding the supplement provisions of this regulation in its annual budget. There is no additional cost to local school boards for compliance with the regulation.

1500 DELAWARE PROFESSIONAL STANDARDS BOARD

1501 KNOWLEDGE, SKILLS, AND RESPONSIBILITY BASED SALARY SUPPLEMENTS FOR EDUCATORS

1.0 Content: The following requirements shall be met in order to receive the salary supplements established by 14 Del. C. §1305. These regulations shall apply to the awarding of salary supplements as a percentage of the state portion of an educator's annual salary for gaining knowledge and skills that lead to more effective instruction, for achieving certification from the National Board for Professional Teaching Standards, or from an equivalent program, and/or for accepting additional responsibility supplements that impact student achievement. Supplements are available subject to an annual appropriation from the Legislature.

2.0 Definitions: The following words and terms, when

used in this regulation, should have the following meaning unless the context clearly indicates otherwise:

"Approved cluster," means a professional development cluster that meets the criteria specified in 3.0 of these Regulations and that has been designated by the Standards Board and the State Board as the basis for awarding a specific salary supplement.

"Delaware Administrator Standards" means standards for education administrators approved by the State Board, as per Department of Education Regulation 394, Delaware Administrator Standards.

"Delaware content standards," means K-12 student content standards approved by the State Board.

"Delaware Professional Teaching Standards" means standards of teaching approved by the State Board, as per Department of Education Regulation 393, Delaware Professional Teaching Standards.

"Department" means the Delaware Department of Education.

"Educator" means an employee paid under 14 Del. C. § 1305.

"Knowledge and skills" means understandings and abilities that, when acquired by educators, lead to more effective instruction.

"Lead mentor" means an educator who has successfully completed the specified training for lead mentors and who fulfills the role in a district.

"Professional development cluster" or "cluster" means a focused group of professional development activities that leads to measurable and observable knowledge and skills.

"Provider" means a local school district, college, educationally related organization, or professional organization that delivers professional development clusters approved by the Standards Board to educators.

"Responsibilities" means educators' additional responsibility assignments that are academic in nature and that impact student achievement. Extra curricular or non-instructional supervisory activities are specifically excluded from this definition under these regulations.

"Salary supplement", when referring to knowledge, skills, and responsibility based supplements, means additional state salary, as described in 14 Del. C § 1305.

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

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

3.0 Professional Development Clusters: The Standards Board may, on a quarterly basis, submit to the State Board a list of professional development clusters and specific areas of knowledge and skills for approval as the basis for awarding salary supplements.

3.1 Professional development clusters, knowledge, and skills shall be grounded in:

3.1.1 Delaware Professional Teaching Standards or Delaware Administrator Standards or their equivalent (i.e., national standards from educators' specialty-area organizations that complement the Delaware standards) or

3.1.2 Delaware content standards or their equivalent (i.e., national standards from content-specialty groups, if there are no Delaware standards for the content area).

3.1.3 Clusters may include a combination of formal courses at graduate or undergraduate levels, in-service courses, action research, study groups, and school, cohort, team, or independent projects. Both voluntary performance or assessment-based specialty certifications awarded for meeting standards established by national professional organizations shall be treated as clusters in accordance with these regulations.

3.1.4 A cluster may be comprised of related segments which may be completed separately over a period of time and which are identified as part of a cohesive professional development plan.

3.2 Knowledge and skills shall be:

3.2.1 Targeted to impact student achievement;

3.2.2 Supported by professional development that has research-based potential to improve instruction, and

3.2.3 Measurable, observable, and applied.

3.3 The specific percentage of salary assigned to each knowledge and skills supplement, provided that no supplement may be less than 2% nor more than 6% of an educator's base state salary shall be submitted with the list of professional development clusters and specific areas of knowledge and skills.

3.4 Submitted with the list of professional development clusters and Each salary supplement shall be designated as permanent or renewable. If not permanent, the duration of the supplement shall be specified.

3.5 An educator who satisfactorily completes an approved cluster shall receive a cluster specific verification document from the provider of the approved cluster.

4.0 Responsibilities: The Standards Board may, on a quarterly basis, submit to the State Board a list of specific responsibility assignments for approval as the basis for awarding responsibility salary supplements.

4.1 Responsibility assignments shall be:

4.1.1 Focused on school improvement issues that impact student achievement;

4.1.2 Supported by high quality, targeted professional development, and

4.1.3 Academic in nature.

4.2 The list of specific responsibility assignments shall include the specific dollar amount of additional salary, which shall be no less than \$750 and no more than \$1,500.

4.3 In order to qualify for a responsibility assignment salary supplement, an educator shall have completed the state approved training program for the position, or, in the absence of a training program, shall meet the criteria set forth for the position, and shall provide state and district approved levels of service, participate in designated activities throughout the period of responsibility, and document the satisfactory fulfillment of the specified responsibility assignment.

4.4 The amount of the responsibility salary supplement paid to an individual may be reduced by the amount of payment that the educator receives from a school district for the same responsibility, if the source of the district payment is state funds granted to the school district for a program that includes the specific responsibility in its operations.

5.0 Effective in FY 2002, the responsibility of serving as a lead mentor in Delaware's new teacher mentoring program will be recognized with a responsibility salary supplement in the amount of \$1,500.

5.1 Additional responsibility assignments shall be identified in accordance with the Standards Board's regulations and procedures.

5.2 A local school district, with the approval of the Standards Board and the State Board, and through regulatory action of the local board, may designate specific academic responsibility assignments in addition to those set forth by the Standards Board that an employee may accept in order to receive a responsibility salary supplement.

6.0 Approval of Professional Development Clusters and Responsibilities:

6.1 The Standards Board's standing committee on professional development and associated compensation, or a subcommittee of the standing committee, shall provide the Standards Board with recommended lists of professional development clusters and responsibility assignments in accordance with these regulations.

6.1.1 The committee, with approval of the Standards Board, shall adopt operating procedures and a schedule for completing its tasks. These procedures may include the opportunity for public comment on the committee's recommendations prior to the Standards Board's actions on the recommendations. The Standards Board shall publicize these procedures and schedule to Delaware's educators, local school districts, colleges, educationally related institutions, and professional organizations.

6.2 The Standards Board shall examine the proposed lists and previously approved lists of clusters and responsibilities to assure that clusters and responsibilities are accessible to all educators and are balanced overall as to availability across subject areas, grade levels, and specialties. It is the intent of the Standards Board that all Delaware educators shall have opportunities to qualify for knowledge, skills, and responsibility salary supplements in

accordance with these regulations.

6.3 The lists of professional development clusters, areas of skills and knowledge, and responsibilities shall be forwarded to the State Board with recommendation for approval in accordance with 14 Del. C. § 1203 following approval by the Standards Board.

7.0 Confirmation of Educators' Eligibility for Salary Supplements:

7.1 Knowledge and Skills: An educator shall receive approval of eligibility from the local district prior to participating in an approved cluster of professional development that is expected to lead to supplemental salary. In determining approval of an educator's participation, local districts shall consider the individual's goals, plans, and needs in relation to the school's or district's improvement and accountability plans. After completing the entire cluster, an educator shall submit documentation to the local district of fulfilling the requirements of the cluster's design.

7.2 Responsibility Assignments" An educator shall provide the local district with such information as may be required to enable the local district to verify that the educator has fulfilled the requirements of 4.3 of these regulations.

8.0 Payment of Salary Supplements: [RESERVED]

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Statutory Authority: 11 Delaware Code,
Chapter 85 (11 Del.C. Ch. 85)

Delaware Regulations for the Delaware Adult Abuse Registry

PUBLIC NOTICE

Delaware Health and Social Services (DHSS) has prepared draft regulations that replace, in their entirety, existing regulations governing the Delaware Adult Abuse Registry as authorized by Title 11 Del.C. Chapter 85.

These regulations govern the placement upon the registry of persons for whom an allegation of abuse, neglect, mistreatment or financial exploitation has been substantiated. Additionally, the regulations establish the procedures for employers to follow when conducting checks of the registry of potential employees. Lastly, they establish procedures for private individuals to follow when conducting checks of potential employees for services in a private residence.

INVITATION FOR PUBLIC COMMENT

Public hearings will be held as follows:

Monday, July 9, 2001, 10:00 AM
Department of Natural Resources & Environmental
Control Auditorium
89 Kings Highway
Dover

Thursday, July 12, 2001, 10:00 AM
Springer Building Training Room
Herman Holloway Campus
1901 N. DuPont Highway
New Castle

For clarification or directions, please call Gina Loughery or Joan Reynolds at 302-577-6661.

Written comments are also invited on these proposed new regulations and should be sent to the following address:

John T. Murray
Division of Long Term Care Residents Protection
3 Mill Road
Wilmington, DE 19806

The last time to submit written comments will be at the public hearing July 12, 2001.

REGULATIONS GOVERNING THE ADULT ABUSE REGISTRY

Section 1: Definitions

(A) "Adult Abuse" means:

(1) ~~Physical abuse including the intentional and unnecessary infliction of pain or injury to an infirm adult or the threat thereof. This includes, but is not limited to, hitting, kicking, pinching, slapping, pulling hair, or any sexual contact, or the threat of any of the above acts.~~

(2) ~~Emotional abuse including, but not limited to:~~

(a) ~~Ridiculing or demeaning an infirm adult.~~

(b) ~~Making derogatory remarks to an infirm~~

~~adult.~~

(c) ~~Cursing directed towards an infirm adult.~~

(d) ~~Threatening retaliation, directly or~~

~~indirectly~~

(3) ~~Mistreatment including the inappropriate use of medications, isolation or physical or chemical restraints on or of an infirm adult.~~

(4) ~~Neglect including:~~

(a) ~~Intentional lack of attention to physical needs of the infirm adult including, but not limited to, toileting, bathing, meals and safety.~~

(b) ~~Intentional failure to report health~~

problems or changes in health problems or changes in health condition of an infirm adult to an immediate supervisor, doctor or nurse.

(e) Intentional failure to carry out a prescribed treatment plan for an infirm adult.

(5) Misappropriation of property including the theft of money or property from the infirm adult, use of money or property without permission of the infirm adult or guardian, and mishandling of money or property belonging to the infirm adult.

(B) "Substantiated Abuse" means that, weighing the facts and circumstances, a reasonable person has concluded that more likely than not the identified individual has committed adult abuse.

(C) "Person Seeking Employment" means any person applying for employment in a health care facility or child care facility that affords direct access to persons receiving care at such a facility, or a person applying for licensure to operate a child care facility.

(D) "Health Care Facility" means any custodial or residential facility where health, nutritional or personal care is provided for infirm adults, including nursing homes, hospitals, home health care agencies, and adult day care facilities.

(E) "Child Care Facility" means any child care facility which is required to be licensed by the Department of Services for Children, Youth and Their Families.

(F) "direct access" means the opportunity to have personal contact with persons receiving care during the course of one's assigned duties.

(G) "Infirm adult" means any person 18 years of age or over who is physically or mentally impaired, either permanently or temporarily.

(H) "proposed concern" refers to a temporary classification used until the final determination is made.

(I) "Department" means the Department of Health and Social Services.

Section 2: Use of Registry

(A) No employer who operates a health care facility or child care facility shall hire any person seeking employment without requesting and receiving an Adult Abuse Registry check for such person.

(1) Any employer who is required to request an Adult Abuse Registry check shall obtain a statement signed by the person seeking employment wherein the person authorizes a full release for the employer to obtain the information provided pursuant to such a check.

(2) The employer shall call the Adult Abuse Registry, provide the name and social security number of the person seeking employment, and will be informed of any information contained in the registry.

(B) When exigent circumstances exist which require an employer to fill a position in order to maintain the required

or desired level of service, the employer may hire a person seeking employment on a conditional basis after the employer has requested an Adult Abuse Registry check.

(1) The employment of the person shall be conditional and contingent upon receipt of the Adult Abuse Registry check by the employer.

(2) The person shall be informed in writing, and shall acknowledge in writing, that his or her employment is conditional, and contingent upon receipt of the Adult Abuse Registry check.

Section 3: Investigation of Adult Abuse.

(A) The Department shall investigate any individual against whom an allegation of adult abuse has been made.

(B) If the investigator determines preliminarily that the facts and circumstances conclude that more likely than not the individual has committed abuse or neglect, the individual's name shall be placed on the Adult Abuse Registry with a finding of "Proposed Concern".

Section 4: Administrative Hearings

(A) Individuals against whom an allegation is preliminarily substantiated shall be notified in writing of the intent to place their name on the Adult Abuse Registry with a finding of "Substantiated Abuse" and shall be offered a right to an administrative hearing. Information contained in the finding of substantiated abuse shall consist of

- (1) The date of the incident
- (2) The type of facility where the incident occurred
- (3) A brief description of the incident
- (4) Length of time the finding remains on the

Abuse Registry

(B) Individuals must request in writing an administrative hearing within 30 days of the date of the notice that a finding of abuse has been preliminarily substantiated.

(C) Individuals who fail to request an administrative hearing within 30 days shall have their name and information regarding the incident changed from a finding of "Proposed Concern" to a finding of "Substantiated Abuse" on the Adult Abuse Registry 30 days after the date of the notice.

(D) Individuals who have entered a plea or who have been convicted by a court of law of adult abuse, shall not have the right to an administrative hearing. Their name and information regarding the incident shall be entered directly to the Adult Abuse Registry.

(E) The Department shall make a scheduling decision within 10 days of receipt of a request for an administrative hearing by an individual who has received notice of a preliminary finding of substantiated abuse.

(1) An individual requesting an administrative hearing shall be entitled to a statement describing the incident, the date and location of the incident, and the name of the victim.

(2) The individual shall be afforded an opportunity to appear with or without an attorney, submit documentary evidence, present witnesses, and question any witness the Department presents.

(3) If, at the conclusion of the hearing, the hearing officer concludes that, weighing the facts and circumstances, more likely than not, the identified individual has committed adult abuse, a notice of "substantiation" shall be placed on the registry.

(4) The hearing officer shall render a written decision and will notify the individual and the Office of the Ombudsman of the decision. The notice will specify the reasons for the decision and, if the finding is substantiated, the length of time the finding of substantiated abuse shall remain on the registry.

(5) The decision of the hearing officer is final.

Section 5: Length of time on the Abuse Registry

The length of time on the Abuse Registry shall be no less than five years and may be permanent. The length of time shall be based on the actual injury or risk of injury to the infirm adult and whether there exists a pattern of adult abuse. Notwithstanding the above, the length of time on the registry may be less than five years if there is evidence of mitigating circumstances indicating that adult abuse by the individual was a singular event and not likely to reoccur.

Section 6: Registry of Nurse Aides

The names of registrants with findings of abuse, neglect, or misappropriation entered on the Registry of Nurse Aides created pursuant to 42 CFR § 483 shall be entered into the Adult Abuse Registry with a finding of substantiated abuse. The finding shall remain on the Adult Abuse Registry for so long as the finding remains on the Registry of Nurse Aides. There shall be no right of appeal for findings entered on the Adult Abuse Registry under this section.

Section 1: Definitions

"Abuse" shall have the same meaning as contained in 16 Del.C. §1131 and shall include mistreatment and financial exploitation as defined in 16 Del.C. §1131 (2) and, 16 Del.C., §1131 (4) respectively.

"Child Care Facility" means any child care facility which is required to be licensed by the Department of Services for Children, Youth and Their Families.

"Contractor" means an entity under contract to provide services in a health care provider whose employees have the opportunity for direct access to an infirm adult or person receiving care for more than 20 hours per week (aggregate) and for more than six weeks in a twelve month period.

"Department" means the Department of Health and Social Services.

"Direct Access" means the opportunity to have

personal contact with persons receiving care during the course of one's assigned duties.

"Division" means the Division of Long Term Care Residents Protection.

"Health Care Service Provider" means any person or entity that provides services in a custodial or residential setting where health, nutritional or personal care is provided for persons receiving care, including but not limited to hospitals, home health care agencies, adult care facilities, temporary employment agencies and contractors that place employees or otherwise provide services in custodial or residential settings for persons receiving care, and hospice agencies. "Health Care Service Provider" does not include any private individual who is seeking to hire a self-employed health caregiver in a private home.

"Infirm Adult" means any person 18 years of age or over who is physically or mentally impaired either permanently or temporarily.

"Neglect" shall have the same meaning as contained in 16 Del. C., § 1131 (3).

"Nursing Facility and Similar Facility," means any facility required to be licensed under 16 Del. C., Chapter 11. This includes but is not limited to facilities commonly called nursing homes, assisted living facilities; intermediate care facilities for persons with mental retardation, neighborhood group homes, family care homes and rest residential care facilities. Also included are the Stockley Center, the Delaware Psychiatric Center and hospitals certified by the Department of Health and Social Services pursuant to 16 Del. C., § 5001 or § 5136.

"Person Receiving Care" means any person who, because of his physical or mental condition requires a level of care and services suitable to his needs to contribute to his health, comfort and welfare.

"Person Seeking Employment" means any person applying for employment with or in a health care service provider, nursing facility or similar facility or child care facility that may afford direct access to persons receiving care at such a facility, or a person applying for licensure to operate a child care facility. It shall also include a self-employed health caregiver that has direct access in any private home.

"Preliminarily Substantiated" refers to a temporary placement on the Registry based on an investigative finding pending the final determination.

"Substantiated Abuse" means that, weighing the facts and circumstances, a reasonable person has concluded by a preponderance of evidence that the identified individual has committed adult abuse for the purpose of placement on the Adult Abuse Registry.

Section 2: Use of Registry

(A) No health care service provider, to include nursing and similar facilities, or child care facility shall hire any

person seeking employment or retain any contractors without requesting and receiving an Adult Abuse Registry check for such person.

(1) Any employer who is required to request an Adult Abuse Registry check shall obtain a statement signed by the person seeking employment wherein the person authorizes a full release for the employer to obtain the information provided pursuant to such a check. Said authorization shall include the following language: "I hereby authorize the Adult Abuse Registry to furnish the indicated employer with any information concerning me which may be on the record or otherwise, and do hereby release the Registry and all individuals connected therewith, from all liability for any damage that may result from the dissemination of the information."

(2) The employment of the person shall be conditional, limited to five calendar days and be contingent upon receipt of the Adult Abuse Registry check by the employer.

(3) The person shall be informed in writing, and shall acknowledge in writing, that his or her employment is conditional, and contingent upon receipt of the Adult Abuse Registry check.

(4) When exigent circumstances exist which require an employer to fill a position in order to maintain the required or desired level of service, the employer may hire a person seeking employment on a conditional basis after the employer has requested an Adult Abuse Registry check.

(B) Private individuals seeking to hire an individual to provide healthcare services in a private residence may check the potential employee through the Adult Abuse Registry. A short letter of request along with a release form signed by the prospective employee may be mailed or faxed to the Division of Long Term Care Residents Protection (DLTCRP) # 3 Mill Road, Suite 308, Wilmington, DE 19806, fax number (302) 577-6673.

Section 3: Investigation of Adult Abuse and Neglect

(A) The Division shall investigate any individual against whom an allegation of adult abuse or neglect has been made.

(B) If the investigation preliminarily substantiates that the alleged abuse or neglect occurred, the Division's Investigations Unit Chief shall enter on the Adult Abuse Registry, with a finding of "Preliminarily Substantiated," the individual's name, date/time of the incident, a description of same and the length of time the finding shall remain on the Registry.

(C) The Division may delegate its authority to conduct the preliminary investigation to a state agency or an entity contracted by a state agency.

(D) Upon placement of a person on the Adult Abuse Registry, the Division will notify the facility from which the complaint originated as well as the current employer that the

person is on the Registry as "Preliminarily Substantiated."

Section 4: Administrative Hearings

(A) Individuals against whom an allegation is preliminarily substantiated shall be notified in writing that their names have been entered on the Adult Abuse Registry and shall be offered a right to an administrative hearing. Individuals shall be informed of the following:

(1) The date and time of the incident.

(2) The name and type of facility where the incident occurred.

(3) A brief description of the incident.

(4) Length of time the finding remains on the Adult Abuse Registry.

(B) All requests for an administrative hearing must be received by the Division in writing, postmarked within 30 days of the date of the notice that a finding of abuse or neglect has been preliminarily substantiated. The Division shall dismiss untimely requests for hearing except where the individual submits evidence of good cause.

(C) Individuals who fail to request an administrative hearing as described above shall have their names and information regarding the incidents changed from a finding of "Preliminarily Substantiated" to a finding of "Substantiated Abuse" on the Adult Abuse Registry.

(D) The hearing officer shall have the power to compel the attendance of witnesses and the production of evidence. Under no circumstance shall the hearing officer order the release of the investigative report and documents attached thereto; provided however, the hearing officer may order the release of statements of witnesses whom the Division intends to call at the hearing.

(E) The hearing officer should receive requests for witnesses and/or the production of evidence no less than ten business days prior to the hearing date. Limited continuances shall be granted for good cause.

(F) The individual shall be afforded an opportunity to appear with or without an attorney, submit documentary evidence, present witnesses, and question any witness the Department presents.

(G) If, at the conclusion of the hearing, the hearing officer concludes by a preponderance of evidence, that the identified individual has committed adult abuse or neglect, a notice of "Substantiated Abuse" shall be placed on the Adult Abuse Registry.

(H) The hearing officer shall render a written decision and will notify the individual and the Division of Long Term Care Residents Protection of the decision. The notice will specify the reasons for the decision and, if the finding is substantiated, the length of time the finding of substantiated abuse or neglect shall remain on the Adult Abuse Registry.

(I) Any person placed on the Adult Abuse Registry shall have the right to appeal the decision within thirty days of the finding. The decision of the hearing officer may be

appealed on the record, to the Delaware Superior Court.

Section 5: Length of time on the Adult Abuse Registry

(A) The length of time shall be based on the seriousness of the incident and whether there exists a pattern of abuse. Evidence of mitigating circumstances may be considered.

(B) Upon final disposition of the allegation, the Division shall notify, in writing, the facility where the incident occurred, as well as the current employer of the individual, of the final disposition.

Section 6: Removal of a Person from the Adult Abuse Registry

(A) The Department shall be authorized to remove a person from the Adult Abuse Registry before the expiration of his registration period where the Department deems that the person no longer poses a threat to any person receiving care in accordance with 11 Del. C., § 8564 (g).

(B) A person whose name has been placed on the Adult Abuse Registry shall have the right to petition the Division, in writing, for the removal of his/her name from the Registry. Said petitioner must demonstrate:

(1) A minimum of eighteen months has passed since the incident or;

(2) Affirmative steps have been taken to correct behavior that led to placement on the Adult Abuse Registry, i.e.: anger management counseling, drug/alcohol treatment, sensitivity training, etc. or;

(3) Demonstrated improved behavior through work references.

(C) The Division will evaluate the information provided by the petitioner and respond in writing within 60 days of receipt of all information provided by the petitioner. The Division is authorized to grant or deny the removal based on the review of the information presented. If the Division denies the request, the petitioner may re-apply for the removal after 6 months, or when the petitioner can produce evidence of performance of the affirmative steps listed above.

Section 7: Disclosure of Adult Abuse Registry Records

There are four categories of records maintained within the Adult Abuse Registry. The dissemination of information contained in the Adult Abuse Registry shall be disclosed by type as listed below:

(A) Information related to "Substantiated Abuse" cases which may be released shall include: date and time of the incident, the name and type of facility, a description of the incident and the length of time the finding shall remain on the Registry. The information may be released to:

(1) The media for purposes of rating or evaluating a facility.

(2) Assist a potential resident or family in placement decisions.

(3) Placements by non-long term care entities.

(B) Information related to a "Preliminarily Substantiated" case, which may be released, is the same as listed above. The information shall clearly be labeled as "Preliminarily Substantiated" and may be released to:

(1) Assist a potential resident or family in placement decisions.

(2) Placements by non-long term care entities.

(C) Hearing Officer Opinions shall not be released except as listed below:

(1) To the person placed on the Adult Abuse Registry.

(2) To a victim identified by name in the record.

(3) Law enforcement officials pursuant to an official investigation.

(4) Long Term Care Ombudsman pursuant to a complaint from a victim identified in the record.

(5) Medicaid Fraud Control Unit of the Department of Justice.

(6) Division of Professional Regulation if the opinion relates to a licensed professional.

(D) Investigative Files will be limited to:

(1) Law enforcement officials pursuant to an official investigation.

(2) Medicaid Fraud Control Unit of the Department of Justice.

**DIVISION OF LONG TERM CARE
RESIDENTS PROTECTION**

Statutory Authority: 16 Delaware Code,
Chapter 11 (16 Del.C. Ch. 11)

**Delaware Regulations for Group Home Facilities for
Persons with Aids**

PUBLIC NOTICE

Delaware Health & Social Services (DHSS) has prepared draft regulations governing Group Home Facilities for Persons with AIDS as authorized by Title 16 Del. Code Chapter 11.

These regulations are designed specifically for Group Homes for eight (8) or less persons with AIDS and establishes the minimum acceptable level of living, programmatic and licensure standards for such homes.

INVITATION FOR PUBLIC COMMENT

Public hearing will be held as follows:

Thursday, July 12, 2001, 9:00 AM
Springer Building Training Room
Herman Holloway Campus
Delaware Health and Social Services
1901 N. DuPont Highway
New Castle, Delaware

For clarifications or directions, please call Gina Loughery or Joan Reynolds at 302-577-6661.

Written comments are also invited on these proposed new regulations and should be sent to the following address:

Robert Smith
Division of Long Term Care Residents Protection
3 Mill Road, Suite 308
Wilmington, DE 19806

The last time to submit written comments will be at the public hearing.

Delaware Regulations for Group Home Facilities for Persons with Aids

May 12, 1997
Revised XXX, 2001

~~Title 16 Health and Safety~~

~~Part II, Chapter 11 Sanitoria, Rest Homes, Nursing Homes, Boarding Homes and Related Institutions~~

~~"Sanitorium, rest home, nursing home, boarding home, and related institutions," within the meaning of this chapter, mean any institution, building or agency in which accommodation is maintained, furnished, or offered for any fee, gift, compensation or reward for the care of more than 1 aged, infirm, chronically ill, adult psychiatrically disabled or convalescent person. The word "person" shall not include mother, father, sister, brother, niece, nephew, motherinlaw, fatherinlaw, sisterinlaw, or brotherinlaw of any individual operating a facility under this chapter.~~

~~These regulations are promulgated in accordance with 16 Del. C Chapter 11~~

~~All facilities must comply with applicable local, state and federal laws and regulations.~~

SECTION 62.0 DEFINITION

The following regulations are designed specifically for Group Homes for eight (8) or less persons with AIDS and establish the minimal acceptable level of living and

programmatic conditions in such homes. Only those residents shall be admitted with an established diagnosis and disease progression such that the resident requires a routine and frequent combination of physician, professional nursing and supportive services. Provisions shall be made for the transfer and/or discharge of residents When acute care (hospital) services are required or requested.

SECTION 62.1 GLOSSARY OF TERMS

~~**Activities of Daily Living** Getting into or out of bed, bathing, dressing, eating, walking, shaving, brushing teeth and combing hair. Normal daily activities including but not limited to ambulating, transferring, range of motion, grooming, bathing, dressing, eating and toileting.~~

~~**Certified Nurse Aide/Nurse Assistant** An individual who provides care that does not require the judgment and skills of a licensed nurse. The care may include but is not limited to the following: bathing dressing grooming, toileting, ambulating, transferring and feeding, observing and reporting the general wellbeing for the person(s) to whom they are providing care. The aide has met the training and testing requirements for nurse aide certification and is included on Delaware Nurse Aide Registry.~~

~~**Certified Nursing Assistant** – An individual certified in accordance with 16 Del. C., Chapter 30A who provides care that does not require the judgment and skills of a licensed nurse.~~

~~**Continuous** - Available at all times without cessation, break or interruption.~~

~~**Department** – Department of Health and Social Services~~

~~**Dietitian** - A person currently registered by the Commission on Dietetic Registration of the American Dietetic Association and/or a Certified Dietitian/Nutritionist in the State of Delaware.~~

~~**Direction** - Authoritative policy or procedural guidance for the accomplishment of a function or activity.~~

~~**Division** – Division of Long Term Care Residents Protection~~

~~**Facilities** - The site, physical structure and equipment necessary to provide the required service.~~

~~**Group Home Administrator** - The individual responsible for the operation of the group home.~~

~~**Incident** – An occurrence or event, a record of which must be maintained in facility files, that results or might result in harm to a resident. Incident includes alleged abuse, neglect, mistreatment and financial exploitation; incidents of unknown source which might be attributable to abuse, neglect or mistreatment; all deaths; falls; and errors or omissions in medication/treatment. (Also see Reportable Incident, 62.119.)~~

~~**Licensed Practical Nurse** - A nurse who is licensed to practice as a practical nurse in the State of Delaware.~~

~~**Licensee** - The pawn or organization to whom the group~~

home for persons with AIDS license is granted. The licensee has full legal authority and responsibility for the governance and operation of the group home.

Medical Services - The services pertaining to medical care and performed at the direction of a physician on behalf of residents by physicians, nurses, or any ~~other professional or technical personnel.~~

Medical and Nursing Services - The services pertaining to medical care and performed at the direction of a physician on behalf of residents by physicians, nurses, or any other professional or technical personnel such as an advanced nurse practitioner or physician's assistant and which may include the curative, restorative, preventive and palliative aspects of nursing care.

Notifiable Diseases - A communicable disease or condition of public health significance required to be reported to the Division of Public Health in accordance with the Delaware Department of Health and Social Services Regulations for the Control of Communicable and other Disease Conditions.

Nursing Service Personnel - Those licensed or unlicensed persons giving direct services to the residents, pertaining to the curative, restorative, preventive or palliative aspects of nursing care and who are supervised by either a registered professional nurse or a licensed practical nurse.

Nursing Services - Those medical services pertaining to the curative, restorative, preventive and palliative aspects of nursing care that are performed ~~or supervised by a registered professional nurse or a licensed practical nurse at the direction of a physician.~~

Personal Care Services - Those health related services that include general supervision of and direct assistance to, individuals in their activities of daily living.

Physician - A physician licensed to practice in the State of Delaware.

Registered Professional Nurse - A nurse who is a graduate of an approved school of professional nursing and who is licensed to practice in the State of Delaware.

Reportable Incident - An occurrence or event which must be reported at once to the Division and for which there is reasonable cause to believe that a resident has been abused, neglected, mistreated or subjected to financial exploitation. Reportable incident also includes an incident of unknown source which might be attributable to abuse, neglect or mistreatment; all deaths; falls with injuries; and significant errors or omissions in medication/treatment which cause the resident discomfort or jeopardize the resident's health and safety. (Also see Incident, 62.110.)

Resident Beds - Accommodations with supportive services (such as: food, laundry, housekeeping) for persons who generally stay in excess of twentyfour (24) hours.

Supervision - Direct oversight and inspection of the act of accomplishing a function or activity. That degree of

oversight and inspection of licensed and unlicensed personnel necessary to ensure the safety, comfort and well-being of residents.

SECTION 62.2 LICENSING REQUIREMENTS AND PROCEDURES

62.200 License Requirement

No person shall establish, conduct or maintain in this State any sanatorium, rest home, nursing home, or boarding home for the care of human beings without first obtaining a license from the Department of Health and Social Services.

62.201 When a facility is classified under this law or regulation and plans to construct, extensively remodel or convert any buildings, ~~two (2) copies~~ one (1) copy of property prepared plans and specifications for the entire facility are to be submitted to the Division ~~of Public Health.~~ An approval in writing is to be obtained before such work is begun. After the work is completed, in accordance with the plans and specifications, a new license to operate will be issued.

62.202 Separate licenses are required for facilities, maintained in separate locations, even though operated under the same management. A separate license is not required for separate buildings maintained by the same management on the same grounds. ~~A license is not transferable from person to person or from one location to another.~~ Under conditions of assignment or transfer of ownership, a new license will be issued.

62.203 Inspections

~~Every group home for persons with AIDS for which a license has been issued under this chapter shall be periodically inspected by a representative of the Division of Public Health.~~

A. Issuance of Licenses

Licenses shall be issued in the following categories:

(1) Annual License. An annual license (12 months) may be renewed yearly if the holder is in full compliance with the provisions of ~~this chapter~~ 16 Del. C., Chapter 11 and the rules and regulations of the Department of Health and Social Services.

(2) Provisional License. ~~A provisional license shall be granted for a term of ninety (90) days only, and shall be granted only to a home which, although not in full compliance, is nevertheless demonstrating evidence of improvement. A provisional license shall be granted for a term of ninety (90) days only, and shall be granted to a group home during its first 90 days of operation. A provisional license may also be granted to a group home, which although not in full compliance, is nevertheless demonstrating evidence of improvement.~~

~~(3) Restricted License. A restricted license shall be granted for a term of ninety (90) days when the~~

home is not in compliance with the provisions of this chapter, and does not demonstrate evidence of improvement. The holder of a restricted license may not admit residents to the home to which the restricted license applies during the period of restriction, but the home may remain in operation until such license is revoked, expires, becomes annual or provisional.

B. Suspension or Revocation of Licenses

The Secretary of the Department of Health and Social Services or his/her designee may suspend or revoke a license issued under this chapter on any of the following grounds:

- (1) Violation of any of the provisions of this chapter or the rules and regulations issued pursuant thereto.
- (2) Permitting, aiding or abetting the commission of any illegal act in the facility.
- (3) Conduct or practices detrimental to the welfare of the resident.

Before any license issued under this chapter is suspended or revoked, thirty (30) days notice shall be given in writing to the holder of the license, during which time he/she may appeal for a hearing before the Secretary of the Department of Health and Social Services or his/her designee.

Provisional or restricted licenses may be issued by the Office of Health Facilities Licensing and Certification without notice if such actions are deemed to be in the best interest of the residents. The holder of the license may appeal the issuance of the provisional or restricted license to the Secretary or his/her designee, however, the provisional or restricted license will remain in effect during the pendency of the appeal.

C. Renewal of License After Suspension or Revocation

If and when the conditions upon which the suspension or revocation of a license are based have been corrected and after a proper inspection has been made, a new license may be granted.

~~62.204~~

~~62.203~~ The Division of Public Health may adopt, amend, or repeal regulations governing the operation of ~~the institutions defined in Section 1101 of this title~~ facilities defined under 16 Del. C., Chapter 11, Subchapter I., Licensing By The State, and shall establish reasonable standards of equipment, capacity, sanitation, and any other conditions which might influence the health or welfare of the residents of such institutions.

SECTION 62.3 GENERAL REQUIREMENTS

62.301 All required records maintained by the group home for persons with AIDS shall be open to inspection by the authorized representatives of the Division of Public Health.

62.302 The term "Group Home" shall not be used as part of the name of any facility in this State, unless it has been so classified by the Department of Health and Social Services.

62.303 No rules shall be adopted by the licensee or administrator which are in conflict with these regulations.

62.304 The Division of Public Health shall be notified, in writing, of any changes in the Administrator.

62.305 The group home shall establish written policies regarding the rights and responsibilities of residents, and these policies and procedures are to be made available to sponsoring agency (ies), and authorized representatives of the Division of Public Health.

~~62.306~~ Each facility shall provide with the admission agreement to all residents or their sponsors a complete statement enumerating all charges for services, materials and equipment which shall, or may be, furnished to the resident during the period of residency.

~~62.307~~ 62.306 Each facility shall make known, in writing the refund and prepayment policy at the time of admission, and in the case of thirdparty payment, an exact statement of responsibility in the event of retroactive denial.

~~62.308~~ 62.307 The group home shall provide safe storage for resident's valuables.

~~62.309~~ 62.308 The group home provider shall assure emergency transportation and care through use of appropriate transfer agreements with local medical facilities

~~62.310~~ 62.309 All residents shall be afforded all protections and privileges contained in the Delaware Patients Bill of Rights.

SECTION 62.4 PLANT, EQUIPMENT AND PHYSICAL ENVIRONMENT

62.401 Site Provisions:

Each group home for persons with AIDS shall be located on a site which is considered suitable by the Division of Public Health. The site must be safe easily drained, suitable for the disposal of sewage, and for the furnishing of a potable water supply.

62.402 Water Supply and Sewage Disposal:

A. The water supply and the sewage, disposal system shall be approved by the Division of Public Health and the Department of Natural Resources and Environmental Control respectively.

B. The water system shall be designed to supply adequate hot and cold water, under pressure, at all times.

C. Hot water at shower, bathing and hand washing facilities shall not exceed 110°F (43°C).

62.403 Building:

A. The building shall be so constructed and maintained to prevent the entrance or existence of rodents and insects at all times. An exterior openings shall be effectively screened during the fly season. Screen doors shall open outward. All screening shall have at least sixteen (16)

mesh per inch.

B. The root exterior walls, doors, sky lights and windows shall be weather tight and watertight and shall be kept in sound condition and good repair.

C. The exterior of the site shall be free from hazards and also from the accumulation of ~~waste materials, obsolete and unnecessary articles, tin cans, rubbish, and other fitter- litter.~~ litter.

D. Floor and wall surfaces of bathrooms, kitchens, and soiled utility rooms shall be constructed and maintained to be impervious to water and to permit the floor and walls to be easily kept in a clean condition.

E. Basements shall be of such construction that they can be maintained in a dry and sanitary condition.

F. Main entrance areas shall open into general or group function areas, usually living rooms., ~~not into private or more specific function areas, i.e., bedrooms or quiet space areas.~~

G. The group home facility must be handicapped accessible. The entrance and circulation areas shall meet appropriate American National Standards Institute ('A.N.S.I.') standards and all other State and Federal standards.

H. One of the main points of entry for the facility shall provide entry closet capacity for outdoor and foul weather clothing.

L. Traffic to and from any room shall not be through a bedroom bathroom, utility room or kitchen except where a utility room, toilet room or bathroom opens directly off the room it serves.

62.404 Plumbing:

The plumbing shall meet the requirements of all municipal or county codes. Where there is no local law, the provisions of the Division of Public Health Sanitary Plumbing Code shall prevail.

62.405 Heating Ventilation and Air Conditioning:

A. The heating equipment for all living and sleeping quarters shall be adequate, safe, protected, and easily controlled. It shag be capable of maintaining the temperature in each room used by residents at a minimum of 72°F (21°C). Portable heating devices shall not be used.

B. The group home must be adequately ventilated. Air conditioning equipment must be adequate and capable of maintaining the temperature in each room used by residents between 72°F 82°F.

62.406 Lighting:

Each room must be suitably lighted at all times for maximum safety, comfort sanitation and efficiency of operation. A minimum of 30 foot candles of fight shall be provided for all working and reading surfaces, and a minimum of 10 foot candles of fight on all other areas. This includes hallways, stairways, storerooms and bathrooms.

62.407 Safety Equipment:

A. To prevent slipping, staircases shall have stair

treads and sturdy handrails.

~~B. Stairways, ramps and opensided porches shall have adequate lighting and handrails.~~

~~C. Hallways shall have night lights.~~

~~D. B.~~ Floor surfaces, especially in heavy traffic areas shall be durable, yet non abrasive and slipresistant. Area rugs on hand finished floors shall have a non skid backing. Carpeting shall be maintained in a clean and slipresistant condition.

~~E. C.~~ All doors for areas used by residents shall be capable of being opened from both sides.

62.408 Bedrooms:

~~A. Each room shall be well lighted and well ventilated.~~ Each room shall be an outside room with at least one (1) window opening directly to the outside. The windowsill shall be at least three (3) feet above the floor and above grade. Windows shall be constructed to allow a maximum of sunlight and air, to eliminate drafts, and be easy to open and close. Window area shall be no less than the equivalent of onetenth (1/10) of the floor space.

B. Bedrooms for one (1) person shall be at least 100 square feet in size; and bedrooms for more than one (1) person shall provide at least 80 square feet of floor space per person and be adequately spaced for resident care. (Minimum room areas are exclusively of toilet rooms, closets lockers, wardrobes, alcoves or vestibules). The ceiling shall not be less than seven (7) feet from the floor.

C. Each bedroom is to have walls that go to the ceiling and a door that can be closed.

D. Adequate electrical outlets shall be conveniently located in each room and each room shall have general lighting and night lighting. A reading light shall be provided for each resident. At least one light fixture shall be switched at the entrance to each bedroom.

~~E. Walls shall be finished in colors which are light and cheerful.~~

~~F. E.~~ Facilities shall ensure adequate privacy and separation of sexes in sleeping arrangements except in cases of husband or wife or other long term consensual partnership arrangements.

~~G. E.~~ If bedroom doors of residents are locked by residents for privacy reasons, all persons on duty must carry a master key for these locks.

~~H. G.~~ Bedrooms shall accommodate no more than two residents per room.

~~I. H.~~ Bedrooms shall contain a separate bed of proper size and height for each resident.

~~J. I.~~ Each resident shall be provided with at least one chair, chestofdrawers, closet space with a clothes rack and shelves, and a mirror.

~~K. Bedroom furniture and closets shall have sufficient space to provide readily accessible storage for the resident's personal possessions and clothes.~~

~~L. J.~~ Bedroom windows shall have window

treatment(s) that close for privacy.

~~K. Bedrooms shall have closable doors that open directly into corridors or Hallways~~

K. Bedroom doors shall open directly into corridors or hallways.

62.409 Bathrooms and Hand Washing Facilities:

A. At least one (1) window or mechanical ventilation to the outside shall be provided. ~~Floors shall not be slippery.~~

B. Bathroom design shall be handicapped accessible and meet appropriate American National Standards Institute (ANSI) Standards.

C. Toilets, showers, bathtubs and wash basins shall provide accessible traffic patterns for all resident rooms.

D. Toilets, bathing and toileting appliances shall be equipped for use by multiple handicapped residents.

E. There shall be at least one toilet of appropriate size for every four clients:

1. Each toilet shall be equipped with a toilet seat and toilet tissue.

~~2. Toilet tissue shall be readily accessible at each toilet.~~

~~3. 2.~~ Separate toilet facilities with hand washing must be provided for staff.

F. There shall be at least one hand washing sink for every four clients. Hand washing facilities shall be readily accessible to residents and staff. Hand washing facilities shall be provided in each resident room or located in an adjoining toilet room available at a reasonable distance from the resident room.

G. There shall be at least one tub or shower equipped with grip bars and slip resistant surfaces for every four residents. At least one shower must be handicapped accessible without curbs.

H. Wash basins shall be available in or immediately adjacent to bathrooms and toilet rooms.

~~I. Shower and tub areas shall be equipped with grab bars and slip resistant surfaces.~~

~~J. I.~~ Bathroom areas shall be equipped with mirrors for personal grooming. Mirrors shall be installed in such a way to minimize the danger or breakage.

62.410 Day Room and Dining Area:

A. When a multipurpose room is used for dining and recreation, it shall have sufficient space to accommodate all activities and to prevent interference ~~with each other among activities.~~

B. There shall be at least 30 square feet per client within the house, not including client bedrooms, for recreation, dining and program activities.

C. Basement space may be used for recreation activities if there are a minimum of two fire exits.

D. Appropriate leisure and mealtime furniture, as well as comfortable seating shall be provided for each resident.

62.411 Kitchen and Pantry/Storage Areas:

A. The kitchen shall provide sufficient space to carry out proper food preparation and dishwashing operations and shall have:

1. Walls, floors and counters with coverings which are easily cleaned and impervious to water ~~to the level of splash.~~ Food contact surfaces, utensils and equipment shall be of approved material, cleanable and shall be kept in good repair.

2. At least one (1) refrigerator in proper working order, capable of maintaining foods at 41°F, or below, as determined in the warmest part of the refrigerator, and one (1) freezing unit, in proper working order capable of maintaining frozen foods in a continuous frozen state.

3. At least one (1) four burner range and one (1) oven which are in proper working order.

4. A dishwasher shall be provided to effectively remove food sod and soaps or detergents from dishes, utensils and equipment used in food storage, preparation and service. The dishwasher must be supplied with hot water of 165°F. If a dishwasher is not used, dishes, equipment, and utensils shall first be washed, next rinsed, and then sanitized according to the following:

a. Immersion for at least onehalf (1/2) minute in clean, hot water of a temperature of at least 1700 F;

b. Immersion for at least one (1) minute in a clean solution containing at least fifty (50) parts per million of available chlorine as a hypochlorite (household bleach or the equivalent) and having a temperature of at least 750F.

B. Cleaned dishes, utensils and equipment shall be stored in a clean dry area protected from contamination by splash, dust or other means.

62.412 Sanitation and Housekeeping:

A. All rooms and every part of the building shall be kept clean, orderly and free of offensive odors.

B. Policy manuals shall be prepared and followed which outline maintenance and cleaning procedures safe storage of cleaning materials and pesticides and other potentially toxic materials, and safe storage and handling of linen and other matters which pertain to the comfort and safety of the residents.

C. There shall be a minimum of three sets of towels, washcloths, sheets and pillowcases for each resident which shall be changed at least weekly or whenever soiled.

D. There shall be separate areas for storage of

1. Food items.

2. Cleaning agents, disinfectants and polishes.

3. Poisons, chemicals and pesticides.

4. Eating, serving and cooking utensils.

E. A ventilated janitors closet must be provided containing a service sink for storage and use of housekeeping items. ~~Chemicals and disinfection agents shall be stored separate from resident care items and food.~~

F. Laundry processing must limit the handling of laundry and must utilize universal precautions in the handling of all soiled laundry.

1. Onsite laundry processing area must include:

a. One room with areas for receiving, sorting, and washing of soiled linen. Washers must be supplied with hot water of 160°F. Room must be properly ventilated with air flow under negative pressure in relation to adjacent areas.

b. One room for drying and folding of clean linen. Room must have hand washing immediately accessible and be properly ventilated with air flow under positive pressure in relation to adjacent areas.

2. Offsite laundry processing must comply with the following:

a. A contract with a commercial laundry must be obtained for the proper processing of soiled linen.

b. A property ventilated soiled linen holding room (ventilated directly outside, with an air flow under negative pressure) or a designated area in the soiled utility room shall be provided for the storage of soiled linen.

c. A clean linen storage closet sufficient for the storage of clean linen must be provided.

G. Soiled utility room for storage of regulated infectious waste, sharps and disposal of body fluids must be provided and must contain a work counter, hand washing facilities, clinical sink or other bed pan cleaning device. This room must be properly ventilated directly outside with air flow under negative pressure in relation to adjacent area (10 total air exchanges per hour).

62.413 Nursing Equipment and Supplies:

A. There shall be sufficient equipment and supplies for nursing care to meet the needs of each resident. It shall be the responsibility of the administrator to obtain specific items required for individual cases.

B. Over the bed tables shall be provided for residents who may not be able to be served a meal in the dining room.

C. There shall be sufficient space and facilities available for the proper cleansing, disinfection, sterilization (if done on premises) and storage of nursing supplies and equipment.

D. A call system shall be provided for each resident. This system shall be accessible to each bed, each toilet room bathroom and shower room used by residents.

E. The facility shall maintain a scale on the premises which can accommodate the physical condition of each resident.

F. The group home provider shall provide bag and mask for assisted ventilation.

SECTION 62.5 FIRE SAFETY

62.501 Fire safety in group homes shall comply with

the adopted rules and regulations of the State Fire Prevention Commission. Enforcement of Fire Regulations is the responsibility of the State Fire Prevention Commission. All applications for a license or renewal of a license must include, with the application, a letter certifying compliance by the Fire Marshal having jurisdiction. Notification of noncompliance with the Rules and Regulations of the State Fire Prevention commission shall be grounds for revocation of a license.

62.502 There must be sufficient staff (a minimum of two) awake and on duty at all times including the night shift, to evacuate all residents in case of fire. More than two staff shall be on duty at all times if the Fire Marshal determines that more staff is required to evacuate residents timely in case of fire.

62.503 Residents and all staff on each shift shall be trained in executing the evacuation plan.

62.504 Evacuation drills must be held at least quarterly on each shift for all staff and residents.

SECTION 62.6 PERSONNEL/ADMINISTRATIVE

62.601 There must be a licensee of the facility. The licensee must:

A. Exercise general policy, budget, and operating direction over the facility;

B. Appoint the administrator of the facility who shall have:

1. An associates degree or higher from an accredited college or university plus three (3) years experience in a health or human services field; or

2. A bachelor's degree or higher in a health, business, or related field and a minimum of one year's work experience in a health or human service field.

C. Insure all operations of the group home facility are conducted in accordance with these regulations and applicable Federal, state and local laws and requirements.

62.602 The licensee and the administrator shall be responsible for complying with the regulations herein contained. In the absence of the administrator, a qualified substitute shall be authorized, in writing, to be in charge.

62.603 The administrator must be on duty and on site in the home a minimum of four (4) hours a day, five (5) days a week.

62.604 In addition to the staff engaged in the direct care and treatment of residents, there must be sufficient personnel to provide basic services such as: food service, laundry, housekeeping and plant maintenance. Nursing service personnel shall not be engaged in food service, laundry, housekeeping and plant maintenance.

62.605 All personnel shall submit to and pass a criminal background check and drug testing in accordance with Title 16 Del.C. Chapter 11, Subchapter IV., Criminal Background Checks and Mandatory Drug Testing.

~~62.605~~ 62.606 No employee shall be less than 18 years

of age and no person shall be employed who has been convicted of a ~~crime where the victim was a person regardless of whether the crime was a felony or a misdemeanor~~ disqualifying crime as set forth in the Criminal Background Check regulations of the Division of Long Term Care Residents Protection.

~~62.606~~ 62.607 The facility shall have written personnel policies and procedures that adequately support sound resident care. Personnel records of each employee shall be kept current and available upon request by the Division of ~~Public Health~~ representatives and shall contain sufficient information to support placement in the positions to which assigned.

~~62.607~~ 62.608 Minimum requirements for employee physical examinations include:

A. ~~Each person, including volunteers, who is involved in the care of residents shall have a screening test for tuberculosis as a prerequisite to employment and annually thereafter. Either a negative intradermal skin test or a chest xray showing no evidence of active tuberculosis shall satisfy this requirement. No person, including volunteers, found to have active tuberculosis in an infectious stage shall be permitted to give care or service to residents. The facility shall have on file results of tuberculin tests performed annually for all employees, including volunteers who are involved in the care of residents. The tuberculin test to be used is the Mantoux test containing 5 TU-PPD stabilized with Tween, injected intradermally, using a needle and syringe, usually on the volar surface of the forearm. Persons found to have a significant reaction (defined as 10 mm of induration or greater) to tests shall be reported to the Division of Public Health and managed according to recommended medical practice. A tuberculin test as specified, done within the twelve months prior to employment or a chest x-ray showing no evidence of active tuberculosis shall satisfy this requirement for asymptomatic individuals. A report of this skin test shall be kept on file.~~

B. ~~A report of this test shall be on file at the facility of employment. Employees who do not have a significant reaction to the initial tuberculin test (those individuals who have less than 10 mm induration) should be retested within 7 – 21 days to identify those who demonstrate delayed reactions. Tests done within one year of a previous test need not be repeated in 7 –21 days.~~

C. ~~No person, including volunteers, found to have active tuberculosis in an infectious stage shall be permitted to give care and service to residents.~~

~~62.608~~ 62.609 Each applicant of a group home must have a medical evaluation for tuberculosis before being admitted to a group home. Any resident found to have active tuberculosis in an infectious stage may not be admitted or continue to reside in a group home.

~~62.609~~ 62.610 The licensee shall approve written policies and procedures pertaining to the services the group

home provides. Such policies and procedures should reflect the philosophy and objectives of the home to provide on a continuing basis good medical, nursing and psychosocial care for all persons admitted to the home who require such care, Such policies and procedures shall reflect the requirements of Section 62.7 and include:

- A. Admission, transfer and discharge policies
- B. Categories of residents accepted or not accepted
- C. Physician services
- D. Nursing services
- E. Food and nutrition services including kitchen sanitation, food handling and storage
- F. Rehabilitative services
- G. Pharmaceutical services
- H. Diagnostic services
- I. Housekeeping services
- J. A written policy and procedure denoting care of residents
 - 1. In an emergency
 - 2. During a communicable disease episode
 - 3. In case of critical illness or mental disturbance
- K. Dental services
- L. Social services
- M. Resident activities, recreational, social, religious
- N. Clinical records
- O. Fire and safety policies
- P. Advance directives to include:
 - 1. On admission, inform residents in writing of their right 1) to accept or refuse treatment, 2) to give written instructions concerning their care and 3) to appoint an agent or proxy to make health care decisions.
 - 2. Documenting in medical records whether or not residents have executed advance directives.
 - 3. Ensuring compliance with requirements of state law on advance directives.
 - 4. Providing education for staff on issues concerning advance directives.
- Q. Infection control.

SECTION 62.7 SERVICES TO RESIDENTS

62.701 Group Home Services:

A. The group home, shall provide to all residents the care deemed necessary for their comfort, safety nutritional requirements and general wellbeing

B. The group home shall have in effect a written transfer agreement with one (1) or more hospitals, which provides the basis for an effective working arrangement under which inpatient hospital care, or other hospital services, are available promptly to the facilities residents, when needed.

C. The group home shall have a written contract agreement for promptly obtaining required laboratory, x-ray

and other diagnostic services. These services may be obtained from other facilities that meet applicable local, state and Federal laws and regulations.

D. The group home shall have arrangements for the provision of all other services and supplies to meet the health and psychosocial needs of each resident. Such arrangements may be other met by appropriately licensed facility staff or by contractual agreements with organizations or individuals licensed as applicable by the State of Delaware.

E. The group home shall immediately inform the attending or emergency physician, ~~his designee~~, registered nurse ~~or contracting agency providing nursing services to the resident~~, and if known, notify the resident's legal representative, interested family member, or other parties as designated by the resident when there is:

- a) an accident involving the resident.
- b) a significant change in the resident's physical, mental, or psychosocial status (i.e., a deterioration in health, mental or psychosocial status in either life threatening conditions or clinical complications);
- c) a need to alter treatment significantly (i.e., a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment).

62.702 Medical and Nursing Services:

A. The group home shall provide for medical and nursing services either directly or through contract arrangements with organizations or individuals licensed as applicable by the State of Delaware.

B. All persons admitted to a group home shall be under the care of a licensed physician and shall be seen by their attending physician at least every 30 days, unless Justified otherwise and documented by the attending physician.

C. All group homes shall arrange for one (1) or more licensed physicians to be called in an emergency. Names and phone numbers of these physicians shall be posted in a conspicuous location.

D. All orders for medications, treatments, diets, and diagnostic services shall be in writing and signed by the attending physician. Telephone orders shall be countersigned by the physician within five (5) working days.

E. All statements of medical treatment goals and treatment plans shall be reviewed and updated as needed by the attending physician, to insure continuing appropriateness of the goals, consistency of management methods with the goals and the achievement of progress towards the goals.

F. A progress note shall be written and signed by the physician if he/she makes an onsite visit.

~~G. All telephone orders shall be accepted in the group home by a licensed nurse and shall be counter signed by the physician within five (5) working days.~~

H. G. The nursing services provided either directly or through contractual arrangements include:

1. An assessment of the resident upon

admission, by a registered nurse and development of written resident care plans in conjunction with the physician and other professionals as needed.

a) Individual written resident care plans to meet the resident's needs shall be developed within seven (7) days of admission and reviewed at least every 62 days by registered mum and other professional disciplines, as required.

b) In the event that there is a significant change in the resident's medical or psychosocial condition the care plan shall be modified to meet the needs of the resident.

2. The coordination and monitoring of resident care and services with the physician and other health professionals by a registered nurse.

3. A supervisory visit to the group home at least ~~every two weeks~~ once a week by a registered nurse who conducts an assessment of the care provided by the certified nurse assistants.

4. The administration of treatments and medications by licensed nurses in accordance with the Nurse Practice Act.

~~F. H.~~ There must be a sufficient number of trained personnel to provide for direct care of residents with a minimum of two (2) nursing service personnel on duty at all times. Each nurse assistant employed by the group home shall have met the training and testing requirements for certification and be registered in good standing on the Delaware Nurse Aide Registry.

62.703 Infection Control:

A. Prevention and Control Services

The facility shall establish and implement an infection prevention and control program. The Administrator shall ensure the development and implementation of the program.

The facility shall establish and implement written policies and procedures regarding infection prevention and control including, but not limited to:

1. Universal Precautions as established by the Centers for Disease Control and Prevention (CDC).

~~2.~~ 3. A system for investigating, reporting, and evaluating the occurrence of all infections, diseases, or conditions which are reportable to the Division of Public Health that may be related to staff activities and procedures of the facility;

~~3.~~ 4. Notifiable diseases shall be reported to the County Public Health Administrator;

~~4.~~ 5. Care of residents with communicable diseases;

~~5.~~ 6. Policies and procedures for exclusion from work and authorization to return to work for personnel with communicable diseases;

~~6.~~ 7. Surveillance techniques to minimize sources and transmission of infection;

~~6.~~ 7. Disinfection, cleaning and care practices and techniques used in the facility including, but not limited to the following:

- a) Care of utensils, instruments, solutions, dressings, articles and surfaces;
- b) Selection, storage, use and disposition of disposable and non disposable resident care item;
- c) Methods to ensure that sterilized materials are packaged and labeled to maintain sterility and to permit identification of expiration dates;
- d) Procedures for care of equipment and other devices that provide a portal of entry for pathogenic microorganisms;
- e) Techniques to be used during each resident contact including hand washing before and after wing for a resident;
- f) Criteria and procedures for isolation of residents.
- g) All personnel shall receive orientation at the time of employment and annual inservice education regarding the infection prevention and control program

B. Infectious Disease and Waste Removal

The facility shall establish and implement policies and procedures for the collection, storage, handling and disposition of all pathological and infectious wastes within the facility, and for the collection, storage, handling and disposition of all pathological and infectious wastes to be removed from the facility, including, but not limited to the following:

1. Needles and syringes and other solid, sharp, or rigid items shall be placed in a puncture resistant container and incinerated or compacted prior to disposal.
2. Needles and syringes shall be destroyed or disposed of in a safe and proper manner by an infectious waste hauler approved by the Department of Natural Resources and Environmental Control.
3. Nonrigid items, such as blood tubing and disposable equipment and supplies, shall be incinerated or placed in double, heavy duty, impervious plastic bags and disposed of by an infectious waste hauler approved by the Department of Natural Resources and Environmental Control.
4. Fecal matter and liquid waste, such as blood and blood products, shall be flushed into, the sewage "em or otherwise disposed of in accordance with federal, state and local standards or regulations.
5. All pathology specimens, tissue and waste, including gross and microscopic tissue removed surgically or by any other procedure and products of conception must be disposed of in compliance with OSHA (Occupational Safety and Health Administration), EPA (Environmental Protection Agency), DNREC (Department of Natural Resources and Environmental Control) and other state and local standards covering the treatment of medical waste.

6. Collection, storage, handling and disposition procedures of all pathological and infectious wastes within the facility shall meet the of all state and federal codes.

62.704 Medications:

A. All medication administered to residents shall be ordered in writing, dated and signed by the attending physician. All prescription medications shall be properly labeled in accordance with ~~Title 24 of the Delaware Pharmacy Laws and Regulations. 24 Del.C., Chapter 25 and the regulations of the Delaware Board of Pharmacy.~~ The label shall contain the following information:

1. The prescription number;
2. The date such drugs were originally dispensed to the resident;
3. The resident's full name;
4. The brand or established name and strength of the drug to the extent that it can be measured;
5. The physician's directions as found on the prescription;
6. The physician's name;
7. The name and address of the dispensing pharmacy or physician.

B. Medications may be selfadministered or administered in accordance with the Nurse Practice Act. Those residents who, upon admission, are incapable of selfadministration or who become incapable of selfadministration will have thew medications administered according to the Nurse Practice Act.

C. The group home provider licensee shall maintain a record of all medication provided to a resident indicating time of day, type of medication, dose, route of selfadministration/administration, by whom given and any reactions noted.

D. Medication Storage

1. Provisions for the locked storage of medications shall be provided. Medication storage area shall contain a work counter, refrigerator and hand sink. The key to the medication storage must be in the possession of or accessible only to personnel responsible for the distribution for selfadministration/administration of medications. If secure storage of medications is provided in resident rooms for those residents capable of selfadministration the key to the medication storage must be in the possession of the resident.

a) No stock supplies of drugs except those approved for the emergency drug kit and those commonly available without prescription (nonlegend drugs), e.g., antacids, aspirin, laxatives, shall be kept in the facility.

b) Prescription medication not requiring refrigeration shall be kept in the original container stored in a locked cabinet or drawer, and clearly labeled for the specific resident. These medications shall be stored within the U.S.P. recommended temperature range of 59 - 86°F unless the

manufacturer's labeling suggests otherwise.

c) Prescription medication requiring refrigeration shall be stored in a separate and secure locked container within the refrigerator. The temperature range must be maintained within U.S.P. requirements.

d) Schedule II substances/prescriptions shall be kept in separately locked, securely fixed boxes or drawers in the locked medication cabinet; hence, under two (2) locks. Schedule II substances shall be handled in the manner outlined by the State and Federal laws and regulations. AD unused Schedule II substances shall be returned to the pharmacist for disposition

e) Internal medications shall be stored separately from external medications.

2. The group home provider shall insure that prescription medication is not used by other than the resident for whom the medication was prescribed.

3. The group home provider is responsible for maintaining an adequate supply of medication at all times.

4. Prescription medication which is no longer needed by a resident shall be disposed of by a physician, pharmacist or other designee who must be a licensed medical professional in accordance with Delaware ~~Pharmaceutical Board of Pharmacy~~ Regulations. All unused portions of any resident's discontinued or expired prescriptions shall be immediately isolated and destroyed or returned to the pharmacist or provider pharmacy supplying pharmaceutical services within 72 hours. The appropriate notation of such return or destruction, providing a quantity, description and date on the resident's medical administration record shall be provided. The person performing the return or destruction shall initial this document.

5. The facility may keep on the premises an emergency drug kit with quantities of medications approved by the Board of Pharmacy. These medications shall only be used by licensed physicians or licensed nurses in an emergency situation. Stocking of this kit shall be arranged with a pharmacist who checks the contents after use and/or periodically.

62.705 Food Service:

A. A minimum of three (3) meals or equivalent shall be served in each twentyfour (24) hour period. Meals shall be served at regular times comparable to normal mealtimes in the community. There must not be more than a fourteen (14) hour span between the evening meal and breakfast.

B. Meals shall provide nutrients and calories for each resident based upon compliance with current recommended dietary allowances of the Food and Nutrition Board of the National Academy of Sciences, National Research Council, except as ordered by a physician.

C. Food preparation methods that conserve nutrients shall be utilized. Excessive exposure to light, prolonged storage, and prolonged cooking in a large quantity

of water shall be avoided.

D. Food shall be prepared so that it will have an appetizing aroma and appearance. Food shall be held and served at proper temperatures in accordance with the ~~U.S. Department of Health and Human Services! Food Code.~~ current Delaware Food Code.

E. Food shall be prepared in a form designated to meet individual needs.

F. When residents refuse food served, substitutes of similar nutritive value shall be offered.

G. Bedtime snacks shall be offered routinely to all residents to the extent medical orders permit.

H. Diets and nutritional supplements shall be saved as prescribed by the physician. Meal and supplement intake shall be monitored by nursing service personnel and recorded in each resident's clinical record.

I. A copy of a recent diet manual shall be available for planning therapeutic maw and as a resource.

J. Menus shall be planned in advance and a copy of the current week's menus shall be posted in the kitchen and in a public area.

1. Portion sizes shall be listed on a menu in the food service area.

2. The names of fruit, vegetables or starch shall be specified on the new (for example: orange juice, green beans, rice).

3. All menus, both regular and therapeutic, shall be approved by the dietitian.

K. Menus showing food actually served each day shall be kept on file for at least one (1) month. When changes in the menu are necessary, substitutions of similar nutritive value shall be provided.

L. A three (3) day supply of food shall be kept on the premises at all times.

~~M. Food shall be from approved sources. The use of homecanned foods is prohibited.~~

~~N. M.~~ A suspected occurrence of food poisoning shall be reported immediately, by telephone, to the County Public Health Administrator.

62.706 Nutrition Services

A. The facility must employ a dietitian directly or through contractual arrangements, either full time, part time or on a consultant basis, and provide onsite services to residents as needed.

B. The immediate nutritional needs of residents shall be addressed upon admission with consultation by the dietitian as needed. A comprehensive nutritional assessment which includes height and weight and an evaluation of calories, protein and fluid requirements shall be completed by the dietitian and updated and reviewed as indicated by the resident's condition.

C. The facility shall obtain residents' weights monthly or more often as needed.

D. Weight changes of 5 pounds or 5% of body

weight in one month shall be reported to the physician and dietitian.

~~62.707 Abuse, Neglect or Mistreatment of Residents~~

~~A. The group home A" follow all requirements set forth in subchapter III of the Delaware Code titled Abuse, Neglect or Mistreatment of Patients or Residents (16 Del. C. § 113 1. et seq.). The facility shall report incidents of abuse, neglect or mistreatment of residents to the Department of Health and Social Services as set forth in the Rules and Regulations Governing Delaware's Patient Abuse Law.~~

~~B. In addition the group home shall immediately report to the Office of Health Facilities Licensing and Certification alleged violations regarding abuse, mistreatment, neglect, injuries of unknown origin and misappropriation of property. These incidents shall be thoroughly investigated by the group home and the results of the thorough investigation shall be reported to the Office of Health Facilities Licensing and Certification, within 5 days of the alleged incident.~~

~~62.708 62.707~~ Records and Reports:

A. There shall be a separate clinical record maintained at the group home on each resident which shall be a chronological history of the resident's stay in the group home. Each resident's records shall contain:

1. Admission record: Including resident's name, birth date, home address prior to entering the facility, identification numbers, such as social security, Medicaid, Medicare, date of admission, physician's name, address and phone number, admitting diagnosis, next of kin (relationship, name, address and phone number).

2. History and physical examination: Prepared by physician within seven (7) days of the resident's admission. A summary and history which was prepared at the hospital and the resident's physician examination which was performed at the hospital, if performed within seven (7) days prior to admission to the home, may be substituted. Additionally, a record of an annual medical evaluation performed by a physician must be contained in each resident's file.

3. Statement of complete diagnosis and prognosis.

4. Physician's orders shall include:

a) Complete list of medications, medication name, dosage, frequency and route of administration, indication for usage;

b) If "as needed" medications are ordered, the reason why the resident takes the medication and the maximum dose in a 24 hour period;

c) Treatments, diets and level of permitted activity.

5. Physician's progress notes with each onsite visit. If medical services are obtained in the physician's office a summary including diagnosis and prognosis, changes in medication mid therapy and necessary followup

will be provided.

6. Nursing notes, shall be recorded by each person providing professional nursing services to the resident, indicating date, time, scope of service provided and signed by the provider of the service.

7. Medication sheets: Including medication, name, dosage, frequency and route of administration, space for the resident to record his/her initials if medication is selfadministered or for recording the initials of the medical professional authorized and responsible for administration of the medication

8. inventory of personal effects both upon admission and at time of transfer and/or discharge.

9. For discharged or transferred residents, the records shall contain the following:

a. A discharge summary containing the:

1. Date and time of discharge,

2. Place to which the resident was

discharged;

3. Condition of resident at time of

discharge.

b. The resident's written consent for discharge or discharge order from the resident's physician.

c. Copies of the name of the resident's guardian, powers of attorney and advance directives, if applicable.

10. Special service notes: e.g., social services and activities, results of special consultations, requested by the physician such as physical therapy, dental and podiatry if services me provided in the group home.

11. Nutrition progress notes.

12. Copy of an interagency transfer form if the resident was admitted from an acute care facility or any other long term care facility or transferred to an acute care or other type of health care facility.

~~13. Advance Directives: any written advance directives signed by residents shall accompany the resident upon transfer to another health care facility.~~

~~14. 13.~~ Documentation of the percentage of intake for each meal.

~~15. 14.~~ Recording of weights obtained including the date the weight was obtained.

~~16. 15.~~ Laboratory work, special tests, and xrays ordered by the physician.

B. Records shall be available at all times to legally authorized persons; otherwise, such records shall be held confidential.

C. Clinical records shall be retained for five (5) years from the date of discharge.

D. Should the facility cease operation, all resident records shall be transferred with the resident to another home or facility, with written receipt acknowledging the transfer which shall be signed by the resident and the new administrator.

E. If a facility ceases operation, arrangements, shall be made to retain discharge records for five (5) years following closure.

F. ~~Incident/accident reports, with adequate documentation & shall be completed for each accident, injury or unusual incident. Adequate documentation shall consist of the name of the resident(s) involved, a description of the accident, injury or unusual incident, a list of the parties involved, the nature of any injuries, the location of the accident (on the premises or off), time of injury, disposition of resident(s) and notice that physician and family have been contacted. Incident/accident reports shall be kept on file in the facility. A copy shall be included in the residents clinical record.~~ Incident reports, with adequate documentation, shall be completed for each incident. Adequate documentation shall consist of the name of the resident(s) involved; the date, time and place of the incident; a description of the incident; a list of other parties involved, including witnesses; the nature of any injuries; resident outcome; and follow-up action, including notification of the resident's representative or family, attending physician and licensing or law enforcement authorities when appropriate. Incident reports shall be kept on file in the facility. Reportable incidents shall be communicated immediately to the Division of Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806; phone number: 1-877-453-0012; fax number: 1-877-264-8516.

SECTION 62.8 WAIVER OF STANDARDS

62.801 Specific standards may be waived by the Division of Public Health provided that each of the following conditions are met:

1. A. Strict enforcement of the standard would result in unreasonable hardship on the group home.
2. B. The waiver is in accordance with the particular needs of any resident of the group home.
3. C. A waiver must not adversely affect the health, safety, welfare, or rights of any resident of the group home.
4. D. The request for a waiver must be made to the Division of Public Health in writing by the group home with substantial detail justifying the request.
5. E. Prior to filing a request for a waiver, the facility shall provide written notice of the request to each resident, each courtappointed guardian of any resident, each person appointed in the durable power of attorney of any resident, each person appointed to be any resident's health care agent under the Death with Dignity Act and each spouse and adult child of any resident. Prior to filing a request for a waiver, the facility shall also provide written notice of the request to the Office of Long Term Care Ombudsman. The notice shall state that the recipient has the right to object to the waiver request in writing to the Division of Public Health. Upon filing the request for a waiver, the group home shall submit to the Office of Health Facilities Licensing and

~~Certification a copy of the notice and a sworn affidavit outlining the method by which the requirement was met. The facility shall maintain proof of the method by which the requirement was met by the group home for the duration of the waiver and make such proof available upon the request of the Division of Public Health or its agents.~~

6. F. A waiver granted by the Division of Public Health is not transferable to another group home in the event of a change of ownership.

7. G. A waiver shall be granted for the term of the license.

APPENDIX A

These regulations are adopted by the Director, Division of Public Health pursuant to 16 Del. C. 1121, 1122, 1123.

PATIENT'S BILL OF RIGHTS

RESPECT

1. ~~Every patient and resident shall be treated with consideration, respect and full recognition of their dignity and individuality.~~

2. ~~Every patient and resident shall receive care, treatment and services which are adequate and appropriate.~~

SERVICES AND PAYMENT

3. ~~Each patient and resident and their families shall, prior to or upon admission, and during their stay, receive a written statement of the services provided by the facility including those required to be offered on an "as needed" basis.~~

~~A. They shall also receive a statement of related charges, including any charges for services not covered under Medicare, Medicaid or the facility's basic per them rate.~~

~~B. Upon receiving such statement, the patient and his representative shall sign a written receipt which shall be retained by the facility.~~

TREATMENT

4. ~~Each patient shall receive from the attending physician or resident physician of the facility, in lay terms, complete and current information regarding his diagnosis, treatment and prognosis, unless medically inadvisable.~~

5. ~~Each patient and resident:~~

~~A. Shall participate in the planning of their medical treatment;~~

~~B. May refuse medication or treatment;~~

~~C. Shall be informed of the medical consequences of all medication and treatment alternatives; and~~

~~D. Shall give prior informed consent to participation in any experimental research, which shall be verified by his signature and the signature of a family~~

member or representative.

6. The facility shall see to it that the name, address and telephone number of the patient or resident's physician is readily accessible to them at their bedside.

7. Each patient and resident's medical care program shall be conducted discreetly and in accordance with the patient's need for privacy.

A. Persons not directly involved in patient care shall not be present during medical examinations, treatment and case discussion.

B. Personal and medical records shall be treated confidentially; shall not be made public without the consent of the patient or resident; shall not be released to any person inside or outside the facility who has no demonstrable need for such records.

8. Every patient and resident shall be free from mental and physical abuse and also from chemical and physical restraints, unless authorized by a physician according to clear and indicated medical requirement.

COMMUNICATIONS

9. Every patient and resident shall receive from the Administrator or staff of the facility a courteous and reasonable response to his requests.

10. Every patient and resident shall be provided with information as to any relationships of the facility to other health care facilities as far as the patient's care is concerned.

11. To maintain reasonable continuity of care, every patient and resident at the least shall be informed of the availability of physicians and appointment times.

12. Every patient and resident may associate privately with people and groups of his own choice at any reasonable hour.

A. May send and receive mail promptly and unopened.

B. Shall have access to any reasonable hour to a telephone where he may speak privately.

C. Shall have access to writing instruments, stationery and postage.

CONTROL OF FINANCIAL AFFAIRS

13. Each patient and resident has the right to manage his own financial affairs.

A. If, by written request, the facility manages the patient's financial affairs, it shall have available for inspection a monthly accounting and shall furnish a quarterly statement upon request to the patient or a designated representative.

B. The patient and resident shall have unrestricted access to such accounts at reasonable hours.

PRIVACY

14. If married, every patient and resident shall enjoy privacy in visits by his spouse and, if both reside in the

facility, they shall be allowed to share a room, unless medically contraindicated.

15. Every patient and resident has the right of privacy in their room and the facility's staff shall respect this right by knocking on the door before entering the room.

GRIEVANCES

16. Every patient and resident has the right, personally, or through others, to present grievances to the Division of Aging, the Ombudsman or to others.

A. There shall be no reprisal, restraint, interference, coercion or discrimination of the patient as a result of such grievance or suggestion.

B. Any alleged violation of any of the provisions of these Rules and Regulations should be presented orally or in writing and forwarded to the attention of the Ombudsman.

C. The Ombudsman shall consult with the complainant to determine if he/she wishes to pursue an investigation. If the complainant wishes to pursue the matter, the Ombudsman shall work closely with the complainant and the institution to resolve the matter. In any case, the confidentiality of the complainant shall not be revealed without his/her consent.

D. On completion of the investigation, the Ombudsman shall report the findings to the complainant and with the complainant's consent to the facility wherein the complaint originated.

E. If the grievance is not resolved at the end of the investigation by the Ombudsman, the grievance findings shall be forwarded to the State Board of Health for appropriate action after obtaining the consent of the complainant.

PERSONAL CHOICE/PERSONAL PROPERTY

17. A patient or resident shall not be required to perform services for the facility.

18. Every patient and resident shall have the right to retain and use their personal clothing and possessions where reasonable and shall be entitled to have security in their storage and use.

TRANSFERS/DISCHARGES

19. No patient or resident, shall be transferred or discharged from a facility except for the following:

A. For medical reasons;

B. For the patient's own welfare or the welfare of the other patients; and

C. For nonpayment of justified charges.

20. If good cause exists, the patient or resident shall be given 30 days advance notice of the proposed action and the reasons for the action and may request an impartial hearing. In emergency situations, such notice need not be given.

21. If a hearing is requested, it shall be held within ten (10) working days of the request. The hearing shall be

conducted by the Division of Public Health. Hearing officers could include:

- A. Nursing Home Ombudsman;
- B. A staff member of the advocacy section, Division of Aging;
- C. A physician from the Division of Public Health, not employed by a hospital operated by the Division;
- D. The licensure program director for the type of home involved.

The Deputy Attorney General for the Division of Public Health may attend as legal officer in these hearings.

22. If the hearing determines in favor of the patient, the home shall be instructed to comply. If the home refuses to comply, the matter will be referred to the Attorney General's Office to see if further action is called for or permissible under the law.

DEVOLUTION OF RIGHTS

Where consistent with the above rights, all rights, particularly as they pertain to a patient adjudicated incompetent, a patient determined to be medically incompetent by his attending physician or a patient unable to communicate, shall devolve to that patient's next of kin, guardian, representative, sponsoring agency or representative payee (except where the facility is the representative payee).

NOTICE AWARENESS OF RIGHTS

I. These provisions shall be posted conspicuously in a public place in each facility.

II. Copies are to be furnished to the patient or resident upon admission and to all current patients and residents and next of kin, guardian, representative, sponsoring agency or two representative payee.

III. Receipts for the statement signed by the above parties shall be retained in the facilities files.

Revised May 27, 1982

APPENDIX B Notifiable Diseases

- | | |
|--|--------------------------|
| 1. Acquired Immune Deficiency Syndrome | 41. Rubella |
| 2. Amebiasis | 42. Rubella, Congenital |
| 3. Anthrax | 43. Salmonellosis |
| 4. Botulism | 44. Shigellosis |
| 5. Brucellosis | 45. Smallpox |
| 6. Campylobacteriosis | 46. Syphilis |
| 7. Chancroid | 47. Tetanus |
| 8. Chlamydia trachomatis infections | 48. Toxic Shock Syndrome |
| 9. Cholera | 49. Trichinosis |
| 10. Condylomata acuminata | 50. Tuberculosis |

- | | |
|--|----------------------------------|
| 11. Diphtheria | 51. Tularemia |
| 12. Encephalitis | 52. Typhoid Fever |
| 13. Foodborne Disease Outbreaks | 53. Typhus Fever |
| 14. Giardiasis | 54. Vaccine Adverse Reactions |
| 15. Gonococcal Infections | 55. Waterborne Disease Outbreaks |
| 16. Granuloma Inguinale | 56. Yellow Fever |
| 17. Hansen's Disease (Leprosy) | |
| 18. Hepatitis (Viral all types) | |
| 19. Herpes | |
| 20. Histoplasmosis | Also, any unusual disease and |
| 21. Human Immunodeficiency Virus (HIV) | adverse reaction to vaccine. |
| 22. Influenza | |
| 23. Lead Poisoning | |
| 24. Legionnaires Disease | |
| 25. Leptospirosis | |
| 26. Lyme Disease | County Health Offices: |
| 27. Lymphogranuloma Venereum | |
| 28. Malaria | New Castle County 9958632 |
| 29. Measles | |
| 30. Meningitis (Bacterial) | Kent County 7395305 |
| 31. Meningitis (Aseptic) | |
| 32. Meningococcal Disease (Other) | Sussex County 8565355 |
| 33. Mumps | |
| 34. Pertussis | |
| 35. Plague | |
| 36. Poliomyelitis | |
| 37. Psittacosis | |
| 38. Rabies (man, animal) | |
| 39. Reye's Syndrome | |
| 40. Rocky Mountain Spotted Fever | |

PART II

APPENDIX A

Notifiable Diseases

- | | |
|--|---|
| <u>Acquired Immune Deficiency Syndrome (S)</u> | <u>Malaria</u> |
| <u>Anthrax (T)</u> | <u>Measles (T)</u> |
| <u>Botulism (T)</u> | <u>Meningitis (all types other than meningoccal)</u> |
| <u>Brucellosis</u> | <u>Meningococcal infections (all types) (T)</u> |
| <u>Campylobacteriosis</u> | <u>Mumps (T)</u> |
| <u>Chancroid (S)</u> | <u>Pelvic Inflammatory Disease (resulting from gonococcal and/or chlamydial infections) (S)</u> |
| <u>Chlamydia trachomatis infections (S)</u> | <u>Pertussis (T)</u> |
| <u>Cholera</u> | <u>Plague (T)</u> |
| <u>Cryptosporidiosis</u> | <u>Poliomyelitis (T)</u> |
| <u>Cyclosporidiosis</u> | |
| <u>Diphtheria (T)</u> | |
| <u>E. Coli 0157:H7 infection (T)</u> | |
| <u>Encephalitis</u> | |

<u>Ehrlichiosis</u>	<u>Psittacosis</u>
<u>Foodborne Disease Outbreaks (T)</u>	<u>Rabies (man, animal)(T)</u>
<u>Giardiasis</u>	<u>Reye's Syndrome</u>
<u>Gonococcal infections (S)</u>	<u>Rocky Mountain</u>
<u>Granuloma Inguinale (S)</u>	<u>Spotted Fever</u>
<u>Hansen's Disease (Leprosy)</u>	<u>Rubella (T)</u>
<u>Hantavirus infection (T)</u>	<u>Rubella (congenital)(T)</u>
<u>Hemolytic uremic syndrome (HUS)</u>	<u>Salmonellosis</u>
<u>Hepatitis A (T)</u>	<u>Shigellosis</u>
<u>Hepatitis B (S)</u>	<u>Smallpox (T)</u>
<u>Hepatitis C & unspecified</u>	<u>Streptococcal disease</u>
<u>Herpes (congenital) (S)</u>	<u>(invasive group A)</u>
<u>Herpes (genital) (N)</u>	<u>Streptococcal toxic</u>
<u>Histoplasmosis</u>	<u>shock syndrome (STSS)</u>
<u>Human Immunodeficiency</u>	<u>Syphilis (S)</u>
<u>Virus (HIV) (N)</u>	<u>Syphilis (congenital) (T)</u>
<u>Human papillomavirus</u>	<u>Tetanus</u>
<u>(genital warts) (N)</u>	<u>Toxic Shock Syndrome</u>
<u>Influenza (N)</u>	<u>Trichinosis</u>
<u>Lead Poisoning</u>	<u>Tuberculosis</u>
<u>Legionnaires Disease</u>	<u>Tularemia</u>
<u>Leptospirosis</u>	<u>Typhoid Fever (T)</u>
<u>Lyme Disease</u>	<u>Vaccine Adverse</u>
<u>Lymphogranuloma Venereum (S)</u>	<u>Reactions</u>
	<u>Varicella</u>
	<u>Waterborne Disease</u>
	<u>Outbreaks (T)</u>
	<u>Yellow Fever (T)</u>

Also, any unusual disease and adverse reaction to vaccine County Health Offices:
New Castle County 995-8632
Kent County 739-5305
Sussex County 856-5355

(T) report by rapid means
(N) report in number only when so requested
For all diseases not marked by (T) or (N):
(S) – sexually transmitted disease, report
required in 1 day
Others – report required in 2 days

APPENDIX B

DRUG RESISTANT ORGANISMS REQUIRED TO BE REPORTED

Staphylococcus aureus intermediate or resistance to Vancomycin (MIC > 8 ug/ml)

Streptococcus pneumoniae drug resistant, invasive disease

DIVISION OF PUBLIC HEALTH OFFICE OF DRINKING WATER

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

NOTICE OF PUBLIC HEARING

The Office of Drinking Water, Division of Public Health of the Department of Health and Social Services (DHSS), will hold a public hearing to discuss proposed revisions to the "State of Delaware Regulations Governing Public Drinking Water Systems." The DHSS is proposing to adopt a new arsenic standard of 0.01 mg/l.

The public hearing will be held June 26, 2001 at 1:00 PM in Room 309, third floor conference room at the Jesse Cooper Building, Federal and Water Street, Dover, Delaware.

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

Office of Drinking Water
Blue Hen Corporate Center, Suite 203
655 Bay Road
Dover, DE 19901
Telephone: (302) 739-5410

Anyone wishing to present his or her oral comments at this hearing should contact Mr. Edward Hallock at (302) 739-5410 by June 24, 2001. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by July 5, 2001:

Dave Walton, Hearing Officer
Division of Public Health
PO Box 637
Dover, DE 19903

Summary of Proposed Regulations

State of Delaware Regulations Governing Public Drinking Water Systems

These proposed regulations replace regulations previously amended on August 11, 1999. The authority to adopt said regulations is 16 **Delaware Code**, Section 122 (c)(3). They will supercede all previous regulations concerning public drinking water supply systems adopted by the Secretary, Delaware Health and Social Services.

Delaware Health and Social Services (DHSS), Division of Public Health (DPH) is proposing arsenic rule amendments to the regulations. The DPH has reviewed the scientific studies used by the U.S. Environmental Protection Agency (EPA) and believes new arsenic Maximum Contaminant Level (MCL) of 0.01mg/L is warranted. This

new rule would have a five-year phase in period to allow for public water systems to make adjustments to meet the new arsenic standard.

SECTION 22.6 INORGANIC AND ORGANIC CHEMICAL REQUIREMENTS

22.601 PMCLs AND SMCLs: The following are the inorganic PMCLs and SMCLs (mg/L - milligrams per liter). Compliance is determined pursuant to Section 22.602.

A. PMCLs

Substance	MCL
Antimony (Sb)	0.006 mg/L
Arsenic (As)**	0.05 mg/L**
Asbestos	7 MF/L*
Barium (Ba)	2 mg/L
Beryllium (Be)	0.004 mg/L
Cadmium (Cd)	0.005 mg/L
Chromium (Cr)	0.1 mg/L
Cyanide (Cn)	0.2 mg/L
Fluoride (F)	See Section 22.603
Lead (Pb)	0.02 mg/L
Mercury (Hg)	0.002 mg/L
Nickel (Ni)	0.1 mg/L
Nitrate-Nitrogen (NO ₃ -N)	10 mg/L (See Section 22.602 I3)
Nitrite-Nitrogen (NO ₂ -N)	1 mg/L
Total Nitrate Nitrogen and Nitrite Nitrogen	10 mg/L
Selenium (Se)	0.05 mg/L
Thallium (Tl)	0.002 mg/L
Turbidity	See Section 22.701

*MFL - million fibers per liter, with fiber length > 10 microns

** Effective five years from the effective date of the adoption of this rule, the Arsenic standard for all community and non-transient non-community public water systems shall be 0.01 mg/L.

B. SMCLs

Substance	MCL
Aluminum	0.05-0.2 mg/L
Chloride (Cl)	250 mg/L
Color	15 color units

Copper (Cu)	1 mg/L
Corrosivity	Noncorrosive (See Section 22.71)
Foaming Agents	0.50 mg/L
Iron (Fe)	0.30 mg/L
Manganese (Mn)	0.05 mg/L
Odor	3 threshold odor number
pH	6.5 - 8.5
Silver	0.1 mg/L
Sulfate (SO ₄)	250 mg/L
Total Dissolved Solids (TDS)	500 mg/L
Zinc (Zn)	5 mg/L

C. The Maximum Contaminant Level Goals (MCLG) for lead and copper are as follows:

Lead	0 mg/L
Copper	1.3 mg/L

DIVISION OF SOCIAL SERVICES
Statutory Authority: 31 Delaware Code,
Section 505 (31 Del.C. §505)

PUBLIC NOTICE Medicaid/Medical Assistance Programs

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Programs is proposing to implement policy changes to the Division of Social Services Manual, Sections 17170.2 and 17170.3 to cite a more specific rule for children and to include a statement on who performs the disability reviews.

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 the Director, Medicaid/Medical Assistance Programs, Division of Social Services, P.O. Box 906, New Castle, Delaware by June 30, 2001.

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.

REVISION

17170 Section 4913 Disabled Children

Section 4913 of The Balanced Budget Act (BBA) provides that children who were receiving SSI payments on August 22, 1996, and who but for the enactment of the new disability definition under § 211(a) of the Personal Responsibility and Work Opportunity Act of 1996 (PRWORA), would continue to be paid SSI, are mandatory categorically eligible for Medicaid. This provision is effective for those children who lose their SSI payment on or after July 1, 1997.

17170.1 Technical Eligibility

The child must meet all of the following requirements:

(a) The child was being paid SSI on August 22, 1996. This includes children who, as of August 22, 1996, were in current pay status, had received favorable or partially favorable administrative decisions, or had a Zebley appeal pending.

(b) The child's SSI payment stopped on or after July 1, 1997.

(c) The decision to stop SSI payments was due to a determination that the child does not meet the definition of disability enacted on August 22, 1996, at § 211(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(d) The child would, except for the disability determination described in (c), continue to be paid SSI.

A child, who was not receiving SSI on August 22, 1996, is not protected by Section 4913. A child who loses SSI after August 22, 1996, for a nondisability reason is also not protected by Section 4913. If either of these two situations occur, a redetermination of Medicaid eligibility for the child under another eligibility group will be done.

17170.2 Disability Determination

The redetermination of disability will follow the rules in ~~20 CFR 416.920-930~~ 20 CFR 416.924 - 924e as in effect on April 1, 1996. A contractor who is competent to perform the redetermination of disability will be used.

17170.3 Continuing Disability Reviews

The rules in ~~20 CFR 416.990~~ 20 CFR 416.994a as published on April 1, 1996, will be used with the following modifications to the frequency of review:

(a) Review disability after, at most, 18 months if medical improvement is expected.

(b) Review disability after, at most, 3 years if disability is not permanent but medical improvement cannot be predicted.

(c) Review disability after, at most, 7 years if disability is permanent.

A contractor who is competent to perform the continuing disability reviews will be used.

17170.4 Financial Eligibility

Follow the SSI income and resource standards and methodologies.

17170.5 Continued Eligibility

Medicaid eligibility for children covered under this provision continues until the earlier of:

a) the child reaches age 18

b) the child no longer meets the criteria of the SSI program for payment of benefits (other than the post August 22, 1996, definition of disability for children). A child who ceases to meet the non-disability SSI eligibility criteria can recover coverage under Section 4913 if the child again meets the non-disability SSI criteria. However, a determination that the child is no longer disabled under the pre-PRWORA disability criteria will permanently bar the child from protected coverage under Section 4913.

c) the child is not eligible under another Medicaid eligibility group.

17170.6 Redetermination of Eligibility

A redetermination of the nondisability criteria is required at least every 12 months.

PUBLIC SERVICE COMMISSION

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

BEFORE THE PUBLIC SERVICE |
COMMISSION OF THE STATE |
OF DELAWARE IN THE |
MATTER OF THE |
CONSIDERATION OF RULES, |
STANDARDS, AND INDICES |
TO ENSURE RELIABLE |
ELECTRICAL SERVICE BY |
ELECTRIC DISTRIBUTION |
COMPANIES (OPENED |
SEPTEMBER 26, 2000) |

**PSC REGULATION
DOCKET NO. 50**

ORDER NO. 5704

AND NOW, this 24th day of April, 2001;
WHEREAS, by Order No. 5552 the Commission initiated this regulation docket, the purpose of which is to explore what actions, if any, the Commission should take (and in what form) in order to ensure the continued reliability of electrical service to Delaware customers; and

WHEREAS, the Commission in Order No. 5552 directed the Staff to conduct, after appropriate notice, one or more public workshops or roundtables to investigate the issues concerning electric service reliability and, at the conclusion of such educational process, the Staff was to report on its view as to the need for any specific action by the Commission and, if rules or regulations were recommended, Staff was to include in its report the text of such proposed rules and regulations; and

WHEREAS, the Commission Staff in compliance with the Commission's Order has completed its report ("Report") which includes as an Appendix proposed rules and regulations ("Rules and Regulations"), a copy of which is attached hereto as Exhibit "B", which, if implemented, would create additional reliability standards for Commission regulated electric utilities; and

WHEREAS, the Commission believes that the policies contained in Staff's Report should be examined and, if appropriate, adopted, after the opportunity for public comment and review, and, accordingly, proposes the adoption of a schedule (attached hereto as Exhibit "C") which will allow Staff to receive and consider written comments on its Report prior to the Commission's consideration of whether it should adopt, as a statewide policy, the Report; and

WHEREAS, the Commission desires to give public notice, pursuant to 29 **Del.C.** §§ 1133, 10115 and 10118, of its intention to adopt reliability Rules and Regulations, and solicit public comment concerning the efficacy, reasonableness, and propriety of the proposed Rules and Regulations, including, but not limited to, the holding of one workshop where all interested parties can meet and comment on the proposed reliability Rules and Regulations; and

WHEREAS, the Commission proposes the adoption of a schedule (attached hereto as Exhibit "D") to solicit public comment and further input from all interested parties through the submission of written comments and the holding of a workshop prior to the Hearing Examiner's consideration of the appropriateness of the proposed Rules and Regulations regarding reliability standards;

NOW, THEREFORE, IT IS ORDERED:

1. That the Schedules attached hereto as Exhibits "B" and "C" are hereby adopted.
2. That the Secretary of the Commission shall transmit to the Registrar of Regulations for publication in the **Delaware Register** the notice attached hereto as Exhibit "A". Such notice shall be accompanied by a copy of the proposed Rules and Regulations (Exhibit "B").
3. That the Secretary of the Commission shall cause the notice attached hereto as Exhibit "A" to be published in *The News Journal* and *Delaware State News* newspapers on or before June 1, 2001, omitting, however, the notice's reference to documentary exhibits, and omitting such documentary exhibits themselves.

4. That the Secretary shall cause the notice attached hereto as Exhibit "A" (as modified pursuant to paragraph 3 above) to be sent by U.S. mail to all electric utilities, both Commission regulated and municipal, serving customers in the State of Delaware and to all persons who have made timely written requests for advance notice of the Commission's regulation-making proceedings.

5. That a public workshop shall be held where all interested parties can meet and comment on the proposed reliability Rules and Regulations.

6. That Robert P. Haynes is designated as the Hearing Examiner for the Rules and Regulation track in this matter pursuant to 26 **Del.C.** § 502 and 29 **Del.C.** Ch. 101, and is authorized to organize, classify, and summarize all materials, evidence, and testimony filed in this docket, to conduct the public hearing and public comment session contemplated under the attached notice, and to make proposed findings and recommendations to the Commission concerning the proposed reliability Rules and Regulations on the basis of the materials, evidence, and testimony submitted. Hearing Examiner Haynes is specifically authorized, in his discretion, to solicit additional comment and to conduct, on due notice, such public hearings as may be required to develop further materials and evidence concerning the proposed Rules and Regulations.

7. That James Mc C. Geddes, Esquire is designated as Staff Counsel for this matter.

8. That the public utilities affected by these proposed Rules and Regulations and Report, and regulated by the Commission, are notified that they may be charged for the cost of this proceeding under 26 **Del.C.** § 114.

9. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Robert J. McMahon, Chairman
 Joshua M. Twilley, Vice Chairman
 Arnetta McRae, Commissioner
 Donald J. Puglisi, Commissioner
 John R. McClelland, Commissioner

ATTEST:

Karen J. Nickerson, Secretary

EXHIBIT "A"

BEFORE THE PUBLIC SERVICE COMMISSION

BEFORE THE PUBLIC SERVICE	
COMMISSION OF THE STATE	
OF DELAWARE IN THE	PSC REGULATION
MATTER OF THE	DOCKET NO. 50
CONSIDERATION OF RULES,	

STANDARDS, AND INDICES
TO ENSURE RELIABLE
ELECTRICAL SERVICE BY
ELECTRIC DISTRIBUTION
COMPANIES (OPENED
SEPTEMBER 26, 2000)

**NOTICE OF COMMENT PERIOD AND PUBLIC
HEARING ON PROPOSED RELIABILITY
STANDARDS AND COMMISSION POLICY ON
ELECTRIC RELIABILITY**

The Commission opened this docket to investigate the need for, and the scope of, Rules and Regulations to ensure that Delaware customers continue to receive electrical service in their homes and businesses. The docket arose out of the Commission's examination of the Delmarva Power & Light Company ("DP&L") decision to implement rolling black-outs on July 6, 1999. Those black outs affected electric service to thousands of DP&L's customers, mostly in southern Delaware.

Consistent with a staff memorandum filed on August 24, 2000, which identified various issues surrounding reliability that Staff believed the Commission should address, the Commission initiated this regulation docket. This docket is a generic one, focused on what is needed to ensure that all customers served by regulated electric utilities under the Commission's jurisdiction enjoy reliable service. And, while this Commission does not have supervisory authority over municipal electric utilities, the Commission invites those entities to participate in this matter. Municipal electric utilities not only share concerns about maintaining reliability on their own networks, but also may find themselves impacted by the actions, which the Commission might eventually adopt for utilities subject to its jurisdictional authority.

The proposed rules and regulations ("Rules and Regulations") set forth requirements based on a uniform methodology for measuring reliability and ensuring the quality of the electric distribution service that is being delivered to Delaware customers by the electric distribution companies ("EDCs") operating in Delaware subject to the Commission's regulatory authority. These rules, which include requirements for data maintenance, record retention and service interruption information, establish standards to measure the reliability of the service provided. The rules in these regulations also set forth requirements for the implementation and scope of outage management systems, and prescribe record reporting parameters. The proposed Rules and Regulations also emphasize that regardless of the limited standards set forth therein, the burden is still on the utility to provide continuous and reliable service to its customers in an efficient, sufficient, and adequate manner.

The Commission has the authority to issue such rules,

and to effect the proposed changes and additions under 26 Del.C. § 209(a).

In addition to the proposed Rules and Regulations on reliability, the Commission is considering the adoption of a report ("Report") prepared by its Staff. The Report details policy positions on electric reliability recommended to the Commission for adoption. The Report makes numerous proposals on improving electric reliability. Many of these proposals suggest that action should be taken on statewide, regional, and federal bases to achieve the goal of reliable electric service at reasonable costs.

The Commission has separated the Rules and Regulations and consideration of the Report into two distinct tracts. Track A will deal with the proposed Rules and Regulations. The Report will be considered in Track B.

Track A

The Commission hereby solicits written comments, suggestions, compilations of data, briefs, or other written materials concerning the proposed Rules and Regulations. Ten (10) copies of such materials shall be filed with the Commission at its office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, DE 19904. All such materials should be filed on or before July 6, 2001. A workshop to be conducted by the Staff of the Commission will be held on July 16, 2001, at 10:00 AM. in the Commission's hearing room at the above address. In addition, the Commission's duly appointed hearing examiner will conduct a public hearing concerning the proposed Rules and Regulations. The Hearing Examiner will schedule such a hearing and provide the appropriate notice.

Track B

The Commission hereby solicits separate written comments on the Report. Ten (10) copies of such materials shall be filed with the Commission at its office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, DE 19904. All such materials should be filed on or before July 6, 2001.

Tracks A & B

The Report and proposed reliability Rules and Regulations, and the materials submitted in connection therewith, will be available for public inspection and copying at the Commission's Dover office during normal business hours and will be available on the Commission's web site at <http://www.state.de.us/delpsc>. The fee for copying is \$0.25 per page.

Any individual with disabilities who wishes to participate in, or to review these proceedings, should contact

the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, by telephone, or otherwise. For inquires, the Commission's toll free telephone number (in Delaware) is 1-800-282-8574. Any person with questions may also contact the Commission Staff at (302) 739-4247 or by Text Telephone at (302) 739-4333. Inquiries can also be sent by Internet e-mail to kneilson@state.de.us.

Electric Service Reliability and Quality Standards

A. Purpose and scope

1) Reliable electric service is of paramount concern to the Delaware Public Service Commission ("Commission"), because it is an essential service to the citizens of Delaware.

2) Nothing in these regulations relieves any utility from compliance with any requirement set forth under any other regulation, statute or order.

3) These regulations are in addition to those required under PSC Docket 58, Regulations Governing Service Supplied by Electrical Utilities.

4) The rules in these regulations set forth requirements based on a uniform methodology for measuring reliability and ensuring quality of the electric distribution service that is being delivered to Delaware customers by the electric distribution companies ("EDCs") operating in Delaware subject to the Commission's regulatory authority.

5) These rules, which include requirements for data maintenance, record retention and service interruption information, establish standards to measure the reliability of service on an annual, quarterly and as needed basis under all operating conditions. Major events shall be examined on a case-by-case basis to determine whether or not the EDC's preparation and response were adequate. It is the general obligation of a regulated EDC to provide sufficient resources in order to provide safe, adequate and proper service to its customers. The Commission may also consider other factors in determining whether or not an EDC has provided adequate service.

6) EDCs are encouraged to explore the use of proven state of the art technology and to promote distribution reliability service improvements.

7) The rules in these regulations also set forth requirements for the implementation and scope of outage management systems.

8) Notwithstanding these rules and regulations, it is the Electric Companies responsibility to provide continuous and reliable electric service to their customers in an efficient, sufficient, and adequate manner. The Companies are subject to the penalties described in Section Q should they fail to efficiently, sufficiently, and adequately provide continuous and reliable service.

B. Definitions

The following words and terms, as used in these regulations, shall have the following meanings, unless the context clearly indicates otherwise.

"ALM" means Active Load Management in accordance with schedule 5.2 of the RAA.

"Benchmark" means the 5-year average (1996-2000) of CAIDI, SAIDI and SAIFI or a value determined by the Commission.

"Contingency" means the unexpected failure or outage of a system component, such as a generator, transmission line, circuit breaker, switch, or other electrical element. A contingency also may include multiple components, which are related by situations leading to simultaneous component outages.

"Corrective action" means the maintenance, repair, or replacement of EDC or utility system components and structures to allow them to function with the proper degree of reliability.

"Customer Average Interruption Duration Index (CAIDI)" represents the average time in minutes required to restore service to those customers that experienced sustained interruptions during the reporting period. CAIDI is defined as follows:

$$\text{CAIDI} = \frac{\text{Sum of all Sustained Customer Interruption Durations per Reporting Period}}{\text{Total Number of Sustained Customer Interruptions per Reporting Period}}$$

"Distribution circuit" means a three-phase set of conductors emanating from a substation circuit breaker serving customers in a defined local distribution area. This includes three-phase, two-phase and single-phase branches.

"EDC" means electric distribution company.

"Electric distribution system" means that portion of an electric system, which delivers electric energy from transformation points on the transmission system to points of connection at the customers' premises.

"Electric Supplier" means an entity or person certified by the Commission, including municipal corporations which choose to provide electricity outside their municipal limits (except to the extent provided prior to February 1, 1999), Broker, Marketer or other entity (including public utilities and their affiliates), that sells electricity to Retail Electric Customers, utilizing the Transmission and Distribution Facilities of an Electric Distribution Company.

"Feeder" means the electric plant that emanates from a substation, serves customers, and is normally electrically isolated at all endpoints.

"Interruption" means the loss of electric service to one or more customers. It is the result of one or more component outages, depending on system configuration as well as other events. See "outage" and "major event." The types of interruption include momentary event, sustained and scheduled.

“Interruption, duration” means the period (measured in minutes) from the initiation of an interruption of electric service to a customer until such service has been restored to that customer. An interruption may require step-restoration tracking to provide reliable index calculations.

“Interruption, momentary event” means an interruption of electric service to one or more customers of duration limited to the period required to restore service by an interrupting device. Such switching operations by interrupting devices must be completed in a specified time not to exceed five minutes. This definition includes all reclosing operations, which occur within five minutes of the first interruption. For example, if a recloser or breaker operates two, three, or four times and then holds within five minutes, the event shall be considered one momentary event interruption.

“Interruption, scheduled” means an interruption of electric power that results when one or more components are deliberately taken out of service at a selected time, usually for the purposes of preventative maintenance, repair or construction.

This interruption derives from transmission and distribution applications and does not apply to generation interruptions.

The key test to determine if the loss of electric service should be classified as a scheduled interruption is as follows: If it is possible to defer the interruption when such deferment is desirable, the interruption is a scheduled interruption. Deferring an interruption may be desirable, for example, to prevent overload of facilities or interruption of service to customers. Scheduled interruptions shall not be included in the CAIDI, SAIDI and SAIFI calculations.

“Interruption, sustained” means an interruption of electric service to one or more customers that is not classified as a momentary event interruption and which is longer than five minutes in duration.

“Interrupting device” means a device capable of being reclosed whose purpose includes interrupting fault currents, isolating faulted components, disconnecting loads and restoring service. These devices can be manual, automatic, or motor operated. Examples include transmission and distribution breakers, line reclosers, motor operated switches, fuses or other devices.

“Major Event” means all customer interruption occurrences and durations during time periods when more than 10% of a utility's Delaware customers are without service and restoration of these customers takes more than 24 hours. Interruptions occurring during a major event in one or more operating areas shall not be included in the EDC's CAIDI, SAIDI and SAIFI calculations of those affected operating area(s) for purposes of annual reliability standards. However, interruption data for major events shall be collected, and reported according to the reporting requirements outlined in the Annual System Performance

Report.

“Minimum reliability level” is defined as the minimum acceptable reliability as measured by CAIDI, SAIDI and SAIFI data as specified in Section O. Performance equal to or better than the minimum reliability level is acceptable. Performance worse than the minimum reliability level is unacceptable and may be subject to penalty.

“Number of Customer Interruptions” means the number of customers without service during a sustained interruption.

“Operating area” means a geographical subdivision of each EDC's franchise territory within the State of Delaware as defined by the EDC. These areas may also be referred to as regions, divisions or districts.

“Outage” means the state of a component when it is not available to perform its intended function due to some event directly associated with that component.

An outage may or may not cause an interruption of electric service to customers, depending on system configuration.

This definition derives from transmission and distribution applications and does not apply to generation outages.

“Power quality” means the characteristics of electric power received by the customer, with the exception of sustained interruptions and momentary event interruptions. Characteristics of electric power that detract from its quality include waveform irregularities and voltage variations—either prolonged or transient. Power quality problems shall include, but are not limited to, disturbances such as high or low voltage, voltage spikes or transients, flicker and voltage sags, surges and short-time overvoltages, as well as harmonics and noise.

“Reliability” means the degree to which safe, proper and adequate electric service is supplied to customers without interruption.

“Step restoration” means the restoration of service to blocks of customers in an area until the entire area or circuit is restored.

“Sum of all Customer Interruption Durations” means the summation of the restoration time (in minutes) for each event times the number of interrupted customers for each step restoration of each interruption event during the reporting period.

“System Average Interruption Duration Index” (SAIDI) represents the average time the customers served in a predefined area experienced sustained interruptions. SAIDI is defined as:

$$\text{SAIDI} = \frac{\text{Sum of all Sustained Customer Interruption Durations per Reporting Period}}{\text{Total Number of Customers Served per Reporting Period}}$$

“System Average Interruption Frequency Index”

(SAIFI) represents the average frequency of sustained interruptions per customer during the reporting period. SAIFI is defined as:

$$\text{SAIFI} = \frac{\text{Total Number of Sustained Customer Interruptions per Reporting Period}}{\text{Total Number of Customers Served per Reporting Period}}$$

“**Total Number of Customers Affected**” means the sum of the number of customers who experienced a sustained interruption during the reporting period. The customer is counted once regardless of the number of sustained interruption events the customer experienced during the reporting period.

“**Total Number of Sustained Customer Interruptions**” means the sum of the number of interrupted customers for each interruption event during the reporting period. Customers who experienced multiple interruptions during the reporting period are counted for each interruption event the customer experienced during the reporting period.

“**Total Number of Customers Served**” means the number of customers provided with electric service by the distribution facility for which a reliability index is being calculated on the last day of the time period for which the reliability index is being calculated. If a different calculation of the Total Number of Customers Served is used, it must be clearly defined within the reports. This number generally excludes all street lighting (dusk-to-dawn lighting, municipal street lighting, traffic lights) and sales to other electric utilities. The method of determining the total number of customers served by each EDC for each reporting period shall be consistent between reporting periods.

C. General reliability

1) Each EDC shall take reasonable measures to provide adequate electric transmission and distribution system capacity for its customers.

2) Each EDC and transmission company shall reasonably forecast the system load it must be capable of supplying and the capability of its supply.

3) Each EDC and transmission company shall accurately model or study its operating system to determine if it is capable of providing reliable electric service, and if problems are identified, the EDC or transmission company shall take corrective action to provide reliable service.

4) Each EDC and transmission company shall identify and examine in sufficient detail potential distribution substation and distribution substation supply circuit single contingencies and all transmission system double contingencies that may cause outages on its system and take corrective action for those contingencies.

D. Transmission system reliability

1. Each EDC and transmission company shall install and maintain its transmission facilities, and ensure that its

transmission facilities are operated, in conformity with the applicable requirements of the National Electrical Safety Code. An EDC shall operate its transmission facilities in conformity with the operating policies, criteria, requirements and standards of NERC and the appropriate regional reliability council, or successor organizations, and other applicable requirements or as required by this Commission.

2. The reliability of an EDC’s or transmission company’s transmission service provided to wholesale customers, such as electric cooperative corporations and municipal corporations, shall be comparable to the reliability which the transmission supplier provides at the wholesale level to all other users of the transmission system, taking into account the nature of each service area in which electricity is delivered to the customer, the delivery voltage and the configuration and length of the circuit from which electricity is delivered.

3. Each EDC and transmission company shall submit to the Commission, on or before May 31, of each year, information concerning the performance of the transmission system, as built and operated, to efficiently serve a fully competitive generation market. The report shall include available transfer capability, total transfer capability and the use, in general, of the transmission system. The report shall include an assessment of the past performance of the transmission system and an appraisal of future transmission system performance. In complying with this requirement, electric distribution companies operating under a single system operator may submit a joint report.

E. Generation reliability

1) Each electric supplier shall operate and maintain its generating facilities in conformity with the operating policies, criteria, requirements and standards of NERC and the appropriate regional reliability council(s), or successor organizations.

2) Each electric supplier shall maintain appropriate generating reserve capacity in compliance with any applicable reserve requirement standards set forth by the appropriate regional reliability council, successor organizations or other entity or agency with jurisdiction to establish such requirements.

3) Each electric supplier shall abide by applicable Commission regulations, procedures and orders, including emergency orders.

4) Each electric supplier shall maintain membership, to the extent required by any regional reliability council, independent system operator or similar organization, in the appropriate regional reliability council(s), or successor organizations.

F. Reliability performance levels

1) Each EDC shall take reasonable measures to perform better than the minimum reliability levels.

2) The SAIFI, SAIDI, and CAIDI for each EDC shall be calculated and submitted at the end of each calendar year, at the end of each quarter and any reporting period established by the Commission.

G. Service reliability

1) Each EDC shall have reasonable programs and procedures necessary to maintain the minimum reliability levels for its respective operating areas.

2) The programs shall be designed to sustain reliability and, where appropriate, improve reliability. Each EDC shall utilize appropriate and qualified resources to maintain as a minimum the minimum reliability levels for its respective operating areas.

3) Interruptions shall not be reduced by unduly characterizing a sustained interruption as a series of momentary event interruptions. Electric service interruptions shall be reported to Commission staff in accordance with Section M.

H. Power quality

1) Each EDC shall consider power quality in the design and maintenance of its distribution power-delivery system components. Each EDC shall strive to avoid and to mitigate, to the extent feasible and cost effective, power quality disturbances under its control that adversely affect customers' properly designed equipment.

2) Each EDC shall, as a minimum, maintain a power quality program that includes its objectives and procedures. The program shall be designed to respond promptly to customer reports of power quality problems. The program shall strive to prevent, mitigate or resolve power quality problems within the EDC's control to the extent cost-effective and practical.

3) The EDC's power quality program shall be filed with the Commission by _____.

I. Individual circuit reliability performance

1) The SAIFI, SAIDI, and CAIDI for each EDC feeder shall be calculated at the end of each calendar year or any reporting period established by the Commission.

2) Each EDC shall identify and analyze poor performing circuit(s) as identified by the reliability performance parameters of item (1) and take corrective action to improve reliability performance.

J. Inspection and maintenance programs

1) Each EDC shall have inspection and maintenance programs for its distribution facilities, as appropriate to furnish safe, proper and adequate service. These programs shall be based on factors such as applicable industry codes, national electric industry practices, manufacturer's recommendations, sound engineering judgment and past experience to the extent intended to maintain or improve

historical levels of service reliability. A significant portion of these inspection and maintenance programs shall be focused on mitigating those interruption causes with the greatest impact on reliability such as those related to equipment, vegetation, and animals. EDCs shall endeavor to utilize tree trimming, physical plant inspections, maintenance and protective measures and equipment to assist in the prevention and management of interruptions when appropriate.

2) Each EDC shall submit to the Commission, no later than _____, compliance plans for the inspections, maintenance and record keeping required in these regulations. These compliance plans shall include individual programs aimed at reducing specific outage causes.

3) Each EDC shall maintain records of inspection and maintenance activities. These records shall be made available to Commission Staff, who shall be permitted to inspect such records at any reasonable time.

K. Transmission and Distribution Studies

1) Each EDC and transmission company shall perform electric transmission and distribution system planning studies for the company's system in accordance with MAAC planning criteria, except that the load forecast will be a 90/10 weather normalized peak load forecast (90/10 forecast). The increase in megawatt ("MW") load from the 50/50 to the 90/10 forecast will be assumed to have a power factor of .85. All MW and MVAR bus loads in the studies will be adjusted by a uniform percentage to achieve the loading corresponding to the 90/10 forecast.

2) Each EDC and transmission company shall perform the electric transmission and distribution system planning studies as described herein in the fall of each year (year a) for the upcoming summer period (year b) and for the summer period two years later (year c). The planning studies will include all transmission and distribution enhancements planned to be in-service during the applicable summer peak.

3) The planning studies will be performed as follows:

a) Normal System Conditions

This planning study, the base case, assumes that all transmission lines, distribution facilities, generators, and transformers are in-service. For each study resulting in a thermal overload or an out-of-range voltage level, the study shall be performed again after the implementation of Active Load Management (ALM), system switching, or reconfiguration.

b) Single Contingency

In this series of planning studies, perform a study with each generator, transmission line, substation transformer, and distribution substation supply circuit out of service. For each study resulting in a thermal overload or an out-of-range voltage level, the study shall be performed again after the implementation of ALM, system switching,

or reconfiguration.

c) Double Contingency

In this series of planning studies, perform a series of studies with a generator or a transmission line out of service and with each additional generator, transmission line, or transmission-voltage transformer (secondary bushing at transmission level voltage) out of service. For each study resulting in a thermal overload or an out-of-range voltage level, the study shall be performed again after the implementation of ALM, system switching, or reconfiguration.

L. Transmission and Distribution Study Reports

1) Each EDC or transmission company shall provide the reports described in this section. The report shall, at a minimum, include the following information, for both year b and year c:

a) Normal System Conditions

This section of the report shall list the transmission and distribution enhancements included in the planning studies, but not in-service at the time of the studies. The report shall include all bus loads, generator bus data, and bus capacitor values used in the studies. The MW of each type of ALM shall be included in the report.

i) For each thermal overload detected by the study under normal conditions, provide the overloaded system element, the normal and emergency ratings of the overloaded element, the percentage loading on the overloaded element and the percent overload on the element (both before and after the implementation of ALM or other corrective action), and a description of the least cost transmission or distribution enhancement to eliminate the thermal overload (including the cost of the enhancement).

ii) For each out-of-range voltage level detected by the study under normal conditions, provide the system element that experiences the out-of-range voltage, the out-of-range voltage level (both before and after implementation of ALM or other corrective action), a description of the least cost transmission or distribution enhancement to eliminate the out-of-range voltage (including the cost of the enhancement), a listing of the circuits that would experience an outage due to automatic load-shedding as a result of the out-of-range voltage.

b) Single Contingency

This section of the report shall list each thermal overload and each out-of-range voltage level for each single contingency.

i) For each thermal overload detected by the study, provide the contingency being studied, the overloaded system element, the normal and emergency ratings of the overloaded element, the percentage loading on the overloaded element and the percent overload on the element (both before and after the implementation of ALM or other corrective action), and a description of the least cost

transmission or distribution enhancement to eliminate the thermal overload (including the cost of the enhancement).

ii) For each out-of-range voltage level detected by the study, provide the contingency being studied, the system element that experiences the out-of-range voltage, the out-of-range voltage level (both before and after implementation of ALM or other corrective action), a description of the least cost transmission or distribution enhancement to eliminate the out-of-range voltage (including the cost of the enhancement), a listing of the circuits that would experience an outage due to automatic load-shedding as a result of the out-of-range voltage.

c) Double Contingency

This section of the report shall list each thermal overload and each out-of-range voltage level for each double contingency.

i) For each thermal overload detected by the study, provide the contingencies being studied, the overloaded system element, the normal and emergency ratings of the overloaded element, the percentage loading on the overloaded element and the percent overload on the element (both before and after the implementation of ALM or other corrective action), and a description of the least cost transmission enhancement to eliminate the thermal overload (including the cost of the enhancement).

ii) For each out-of-range voltage level detected by the study, provide the contingencies being studied, the system element that experiences the out-of-range voltage, the out-of-range voltage level (both before and after implementation of ALM or other corrective action), a description of the least cost transmission enhancement to eliminate the out-of-range voltage (including the cost of the enhancement), a listing of the circuits that would experience an outage due to automatic load-shedding as a result of the out-of-range voltage.

M. Annual System Performance Report

1) By May 1 each year, an EDC shall submit the report required by this regulation to the Commission. The data used to generate the report will be for the previous calendar year.

2) Each EDC shall complete and submit the information requested on the attached form or such form as the Commission shall from time to time require. Each EDC shall also provide the same information in electronic form.

3) The Annual Report shall include the electric service reliability performance for the EDC's predefined operating areas in relation to their benchmark and minimum reliability levels of SAIFI, SAIDI, and CAIDI.

4) Indices to be Reported.

a) System-Wide Indices. A utility shall provide SAIDI, SAIFI, and CAIDI for all feeders originating in Delaware. The indices shall be calculated and reported with two sets of input data.

i) All sustained interruption data;
ii) Major event interruption data excluded.
b) Feeder Indices. A utility shall provide SAIDI, SAIFI, and CAIDI for 2% of feeders or 10 feeders, whichever is more, serving at least one Delaware customer that are identified by the utility as having the poorest reliability. The indices shall be calculated and reported with 2 sets of input data.

i) All sustained interruption data;
ii) Major event interruption data excluded.
iii) Feeders included in the report, which serve customers in Delaware and one or more bordering jurisdiction, shall be identified. The report shall include the percentage of customers located in Delaware and the percentage of customers located in bordering jurisdictions.

iv) Feeders shall not be included as having the poorest reliability in two consecutive reports.

5) The Annual Report shall include a summary of:

a) The EDC's reliability programs, including inspection and maintenance programs;
b) Changes and exceptions to the EDC's current program(s);
c) The EDC's new reliability program(s);
d) The method used by a utility to identify the feeders with poorest reliability as approved by the Commission.
e) The EDC's power quality program;
f) Technology initiatives to improve reliability;
g) The number of personnel (broken down by bargaining and non-bargaining unit) in each EDC's operating area(s) and a summary statement referencing each EDC's training program; and
h) Certification by an officer of the EDC of the data and analysis and that necessary maintenance programs and other actions are being performed and adequately funded by the Company and addressed in its business plans to help achieve the benchmark reliability levels and as a minimum to maintain the minimum reliability levels for each operating area.

6) The Annual Report shall also include statistical tables and charts as follows for EDC reliability performance Statewide and by each feeder:

a) Five years of trends of CAIDI, SAIDI and SAIFI; and
b) Five years of trends of major causes of interruptions.

7) The Annual Report shall include a summary of each major event.

8) In the event that an EDC's reliability performance in an operating area does not meet the minimum reliability level for the calendar year, the Annual Report shall include the following:

a) An analysis of the service interruption causes, patterns and trends;

b) A description of the corrective actions taken or to be taken by the EDC and the target dates by which the corrective action shall be completed; and

c) If no corrective actions are planned, an explanation shall be provided.

9) Actions for Feeders with Poorest Reliability.

a) Each utility shall report remedial actions for all feeders reported under 4 (b) of this section.

b) Each utility shall briefly describe the actions taken or planned to improve reliability. When the utility determines that remedial actions are unwarranted, the utility shall provide justification for this determination.

10) Evaluation of Remedial Actions. For the feeders identified as having the poorest reliability in an annual system performance report, the utility shall provide the following information in the next two annual reports.

a) The annual report for the year following the identification of feeders having the poorest performance shall provide a brief description of the actions taken, if any, to improve reliability and the completion dates of these actions.

b) The annual report two years after the identification of feeders having the poorest performance shall include the ordinal ranking representing the feeder's reliability during the current reporting period.

11) Each EDC shall include in its annual report the number of momentary events as measured at the substation.

12) The annual report shall include a summary of certain specific reliability statistics including forecasted peak loads, generation resources and reserve margins. This information shall be provided for any default service or standard offer service.

13) The annual report shall include summaries of all recent transmission and distribution planning studies and network capability studies (including CETO and CETL results) performed for any distribution or transmission facilities owned by the utility.

14) The annual report shall include summaries of any changes to reliability-related requirements, standards and procedures at PJM, MAAC or NERC.

N. Major event report

1) The EDC shall, within 15 business days after the end of a major event, submit a report to the Commission, which shall include the following:

a) The date and time when the EDC's storm center opened and closed;

b) The total number of customers out of service over the course of the major event over four hour intervals, identified by operating area or circuit area. For purposes of this count, the starting time shall be when the storm center opens and the ending time shall be when the storm center is closed, the EDC shall report the date and time when the last customer affected by a major event is restored;

c) The total number of trouble locations and classification;

d) The time at which the mutual aid and non-company contractor crews were requested, arrived for duty and were released, and the mutual aid and non-contractor response(s) to the request(s) for assistance;

e) A timeline profile of the number of company line crews, mutual aid crews, non-company contractor line and tree crews working on restoration activities during the duration of the major event; and

f) A timeline profile of the number of company crews sent to an affected operating area to assist in the restoration effort.

2) The EDC shall continue to cooperate with any Commission request for information before, during and after a major event.

O. Establishment of service level values

1) For each of an EDC's operating areas, the reliability performance level is established as follows:

a) The operating area's CAIDI benchmark standard is set at the 5-year average CAIDI for the years 1996-2000;

b) The operating area's SAIFI benchmark standard is set at the 5-year average SAIFI for the years 1996-2000;

c) The operating area's SAIDI benchmark standard is set at the 5-year average SAIDI for the years 1996-2000; and

d) The minimum reliability level for each operating area is attained when its annual CAIDI, SAIDI and SAIFI are no higher than the 5-year benchmark standard plus one standard deviation.

2) When the CAIDI, SAIDI and SAIFI of an EDC's operating area do not meet the minimum reliability level, further review, analysis, and corrective action are required.

3) The minimum reliability level to be assigned to each operating area shall be reviewed and may be adjusted for subsequent years after consideration of various factors, including:

a) A comparison of actual multi-year CAIDIs, SAIDIs and SAIFIs;

b) Trends among indices;

c) The average high and low values of multi-year indices;

d) Local geography, weather and electric system design of an operating area;

e) The relative performance of an operating area in relation to other operating areas of a given EDC's franchise area;

f) A comparison of the performance of all operating areas of all EDCs; and

g) A comparison of the performance of the EDC to other states of industry statistics.

P. Prompt restoration standards

1) EDCs shall begin the restoration of service to an affected service area within two hours of notification by two or more customers of any loss of electric service affecting those customers served electrically by the same affected interrupting device within the system. Beginning restoration of service shall be defined as the essential or required analysis of the interruption and dispatching an individual or crew to an affected area to begin the restoration process.

2) The prompt restoration standards shall not apply to EDCs during major events.

3) When possible, each EDC shall place the highest priority on responding to emergency (safety) situations and high priority on responding to other public facilities for which prompt restoration is essential to the public welfare. These priority requests may come from police, fire, rescue, authorized emergency service providers or public facility operators.

4) In situations where it is not practicable to respond within two hours to a reported interruption (safety reasons, inaccessibility, multiple simultaneous interruptions, storms or other system emergencies), the EDC shall respond as soon as the situation permits.

Q. Penalties and Other Remedies

1) Publicly Owned Utilities

a) Civil administrative penalties for violations of the reporting and plan and program submission requirements set out in sections G through N and P of these regulations shall be assessed as follows:

b) For failure to submit complete required reports, programs and plans on the due date set by rule, the EDC may be liable for penalties for each day beyond the due date that the report, program or plan is not submitted, as provided in Delaware statute, provided, however, that upon timely written request to the Commission demonstrating the need for an extension of time, the time for submitting required reports, plans and programs may be extended in appropriate cases at the Commission's sole discretion. Civil administrative penalties for violations of these regulations other than those set out in Q. 1) a) above may be assessed as follows:

i) For failure to implement the requirements set out in the programs and plans as submitted to the Commission or for the willful misrepresentation of fact and/or intentional inaccuracies in any submitted report, plan or program or for violation of any other requirement of these regulations, an EDC may be liable for penalties as allowed by Delaware statute.

ii) Each violation of any rule of these regulations shall constitute an additional, separate and distinct violation.

iii) Each day during which a violation continues shall constitute an additional, separate and distinct

violation.

c) The Commission may compromise any penalty, which may be assessed under this section. In determining the amount of the penalty, or the amount agreed upon in compromise, the Commission may consider aggravating and mitigating circumstances including the nature and gravity of the violation; the degree of the EDC's culpability; and history of prior violations; and any good faith effort on the part of the EDC in attempting to achieve compliance.

d) Penalty assessments are payable as provided by Delaware statute.

2) Cooperatives

a) Due to the particular ownership structure of cooperative electric utilities, no penalties will be collected from these entities unless otherwise determined by the Commission.

b) Each cooperative electric utility shall make reasonable efforts to correct deficiencies in order to improve service reliability as soon as possible.

c) Each cooperative electric utility shall inform its customers in writing by **May 31** of the year following any year in which it does not meet its minimum reliability standards. The notice shall, at a minimum, include the minimum reliability requirement; the level obtained by the cooperative; an explanation of the index including how it is measured and calculated in sufficient detail; how the cooperative plans to improve the reliability standard; and how a customer may obtain additional information on the system-wide indices or their local circuit performance statistics.

R. Outage Management Systems (OMS)

1) Each EDC shall substantially implement the OMS as described in this section by.

2) The OMS shall consist at a minimum of a fully integrated geographic information system (GIS), a software driven outage assessment tool and an energy management system/supervisory control and data acquisition (EMS/SCADA).

3) It is intended that when fully implemented the OMS shall be able to digitally map the entire electric distribution system, group customers who are out of service to the most probable interrupting device that operated, associate customers with distribution facilities, generate street-map indicating EDC outage locations, improve the management of resources during a storm, improve the accuracy of identifying the number of customers without electric service and improve the ability to estimate their expected restoration time, accurately communicate the number and when customers were restored and dispatch crews and/or troubleshooters via computer (mobile data terminals

Report Track

June 1 st	Publish Notice in Newspapers
July 6 th	Comments Received from Interested Parties
July 24 th	Staff revised Report
August 16 th	Comments on Revised Report and the Report to the Commission
End of August	Commission Meeting on the Report

E X H I B I T "D"

Rules and Regulations Track

June 1 st	Publish Notice
July 6 th	Comments Received from Interested Parties
July 16 th	Workshop
August 3 rd	Staff Comments to Hearing Examiner
August 10-30	Hearings to be scheduled during this period
November 16 th	Hearing Examiner issues Hearing Examiner's Report

E X H I B I T "C"

Symbol Key

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

Final Regulations

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

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

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF CHIROPRACTIC
24 DE Admin. Code 700
Statutory Authority: 24 Delaware Code,
Section 706(a)(1), (24 Del.C. §706(a)(1))**

Order**Summary of the Evidence and Information Submitted**

There were no written or verbal comments addressing the proposed rules and regulations.

Findings of Fact

1. Pursuant to 24 *Del.C.* § 706 (a) (1), the Board of Chiropractic of the State of Delaware (the "Board") proposed to revise to its rules and regulations as more specifically set forth in the Hearing Notice which is attached hereto as Exhibit "A" and incorporated herein.

2. Pursuant to 29 *Del.C.* § 10115, notice was given to the public that a hearing would be held on April 19, 2001, at 8:30 a.m. in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware to consider the proposed revision. Notice was posted in two Delaware newspapers of general circulation as

more specifically set forth in the affidavits which are attached hereto as Exhibits "B" and "C" and incorporated herein.

3. The notice invited the public to submit written comments regarding the proposed revision.

4. A hearing was held on April 19, 2001, at which a quorum of the Board of Chiropractic was present.

5. The Board of Chiropractic finds the proposed revision serves to implement or clarify specific sections of 24 *Del.C.* Chapter 7 .

Text and Citation

The text of the Rules and Regulations hereby promulgated are as it appeared in the Delaware Register of Regulations, Vol. 4, Issue 9 (March 1, 2001). The text is attached hereto as Exhibit "D" with the changes noted.

Decision

NOW, THEREFORE, based on the Board of Chiropractic's authority to formulate rules and regulations pursuant to 24 *Del.C.* § 706(a)(1), it is the decision of the Board of Chiropractic to adopt the proposed revision of its rules and regulations. A copy of the rules and regulations is attached hereto as Exhibit "E" and incorporated herein. Such regulations shall be effective ten days after the date this Order is published in its final form in the Register of Regulations.

IT IS SO ORDERED this 19th day of April, 2001.

Delaware State Board Of Chiropractic

Bryan Errico, D.C., President
W. Monroe Hearne, Secretary, Public Member
Tamara Blossic, D.C., Professional Member
Hal Bowen, D.C., Professional Member
Trent Camp, D.C., Professional Member
Crystal Carey, Esquire, Public Member
Rebecca Gates, Public Member

ATTEST:

Judy Letterman, Administrative Assistant to the Board

This is to certify that the above and foregoing is a true and correct copy of the Order of the Delaware State Board of Chiropractic in the Matter of Adoption of Regulations.

- 1.0 Chiropractic Defined; Limitations of Chiropractic License
- 2.0 Officers; Meetings; Quorum
- 3.0 Certification
- 4.0 Continuing Education
- 5.0 Issuance of License; Renewal; Inactive Status; Reinstatements; Retention of Patient Records
- 6.0 Grounds for Discipline
- 7.0 License to Practice
- 8.0 Voluntary Treatment Options ~~for Chemically Dependent or Impaired Professionals~~

1.0 Chiropractic Defined; Limitations of Chiropractic License

1.1 An adjunctive procedure not otherwise prohibited by Chapter 7 which aids and or assists the chiropractor in providing chiropractic care and includes by way of example and is not limited to:

- Acupuncture Procedures
- Physiological Therapeutics
- Diet and Nutritional Programs
- Rehabilitation/Exercise Programs

2.0 Officers; Meetings; Quorum

The Board will hold elections for the offices of President and Secretary at the regularly scheduled meeting in October of each year or as soon thereafter as practical. Vacancies occurring in an office shall be filled for the remainder of the term in the month following the vacancy or as soon thereafter as is practical.

3.0 Certification

Certification in any nationally recognized specialty for a licensee requires a minimum of one hundred (100) or more

hours of certified training beyond and in addition to any courses or training received toward a degree of Doctor of Chiropractic. Certification in any nationally recognized chiropractic specialty or technique requires that the licensee shall have completed all requirements for recognition as a practitioner of such chiropractic specialty or technique by the nationally recognized certification body.

4.0 Continuing Education.

4.1 Continuing Education for New Licensees:

~~4.1.1 During the first reporting period after initial licensure, each licensee shall complete as part of his or her continuing education requirements a two (2) hour course in Delaware Chiropractic law and Regulations or general Chiropractic jurisprudence approved by the Board.~~

~~4.1.2 During the first reporting period after initial licensure, each licensee shall complete as part of his or her continuing education requirements a two (2) hour course in AIDS/Communicable diseases approved by the Board.~~

~~4.1.3~~ At the time of the initial license renewal, some individuals will have been licensed for less than two (2) years. Therefore, for these individuals only, the continuing education hours will be pro-rated as follows:

License Granted ~~0~~ during Credit Hours Required:

First Year:

July 1 - December 31	24 hours
January 1 - June 30	18 hours

License Granted ~~0~~ during Credit Hours Required:

Second Year:

July 1 - December 31	12 hours
January 1 - June 30	<u>6</u> hours

4.2 Continuing Education for Licensees other than new licensees:

4.2.1 Unless otherwise excused by the Board for good cause such as illness, extended absence from the country, or unique personal hardship which is not the result of professional negligence or inadvertence, all Chiropractors seeking renewal more than two (2) years from initial licensure or reinstatement of a lapsed license must provide to the Board adequate proof of the satisfactory completion of twenty four (24) hours of Board approved continuing education within the immediately preceding two (2) year period. ~~A licensee who has failed to meet the continuing education requirement for renewal of licensure but who has paid the renewal fee may be granted a period of thirty (30) days to complete the continuing education.~~

4.2.2 Proof of continuing education shall be received at the Division of Professional Regulation, Dover, Delaware, no later than April 30th of the reporting year and shall be received every 2 years after such date. Continuing education completed before April 30th of the reporting year shall not be carried over to the next renewal period. The

Board has the right to conduct an audit of the proof of continuing education submitted by licensees.

5.0 Issuance of License; Renewal; Inactive Status; Reinstatements; Retention of Patient Records

5.1 The Biennial licenses granted by the Board shall automatically terminate on June 30th of each even numbered year or on such other date as is specified by the Division of Professional Regulation. It is the responsibility of the licensee to file a renewal application with the Board. The failure of the Board to notify a licensee of his/her expiration date does not in any way relieve the licensee of the requirements of filing a renewal application with the Board. A licensee who fails to renew a license before the expiration date may renew on a late basis for a period not to exceed one (1) year.

5.2 Inactive Status and Termination of Practice. Any licensee who seeks to be placed on inactive status or who terminates his or her practice and is not transferring his or her records to another chiropractor shall notify the Board in writing and notify all patients treated within the last three years by publication in a newspaper of general circulation throughout the State of Delaware and offer to make the patients records available to the patient or his or her duly authorized representative. Such notice by publication shall be made at least ninety (90) days prior to termination of the practice except in an emergency situation where as much notice as is reasonably possible shall be given. All patients who have not requested their records from such publication of notice shall, within thirty days of the closing of the business be notified by first class mail to permit patients to procure their records. ~~Patient records must be retained by the Chiropractor or arrangements made for the maintenance and retention of patient records for three (3) years from the date of the last treatment.~~

5.3 Retention of Patient Records. Patient records must be retained by the Chiropractor or arrangements made for the maintenance and retention of patient records for three (3) years from the date of the last treatment.

6.0 Grounds for Discipline

6.1 Unprofessional Conduct in Advertising. Any Licensee who advertises or holds out to the public that he or she is a specialist in any specific chiropractic or adjunctive procedure without having a valid current certification as having special training and/or certification in such procedure or procedures from a recognized certification body is guilty of unprofessional conduct.

6.2 Examples of Unprofessional Conduct in Advertising and Promotional Practices. The following advertising and promotional practices are deemed to be misleading, false, deceptive, dishonorable and/or unethical and shall constitute unprofessional conduct by a licensee:

6.2.1 The use of testimonials without written

permission of that doctor's patient.

6.2.2 Offering free or discounted examinations unless all charges associated with such examinations, including all x-ray fees and charges, are conspicuously set out in writing at the time of and in conjunction with such offer and unless such examinations are offered regardless of the availability of insurance coverage of any recommended subsequent treatment.

6.2.3 The use of unjustified or exaggerated claims, promises or statements which guarantee or strongly imply cure or successful treatment or are otherwise false, fraudulent, deceptive, or misleading.

6.2.4 Willful failure to identify licensee as a Doctor of Chiropractic.

6.3 Unprofessional conduct with ~~p~~Patient, ~~e~~Employees, or ~~e~~Co-workers. Sexual misconduct in violation of a statute of the State of Delaware or any State or Commonwealth where such conduct takes place, involving a licensee and a patient, employee or co-worker shall be deemed to be unprofessional conduct.

7.0 License to Practice

A Chiropractor licensed elsewhere but not licensed in the State of Delaware may practice chiropractic within the State of Delaware only in consultation with a duly Delaware licensed Chiropractor for not more than ten (10) consultations in any twelve (12) month period, which consultations shall be limited to examination, recommendation or testimony in litigation.

8.0 Voluntary Treatment Option for ~~Chemically Dependent or Impaired Professionals~~

Any member of the public or a licensee may make a written report, signed by the complainant, of chemical dependency or impairment affecting any person regulated by the Board pursuant to 29 Del.C. §8807(n).

8.1 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.

8.2 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.

8.3 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).

8.4 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.

8.5 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 (h) of this section.

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

8.6.1 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.

8.6.2 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.

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

8.6.4 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.

8.6.5 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.

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

8.7 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.

8.8 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.

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

8.10 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.

8.11 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.

8.12 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.

DIVISION OF PROFESSIONAL REGULATION

BOARD OF MASSAGE & BODYWORK

24 DE Admin. Code 5300

Statutory Authority: 24 Delaware Code,
Section 5306(1) (24 Del.C. 5306(1))

Order Adopting Rules and Regulations

AND NOW, this 3rd day of May, 2001, in accordance with 29 *Del.C.* §10118 and for the reasons stated hereinafter, the Board of Massage and Bodywork of the State of Delaware (hereinafter "the Board") enters this Order adopting amendments to Rules and Regulations.

I. Nature of the Proceedings

Pursuant to the Board's authority under 24 *Del.C.* §5306(1) and 5306(7), the Board proposed to revise its existing Rules and Regulations to clarify the continuing education requirements for those licensees that are certified as massage technicians and who subsequently are licensed as massage and bodywork therapists. Notice of the public hearing to consider the proposed amendments to the Rules and Regulations was published in the Delaware *Register of Regulations* dated March 1, 2001, and two Delaware newspapers of general circulation, in accordance with 29 *Del. C.* §10115. The public hearing was held on April 5, 2001 at 1:00 p.m. in Dover, Delaware, as duly noticed, and at which a quorum of the Board was present. The Board deliberated and voted on the proposed revisions to the Rules and Regulations. This is the Board's Decision and Order ADOPTING the amendments to the Rules and Regulations as proposed.

II. Evidence and Information Submitted

The Board received no written comments in response to the notice of intention to adopt the proposed revisions to the Rules and Regulations. At the April 5, 2001 hearing, the Board received comment from Ms. Cheryl Smith. Ms. Smith stated that the proposed changes were acceptable to her.

III. Findings of Fact and Conclusions

1. The public was given notice of the proposed amendments to the Rules and Regulations and offered an adequate opportunity to provide the Board with comments. The Board received a favorable comment regarding the proposed revisions.

2. The proposed amendments to the Rules and Regulations are necessary to clarify the continuing education requirements for those licensees that are certified as massage technicians and who later are certified as massage therapists. The proposed amendments will assist licensees in understanding the continuing education requirements applicable for renewal of certificates and licenses.

3. The Board concludes that it has statutory authority to promulgate rules and regulations pursuant to 24 *Del.C.* §5306(1). The Board further concludes that it has statutory authority to establish by rule and regulation continuing education standards required for license and certificate renewal under 24 *Del.C.* §5306(7).

4. For the foregoing reasons, the Board concludes that it is necessary to adopt amendments to its Rules and Regulations, and that such amendments are in furtherance of its objectives set forth in 24 *Del. C.* Chapter 53.

IV. Decision and Order to Adopt Amendments

NOW, THEREFORE, by unanimous vote of a quorum of the Board, **IT IS ORDERED**, that the Rules and Regulations are approved and adopted in the exact text as set forth in Exhibit A attached hereto. The effective date of this Order is ten (10) days from the date of its publication in the Delaware *Register of Regulations* pursuant to 29 *Del. C.* § 10118(g).

By Order of the Board Massage and Bodywork (As authenticated by a quorum of the Board)

Allan Angel, President, Public Member
Phyllis E. Mikell, Vice President, Professional Member
Daniel Stokes, Secretary, Professional Member
Carla Arcaro, Professional Member
Patricia A. Beetschen, Professional Member
Vivian L. Cebrick, Public Member
Katherine J. Marshall, Public Member

- 1.0 Definitions
- 2.0 Filing of Application for Licensure as Massage/
Bodywork Therapist
- 3.0 Examination
- 4.0 Application for Certification as Massage Technician.
- 5.0 Expired License or Certificate
- 6.0 Continuing Education
- 7.0 Scope of Practice
- 8.0 Voluntary Treatment Option for Chemically Dependent
or Impaired Professionals

1.0 Definitions and General Definitions

1.1 The term "500 hours of supervised in-class study" as referenced in 24 **Del.C.** §5308(a)(1) shall mean that an instructor has controlled and reviewed the applicant's education on the premises of a school or approved program of massage or bodywork therapy, and can document that the applicant has successfully completed a curriculum that is substantially the same as referenced in 24 **Del.C.** § 5308(a)(1) and which includes hands-on technique and contraindications as they relate to massage and bodywork. More than one school or approved program of massage or bodywork therapy may be attended in order to accumulate the total 500 hour requirement.

1.2 The term a "100-hour course of supervised in-class study of massage" as referenced in 24 **Del.C.** §5309(a)(1) shall mean that an instructor has controlled and reviewed the applicant's education on the premises of a school or approved program of massage or bodywork therapy, and can document that the applicant has successfully completed a 100 hour course which includes hands-on technique and theory, and anatomy, physiology, and contraindications as they relate to massage and bodywork.

1.2.1 The 100 hour course must be a unified introductory training program in massage and bodywork, including training in the subjects set forth in Rule 1.2. The entire 100 hour course must be taken at one school or approved program. The Board may, upon request, waive the "single school" requirement for good cause or hardship, such as the closure of a school.

4 DE Reg. 1245 (2/1/01)

1.3 The "practice of massage and bodywork" includes, but is not limited to, the following modalities:

- Acupressure
- Chair Massage
- Craniosacral Therapy
- Deep Tissue Massage Therapy
- Healing Touch
- Joint Mobilization
- Lymph Drainage Therapy
- Manual Lymphatic Drainage
- Massage Therapy
- Myofascial Release Therapy
- Neuromuscular Therapy

- Orthobionomy
- Process Acupressure
- Reflexology
- Rolfing
- Shiatsu
- Swedish Massage Therapy
- Trager
- Visceral Manipulation

1.4 The practice of the following modalities does not constitute the "practice of massage and bodywork":

- Alexander Technique
- Aroma therapy
- Feldenkrais
- Hellerwork
- Polarity Therapy
- Reiki
- Shamanic Techniques
- Therapeutic Touch

3 DE Reg. 1516 (5/1/00)

2.0 Filing of Application for Licensure as Massage/ Bodywork Therapist

2.1 A person seeking licensure as a massage/bodywork therapist must submit a completed application on a form prescribed by the Board to the Board office at the Division of Professional Regulation, Dover, Delaware. Each application must be accompanied by (1) a copy of a current certificate from a State certified cardiopulmonary resuscitation program as required by 24 **Del.C.** §5308(3); and (2) payment of the application fee established by the Division of Professional Regulation pursuant to 24 **Del.C.** §5311.

2.2 In addition to the application and materials described in 2.1 of this Rule, an applicant for licensure as a massage/bodywork therapist shall have (1) each school or approved program of massage or bodywork where the applicant completed the hours of study required by 24 **Del.C.** §5308(a)(1) submit to the Board an official transcript or official documentation showing dates and total hours attended and a description of the curriculum completed; and (2) Assessment Systems, Incorporated or its predecessor, submit to the Board verification of the applicant's score on the written examination described in Rule 3.0 herein.

2.3 The Board shall not consider an application for licensure as a massage/bodywork therapist until all items specified in 2.1 and 2.2 of this Rule are submitted to the Board's office.

2.3.1 The Board may, in its discretion, approve applications contingent on receipt of necessary documentation. If the required documentation is not received within 120 days from the date when the application is first reviewed by the Board, the Board will propose to deny the application.

2.3.2 If an application is complete in terms of required documents, but the candidate has not responded to a

Board request for further information, explanation or clarification within 120 days of the Board's request, the Board will vote on the application as it stands.

2.4 **Renewal.** Applicants for renewal of a massage/bodywork therapist license shall submit a completed renewal form, renewal fee, proof of continuing education pursuant to Rule 6.0 and a copy of a current certificate from a State certified cardiopulmonary resuscitation program. License holders shall be required to maintain current CPR certification throughout the biennial licensure period.

4 DE Reg. 1245 (2/1/01)

3.0 Examination

The Board designates the National Certification Examination administered by the National Certification Board for Therapeutic Massage and Bodywork ("NCBTMB") as the written examination to be taken by all persons applying for licensure as a massage/bodywork therapist. The Board will accept as a passing score on the exam the passing score established by the NCBTMB.

4.0 Application for Certification as Massage Technician

4.1 A person seeking certification as a massage technician must submit a completed application on a form prescribed by the Board to the Board office at the Division of Professional Regulation, Dover, Delaware. Each application must be accompanied by (1) a copy of current certificate from a State certified cardiopulmonary resuscitation program as required by 24 **Del.C.** §5309(a)(2); and (2) payment of the application fee established by the Division of Professional Regulation pursuant to 24 **Del.C.** §5311.

4.2 In addition to the application and materials described in 4.1 of this Rule, an applicant for certification as a massage technician shall have the school or approved program of massage or bodywork therapy where the applicant completed the hours or study required by 24 **Del.C.** §5309(a)(1) submit to the Board an official transcript or official documentation showing dates and total hours attended and a description of the curriculum completed.

4.3 The Board shall not consider an application for certification as a massage technician until all items specified in 4.1 and 4.2 of this Rule are submitted to the Board's office.

3 DE Reg. 1516 (5/1/00)

4.3.1 The Board may, in its discretion, approve applications contingent on receipt of necessary documentation. If the required documentation is not received within 120 days from the date when the application is first reviewed by the Board, the Board will propose to deny the application.

4.3.2 If an application is complete in terms of required documents, but the candidate has not responded to a Board request for further information, explanation or clarification within 120 days of the Board's request, the

Board will vote on the application as it stands.

4.4 **Renewal.** Applicants for renewal of a massage technician certificate shall submit a completed renewal form, renewal fee, proof of continuing education pursuant to Rule 6.0 and a copy of a current certificate from a State certified cardiopulmonary resuscitation program. Certificate holders shall be required to maintain current CPR certification throughout the biennial licensure period.

4 DE Reg. 1245 (2/1/01)

5.0 Expired License or Certificate

An expired license as a massage/bodywork therapist or expired certificate as a massage technician may be reinstated within ninety (90) days after expiration upon application and payment of the renewal fee plus a late fee as set by the Division of Professional Regulation.

6.0 Continuing Education

6.1 *Hours required.* For license or certification periods beginning September 1, 2000 and thereafter, each massage/bodywork therapist shall complete twenty-four (24) hours of acceptable continuing education during each biennial licensing period, except as otherwise provided in these Rules and Regulations. Each massage technician shall complete twelve (12) hours of acceptable continuing education during each biennial licensing period, except as otherwise provided in these Rules and Regulations. Completion of the required continuing education is a condition of renewing a license or certificate. Hours earned in a biennial licensing period in excess of those required for renewal may not be credited towards the hours required for renewal in any other licensing period.

6.1.1 *Calculation of Hours.* For academic course work, correspondence courses or seminar/workshop instruction, one (1) hour of acceptable continuing education shall mean 50 minutes of actual instruction. One (1) academic semester hour shall be equivalent to fifteen (15) continuing education hours; one (1) academic quarter hour shall be equivalent to ten (10) continuing education hours.

4 DE Reg. 1245 (2/1/01)

6.1.2 If during a licensing period an individual certified by the Board as a massage technician is issued a license as a massage and bodywork therapist, the continuing education requirement for that licensing period is as follows:

6.1.2.1 If the license is issued more than twelve (12) months prior to the next renewal date, the licensee shall complete twenty-four (24) hours of acceptable continuing education during the licensing period.

6.1.2.2 If the license is issued less than twelve (12) months prior to the next renewal date, the licensee shall complete twelve (12) hours of acceptable continuing education during the licensing period.

6.2 *Proration.* Candidates for renewal who were first licensed or certified twelve (12) months or less before the

date of renewal are exempt from the continuing education requirement for the period in which they were first licensed or certified.

6.3 *Content.*

6.3.1 Except as provided in Rule 6.3.2, continuing education hours must contribute to the professional competency of the massage/bodywork therapist or massage technician within modalities constituting the practice of massage and bodywork. Continuing education hours must maintain, improve or expand skills and knowledge obtained prior to licensure or certification, or develop new and relevant skills and knowledge.

6.3.2 No more than 25% of the continuing education hours required in any licensing period may be earned in any combination of the following areas and methods:

6.3.2.1 Courses in modalities other than massage/bodywork therapy

6.3.2.2 Personal growth and self-improvement courses

6.3.2.3 Business and management courses

6.3.2.4 Courses taught by correspondence or mail

6.3.2.5 Courses taught by video, teleconferencing, video conferencing or computer

6.4 *Board approval.*

6.4.1 "Acceptable continuing education" shall include any continuing education programs meeting the requirements of Rule 6.3 and offered or approved by the following organizations:

6.4.1.1 NCBTMB

6.4.1.2 American Massage Therapy Association

6.4.1.3 Association of Oriental Bodywork Therapists of America

6.4.1.4 Association of Bodywork and Massage Practitioners

6.4.1.5 Delaware Nurses Association

6.4.2 Other continuing education programs or providers may apply for pre-approval of continuing education hours by submitting a written request to the Board which includes the program agenda, syllabus and time spent on each topic, the names and resumes of the presenters and the number of hours for which approval is requested. The Board reserves the right to approve less than the number of hours requested.

6.4.3 *Self-directed activity:* The Board may, upon request, review and approve credit for self-directed activities, including, but not limited to, teaching, research, preparation and/or presentation of professional papers and articles. A licensee must obtain pre-approval of the Board prior to undertaking the self-directed activity in order to assure continuing education credit for the activity. Any self-directed activity submitted for approval must include a

written proposal outlining the scope of the activity, the number of continuing education hours requested, the anticipated completion date(s), the role of the licensee in the case of multiple participants (e.g. research) and whether any part of the self-directed activity has ever been previously approved or submitted for credit by the same licensee.

6.4.4 The Board may award additional continuing education credits, on an hour for hour basis, to continuing education instructors for the first-time preparation and presentation of an approved continuing education course for other practitioners, to a maximum of 6 additional hours. (e.g. an instructor presenting a 8 hour course for the first time may receive up to 6 additional credit hours for preparation of the course). This provision remains subject to the limitations of Rule 6.3.2.

6.5 *Reporting.*

6.5.1 For license or certification periods beginning September 1, 2000 and thereafter, each candidate for renewal shall submit a summary of their continuing education hours, along with any supporting documentation requested by the Board, to the Board on or before May 31 of the year the license or certification expires. No license or certification shall be renewed until the Board has approved the required continuing education hours or granted an extension of time for reasons of hardship. The Board's approval of a candidate's continuing education hours in a particular modality does not constitute approval of the candidate's competence in, or practice of, that modality.

6.5.2 If a continuing education program has already been approved by the Board, the candidate for renewal must demonstrate, at the Board's request, the actual completion of the continuing education hours by giving the Board a letter, certificate or other acceptable proof of attendance provided by the program sponsor.

6.5.3 If a continuing education program has not already been approved by the Board, the candidate for renewal must give the Board, at the Board's request, all of the materials required in Rule 6.4.2 and demonstrate the actual completion of the continuing education hours by giving the Board a letter, certificate or other acceptable proof of attendance provided by the program sponsor.

6.6 *Hardship.* A candidate for renewal may be granted an extension of time in which to complete continuing education hours upon a showing of unusual hardship. "Hardship" may include, but is not limited to, disability, illness, extended absence from the jurisdiction and exceptional family responsibilities. Requests for hardship consideration must be submitted to the Board in writing prior to the end of the licensing or certification period for which it is made. If the Board does not have sufficient time to consider and approve a request for hardship extension prior to the expiration of the license, the license will lapse upon the expiration date and be reinstated upon completion of continuing education pursuant to the hardship exception.

The licensee may not practice until reinstatement of the license.

3 DE Reg. 1516 (5/1/00)

7.0 Scope of Practice

Licensed massage/bodywork therapist and certified massage technicians shall perform only the massage and bodywork activities and techniques for which they have been trained as stated in their certificates, diplomas or transcripts from the school or program of massage therapy where trained.

8.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

8.1 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.

8.2 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.

8.3 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).

8.4 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.

8.5 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 (h) of this section.

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

8.6.1 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.

8.6.2 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.

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

8.6.4 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.

8.6.5 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.

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

8.7 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.

8.8 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.

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

8.10 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.

8.11 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.

8.12 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.

DEPARTMENT OF EDUCATION

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

REGULATORY IMPLEMENTING ORDER

401 MAJOR CAPITOL IMPROVEMENT PROGRAMS

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education seeks to amend regulation 401 Major Capitol Improvement Programs. The amendments include providing clarity in section 1.0 by stating that Major Capitol Improvement programs are programs having a cost of \$250,000, or more and adding Section 12.0 on Voluntary School Assessment. The General Assembly amended Title 14, Section 103 by adding a new section (c) thus requiring the Department of Education to amend this regulation.

Notice of the proposed amended regulation was published in the News Journal and the Delaware State News on March 26, 2001 in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

II. FINDINGS OF FACTS

The Secretary finds that it is necessary to amend these regulations to reflect a legislative mandate.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is necessary to amend the regulation. Therefore, pursuant to 14 Del.C. Section 122, the regulation attached hereto as Exhibit B is hereby amended. Pursuant to the provisions of 14 Del.C. Section 122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit B, and said amended regulation shall be cited in the *Regulations of the Department of Education*.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the

Secretary pursuant to 14 *Del.C.* Section 122. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED this 17th day of May, 2001.

Valerie A Woodruff, Secretary of Education

401 Major Capital Improvement Programs

1.0 Major Capital Improvement Programs are projects ~~in~~ excess having a cost of \$250,000, or more.

1.1 The Secretary of Education shall annually review the current cost per square foot for construction and make needed adjustments as required.

2.0 Procedures for Approval of a Site for School Construction

2.1 Local school districts shall contact the Department of Education for a site review when they propose to purchase a site for school purposes. All prospective sites shall be reviewed at one time. It is preferable that at least four (4) sites be considered.

2.2 The Department of Education will forward all prospective sites to the following agencies for their review and comments. The Department of Education will consolidate the responses of the other agencies in order to review and rank the prospective sites and list all reasons for approval or rejection. The Department shall then notify the school district concerning their final decision.

2.2.1 State Planning Coordination Office

2.2.2 The Budget Office

2.2.3 The Department of Natural Resources and Environmental Control

2.2.4 The Department of Agriculture

2.2.5 The Department of Transportation

2.2.6 The Local Planning Agency having jurisdiction

3.0 Educational Specifications, Schematic Plans, Preliminary Plans, and Final Plan Approvals

3.1 Educational Specifications are defined as a document which presents to an architect what is required of an educational facility to house and implement the educational philosophy and institutional program in an effective way.

3.1.1 Educational Specifications shall be approved by the local school board and the Department of Education. The Department will require ten (10) working days for completion of the review and approval process.

3.2 All Schematic Plans shall be approved by the local school board and the Department of Education and these approved plans should be sent to the county or city planning office for information purposes only.

3.3 All Preliminary Plans shall be approved by the local

school board and the Department of Education.

3.4 All final plans shall be approved by the local school board and the Department of Education.

3.5 The local school district must involve the following groups in reviewing these plans prior to the final approval.

3.5.1 Fire Marshal to review the plans for fire safety.

3.5.2 Division of Public Health, Bureau of Environmental Health, Sanitary Engineering for Swimming Pools, and the County Health Unit for information on Kitchens and Cafeterias.

3.5.3 Division of Facilities Management, Chief of Engineering & Operations for compliance with building codes.

3.5.4 Division of Highways for review of the Site Plan showing entrances and exits.

3.5.5 Architectural Accessibility Board for access for persons with disabilities.

4.0 Certificates of Necessity

4.1 The Certificate of Necessity is a document issued by the Department of Education which certifies that a construction project is necessary and sets the scope and cost limits for that project.

4.2 Certificates of Necessity shall be obtained sufficiently in advance to meet all prerequisites for the holding of a local referendum as it must be quoted in the advertisement for the referendum and shall be issued only at the written request of the local school district.

5.0 Notification, Start of Construction, Completion of Construction and Certificate of Occupancy

5.1 The school district shall submit to the Department of Education and the State Budget Director a construction schedule, showing start dates, intermediate stages and final completion dates.

5.2 The school district shall notify the Department of Education, the State Budget Director and the Insurance Coverage Office at the completion of the construction, which is defined as when the school district, with the concurrence of the architect, accepts the building as complete.

5.3 The school district shall notify the Department of Education, the State Auditor, and the State Budget Director upon approval of the Certificate of Occupancy.

5.4 Local school districts shall submit to the Department of Education a copy of the electronic autocad files. Electronic autocad files shall be submitted no later than 30 calendar days after the completion of any major renovation or addition to an existing facility.

6.0 Purchase Orders: All purchase orders for any major capital improvement project shall be approved by both the Department of Education and the Director of Capital Budget

and Special Projects prior to submission to the Division of Accounting.

7.0 Change Orders

7.1 Change Orders are changes in the construction contract negotiated with the contractor. The main purpose is to correct design omissions, faults of unforeseen circumstances which arise during the construction process.

7.2 All Change Orders must be agreed upon by the architect, the school district and the contractor and shall be forwarded to the Department of Education.

7.2.1 Submission of a Change Order must include the following documents: Completed purchase order as applicable; Local Board of Education minutes identifying and approving the changes; Completed AIA document G701; Correspondence which gives a breakdown in materials, mark-up and other expenses; and, if not contained in any of the preceding, an explanation of need plus any drawings needed to explain the requested change.

8.0 Transfer of Funds between Projects

8.1 The transfer of funds between projects during the bidding and construction process shall have the written approval of the Department of Education. Acceptability of the transfer of funds will meet the following criteria:

8.1.1 No project may have more than 10% of its funding moved to another project. For example -no more than \$10,000 could be transferred from a \$100,000 project to any other project.

8.1.2 No project may have more than 10% added to its initial funding. For example - no more than \$10,000 would be transferred from all other projects to a project originally budgeted at \$100,000.

9.0 Educational Technology: All school buildings being constructed or renovated under the Major Capital Improvement Program shall include, in the project, wiring for technology that meets the Delaware Center for Educational Technology standards appropriate to the building type, such as high school, administration, etc. The cost of such wiring shall be borne by project funds.

10.0 Air Conditioning: All school buildings with Certificates of Necessity issued after July 1, 2000 for new school construction and/or major renovation/rehabilitation shall require the inclusion of air conditioning unless otherwise waived by the Secretary of Education.

11.0 Administration of the New School: The principle administrator of a new school may be hired for up to one (1) year prior to student occupancy to organize and hire staff. The State portion of salary/benefits may be paid from Major Capital Improvement Programs.

12.0 Voluntary School Assessment

12.1 The funds generated as a result of the Voluntary School Assessment, as authorized by the provisions of 14 Del. C. Section 103(c) relating to land use planning and education, shall be applied exclusively to offsetting the required local share of major capital construction costs.

12.1.1 Districts receiving Voluntary School Assessment funds shall have full discretion in the use of those funds for any construction activities that increase school capacity.

REGULATORY IMPLEMENTING ORDER

1051 SENIOR HIGH SCHOOL INTERSCHOLASTIC ATHLETICS **1052 JUNIOR HIGH/MIDDLE SCHOOL INTERSCHOLASTIC ATHLETICS**

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education seeks the approval of the State Board of Education to amend the regulations of the Delaware Secondary School Athletic Association (DSSAA). The regulations to be amended include 1051 DSSAA Senior High School Interscholastic Athletics and 1052 DSSAA Junior High/Middle School Interscholastic Athletics.

The most significant changes to the regulations include the following:

1. Inclusion of a provision in the residence and transfer regulations to deal with students who change schools as a result of the Caregivers School Authorization.
2. Eliminating the penalty for failing to complete a semester or being absent for one or more semesters provided the student is academically eligible upon his/her return.
3. Eliminating the requirement that the two core academic credits necessary to be academically eligible must be in separate disciplines.
4. Placing the same restrictions on intra-district "choice" transfers as inter-district "choice" transfers.
5. Permitting students to practice at a sending school and transfer to a receiving school prior to the start of the academic year without any loss of eligibility.
6. Permitting schools to make protective equipment available to students who are participating in non-school sponsored camps/clinics and recreational leagues.

The remaining proposals represent editorial changes or minor modifications to a particular regulation. All of the proposed revisions have been reviewed by the Constitution and Bylaws Committee, discussed by the membership at the Annual Meeting, and received two affirmative votes from the DSSAA Board of Directors.

Notice of the proposed amended regulation was published in the News Journal and the Delaware State News on March 26, 2001 in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

II. FINDINGS OF FACTS

The Secretary finds that it is necessary to amend these regulations because the changes are needed to reflect current procedures, legislative mandates and some added flexibility in the area of eligibility.

III. DECISION TO AMEND THE REGULATIONS

For the foregoing reasons, the Secretary concludes that it is necessary to amend the regulations. Therefore, pursuant to 14 *Del.C.* Section 122, the regulations attached hereto as Exhibit B are hereby amended. Pursuant to the provisions of 14 *Del.C.* Section 122(e), the regulations hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of the regulations amended hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be cited in the *Regulations of the Department of Education*.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 *Del.C.* Section 122, in open session at the said Board's regularly scheduled meeting on May 17, 2001. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED this 17th day of May, 2001.

Valerie A Woodruff, Secretary of Education

Approved this 17th day of May, 2001.

STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President
 Jean W. Allen, Vice President
 Mary B. Graham, Esquire
 Valarie Pepper
 Dennis J. Savage
 Dr. Claibourne D. Smith

1051 DSSAA Senior High School Interscholastic

Athletics

1.0 Eligibility

No student shall represent a school in an interscholastic scrimmage or contest if he/she does not meet the following requirements:

1.1 Age

1.1.1 Students who become 19 years of age on or after June 15 shall be eligible for all sports during the school year provided all other eligibility requirements are met. Students who have attained the age of 19 prior to June 15 shall be ineligible for all sports.

See 3 DE Reg 437 (9/1/99)

1.1.2 In determining the age of a contestant, the birth date as entered on the birth record of the Bureau of Vital Statistics shall be required and shall be so certified on all eligibility lists.

1.1.3 Requests for waiver of the age requirement shall be considered only for participation on an unofficial, non-scoring basis in non-contact or non-collision sports.

1.2 Enrollment and Attendance

1.2.1 A student must be legally enrolled in the high school which he/she represents and must be in regular attendance ~~by September 20~~ prior to the 11th school day of the academic year.

1.2.1.1 A student who enters school ~~after September 20~~ on or after the 11th school day of the academic year shall not be eligible to participate ~~until February 1~~ for ninety (90) school days.

~~1.2.1.2 A student who enters school after February 1 shall not be eligible to participate during the remainder of the school year.~~

1.2.2 A shared-time student who attends two (2) different schools during the regular school day shall be eligible to participate only at his/her home school.

1.2.2.1 A student's home school shall be the school at which he/she is receiving instruction in the core academic areas and at which he/she is satisfying the majority of his/her graduation requirements.

1.2.2.2 A shared-time student shall not be eligible to participate at the school at which he/she is receiving only specialized educational instruction; e.g., vocational training.

1.2.3 A student who is participating in the Delaware School Choice Program, as authorized by 14 *Del.C.*, Ch. 4, is obligated to attend the "choice school" for a minimum of two (2) years unless the student's custodial parent(s) or legal guardian(s) relocate to a different school district or the student fails to meet the academic requirements of the "choice school". If a student attends a "choice school" for less than two (2) years and subsequently returns to his/her home school, the student must receive a release from the "choice district" in order to legally enroll at his/her home school. Without a release, the student would

not be eligible to participate in interscholastic athletics (see 1.4.11).

1.2.4 A student may not participate in a practice, scrimmage, or contest during the time a suspension, either in-school or out-of-school, is in effect or during the time he/she is assigned to an alternative school for disciplinary reasons.

1.2.5 A student must be legally in attendance at school in order to participate in a practice, scrimmage, or contest except when excused by proper school authorities.

1.2.5.1 A student who is not legally in attendance at school due to illness or injury shall not be permitted to participate in a practice, scrimmage, or contest on that day.

1.2.6 An ineligible student who practices in violation of ~~these rules~~ 1.2.4 or 1.2.5 shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of days.

~~1.2.7 Failure to complete a semester or absence for one or more semesters for reasons other than personal illness shall disqualify a student for ninety (90) school days from the date of reentry to school.~~

1.3. Residence

1.3.1 A student must be living with his/her custodial parent(s) or court appointed legal guardian(s) in the attendance zone of the school which he/she attends in order to be eligible for interscholastic athletics in that school. In cases of joint custody, the custodial parent shall be the parent with actual physical placement as determined by court action.

1.3.1.1 Maintaining multiple residences in order to circumvent this requirement shall render the student ineligible.

1.3.1.2 A student who, ~~under authority of a policy of the local board of education pursuant to established school board policy or administrative procedure,~~ remains in a school he/she has been attending after his/her legal residence changes to the attendance zone of a different school in the same school district, may exercise, prior to the first official student day of the subsequent academic year, a one time election to remain at his/her current school and thereby not lose athletic eligibility.

1.3.1.2.1 However, if a student chooses to remain at his/her current school and ~~subsequently then~~ transfers to the school in his/her new attendance zone on or after the first official student day of the subsequent academic year, he/she shall be ineligible, for ninety (90) school days.

1.3.1.3 If a student changes residence to a different attendance zone after the start of the last marking period and, pursuant to established school board policy or administrative procedure, is granted permission to continue attending his/her present school ~~via established district policy for such,~~ the student shall retain his/her athletic

eligibility in that school for the remainder of the school year provided all other eligibility requirements are met.

1.3.1.4 A student shall be permitted to complete his/her senior year at the school he/she is attending and remain eligible even though a change of legal residence to the attendance zone of another school has occurred. This provision shall refer to any change of legal residence that occurs after the completion of the student's junior year.

1.3.1.5 A student may be residing outside of the attendance zone of the school which he/she attends if the student is participating in the Delaware School Choice Program as authorized by 14 *Del.C.*, Ch. 4.

1.3.1.6 A student who is a non-resident of Delaware shall be eligible at a public, vocational-technical, or charter school if, in accordance with 14 *Del.C.*, § 607, his/her custodial parent or court appointed legal guardian is a full-time employee of that district.

1.3.1.7 Notwithstanding 1.3.1, a student shall be eligible at a public or vocational-technical school if he/she enrolls in accordance with 14 *Del.C.* §202(f), the Caregivers' School Authorization.

1.3.1.7.1 An exception would be a student whose relative caregiver does not provide the documentation required by the Caregivers' School Authorization (proof of relation and proof of full-time care) but is permitted to register on the basis of a petition for the transfer of guardianship. A student who registers on the basis of a petition for the transfer of guardianship is not eligible to scrimmage or compete until the relative caregiver has provided the aforementioned required documentation or has received a signed court order designating him/her as the student's legal guardian.

See 3 DE Reg 437 (9/1/99)

1.3.2 Notwithstanding 1.4, a student who reaches the age of majority (18), leaves his/her parents' place of residency and jurisdiction thereof, and moves to another attendance zone to continue his/her high school education shall be ineligible to participate in athletics for 90 school days commencing with the first day of official attendance. This provision shall not apply to a student participating in the Delaware School Choice Program, as authorized by 14 *Del. C.*, Ch. 4, provided the student's choice application was properly submitted prior to the his/her change of residence.

See 3 DE Reg 437 (9/1/99)

1.4 Transfer

1.4.1 A student who has not previously participated in interscholastic athletics (previous participation is defined as having practiced, scrimmaged, or competed in grades 9 through 12 except as specified in 5.2) is released by a proper school authority from a sending school, has completed the registration process at the receiving school, and is pursuing an approved course of study shall be eligible immediately upon registration provided he/she meets all other DSSAA eligibility requirements.

1.4.2 If a student has previously participated in interscholastic athletics, he/she shall be ineligible for a period of ninety (90) school days commencing with the first day of official attendance in the receiving school unless one of the following exceptions applies:

1.4.2.1 The transfer is within a school district and is approved by the district's superintendent pursuant to ~~local~~ established school board policy or administrative procedure. This provision shall not apply to a student who transfers to his/her home school from a "choice school" within the district and who has not completed the two-year attendance requirement unless he/she satisfies the conditions stipulated in 1.4.2.5.1 through 1.4.2.5.4. This provision shall also not apply to a student who transfers from a "choice school" to another "choice school" within the district (see 1.4.7.1).

1.4.2.2 The transfer is caused by court action, court action being an order from a court of law affecting legally committed students.

1.4.2.2.1 In the case of a transfer of guardianship/custody, the transfer shall be the result of a court order signed by a judge, commissioner, or master of a court of competent jurisdiction. A petition for the transfer of guardianship/custody, an affidavit, (except as permitted by 1.4.2.3), or a notarized statement signed by the affected parties shall not be sufficient to render the student eligible to participate in interscholastic athletics.

1.4.2.3 The transfer is in accordance with 14 Del. C. §202(f), the Caregivers School Authorization.

1.4.2.3.1 An exception would be a student whose relative caregiver does not provide the documentation required by the Caregivers' School Authorization (proof of relation and proof of full-time care) but is permitted to register on the basis of a petition for the transfer of guardianship. A student who registers on the basis of a petition for the transfer of guardianship is not eligible to scrimmage or compete until the relative caregiver has provided the aforementioned required documentation or has received a signed court order designating him/her as the student's legal guardian.

~~1.4.2.4~~ ~~1.4.2.3~~ 1.4.2.3 The transfer is the result of a change in residence by the custodial parent(s) or court appointed legal guardian(s) from the attendance zone of the sending school to the attendance zone of the receiving school. A change in residence has occurred when all occupancy of the previous residence has ended.

~~1.4.3~~ 1.4.2.4.1 A student who transfers from a public, private, vocational-technical, charter, or choice school to another public, private, vocational-technical, charter, or choice school shall be eligible in the receiving school immediately, except as prohibited by 1.4.10.1, when the custodial parent(s) or court appointed legal guardian(s) has established a new legal residence in another public school attendance zone different from the one in which the

custodial parent(s) or court appointed legal guardian(s) resided for attendance in the sending school. In the case of a transfer to a public or vocational-technical school, the new legal residence must be in the attendance zone of the receiving school.

~~1.4.6~~ 1.4.2.5 ~~No waiver shall be required for students who~~ The transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year provided:

~~1.4.6.1~~ 1.4.2.5.1 The student has completed the registration process at the receiving school prior to the first official student day of the academic year. The first official student day shall be defined as the first day on which students in any grade in that school are required to be in attendance.

See 3 DE Reg 437 (9/1/99)

~~1.4.6.2~~ 1.4.2.5.2 The student has not attended class, excluding summer school, or participated in a ~~practice~~, scrimmage, or contest at the sending school since the close of the previous academic year.

~~1.4.6.3~~ 1.4.2.5.3 The student's legal residence is located in the attendance zone of the receiving school.

~~1.4.6.4~~ 1.4.2.5.4 All other DSSAA eligibility requirements have been met.

~~1.4.4~~ 1.4.3 Promotion to the ninth grade from a school whose terminal point is the eighth grade, or to the tenth grade from a junior high school whose terminal point is the ninth grade, shall not constitute a transfer. Students so promoted shall be eligible.

~~1.4.5~~ 1.4.4 If a waiver of the ninety (90) school day ineligibility clause is requested due to a desired change in the program of study or financial hardship, the parent(s) or court appointed legal guardian(s) is responsible for providing documentation to the DSSAA Board of Directors to support the request. Documentation should include the following ~~for~~ each specific request:

~~1.4.5.1~~ 1.4.4.1 Change in program of study (a multi-year, hierarchical sequence of courses with a common theme or subject matter leading to a specific outcome).

~~1.4.5.1.1~~ 1.4.4.1.1 Student schedule card.

~~1.4.5.1.2~~ 1.4.4.1.2 Student transcript.

~~1.4.5.1.3~~ 1.4.4.1.3 Current course descriptions from both the sending and receiving schools.

~~1.4.5.1.4~~ 1.4.4.1.4 Statement from the principal of the sending school indicating that a significant part of the student's desired program of study will not be offered and that it will place the student at a definite disadvantage to delay transfer until the end of the current school year.

~~1.4.5.1.5~~ 1.4.4.1.5 Statement from the principal of both the sending and receiving schools that the student is not transferring primarily for athletic advantage as defined in ~~1.4.8.1~~ 1.4.6.1 through ~~1.4.8.4~~ 1.4.6.4.

See 3 DE Reg 437 (9/1/99)

~~1.4.5.2~~ **Finances**

1.4.4.2 Financial hardship

~~1.4.5.2.1~~ 1.4.4.2.1 Proof of extreme financial hardship caused by significant and unexpected reduction in income and/or increase in expenses.

~~1.4.5.2.2~~ 1.4.4.2.2 Statement from the principal of both the sending and receiving schools that the student is not transferring primarily for athletic advantage as defined in ~~1.4.8.1~~ 1.4.6.1 through ~~1.4.8.4~~ 1.4.6.4.

See 3 DE Reg 437 (9/1/99)

~~1.4.7~~ 1.4.5 In cases of joint custody when a primary residence is established, a change in a student's primary residence without court action subjects the student to the ninety (90) school day ineligibility clause.

~~1.4.8~~ 1.4.6 A change of custody or guardianship for athletic advantage shall render a student ineligible under the ninety (90) school day ineligibility clause if the primary reason for his/her transfer is one of the following:

~~1.4.8.1~~ 1.4.6.1 To seek a superior team.

~~1.4.8.2~~ 1.4.6.2 To seek a team more compatible with his/her abilities.

~~1.4.8.3~~ 1.4.6.3 Dissatisfaction with the philosophy, policies, methods, or actions of a coach or administrator pertaining to interscholastic athletics.

~~1.4.8.4~~ 1.4.6.4 To avoid disciplinary action imposed by the sending school related to or affecting interscholastic athletic participation.

~~1.4.9~~ If a student transfers at any time during the school year for reasons other than those specified in ~~1.4.2~~, the student shall be ineligible for a period of ninety (90) school days commencing with the first day of official attendance in the receiving school except as permitted by ~~1.4.1~~.

~~1.4.10~~ 1.4.7 A student who transfers from a public, private, vocational-technical, or charter school to a school of choice, as authorized by 14 *Del. C.*, Ch. 4, shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year and the student satisfies the conditions stipulated in ~~1.4.6.1~~, ~~1.4.6.2~~ and ~~1.4.6.4~~ 1.4.2.5.1, 1.4.2.5.2, and 1.4.2.5.4.

~~1.4.10.1~~ 1.4.7.1 A student who transfers from a school of choice to another school of choice shall be ineligible to participate in interscholastic athletics during his/her first year of attendance at the receiving school unless the receiving school sponsors a sport(s) not sponsored by the sending school in which case the student shall be eligible to participate in that sport(s) only.

~~1.4.11~~ 1.4.8 A student who transfers from a school of choice to either a private school or, after completing his/her two-year commitment, to a public, vocational technical, or charter school shall be eligible immediately provided the transfer occurs after the close of the sending school's

academic year and prior to the first official student day of the receiving school's academic year and the student satisfies the conditions stipulated in ~~1.4.6.1~~ 1.4.2.5.1 through ~~1.4.6.4~~ 1.4.2.5.4.

~~1.4.9.1~~ 1.4.9 If a student transfers with fewer than ninety (90) school days left in the academic year, he/she shall be ineligible for the remainder of the school year but shall be eligible beginning with the subsequent fall sports season provided he/she is in compliance with all other eligibility requirements.

See 3 DE Reg 437 (9/1/99)

1.5 Amateur

1.5.1 A student may not participate in an interscholastic sport unless he/she is considered an amateur in that sport. A student forfeits his/her amateur status if he/she does any of the following:

1.5.1.1 Knowingly plays on or against a professional team. ~~This rule does not apply to an athlete who participates in summer baseball or other sports outside of the school's sports season in which he/she does not receive any form of remuneration for athletic services.~~

1.5.1.2 Signs a professional contract, accepts reimbursement for expenses to attend a professional tryout, or receives financial assistance in any form from a professional sports organization.

1.5.1.3 Enters competition under an assumed name. The surname and given name used by any player in his/her first game of interscholastic competition shall be used during the remainder of the student's interscholastic career. Any change in spelling or use of another name shall be regarded as an attempt to evade this rule unless the change has been properly certified by the player to the principal of the school.

~~1.5.1.3.1 In the event a false name is used without the knowledge and consent of the player, or if the player has participated in a game without having his/her name appear in the box score, or if his/her name appears in the box score of a game in which he/she did not play, it becomes the sole obligation of the player involved to report the error or omission to the principal of the school within 48 hours from the time such game was played.~~

1.5.1.4 Receives remuneration of any kind or accepts reimbursement for expenses in excess of the actual and necessary costs of transportation, meals, and lodging for participating in a team or individual competition or an instructional camp or clinic. Reimbursement for the aforementioned expenses is permitted only if all of the participants receive the same benefit.

See 3 DE Reg 437 (9/1/99)

1.5.1.5 Receives cash or a cash equivalent (savings bond, certificate of deposit, etc.), merchandise (except as permitted by 26.5) or a merchandise discount, (except for discount arranged by school for part of team uniform) a reduction or waiver of fees, a gift certificate, or

other valuable consideration as a result of his/her participation in an organized competition or instructional camp/clinic.

1.5.1.5.1 Accepting an event program and/or a complimentary item(s) (t-shirt, hat, equipment bag, etc.) that is inscribed with a reference to the event, has an aggregate retail value of no more than \$50.00, and is provided to all of the participants, shall not jeopardize his/her amateur status.

See 3 DE Reg 525 (10/1/99)

1.5.1.6 Sells or pawns awards received.

1.5.1.7 Uses his/her athletic status to promote or endorse a commercial product or service in a newsprint, radio, or television advertisement or personal appearance.

~~1.5.1.8 Receives an award prohibited by DSSAA for being a member of some athletic organization.~~

1.5.2 Accepting compensation for teaching lessons, coaching, or officiating shall not jeopardize his/her amateur status.

1.5.3 A student who forfeits his/her amateur status under the provisions of this rule is ineligible to participate at the interscholastic level in the sport in which the violation occurred. He/she may be reinstated after a period of up to 180 school days provided that during the suspension, he/she complies with all of the provisions of this rule. The suspension shall date from the time of the last offense.

2.0 Use of Influence for Athletic Purposes

2.1 The use of influence by a person(s) employed by or representing a member school including members of alumni associations, booster groups, and similar organizations to persuade, induce, or facilitate the enrollment of a student in that school for athletic purposes shall render the student ineligible for up to 180 school days from the date the charge is substantiated. In addition, the offending school shall be placed on probation, as determined by the DSSAA Board of Directors, and the offending employee, if a coach, shall be suspended for up to 180 school days from the date the charge is substantiated.

2.2 The use of influence for athletic purposes shall include, but not be limited to, the following:

2.2.1 Offer of money, room, board, clothing, transportation, or other valuable consideration to a prospective athlete or his/her parent(s) or court appointed legal guardian(s).

2.2.2 Offer of waiver/reduction of tuition or financial aid if based, even partially, on athletic considerations.

2.2.3 Preference in job assignments or offer of compensation for work performed in excess of what is customarily paid for such services.

2.2.4 Offer of special privileges not accorded to other students.

2.2.5 Offer of financial assistance including free or

reduced rent, payment of moving expenses, etc., to induce a prospective athlete or his/her parent(s) or court appointed legal guardian(s) to change residence.

2.3 A school employee or Board approved volunteer may not initiate contact or request that a booster club member, alumnus, or player initiate contact with a student enrolled in another school or his/her parent(s) or court appointed legal guardian(s) in order to persuade the student to enroll in a particular school for athletic purposes. Illegal contact shall include, but not be limited to, letters, questionnaires or brochures, telephone calls, and home visits or personal contact at athletic contests.

2.3.1 If a coach or athletic director is contacted by a prospective athlete or his/her parent(s) or court appointed legal guardian(s), the former must refer the individual(s) to the principal or school personnel responsible for admissions.

2.3.2 A school employee or Board approved volunteer may discuss the athletic program with a prospective student or his/her parent(s) or court appointed legal guardian(s) during an open house or approved visit initiated by the parent(s) or court appointed legal guardian(s).

2.3.2.1 A school employee or Board approved volunteer may provide information concerning sports offered, facilities, conference affiliation, and general athletic policies. However, he/she is not permitted to state or imply in any way that his/her athletic program is superior to that of another school or that it would be more beneficial or advantageous for the prospective student to participate in athletics at his/her school.

2.3.3 A school employee or Board approved volunteer may conduct an informational presentation at a feeder school provided he/she observes the restrictions specified in 2.3.2.1.

2.4 If the number of applicants under the Delaware School Choice Program exceeds the number of available student openings, the selection criteria established by the district shall not include athletic considerations.

3.0 Non-School Competition (participants competing "unattached" and not representing their schools)

3.1 A student may participate on a non-school team or in a non-school individual event both during and out of the designated sport season. However, the student owes his/her primary loyalty and allegiance to the school team of which he/she is a member. A school shall have the authority to require attendance at practices and contests and students not in compliance shall be subject to disciplinary action as determined by the school.

3.2 Participation on a non-school team or in a non-school individual event shall be subject to the following conditions:

3.2.1 With the exception of organized intramurals, the student may not wear school uniforms ~~or use school~~

equipment.

3.2.2 With the exception of organized intramurals, the student may use only school equipment whose primary purpose is to protect the wearer from physical injury.

~~3.2.2~~ 3.2.3 The school or a school affiliated support group may not provide transportation.

~~3.2.3~~ 3.2.4 The school or a school affiliated support group may not pay entry fees or provide any form of financial assistance.

3.2.4 3.2.5 The school coach may not require his/her athletes to participate in non-school competition or provide instruction to his/her athletes in non-school competition.

3.3 14 *Del.C.*, § 122(b)(15) requires written parental permission prior to participation on a similar team during the designated sport season. Written authorization must be on file in the student's school prior to engaging in a tryout, practice, or contest with a similar team. Consent forms shall be available in all member schools.

3.3.1 Similar teams shall include organized intramural teams as well as non-school teams in that sport.

4.0 Passing Work

4.1 In order to be eligible for participation in interscholastic athletics, including practices, a student must pursue a regular course of study or its equivalent as approved by the local governing body, and must be passing at least five (5) credits. Two (2) of those credits must be in the separate areas of English, Mathematics, Science, or Social Studies.

4.1.1 A student who is receiving special education services and is precluded from meeting the aforementioned academic requirements due to modifications in the grading procedure or course of study, shall be adjudged eligible by the principal if he/she is making satisfactory progress in accordance with the requirements of his/her individualized education plan (IEP).

4.2 In the case of a student in the twelfth grade, he/she must be passing all courses necessary for graduation from high school in order to be eligible for participation. A course necessary for graduation shall be any course, whether taken during or outside the ~~normal~~ regular school day, that satisfies an unmet graduation requirement.

4.3 A student whose work in any regular marking period does not meet the above standards shall be ineligible to participate in interscholastic athletics, including practices, for the next marking period.

4.3.1 In the case of a conflict between the marking period grade and the final grade, the final grade shall determine eligibility.

4.3.2 The final accumulation of credits shall determine eligibility for the first marking period of the following school year. When a student makes up a failure or earns the required credit(s) during the summer, he/she shall become eligible provided he/she successfully completes the

course work prior to the first official student day of the school year.

4.3.2.1 Written verification of the successful completion of a correspondence course must be received before a student shall regain his/her eligibility.

4.4 A student forfeits or regains his/her eligibility, in accordance with the provisions of this rule, on the day report cards are issued.

4.5 Local school boards and non-public schools may establish more stringent requirements for academic eligibility than the minimum standards herein prescribed.

See 3 DE Reg 437 (9/1/99)

4.6 An ineligible student who practices in violation of ~~these rules~~ 4.1, 4.2, or 4.3 shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of days.

5.0 Participation

5.1 No student shall represent a school in athletics after four (4) consecutive years from the date of his/her first entrance into the ninth grade unless a waiver is granted for hardship reasons.

5.1.1 No student shall have more than four (4) opportunities to participate in a fall sport or combination of fall sports, in a winter sport or combination of winter sports, or in a spring sport or combination of spring sports.

5.1.2 "Hardship" shall be defined as extenuating circumstances which are unusual, extraordinary and beyond the control of the student or his/her parent(s) or court appointed legal guardian(s); preclude him/her from completing the academic requirements for graduation within the normal period of eligibility; and deprive him/her of all or part of one of his/her opportunities to participate in a particular sports season.

5.1.2.1 ~~The circumstances must be unusual, unavoidable, and extraordinary.~~ A clear and direct causal relationship must exist between the alleged hardship condition and the failure of the student to complete the academic requirements for graduation within the normal period of eligibility and the loss of all or part of one of his/her opportunities to participate in a particular sports season.

5.1.2.2 The burden of proof rests with the student in conjunction with the waiver/appeal process as described in 1053 ~~DSSAA~~ Waiver Procedure and 1055 ~~DSSAA~~ Appeal Procedure. Claims of extended illness, debilitating injury, emotional stress, etc., must be accompanied by appropriate documentation. Evidence must be submitted to verify that the student or his/her parent(s) or court appointed legal guardian(s) sought assistance to ameliorate the effects of the hardship condition.

5.1.3 Satisfactory completion of studies in accordance with promotion policies established by the local governing body shall determine when a student is beyond the eighth grade.

5.2 If the eighth grade is part of the same administrative unit as grades 9 through 12, participation on the part of an eighth-grade student toward five (5) years of eligibility shall be at the discretion of the individual school.

5.2.1 Seventh-grade students shall not be permitted to participate on senior high school interscholastic teams.

5.3 Participation shall be defined as taking part in a school sponsored practice (see 25.3), scrimmage, or contest on or after the first allowable date for practice in that sport.

6.0 Postgraduates/Higher Institutions

6.1 Postgraduates shall not be eligible to participate in interscholastic athletics.

6.1.1 All graduates of recognized senior high schools shall be considered postgraduates.

6.2 Students whose commencement exercises are prior to the completion of the school's regular season schedule and/or the state tournament shall be eligible to compete.

6.3 A regularly enrolled student taking courses in an institution of higher education shall be eligible provided he/she meets all other DSSAA requirements.

7.0 Foreign Exchange Students/Foreign Students

7.1 Notwithstanding 1.2, 1.3, and 1.4, foreign students may be eligible to participate in interscholastic athletics upon arrival at their host school provided they have not attained the age of 19 prior to June 15 and are enrolled as participants in a recognized foreign exchange program.

7.1.1 All foreign exchange programs which are included on the Advisory List of International Educational Travel and Exchange Programs of the Council on Standards for International Educational Travel (CSIET) and are two (2) semesters in length shall be considered as recognized.

7.1.2 Students participating in programs not included on the CSIET list shall be required to present evidence that the program is a bona fide educational exchange program before it shall be considered as recognized.

7.2 Foreign students who are not participating in a foreign exchange program are considered to be transfer students and are ineligible to compete in interscholastic athletics unless they are in compliance with all DSSAA eligibility requirements including 1.3.1.

7.2.1 With the exception of a boarding school student, a foreign student who is attending a private or parochial school must be residing with his/her court appointed legal guardian in order to be eligible to participate in interscholastic athletics.

7.3 Once enrolled, foreign exchange and other foreign students must comply with all DSSAA eligibility rules.

7.4 Athletic recruitment of foreign exchange students or other foreign students by a member school or any other entity is prohibited, and any such students recruited shall be adjudged ineligible.

8.0 Examinations

8.1 A student shall not be eligible to practice, scrimmage, or compete in an interscholastic contest unless he/she has been adequately examined by a licensed physician (M.D. or D.O.), a certified nurse practitioner, or a certified physician's assistant on or after June 1 and before beginning such athletic activity for the current school year.

8.1.1 A certificate to that effect, as well as the parent's or court appointed legal guardian's consent, shall be on file with the administrative head of the school prior to the student participating in a practice, scrimmage, or game.

8.2 For any subsequent sports season in the school year, a limited reexamination shall be performed under the following circumstances:

8.2.1 If the athlete has been treated for an injury during the ~~immediately~~ preceding sports season.

8.2.2 If the athlete has been out of school during the preceding ~~term~~ sports season with an illness other than the usual minor upper respiratory or gastrointestinal upset.

8.2.3 If an operation has been performed on the athlete during the preceding ~~term~~ sports season.

8.2.4 If the athlete has a remedial defect.

8.3 The medical history of the student should be available at the time of each examination.

8.4 A player who is properly certified to participate in interscholastic athletics but is physically unable to ~~practice~~ participate for five (5) consecutive days on which a practice, scrimmage, or contest is held due to illness or injury, must present to the administrative head of the school a statement from a qualified physician that he/she is again physically able to participate.

9.0 Clarifying Eligibility

9.1 In cases of uncertainty or disagreement, the eligibility of a student shall be determined initially by the Executive Director. If the Executive Director determines that the student is ineligible, the school and the student shall be notified and the student suspended immediately from participation in interscholastic athletics.

9.2 The school and the student shall be informed that the decision of the Executive Director may be appealed to the DSSAA Board of Directors in accordance with the procedure described in 1055 DSSAA Appeal Procedure.

9.3 Decisions of the DSSAA Board of Directors to affirm, modify, or reverse the eligibility rulings of the Executive Director may be appealed to the State Board of Education in accordance with the procedure described in 1055 DSSAA Appeal Procedure.

10.0 Eligibility Lists

10.1 Member schools shall use eligibility forms approved by the Executive Director.

10.2 A copy of the original eligibility report and

subsequent addenda must be either received by the Executive Director or postmarked prior to the first contest for which the students listed are eligible. Failure to file an eligibility report as prescribed shall result in a \$15.00 fine against the school.

10.3 In the case of a student who met all DSSAA eligibility requirements but was omitted from the eligibility report due to administrative or clerical error, he/she shall be adjudged eligible and the school assessed a \$10.00 fine.

See 3 DE Reg 437 (9/1/99)

11.0 Contracts Interchanged

11.1 Contracts between DSSAA member schools or between DSSAA member schools and full member schools of comparable state associations are encouraged but not required.

11.1.1 Conference master contracts are approved substitutes for individual contracts.

11.1.2 In the case of a dispute and provided either a signed individual contract or conference master contract is in place, appeal may be made to the DSSAA Board of Directors which, after review of the circumstances, may assign an appropriate penalty.

11.1.2.1 Without a signed individual contract or conference master contract, a member school has no right of appeal to the Executive Director or the DSSAA Board of Directors.

11.2 Contracts between DSSAA member schools and non-member or associate member schools of comparable state associations are required.

11.2.1 A copy of the signed contract must be either received by the Executive Director or postmarked prior to the contest for which the agreement was drawn up. Failure to file a signed contract as prescribed shall result in the DSSAA member school being assessed a \$15.00 fine.

11.2.2 In the case of a dispute, a member school has no right of appeal to the Executive Director or the DSSAA Board of Directors unless a signed individual contract is in place.

11.3 Contracts shall be interchanged according to the following provisions:

11.3.1 Contracts on the accepted form shall be arranged by the competing schools for each season's interscholastic athletic contests.

11.3.2 Contracts shall be drawn up by the faculty manager or other designated staff member of the home school of the earlier varsity contest.

11.3.3 A signed contract or any part thereof may not be nullified or modified except by mutual agreement of both schools involved.

11.4 If a game is not played, it shall be considered "no contest" unless a signed individual contract or conference master contract was in place and one of the participating

schools breached the agreement in which case appeal may be made to the Executive Director or the DSSAA Board of Directors.

11.4.1 If a game is not played because an out of state opponent qualifies for its state championship series and the date of the playoff game conflicts with the date of the regular season game, a forfeit shall not be awarded.

12.0 Spring Football

12.1 No member school shall participate in spring football games nor shall a member school conduct football practice of any type outside of the regular fall sports season except when participating in the state tournament.

12.2 "Organized football" or "organized football practice" shall be defined as any type of sport which is organized to promote efficiency in any of the various aspects of football. Rugby and touch football featuring blocking, tackling, ball handling, signaling, etc. shall be considered "organized football" and shall be illegal under the intent of this rule.

13.0 Licensed Physician

13.1 Provision shall be made for a licensed physician, a NATA certified athletic trainer, or a registered nurse to be present at all interscholastic football games in which a member school participates. The host school shall provide this service.

See 3 DE Reg 438 (9/1/99)

13.2 Failure by the host school to provide this service shall result in the school being assessed a \$100.00 fine.

14.0 Use of Ineligible Athlete

14.1 The deliberate or inadvertent use of an ineligible athlete in the sports of soccer, football, volleyball, field hockey, basketball, baseball, softball, and lacrosse shall require the offending school to forfeit the contest(s) in which the ineligible athlete participated.

14.1.1 If the infraction occurs during a tournament, including a state championship, the offending school shall be replaced by its most recently defeated opponent. Teams eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament.

14.1.2 Team and/or individual awards shall be returned to the event sponsor.

14.1.3 Team and/or individual records and performances shall be nullified.

14.1.4 The offending school may appeal to the DSSAA Board of Directors for a waiver of the forfeiture penalty if the ineligible athlete had no tangible effect on the outcome of the contest(s). If the forfeiture penalty is waived, the offending school shall be reprimanded and fined \$200.00 unless the athlete or his/her parent(s) or court appointed legal guardian(s) knowingly withheld information or provided

false information that caused him/her to be eligible for interscholastic competition. The burden of proof, in both instances, rests entirely with the offending school.

See 3 DE Reg 438 (9/1/99)

14.1.5 A forfeit shall constitute a loss for the offending school and a win for its opponent for purposes of standings and playoff eligibility.

14.1.6 A forfeit shall be automatic and not subject to refusal by the offending school's opponent.

14.2 The deliberate or inadvertent use of an ineligible athlete in the sports of cross country, wrestling, swimming, track, golf, and tennis shall require the offending school to forfeit the matches won and/or points earned by the ineligible athlete or by a relay team of which he/she was a member. The points contributed by an ineligible athlete to his/her team score shall be deleted.

14.2.1 If the infraction occurs during a tournament, including a state championship, the ineligible athlete shall be replaced by his/her most recently defeated opponent or the next highest finisher. Contestants eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament.

14.2.2 Individual awards earned by the ineligible athlete and team awards, if necessary because of adjustments in the standings, shall be returned to the event sponsor.

14.2.3 Individual records and performances by the ineligible athlete shall be nullified.

14.3 If an ineligible athlete participates in interscholastic competition contrary to DSSAA rules but in accordance with a temporary restraining order or injunction against his/her school and/or DSSAA, and the injunction is subsequently vacated, stayed, or reversed, or the courts determine that injunctive relief is not or was not justified, or the injunction expires without further judicial determination, the penalties stipulated in 14.1 and 14.2 shall be imposed.

14.4 The intentional use of an ineligible athlete by a member school or repeated indifference to its responsibility to determine the eligibility of its athletes will subject the school to additional penalties which may include suspension for up to 180 school days from the date the charge is substantiated.

14.5 If a coach knowingly withholds information or provides false information that causes an athlete to be eligible for interscholastic competition, the coach shall be suspended from coaching in any sport at any DSSAA member school for up to 180 school days from the date the charge is substantiated.

14.6 If an athlete or his/her parent(s) or court appointed legal guardian(s) knowingly withholds information or provides false information that causes him/her to be eligible for interscholastic competition, the athlete shall be suspended from participation in any sport at any DSSAA member school for up to 180 school days from the date the charge is substantiated.

15.0 Reporting Violations

15.1 If a school violates a provision of the DSSAA Constitution and Bylaws, the administrative head or his/her designee shall notify the Executive Director in writing of the violation.

15.2 If a school uses an ineligible athlete, the administrative head or his/her designee shall notify the opposing school(s) or event sponsor, in the case of a tournament or meet, and the Executive Director in writing of the violation and the forfeiture of the appropriate game(s), match(es), and/or point(s) won.

15.3 All violations will be reviewed by the DSSAA Board of Directors which may impose additional penalties in accordance with 38.0.

16.0 Equivalent Rules

16.1 A member school shall not participate in a scrimmage or contest with any school that is not a member in good standing of DSSAA or a state association comparable to DSSAA.

16.1.1 A full member school shall not participate in a scrimmage or contest with an associate or non-member school of another state association unless the opposing school, as part of a written contract, certifies that its contestants are eligible under the rules of its home state association.

16.1.1.1 Postgraduate students shall not be allowed to participate.

16.1.2 An associate member school shall not participate in a scrimmage or contest with an associate or non-member school of another state association unless the opposing school complies with the conditions specified in 16.1.1. However, the opposing school shall be exempt from those rules which DSSAA has waived for its associate member school.

16.1.2.1 Postgraduate students shall not be allowed to participate.

16.2 Member schools shall not participate in a practice, scrimmage, or contest with a non-school sponsored team.

16.3 Member schools shall not participate in a practice, scrimmage, or contest with ~~university, college, or junior college undergraduates students.~~

~~16.4~~ 1.6.3.1 This ~~rule~~ provision shall not apply to games played against the alumni or faculty of the school when the game is sponsored by school authorities.

~~16.5~~ 16.4 A school which participates in a game against an illegal opponent shall be required to forfeit the contest and be assessed a \$100.00 fine.

17.0 Codes

17.1 DSSAA is affiliated with the National Federation of State High School Associations (NFHS). The playing codes, sanctions, and other rules of the NFHS are adopted

except as modified by the DSSAA Board of Directors.

17.2 The playing rules of the United States Tennis Association, the United States Golf Association, and the United States Lacrosse Association are adopted for the sports of tennis, golf, and girls' lacrosse respectively except as modified by the DSSAA Board of Directors.

18.0 Conferences

18.1 Member schools may establish voluntary conference organizations according to the following rules:

18.1.1 Any such organization may be composed of public and non-public schools.

18.1.2 Any conference so formed must submit its proposed membership and its constitution and bylaws to the DSSAA Board of Directors and they must be approved before the schools may enter into any contractual agreements.

18.1.2.1 All subsequent amendments to the constitution and bylaws of the conference must be approved by the DSSAA Board of Directors.

See 3 DE Reg 438 (9/1/99)

19.0 All-Star Contests

19.1 An all-star contest shall be defined as an organized competition in which the participants are selected by the sponsoring organization or its designee on the basis of their performance during the interscholastic season in that sport.

19.2 Students who have completed their eligibility in a sport may participate in one all-star contest in that sport, if approved by DSSAA, prior to graduation from high school.

19.3 Member schools shall not make their facilities, equipment, or uniforms available to the sponsoring organization or the participants unless the all-star contest is approved by DSSAA.

19.4 The all-star contest must be approved by DSSAA in accordance with the following criteria:

19.4.1 The contest shall not be for determining a regional or national champion.

19.4.2 The contest shall be organized, promoted, and conducted by and all profits go to a nonprofit organization. Involvement by a commercial organization shall be limited to providing financial support.

19.4.3 The awards given shall be in compliance with 1.5.

19.4.4 Exceptions to the adopted rules code for the sport, including uniform regulations, shall require the approval of DSSAA.

19.4.5 A full financial report must be filed with the Executive Director within thirty (30) days of the contest. Failure to submit a financial report within the specified period of time shall result in the sponsoring organization being assessed a \$50.00 fine.

19.4.6 The event organizer shall not accept financial support or sell advertising to companies involved in

the production or distribution of alcohol and tobacco products.

See 3 DE Reg 439 (9/1/99)

19.5 A student who participates in more than one all-star game or in a non-approved all-star game shall forfeit his/her eligibility for 90 school days.

20.0 Sponsoring Interscholastic Teams

20.1 Definition of Interscholastic Athletics

20.1.1 Interscholastic competition is defined as any athletic contest between students representing two (2) or more schools. Students are considered to be representing a school if the school does any of the following:

20.1.1.1 Partially or wholly subsidizes the activity (providing equipment, uniforms, transportation, entry fees, etc.).

20.1.1.2 Controls and administers the funds, regardless of their source, needed to conduct the activity.

20.1.1.3 Permits the students to compete under the name of the school.

20.1.1.4 Publicizes or promotes the activity through announcements, bulletins, or school sponsored publications.

20.1.1.5 Presents or displays individual/team awards.

20.1.2 Members of school clubs who participate in non-competitive, recreational activities or compete unattached are not considered to be engaged in interscholastic competition.

20.2 Sponsorship of Teams

20.2.1 Schools may sponsor teams for interscholastic competition in a sport provided the following criteria are met:

20.2.1.1 The governing body of the participating district or non-public school approves participation in the sport. The administrative head of the school shall notify the Executive Director in writing of the school's intent to sponsor a team in a new sport.

20.2.1.2 The governing body of the participating district or non-public school controls the funds needed to support the proposed team, regardless of their source, in the same manner as existing teams (coaches' salaries, purchase and repair of equipment, medical supervision, transportation, preparation and maintenance of practice and game facilities, awards, etc.). Requests from outside sources to make financial contributions or to donate equipment or services must be submitted in writing and must include an acknowledgment that the equipment becomes the property of the school. The contribution or donation must be approved in writing by the administrative head of the school.

See 3 DE Reg 439 (9/1/99)

20.2.1.3 The participating schools agree to comply with all applicable DSSAA rules and regulations as stated in the current DSSAA Official Handbook.

20.3 Levels of Participation

20.3.1 Level 1 or developmental sport - less than twelve (12) participating schools at the varsity level.

20.3.1.1 All DSSAA rules and regulations shall be in effect except 23.0, 24.0, and 32.0.

20.3.1.2 Schools shall not be permitted to scrimmage or compete against a non-school sponsored team.

20.3.2 Level 2 or recognized sport - twelve (12) or more participating schools at the varsity level.

20.3.2.1 At the time of official recognition, DSSAA shall provide rules publications to the participating schools, designate an approved officials' association, conduct an annual or biannual rules clinic for coaches and officials, establish a maximum game schedule, and form a committee to promote the continued development of the sport and prepare for a future state championship.

20.3.2.2 All DSSAA rules and regulations shall be in effect.

20.3.3 Level 3 or championship sport - sixteen (16) or more participating schools at the varsity level.

20.3.3.1 Upon petition by the sport committee and adoption of a tournament proposal, DSSAA shall establish a state championship.

20.3.4 Withdrawal of level 2 or level 3 status.

20.3.4.1 If, for two (2) consecutive years, less than the required number of schools participate in a sport, DSSAA may withdraw official recognition or suspend the state tournament/meet for a period of time as determined by the Board of Directors.

21.0 State Championships

21.1 The minimum number of high schools which must sponsor a sport at the varsity level in order for DSSAA to approve a state championship shall be sixteen (16).

21.2 State championship play shall be permitted at the varsity level only in football, basketball, indoor and outdoor track, cross country, swimming, wrestling, golf, baseball, soccer, tennis, field hockey, softball, girls' volleyball, and lacrosse provided such tournament or meet is under the direct control and supervision of and/or has the approval of DSSAA.

21.3 All state championships shall be managed by committees established in accordance with Sections 11. and 12. of Article IV of the DSSAA Constitution.

21.3.1 Each tournament format, as well as the criteria and procedures for selecting and seeding the participating teams, must be approved by the Board of Directors and any subsequent changes must also be approved by the Board. The Executive Director shall advise the committees as to which proposed changes must be presented to the Board. If the Executive Director and the committee cannot agree, the proposed change must be presented to the DSSAA Board of Directors for approval.

See 3 DE Reg 439 (9/1/99)

21.3.2 All financial arrangements, including the

collection of monies and expenditures, must be approved by the Executive Director

21.4 Championship play in other sports must be confined to the individual conferences and conducted in accordance with the rules of the conference as approved by the DSSAA Board of Directors.

21.5 No member school shall participate in a post-season contest.

22.0 Certified Coaches

22.1 Only those professional employees certified by the Department of Education and whose salary is paid by the State and/or local Board of Education, or in the case of charter and non-public schools by a similar governing body, if acceptable as a coach by the governing body, shall coach, assist in coaching, or direct member school teams in any district.

22.1.1 The terms of employment must be for the regular school year and the professional assignment shall be no less than 1/2 of the school day, exclusive of coaching duties.

See 3 DE Reg 439 (9/1/99)

22.2 Emergency coaches

22.2.1 An emergency coach shall be defined as an individual who is either not certified by the Department of Education, or is certified by the Department of Education but is not employed for the regular school year or whose professional assignment is less than 1/2 of the school day.

22.2.2 An individual who meets the requirements of a certified coach as specified in 22.1 but whose professional assignment is located in a different school or district than his/her coaching assignment shall not be considered an emergency coach by DSSAA.

22.2.3 Member schools shall be required to annually reopen all positions that are held by emergency coaches.

22.2.4 Emergency coaches may be employed provided the local governing body adheres to the following procedures:

22.2.4.1 The employing Board of Education must attempt to locate an acceptable, certified professional staff member by advertising the coaching vacancy in the district for as many days as are required by the district's collective bargaining agreement.

22.2.4.2 If an acceptable, certified professional staff member is not available, an individual who is acceptable to the employing Board of Education may be hired as an emergency coach.

22.2.4.3 Any individual employed as a coach under the emergency provision must comply with the following regulations:

22.2.4.3.1 He/she must be officially appointed by the local Board of Education. The superintendent or his/her designee may temporarily appoint

an individual if a coaching vacancy arises and the sport season begins during the interim between meetings of the local Board of Education.

See 3 DE Reg 439 (9/1/99)

22.2.4.3.2 His/her coaching salary must be paid exclusively by the local Board of Education.

22.3 Students who are practice teaching in a member school shall be permitted to assist in all professional activities during their practice teaching period.

22.4 In addition to the members of the school's regular coaching staff, who must come from 22.1 through 22.3, the local governing body may supplement a school's coaching staff with volunteer coaches. Volunteer coaches are individuals who donate their services to a school and who have been approved by that school's local governing body. A current list of approved volunteer coaches shall be on file in the school's administrative office before any coaching duties are assumed.

22.5 All varsity head coaches (junior varsity if the school does not sponsor a varsity team) shall be required to attend the DSSAA rules clinic for their sport or, if applicable, pass an open book rules examination supplied by the DSSAA office.

22.5.1 A school shall be assessed a \$50.00 fine and the head coach shall be placed on probation if he/she fails to attend the DSSAA rules clinic or pass the open book rules examination in his/her sport. Failure to comply for a second consecutive year shall result in the school being assessed a \$50.00 fine and the coach being suspended for up to five contests as determined by the Executive Director.

22.6 Beginning with the ~~2000-01~~ 2001-02 school year, certified and emergency head coaches at all levels of competition shall be required to hold a current certification in adult CPR.

~~22.6.1 Beginning with the 2001-02 school year, assistant coaches at all levels of competition shall be required to hold a current certification in adult CPR.~~

See 3 DE Reg 439 (9/1/99)

23.0 Sports Seasons and Practices

23.1 The regular fall sports season shall begin with the first approved day for practice and end with the start of the state championship in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament in that sport. Conference championships must also be completed before the start of the state tournament in that sport.

23.2 The regular winter sports season shall begin with the first approved day for practice and end with the start of the state championship in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament in that sport. Conference championships must also be completed before the start of the state tournament in that sport.

See 3 DE Reg 439 (9/1/99)

23.3 The regular spring sports season shall begin on March 1 and end with the start of the state championship in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament in that sport. Conference championships must also be completed before the start of the state tournament in that sport.

23.4 Practice for any fall sport shall not begin earlier than 21 days before the first Friday after Labor Day. Practice for any winter sport shall not begin earlier than 21 days before the first Friday in December and practice for any spring sport shall not begin earlier than March 1.

See 3 DE Reg 439 (9/1/99)

23.4.1 The first three (3) days of football practice shall be primarily for the purpose of physical conditioning and shall be restricted to non-contact activities. Coaches may introduce offensive formations and defensive alignments, run plays "on air," practice non-contact phases of the kicking game, and teach non-contact positional skills. Protective equipment shall be restricted to helmets, mouthguards, and shoes. The use of dummies, hand shields, and sleds in contact drills is prohibited, Blocking, tackling, and block protection drills which involve any contact between players are also prohibited.

23.5 A school which participates in a game prior to the first allowable date or after the start of the state championship shall be required to forfeit the contest and be assessed a \$100.00 fine.

23.6 A school which conducts practice prior to the first allowable date shall be assessed a fine of \$100.00 per illegal practice day.

23.7 A certified, emergency, or volunteer coach shall not be allowed to provide instruction out of the designated season in his/her assigned sport to returning members of the varsity or subvarsity teams of the school at which he/she coaches. He/she shall also be prohibited from coaching rising ninth graders (rising eighth graders if eighth grade is part of the same administrative unit as grades 9 through 12) who participated in his/her assigned sport at a feeder school.

23.7.1 A coach shall not be allowed to participate on a team in his/her assigned sport with the aforementioned players.

23.7.2 A coach shall also be prohibited from officiating contests in his/her assigned sport if the aforementioned players are participating except in organized league competition.

23.7.2.1 The league shall not be organized and conducted by the employing school, the employing school's booster club, or the employing school's coaching staff.

23.7.2.2 The league shall have written rules and regulations that govern the conduct of contests and establish the duties of contest officials.

23.7.2.3 The league shall have registration/

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entry procedures, forms, and fees; eligibility requirements; and fixed team rosters, team standings, and a master schedule of contests.

23.8 A certified, emergency, or volunteer coach shall not be allowed to provide instruction during the designated season in his/her assigned sport to current members of the varsity or subvarsity teams of the school at which he/she coaches outside of school sponsored practices, scrimmages, and contests.

23.9 A coach who is determined to be in violation of 23.7 or 23.8 shall be suspended from coaching in the

specified sport at any DSSAA member school for up to 180 school days from the date the charge is substantiated.

24.0 Maximum Game Schedules and Designated Sport Season

24.1 The maximum number of regularly scheduled interscholastic contests/competition dates for each team and individual in the recognized sports and their designated season shall be as follows:

24.2 Participation in any part of a quarter/half shall

Sport Season	Team Limitations Week	Individual Limitations Week	Day
Fall			
Cross Country (boys and girls)	16 competition dates	•+3 competition dates	
Field Hockey (girls)	16 contests	•3 contests	2 halves
Football (boys)	10 contests	1 contest	
Soccer (boys)	16 contests	•3 contests	2 halves
Volleyball (girls)	16 competition dates of which 1 date may involve more than 2 teams	•3 competition dates	
Winter			
Basketball (boys and girls)	22 contests	•3 contests	•3 competition dates 4 quarters
Swimming (boys and girls)	*16 contests <u>16 Competition Dates</u>	•3 competition dates	•3 competition dates
Indoor Track (boys and girls)	12 contests	•+ 3 contests	•+3 contests
Wrestling (boys)	*18 contests	•3 competition dates	•3 competition dates 5 matches
Spring			
Baseball (boys)	18 contests	•3 contests	•3 contests
Softball (girls)	18 contests	•3 contests	•3 contests
Golf (boys)	16 competition dates	•3 competition dates	•3 competition dates
Tennis (boys and girls)	16 contests	•3 contests	•3 contests
Outdoor Track (boys and girls)	18 competition dates	•+3 competition dates	•+3 competition dates
Lacrosse (boys and girls)	16 contests	•3 contests	•3 competition dates 4 quarters (boys) or 2 halves (girls)
Soccer (girls)	16 contests	•3 contests	•3 competition dates 2 halves

• The third contest/competition date in a week must be held on Friday (no early dismissal permitted), Saturday or Sunday. This requirement is waived when a school is ~~not in session~~ closed for the entire week such as during winter or spring vacation.

+ A team may not participate in two different cross country, indoor track or outdoor track meets on the same day.

* Participation in a triangular meet shall count as two contests and participation in a quadrangular meet shall count as three contests toward the seasonal limitation.

count as a quarter/half toward the weekly and daily limitations in that sport. However, in the case of football, participation on a free kick or a play from a scrimmage kick formation shall not count as a quarter. Overtime periods shall be considered as part of the fourth quarter or second half.

24.3 A week shall be designated as starting on Monday and ending on Sunday for all sports except football. A football week shall begin the day of the varsity game and end the day preceding the next varsity game or the following Friday.

24.4 The preceding game limitations, with the exception of the individual daily limitation, shall not prohibit the rescheduling of postponed games at the discretion and convenience of the member schools involved provided the game was postponed due to inclement weather, unplayable field conditions, failure of the assigned officials to appear for the game, breakdown of the bus or van carrying the visiting team, or any other circumstances beyond the control of site management which preclude playing the game. However, a team may not participate in more than four (4) contests/competition dates in a week.

24.5 The maximum number of regularly scheduled contests for each of the recognized sports, except football, shall be exclusive of conference championships, playoffs to determine tournament state berths, and the state tournament/meet. The maximum number of regularly scheduled football contests shall be exclusive of the state tournament.

24.5.1 Any playoffs to determine state tournament berths shall be under the control and supervision of the DSSAA tournament committee.

24.6 A student shall participate in a particular sport for only one season during each academic year.

~~24.6~~ 24.7 A school which participates in more than the allowable number of contests in a season shall be suspended from the state playoffs or, if a non-qualifying team, fined \$200.00.

~~24.7~~ 24.8 A school which exceeds the weekly contest limitation shall be required to forfeit the contest and be assessed a \$100.00 fine.

~~24.8~~ 24.9 A student who exceeds the weekly or daily contest limitation shall be considered an ineligible athlete and the school subject to the penalties stipulated in 14.0.

25.0 Practice Sessions

25.1 Member schools shall conduct a minimum of three (3) weeks of practice under the supervision of the school's coaching staff prior to the first scheduled contest in all sports.

~~25.1.1 The intent of this regulation is for each school to conduct regular daily practice during the aforementioned 21-day period, provided weather conditions and other safety related factors permit, without being required to practice on holidays and weekends. Practicing~~

on holidays and weekends shall be left to the discretion of the individual schools and conferences.

25.2 A student shall be required to practice for a period of at least seven (7) calendar days prior to participating in a contest. However, if a student has been participating in a state tournament during the preceding sports season and is unable to begin practicing at least seven (7) calendar days before his/her team's first contest, he/she shall be exempt from this requirement.

25.3 A practice session shall be defined as any instructional activity on the field, court, mat, or track or in the pool, weight room, or classroom such as team meetings, film reviews, blackboard sessions, warmup and cool down exercises, drills, mandatory strength training, etc.

25.3.1 All activities shall be under the supervision of a certified, emergency, or approved volunteer coach.

25.4 Practice sessions shall be limited to two (2) hours on official school days.

25.4.1 Split sessions may be conducted but practice time shall not exceed two hours for any individual athlete.

25.4.2 The two-hour practice limitation does not include time for non-instructional activities such as dressing, showering, transportation, or training room care.

25.5 A school which deliberately exceeds the two-hour practice limitation shall be assessed a \$100.00 fine.

26.0 Awards

26.1 A member school and/or support group affiliated with a member school, such as an alumni association or booster club, shall be allowed to present recognition awards for team and/or individual accomplishments.

26.1.1 The awards, including artwork and lettering, shall require the approval of the administrative head of the school and their value shall be mostly symbolic.

26.1.2 Permissible awards include trophies, plaques, medals, letters, certificates, photographs, and similar items. Jackets, sweaters, shirts, watches, rings, charms, and similar items if properly inscribed (reference to the team or individual athletic accomplishment) are also acceptable.

26.1.3 Member schools and such support groups shall also be permitted to sponsor ~~team~~ banquets and present post-secondary scholarships.

26.2 A non-profit group such as a coaches association, booster club not affiliated with a member school, or community service organization shall be allowed to present recognition awards for team and/or individual accomplishments with the approval of the administrative head of the school.

26.2.1 With the exception of post-secondary scholarships, the awards shall have symbolic value only. Awards that have with utilitarian value are prohibited.

26.2.2 Non-profit groups shall also be permitted to sponsor ~~team~~ banquets.

26.3 Non-profit organizations co-sponsoring a tournament shall be allowed to give post-secondary scholarships to participating schools provided they are not awarded on the basis of team or individual performance in the tournament. Scholarship monies shall be administered in accordance with DSSAA and NCAA regulations.

See 3 DE Reg 440 (9/1/99)

26.4 Commercial organizations shall be allowed to present recognition awards for team and/or individual accomplishments with the approval of the administrative head of the school.

26.4.1 With the exception of post-secondary scholarships, the awards shall have symbolic value only. Awards with utilitarian value are prohibited. The aggregate retail value of the award shall not exceed \$50.00 per team or per recipient.

See 3 DE Reg 440 (9/1/99)

26.5 Non-symbolic competition awards (based on team's or individual's place finish), regardless of sponsor, shall have ~~a utilitarian~~ an aggregate retail value not to exceed \$50.00 per recipient and shall require the prior approval of the Executive Director.

27.0 Boxing

Member schools shall not participate in interscholastic boxing.

28.0 Protests and Complaints

All protests and complaints brought before DSSAA shall be in writing and shall be acted on only after the administrative head of the school involved has been given an opportunity to appear before the Board of Directors.

29.0 Wrestling Weight Control Code

29.1 Each year, prior to January 15, a wrestler must establish his/her minimum weight class at a weigh-in witnessed by and attested to in writing by the athletic director or a designated staff member (excluding coaches) of the school the wrestler attends. Thereafter, a wrestler may not compete in a weight class below his/her duly established weight class. In addition, a wrestler may not compete in the individual state championship or a qualifying tournament in his/her duly established weight class unless the wrestler makes weight in at least fifty (50) percent of his/her conference and non-conference weigh-ins during the regular season.

29.1.1 A wrestler who weighs in at least once but fails to establish his/her minimum weight class prior to January 15 shall automatically be certified at the weight he/she last weighed in before that date.

29.1.2 A wrestler who does not weigh in at least once and fails to establish his/her minimum weight class prior to January 15 shall automatically be certified at the weight he/she first weighs in after that date.

29.1.3 A wrestler who is unable, prior to January 15, to get down to the maximum allowable weight of 275 pounds in order to compete in the heavyweight class shall be permitted to certify his/her minimum weight class at a later date in the season and thereafter be eligible to participate.

29.2 By January 15, a certified team roster listing the established minimum weight class of each wrestler shall be sent to the secretary of the conference to which the school belongs or to the secretary of the independent tournament. Further, duly attested notices of additions to the certified roster shall be sent to the conference secretary without delay.

29.2.1 The conference secretary shall in turn send to each school in his/her conference copies of the certified rosters of each school. Further, he/she shall note and send copies of the notices of additions to the rosters as these additions occur.

~~29.3 Violation of this code on the part of any coach shall be considered evidence of unethical conduct as shall other attempts to circumvent its intent which is to prevent harmful weight reduction.~~

30.0 Use of Officials

30.1 Member schools and tournament sponsors shall be required to use officials approved by DSSAA for interscholastic contests.

30.1.1 In the case of emergencies such as an act of God, refusal by an association to work games, or a shortage of qualified officials, schools which desire to use other than approved officials must obtain permission from the Executive Director.

30.2 Officials shall be required each year to attend the DSSAA rules interpretation clinic and pass the rules examination provided by the DSSAA office for the sport(s) they officiate.

30.2.1 Failure on the part of an official to attend the DSSAA rules interpretation clinic and pass the rules examination in the same season shall cause the official to be placed on probation and to lose his/her eligibility to officiate a state tournament contest ~~until both requirements have been satisfied in the same season~~ during that season.

30.2.2 Failure to ~~fulfill this obligation within one (1) year~~ satisfy both requirements in the same season for two (2) consecutive years shall cause the official to lose varsity officiating status during the second season. Failure to fulfill this obligation in subsequent years shall cause the official to continue to be restricted to subvarsity contests until both requirements have been satisfied in the same season.

30.2.3 Attending the fall soccer rules interpretation clinic shall satisfy the clinic attendance requirement for both the boys' and girls' soccer seasons. Attending the spring soccer rules interpretation clinic shall satisfy the clinic attendance requirement for only the girls' soccer season.

30.2.4 If, for a legitimate reason which is documented by the president of his/her association, an official is unable to attend the DSSAA rules interpretation

clinic, he/she may view a videotape of the DSSAA clinic or, in the absence of a videotape, attend a clinic conducted by another NFHS member state association provided the following procedures are observed:

30.2.4.1 No later than the day of the DSSAA rules interpretation clinic, the president of the association notifies the Executive Director, in writing, of the official's inability to attend the clinic.

30.2.4.2 The out-of-state clinic is conducted by an individual either trained by the NFHS or designated as a clinician by the state's athletic association.

30.2.4.3 The official arranges for a letter to be sent to the Executive Director from the state's athletic association office verifying his/her attendance at the clinic.

30.3 Use of non-approved officials without permission from the Executive Director shall result in the school or tournament sponsor being assessed a \$50.00 fine per non-approved official.

31.0 ~~Summer~~ Out of Season Athletic Camp and Clinic Sponsorship

31.1 DSSAA does not restrict a student's decision to attend ~~a summer~~ an out of season athletic ~~camp~~ camp/clinic. However, schools, school organizations, coaches, or school related groups, such as booster clubs, may not sponsor an athletic ~~camp~~ camp/clinic which limits membership to their own district, locale, or teams. Coaches employed by ~~a summer~~ an out of season athletic camp may not instruct their ~~[own returning]~~ athletes as per 23.7.

31.2 School related groups, such as booster clubs, which desire to sponsor the attendance of their school's enrolled students at ~~summer~~ an out of season athletic ~~camp~~ camp/clinic, may do so with the approval of the local school board or governing body. The disbursement of funds to pay for ~~camp~~ camp/clinic related expenses (fees, travel costs, etc.) shall be administered by the principal or his/her designee and the funds shall be allocated according to the following guidelines:

31.2.1 All students and team members shall be notified of the available sponsorship by announcement, publication, etc.

31.2.2 All applicants shall share equally in the funds provided.

31.2.3 All applicants shall be academically eligible to participate in interscholastic athletics.

31.2.4 All applicants shall have one year of prior participation in the sport for which the ~~camp~~ camp/clinic is intended or, absent any prior participation, he/she shall be judged by the coach to benefit substantially from participation in the ~~camp~~ camp/clinic.

32.0 Sanctions - School Team Competition

32.1 Member schools may participate in tournaments/meets involving four (4) or more schools only if the event

has been sanctioned by DSSAA and, if applicable, by the NFHS. Tournaments/meets shall be sanctioned in accordance with the following criteria:

32.1.1 The event shall not be for determining a regional or national champion.

32.1.2 The event shall be organized, promoted, and conducted by and all profits go to a nonprofit organization. Involvement by a commercial organization shall be limited to providing financial support.

32.1.3 Nonsymbolic competition awards shall have ~~a~~ an aggregate retail value of not more than \$50.00 per recipient and shall require the prior approval of the Executive Director.

32.1.4 Non-school event organizers shall submit a full financial report to the DSSAA office within ninety (90) calendar days of the completion of the event.

32.1.5 The event organizer shall submit a list of out-of-state schools which have been invited to participate and such schools shall be subject to approval by the Executive Director.

32.1.6 Out-of-state schools which are not members of their state athletic association shall verify in writing that their participating athletes are in compliance with their state athletic association's eligibility rules and regulations.

32.1.7 The event organizer shall not accept financial support or sell advertising to companies involved in the production or distribution of alcohol and tobacco products.

32.1.8 The event organizer shall comply with all applicable NFHS sanctioning requirements.

See 3 DE Reg 525 (10/1/99)

32.2 Participation in a non-sanctioned event shall result in the offending school being assessed a \$25.00 fine. A second offense shall result in a \$50.00 fine and loss of eligibility to participate in sanctioned events for the remainder of the sport season. A third offense shall result in a \$100.00 fine and loss of eligibility to participate in sanctioned events for the remainder of the school year.

33.0 Coed Teams

33.1 If a school sponsors a boys' team and a girls' team in a particular sport, boys shall participate on the boys' team and girls shall participate on the girls' team even if the teams compete during different seasons.

~~33.1.1 A student shall participate in a particular sport for only one season during each academic year.~~

33.2 If a school sponsors only a boys' team in a particular sport, girls shall be permitted to participate on the boys' team.

33.2.1 Coed teams shall participate only in the boys' state championship tournament/meet.

33.3 If a school sponsors only a girls' team in a particular sport, boys shall not be permitted to participate on the girls' team.

34.0 Non-School Instructional Camps and Clinics

34.1 A student may participate in a commercial camp or clinic, including private lessons, both during and out of the designated sport season provided the following conditions are observed:

34.1.1 The student must participate unattached and may not wear school uniforms or use school equipment.

34.1.2 The student may use only school equipment whose primary purpose is to protect the wearer from physical injury.

~~34.1.2~~ 34.1.3 The school may not provide transportation or pay fees.

~~34.1.3~~ 34.1.4 The school coach may not require his/her athletes to participate in a camp or clinic or provide instruction to his/her returning athletes in a camp or clinic.

35.0 Open Gym Programs

35.1 A member school may open its gymnasium or other facility for informal, recreational activities in accordance with the following provisions:

35.1.1 The open gym must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

35.1.2 Student participation must be voluntary and the open gym must not be a prerequisite for trying out for a particular team.

35.1.3 The activities must be unstructured and student-generated. Organized drills in the skills or techniques of a particular sport are prohibited. Organized competition with fixed team rosters is also prohibited.

35.1.3.1 A coach may not predetermine that the open gym will include only his/her sport and publicize the open gym as being restricted to that sport. It is the responsibility of the adult supervisor to permit as many different activities as the facility can effectively and safely accommodate.

See 3 DE Reg 440 (9/1/99)

35.1.4 A coach may open the facility and distribute playing equipment but may not instruct, officiate, participate, organize the activities, or choose teams in his/her assigned sport.

35.1.5 Playing equipment is restricted to that which is customarily used in a contest in a particular sport. Playing equipment which is only used in a practice session is prohibited.

35.1.6 The participants must provide their own workout clothing.

36.0 Conditioning Programs

36.1 A member school may conduct a conditioning program in accordance with the following provisions:

36.1.1 The conditioning program must be available to all interested students, must not be restricted to members

of a particular team, and must be publicized as such.

36.1.2 Student participation must be voluntary. The conditioning program must not be a prerequisite for trying out for a particular team.

36.1.3 Permissible activities include stretching, lifting weights, jumping rope, running, calisthenics, aerobics, and similar generic conditioning activities. Organized drills in the skills or techniques of a particular sport are prohibited.

36.1.4 A coach may not provide instruction in sport specific skills or techniques.

36.1.5 Sport specific equipment is prohibited.

36.1.6 The participants must provide their own workout clothing.

37.0 Non-Payment of Fines

A school which does not pay, by July 1, all fines incurred during the school year shall be ineligible to participate in a state championship event in any sport during the following school year until such time as all fines are paid.

38.0 Additional Penalties

Additional penalties may be imposed by the Executive Director or the DSSAA Board of Directors for repeat offenses or as deemed necessary to ensure the proper conduct of interscholastic competition.

1052 DSSAA Junior High/Middle School Interscholastic Athletics

1.0 Eligibility

No student shall represent a school in an interscholastic scrimmage or contest if he/she does not meet the following requirements:

1.1 Age

1.1.1 Eighth-grade students who become 15 years of age on or after June 15 in a school terminating in the eighth grade shall be eligible for all sports during the current school year provided all other eligibility requirements are met.

1.1.1.1 Permission shall be granted for 15-year old eighth-grade students in a school terminating in the eighth grade who are ineligible for junior high/middle school competition to participate in the district high school athletic program provided they meet all other eligibility requirements.

1.1.2 In determining the age of a contestant, the birth date as entered on the birth record of the Bureau of Vital Statistics shall be required and shall be so certified on all eligibility lists.

1.1.3 Requests for waiver of the age requirement shall be considered only for participation on an unofficial, non-scoring basis in non-contact sports.

1.2 Enrollment and Attendance

1.2.1 A student must be legally enrolled in the junior high/middle school which he/she represents and must be in regular attendance ~~by September 20~~ prior to the 11th school day of the academic year.

1.2.1.1 A student who enters school ~~after September 20~~ on or after the 11th school day of the academic year shall not be eligible to participate ~~until February 1~~ for ninety (90) school days.

~~1.2.1.2 A student who enters school after February 1 shall not be eligible to participate during the remainder of the school year.~~

1.2.2 A student who is participating in the Delaware School Choice Program, as authorized by 14 *Del. C.*, Ch. 4, is obligated to attend the "choice school" for a minimum of two (2) years unless the student's custodial parent(s) or court appointed legal guardian(s) relocate to a different school district or the student fails to meet the academic requirements of the "choice school". If a student attends a "choice school" for less than two (2) years and subsequently returns to his/her home school, the student must receive a release from the "choice district" in order to legally enroll at his/her home school. Without a release, the student would not be eligible to participate in interscholastic athletics (see 1.4.9).

1.2.3 A student may not participate in a practice, scrimmage, or contest during the time a suspension, either in-school or out-of-school, is in effect or during the time he/she is assigned to an alternative school for disciplinary reasons.

1.2.4 A student must be legally in attendance at school in order to participate in a practice, scrimmage, or contest except when excused by proper school authorities.

1.2.4.1 A student who is not legally in attendance at school due to illness or injury shall not be permitted to participate in a practice, scrimmage, or contest on that day.

1.2.5 An ineligible student who practices in violation of ~~these rules~~ 1.2.3 or 1.2.4 shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of days.

~~1.2.6 Failure to complete a semester or absence for one or more semesters for reasons other than personal illness shall disqualify a student for ninety (90) school days from the date of reentry to school.~~

1.3 Residence

1.3.1 A student must be living with his/her custodial parent(s) or court appointed legal guardian(s) in the attendance zone of the school which he/she attends in order to be eligible for interscholastic athletics in that school. In cases of joint custody, the custodial parent shall be the parent with actual physical placement as determined by court action.

1.3.1.1 Maintaining multiple residences in order to circumvent this requirement shall render the student ineligible.

1.3.1.2 A student who, ~~under authority of a policy of the local board of education~~ pursuant to established school board policy or administrative procedure, remains in a school he/she has been attending after his/her legal residence changes to the attendance zone of a different school in the same school district, may exercise, prior to the first official student day of the subsequent academic year, a one time election to remain at his/her current school and thereby not lose athletic eligibility.

1.3.1.2.1 However, if a student chooses to remain at his/her current school and ~~subsequently then~~ transfers to the school in his/her new attendance zone on or after the first official student day of the subsequent academic year, he/ she shall be ineligible, for ninety (90) school days.

1.3.1.3 If a student changes residence to a different attendance zone after the start of the last marking period and, pursuant to established school board policy or administrative procedure, is granted permission to continue attending his/her present school ~~via established district policy for such~~, the student shall retain his/her athletic eligibility in that school for the remainder of the school year provided all other eligibility requirements are met.

1.3.1.4 A student may be residing outside of the attendance zone of the school which he/she attends if the student is participating in the Delaware School Choice Program as authorized by 14 *Del. C.*, Ch. 4.

1.3.1.5 A student who is a non-resident of Delaware shall be eligible at a public or charter school if, in accordance with 14 *Del.C.*, § 607, his/her custodial parent or court appointed legal guardian is a full-time employee of that district.

1.3.1.6 Notwithstanding 1.3.1, a student shall be eligible at a public or vocational-technical school if he/she enrolls in accordance with 14 *Del.C.* §202(f), the Caregivers School Authorization.

1.3.1.6.1 An exception would be a student whose relative caregiver does not provide the documentation required by the Caregivers' School Authorization (proof of relation and proof of full-time care) but is permitted to register on the basis of a petition for the transfer of guardianship. A student who registers on the basis of a petition for the transfer of guardianship is not eligible to scrimmage or compete until the relative caregiver has provided the aforementioned required documentation or has received a signed court order designating him/her as the student's legal guardian.

1.4 Transfer

1.4.1 A student who has not previously participated in interscholastic athletics (previous participation is defined as having practiced, scrimmaged or competed in grades 6 through 8), is released by a proper school authority from a

sending school, has completed the registration process at the receiving school, and is pursuing an approved course of study shall be eligible immediately upon registration provided he/she meets all other DSSAA eligibility requirements.

1.4.2 If a student has previously participated in interscholastic athletics, he/she shall be ineligible for a period of ninety (90) school days commencing with the first day of official attendance in the receiving school unless one of the following exceptions applies:

1.4.2.1 The transfer is within a school district and is approved by the district's superintendent pursuant to established school board policy or administrative procedure. This provision shall not apply to a student who transfers to his/her home school from a "choice school" within the district and who has not completed the two-year attendance requirement unless he/she satisfies the conditions stipulated in 1.4.2.5.1 through 1.4.2.5.4. This provision shall also not apply to a student who transfers from a "choice school" to another "choice school" within the district (see 1.4.6.1).

~~1.4.2.1~~ 1.4.2.2 The transfer is caused by court action, court action being an order from a court of law affecting legally committed students.

~~1.4.2.1.1~~ 1.4.2.2.1 In the case of a transfer of guardianship/custody, the transfer shall be the result of a court order signed by a judge, commissioner, or master of a court of competent jurisdiction. A petition for the transfer of guardianship/custody, an affidavit, (except as permitted by 1.4.2.3) or a notarized statement signed by the affected parties shall not be sufficient to render the student eligible to participate in interscholastic athletics.

1.4.2.3 The transfer is in accordance with 14 Del. C. §202(f), the Caregivers School Authorization.

1.4.2.3.1 An exception would be a student whose relative caregiver does not provide the documentation required by the Caregivers School Authorization (proof of relation and proof of full-time care) but is permitted to register on the basis of a petition for the transfer of guardianship. A student who registers on the basis of a petition for the transfer of guardianship is not eligible to scrimmage or compete until the relative caregiver has provided the aforementioned required documentation or has received a signed court order designating him/her as the student's legal guardian.

~~1.4.2.2~~ 1.4.2.4 The transfer is the result of a change in residence by the custodial parent(s) or court appointed legal guardian(s) from the attendance zone of the sending school to the attendance zone of the receiving school. A change in residence has occurred when all occupancy of the previous residence has ended.

~~1.4.3~~ 1.4.2.4.1 A student who transfers from a public, private, charter or choice school to another public, private, charter, or choice school, except as prohibited by 1.4.7.1, shall be eligible in the receiving school immediately

when the custodial parent(s) or court appointed legal guardian(s) has established a new legal residence in another public school attendance zone different from the one in which the custodial parent(s) or court appointed legal guardian(s) resided for attendance in the sending school. In the case of a transfer to a public school, the new legal residence must be in the attendance zone of the receiving school.

~~1.4.5~~ 1.4.2.5 ~~No waiver shall be required for students who transfer~~ The transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year provided:

~~1.4.5.1~~ 1.4.2.5.1 The student has completed the registration process at the receiving school prior to the first official student day of the academic year. The first official student day shall be defined as the first day on which students in any grade in that school are required to be in attendance.

~~1.4.5.2~~ 1.4.2.5.2 The student has not attended class, excluding summer school, or participated in a ~~practice,~~ scrimmage, or contest at the sending school since the close of the previous academic year.

~~1.4.5.3~~ 1.4.2.5.3 The student's legal residence is located in the attendance zone of the receiving school.

~~1.4.5.4~~ 1.4.2.5.4 All other DSSAA eligibility requirements have been met.

~~1.4.4~~ 1.4.3 If a waiver of the ninety (90) school day ineligibility clause is requested due to a desired change in the program of study or financial hardship, the parent(s) or court appointed legal guardian(s) is responsible for providing documentation to the DSSAA Board of Directors to support the request. Documentation should include the following ~~for~~ each specific request:

~~1.4.4.1~~ 1.4.3.1 ~~Change in program~~ Program of study (a multi-year hierarchical sequence of courses with a common theme or subject matter leading to a specific outcome).

~~1.4.4.1.1~~ 1.4.3.1.1 Student schedule card.

~~1.4.4.1.2~~ 1.4.3.1.2 Student transcript.

~~1.4.4.1.3~~ 1.4.3.1.3 Current course descriptions from both the sending and receiving schools.

~~1.4.4.1.4~~ 1.4.3.1.4 Statement from the principal of the sending school indicating that a significant part of the student's desired program of study will not be offered and that it will place the student at a definite disadvantage to delay transfer until the end of the current school year.

~~1.4.4.1.5~~ 1.4.3.1.5 Statement from the principal of both the sending and receiving school that the student is not transferring primarily for athletic advantage as described in ~~1.4.6.1~~ 1.4.5.1 through ~~1.4.6.4~~ 1.4.5.4.

~~1.4.4.2~~ 1.4.3.2 ~~Finances~~ Financial hardship

~~1.4.4.2.1~~ 1.4.3.2.1 Proof of extreme financial

hardship caused by significant loss of income and/or increased expenses.

~~1.4.4.2.2~~ 1.4.3.2.2 Statement from the principal of both the sending and receiving schools that the student is not transferring primarily for athletic advantage as defined in ~~1.4.6.1~~ 1.4.5.1 through ~~1.4.6.4~~ 1.4.5.4.

~~1.4.6~~ 1.4.4 In cases of joint custody when a primary residence is established, a change in a student's primary residence without court action subjects the student to the ninety (90) school-day ineligibility clause.

~~1.4.7~~ 1.4.5 A change of custody or guardianship for athletic advantage shall render a student ineligible under the ninety (90) school-day ineligibility clause if the primary reason for his/her transfer is one of the following:

~~1.4.7.1~~ 1.4.5.1 To seek a superior team.

~~1.4.7.2~~ 1.4.5.2 To seek a team more compatible with his/her abilities.

~~1.4.7.3~~ 1.4.5.3 Dissatisfaction with the philosophy, policies, methods, or actions of a coach or administrator pertaining to interscholastic athletics.

~~1.4.7.4~~ 1.4.5.4 To avoid disciplinary action imposed by the sending school related to or affecting interscholastic athletic participation.

~~1.4.8~~ If a student transfers at any time during the school year for reasons other than those specified in ~~1.4.2~~, the student shall be ineligible for a period of ninety (90) school days commencing with the first day of official attendance in the receiving school except as permitted by ~~1.4.1~~.

~~1.4.9~~ 1.4.6 A student who transfers from a public, private, or charter school to a school of choice, as authorized by 14 Del. C., Chapter 4 shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of ~~the~~ the receiving school's academic year and the student satisfies the conditions stipulated in ~~1.4.5.1, 1.4.5.2, and 1.4.5.4~~ 1.4.2.5.1, 1.4.2.5.2, and 1.4.2.5.4.

~~1.4.9.1~~ 1.4.6.1 A student who transfers from a school of choice to another school of choice shall be ineligible to participate in interscholastic athletics during his/her first year of attendance at the receiving school unless the receiving school sponsors a sport(s) not sponsored by the sending school in which case the student shall be eligible to participate in that sport(s) only.

~~1.4.10~~ 1.4.7 A student who transfers from a school of choice to a public, private, or charter school shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year and the student satisfies the conditions stipulated in ~~1.4.5.1~~ 1.4.2.5.1 through ~~1.4.5.4~~ 1.4.2.5.4.

~~1.4.8.1~~ 1.4.8. If a student transfers with fewer than ninety (90) school days left in the academic year, he/she shall be ineligible for the remainder of the school year but

shall be eligible beginning with the subsequent fall sports season provided he/she is in compliance with all other eligibility requirements.

1.5 Amateur

1.5.1 A student may not participate in an interscholastic sport unless he/she is considered an amateur in that sport. A student forfeits his/her amateur status if he/she does any of the following:

1.5.1.1 Knowingly plays on or against a professional team. ~~This rule does not apply to an athlete who participates in summer baseball or other sports outside of the school's sports season in which he/she does not receive any form of remuneration for athletic services.~~

1.5.1.2 Signs a professional contract, accepts reimbursement for expenses to attend a professional tryout, or receives financial assistance in any form from a professional sports organization.

1.5.1.3 Enters competition under an assumed name. The surname and given name used by any player in ~~the~~ his/her first game of interscholastic competition shall be used during the remainder of the student's interscholastic career. Any change in spelling or use of another name shall be regarded as an attempt to evade this rule unless the change has been properly certified by the player to the principal of the school.

~~1.5.1.3.1 In the event a false name is used without the knowledge and consent of the player, or if the player has participated in a game without having his/ her name appear in the box score, or if his/her name appears in the box score of a game in which he/she did not play, it becomes the sole obligation of the player involved to report the error or omission to the principal of the school within 48 hours from the time such game was played.~~

1.5.1.4 Receives remuneration of any kind or accepts reimbursement for expenses in excess of the actual and necessary costs of transportation, meals, and lodging for participating in a team or individual competition or an instructional camp/clinic. Reimbursement for the aforementioned expenses is permitted only if all of the participants receive the same benefit.

1.5.1.5 Receives cash or a cash equivalent (savings bond, certificate of deposit, etc.), merchandise (except as permitted by 25.4) or a merchandise discount (except for discount arranged by school for part of team uniform), a reduction or waiver of fees, a gift certificate, or other valuable consideration as a result of his/her participation in an organized competition or instructional camp/clinic.

1.5.1.5.1 Accepting an event program and/or a complimentary item(s) (t-shirt, hat, equipment bag, etc.) that is inscribed with a reference to the event, has an aggregate retail value of no more than \$50.00, and is provided to all of the participants, shall not jeopardize his/her amateur status.

1.5.1.6 Sells or pawns awards received.

1.5.1.7 Uses his/her athletic status to promote or endorse a commercial product or service in a newsprint, radio, or television advertisement or personal appearance.

~~1.5.1.8 Receives an award prohibited by DSSAA for being a member of some athletic organization.~~

1.5.2 Accepting compensation for teaching lessons, coaching, or officiating shall not jeopardize his/her amateur status.

1.5.3 A student who forfeits his/her amateur status under the provisions of this rule is ineligible to participate at the interscholastic level in the sport in which the violation occurred. He/she may be reinstated after a period of up to 180 school days provided that during the suspension, he/she complies with all of the provisions of this rule. The suspension shall date from the time of the last offense.

2.0 Use of Influence for Athletic Purposes

2.1 The use of influence by a person(s) employed by or representing a member school including members of alumni associations, booster groups, and similar organizations to persuade, induce, or facilitate the enrollment of a student in that school for athletic purposes shall render the student ineligible for up to 180 school days from the date the charge is substantiated. In addition, the offending school shall be placed on probation, as determined by the DSSAA Board of Directors, and the offending employee, if a coach, shall be suspended for up to 180 school days from the date the charge is substantiated.

2.2 The use of influence for athletic purposes shall include, but not be limited to, the following:

2.2.1 Offer of money, room, board, clothing, transportation, or other valuable consideration to a prospective athlete or his/her parent(s) or court appointed legal guardian(s).

2.2.2 Offer of waiver/reduction of tuition or financial aid if based, even partially, on athletic considerations.

2.2.3 Preference in job assignments or offer of compensation for work performed in excess of what is customarily paid for such services.

2.2.4 Offer of special privileges not accorded to other students.

2.2.5 Offer of financial assistance including free or reduced rent, payment of moving expenses, etc., to induce a prospective athlete or his/her custodial parent(s) or court appointed legal guardian(s) to change residence.

2.3 A school employee or Board approved volunteer may not initiate contact or request that a booster club member, alumnus, or player initiate contact with a student enrolled in another school or his/her parent(s) or court appointed legal guardian(s) in order to persuade the student to enroll in a particular school for athletic purposes. Illegal contact shall include, but not be limited to, letters,

questionnaires or brochures, telephone calls, and home visits or personal contact at athletic contests.

2.3.1 If a coach or athletic director is contacted by a prospective athlete or his/her parent(s) or court appointed legal guardian(s), the former must refer the individual(s) to the principal or school personnel responsible for admissions.

2.3.2 A school employee or Board approved volunteer may discuss the athletic program with a prospective student or his/her parent(s) or court appointed legal guardian(s) during an open house or approved visit initiated by the parent(s) or court appointed legal guardian(s).

2.3.2.1 A school employee or Board approved volunteer may provide information concerning sports offered, facilities, conference affiliation, and general athletic policies. However, he/she is not permitted to state or imply in any way that his/her athletic program is superior to that of another school or that it would be more beneficial or advantageous for the prospective student to participate in athletics at his/her school.

2.4 If the number of applicants under the Delaware School Choice Program exceeds the number of available student openings, the selection criteria established by the district shall not include athletic considerations.

3.0 Non-school Competition (participants competing "unattached" and not representing their schools)

3.1 A student may participate on a non-school team or in a non-school individual event both during and out of the designated sport season. However, the student owes his/her primary loyalty and allegiance to the school team of which he/she is a member. A school shall have the authority to require attendance at practices and contests and students not in compliance shall be subject to disciplinary action as determined by the school.

3.2 Participation on a non-school team or in a non-school individual event shall be subject to the following conditions:

3.2.1 With the exception of organized intramurals, the student may not wear school uniforms ~~or use school equipment~~.

3.2.2 With the exception of organized intramurals, the student may use only school equipment whose primary purpose is to protect the wearer from physical injury.

~~3.2.2~~ 3.2.3 The school or a school affiliated support group may not provide transportation.

~~3.2.3~~ 3.2.4 The school or a school affiliated support group may not pay entry fees or provide any form of financial assistance.

~~3.2.4~~ 3.2.5 The school coach may not require his/her athletes to participate in non-school competition or provide instruction to his/her athletes in non-school competition.

3.3 14 Del.C., §122 (15) requires written parental permission prior to participation on a similar team during the

designated sport season. Written authorization must be on file in the student's school prior to engaging in a tryout, practice, or contest with a similar team. Consent forms shall be available in all member schools.

3.3.1 Similar teams shall include organized intramural teams as well as non-school teams in that sport.

4.0 Passing Work

4.1 In order to be eligible for participation in interscholastic athletics, including practices, a student must pursue a regular course of study or its equivalent as approved by the local governing body; and must be passing at least four (4) credits. Two (2) of those credits must be in the ~~separate~~ areas of English, Mathematics, Science, or Social Studies.

4.1.1 A student who is receiving special education services and is precluded from meeting the aforementioned academic requirements due to modifications in the grading procedure or course of study, shall be adjudged eligible by the principal if he/she is making satisfactory progress in accordance with the requirements of his/her individualized education plan (IEP).

4.2 A student whose work in any regular marking period does not meet the above standards shall be ineligible to participate in interscholastic athletics, including practices, for the next marking period.

4.2.1 In the case of a conflict between the marking period grade and the final grade, the final grade shall determine eligibility.

4.2.2 The final accumulation of credits shall determine eligibility for the first marking period of the following school year. When a student makes up a failure or earns the required credit(s) during the summer, he/she shall become eligible provided he/she successfully completes the course work prior to the first official student day of the school year.

4.2.2.1 Written verification of the successful completion of a correspondence course must be received before a student shall regain his/her eligibility.

4.3 A student forfeits or regains his/her eligibility, in accordance with the provisions of this rule, on the day report cards are issued.

4.4 Local school boards and non-public schools may establish more stringent requirements for academic eligibility than the minimum standards herein prescribed.

4.5 An ineligible student who practices in violation of ~~these rules~~ 4.1 or 4.2 shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of days.

5.0 Participation

5.1 ~~For the school year 2000-2001 through 2002-2003~~ During the 2001-02 and 2002-03 school years, the following provisions shall be in effect:

5.1.1 No student shall represent a school in athletics after six (6) consecutive semesters from the date of his/her first entrance into the seventh grade in schools with grades 7 through 8, inclusive.

5.1.2 No student shall represent a school in athletics after eight (8) consecutive semesters from the date of his/her first entrance into the sixth grade in schools with grades 6 through 8, inclusive.

5.1.2.1 Participation on the part of a sixth-grade student shall be at the discretion of the individual school.

5.1.2.2 Sixth-grade students shall not be permitted to participate in football unless the conference develops a classification system that is approved by the DSSAA Board of Directors.

5.2 Beginning with the 2003-2004 school year, ~~2003-2004 and thereafter~~ the following provisions shall be in effect:

5.2.1 No student shall represent a school in athletics after four (4) consecutive semesters from the date of his/her first entrance into the seventh grade in schools which restrict participation in interscholastic athletics to students in grades 7 and 8 unless a waiver is granted for hardship reasons.

5.2.1.1 No student shall have more than two (2) opportunities to participate in a fall sport or combination of fall sports, in a winter sport or combination of winter sports, or a spring sport or combination of spring sports.

5.2.1.2 "Hardship" shall be defined as extenuating circumstances which are unusual, extraordinary, and beyond the control of the student or his/her parent(s) or court appointed legal guardian(s), preclude him/her from completing the academic requirements for promotion within the normal period of eligibility; and deprive him/her of all or part of one of his/her opportunities to participate in a particular sports season.

5.2.1.2.1 ~~The circumstances must be unusual, unavoidable, and extraordinary.~~ A clear and direct causal relationship must exist between the alleged hardship condition and the failure of the student to complete the academic requirements for promotion within the normal period of eligibility and the loss of all or part of one of his/her opportunities to participate in a particular sports season.

5.2.1.2.2 The burden of proof rests with the student in conjunction with the waiver/appeal process as described in 1053 ~~DSSAA~~ Waiver Procedure and 1055 ~~DSSAA~~ Appeal Procedure. Claims of extended illness, debilitating injury, emotional stress, etc., must be accompanied by appropriate documentation. Evidence must be submitted to verify that the student or his/her parent(s) or court appointed legal guardian(s) sought assistance to ameliorate the effects of the hardship condition.

5.2.2 No student shall represent a school in athletics after six (6) consecutive semesters from the date of

his/her first entrance into the sixth grade in schools which permit students in grades 6, 7 and 8 to participate in interscholastic athletics unless a waiver is granted for hardship reasons as specified in 5.2.1.2.

5.2.2.1 No student shall have more than three (3) opportunities to participate in a fall sport or combination of fall sports, in a winter sport or combination of winter sports, or a spring sport or combination of spring sports.

5.2.2.2 Participation on the part of a sixth-grade student shall be at the discretion of the individual school.

5.2.2.3 Sixth-grade students shall not be permitted to participate in football unless the conference develops a classification system that is approved by the DSSAA Board of Directors.

5.3 Students below the sixth grade shall not be permitted to practice, scrimmage, or compete on junior high/middle school interscholastic teams.

5.4 Participation shall be defined as taking part in a school sponsored practice, (see 24.3), scrimmage, or contest on or after the first allowable date for practice in that sport.

6.0 Grades

The junior high/middle school interscholastic athletic program shall include grades 6 through 8, inclusive.

7.0 Junior High/Middle School and Senior High School Competition

7.1 No junior high/middle school student who has completed a season at the junior high/middle school level shall compete in the same sport at the senior high school level during the same school year.

7.2 A junior high/middle school student who participates in a varsity or subvarsity game at the high school level shall be ineligible to participate at the junior high/middle school level in the same sport.

8.0 Examinations

8.1 A student shall not be eligible to practice, scrimmage, or compete in an interscholastic contest unless he/she has been adequately examined by a licensed physician (M.D. or D.O.), a certified nurse practitioner, or a certified physician's assistant on or after June 1 and before beginning such athletic activity for the current school year.

8.1.1 A certificate to that effect, as well as the parent's or court appointed legal guardian's consent, shall be on file with the administrative head of the school prior to the student participating in a practice, scrimmage, or game.

8.2 For any subsequent sports season in the school year, a limited reexamination shall be performed under the following circumstances:

8.2.1 If the athlete has been treated for an injury during the ~~immediately~~ preceding sports season.

8.2.2 If the athlete has been out of school

during the preceding ~~term~~ sports season with an illness other than the usual minor upper respiratory or gastrointestinal upset.

8.2.3 If an operation has been performed on the athlete during the preceding ~~term~~ sports season.

8.2.4 If the student has a remedial defect.

8.3 The medical history of the student should be available at the time of each examination.

8.4 A player who is properly certified to participate in interscholastic athletics but is physically unable to ~~practice~~ participate for five (5) consecutive days on which a practice, scrimmage, or contest is held due to illness or injury, must present to the administrative head of the school a statement from a qualified physician that he/she is again physically able to participate.

9.0 Clarifying Eligibility

9.1 In cases of ~~doubt~~ uncertainty or disagreement, the eligibility of a student shall be determined initially by the Executive Director. If the Executive Director determines that the student is ineligible, the school and the student shall be notified and the student suspended immediately from participation in interscholastic athletics.

9.2 The school and the student shall be informed that the decision of the Executive Director may be appealed to the DSSAA Board of Directors in accordance with the procedure described in 1055 ~~DSSAA~~ Appeal Procedure.

9.3 Decisions of the DSSAA Board of Directors to affirm, modify, or reverse the eligibility rulings of the Executive Director may be appealed to the State Board of Education in accordance with the procedure described in 1055 ~~DSSAA~~ Appeal Procedure.

10.0 Eligibility Lists

10.1 Member schools shall use eligibility forms approved by the Executive Director.

10.2 A copy of the original eligibility report and subsequent addenda must be either received by the Executive Director or postmarked prior to the first contest for which the students listed are eligible. Failure to file an eligibility report as prescribed shall result in a \$15.00 fine against the school.

10.3 ~~A student not listed on the original eligibility report or subsequent addenda on file in the Executive Director's office shall be ineligible.~~ In the case of a student who met all DSSAA eligibility requirements but was omitted from the eligibility report due to administrative or clerical error, he/she shall be adjudged eligible and the school assessed a \$10.00 fine.

11.0 Contracts Interchanged

11.1 Contracts between DSSAA member schools or between DSSAA member schools and full member schools of comparable state associations are encouraged but not

required.

11.1.1 Conference master contracts are approved substitutes for individual contracts.

11.1.2 In ~~the~~ case of a dispute and provided either a signed individual contract or conference master contract is in place, appeal may be made to the DSSAA Board of Directors which, after review of the circumstances, may assign an appropriate penalty.

11.1.2.1 Without a signed individual contract or conference master contract, a member school has no right of appeal to the Executive Director or the DSSAA Board of Directors.

11.2 Contracts ~~are required~~ between DSSAA member schools and non-member or associate member schools of comparable state associations are required.

11.2.1 A copy of the signed contract must be either received by the Executive Director or postmarked prior to the contest for which the agreement was drawn up. Failure to file a signed contract as prescribed shall result in the DSSAA member school being assessed a \$15.00 fine.

11.2.2 In the case of a dispute, a member school has no right of appeal to the Executive Director or the DSSAA Board of Directors unless a signed individual contract is in place.

11.3 Contracts shall be interchanged according to the following provisions:

11.3.1 Contracts on the accepted form shall be arranged by the competing schools for each season's interscholastic athletic contests.

11.3.2 Contracts shall be drawn up by the faculty manager or other designated staff member of the home school of the earlier contest.

11.3.3 A signed contract or any part thereof may not be nullified or modified except by mutual agreement of both schools involved.

11.4 If a game is not played, it shall be considered "no contest" unless a signed individual contract or conference master contract was in place and one of the participating schools breached the agreement in which case appeal may be made to the Executive Director or the DSSAA Board of Directors.

12.0 Spring Football

12.1 No member school shall participate in spring football games nor shall a member school conduct football practice of any type outside of the regular fall sports season.

12.2 "Organized football" or "organized football practice" shall be defined as any type of sport which is organized to promote efficiency in any of the various aspects of football. Rugby and touch football featuring blocking, tackling, ball handling, signaling, etc. shall be considered "organized football" and shall be illegal under the intent of this rule.

13.0 Licensed Physician

13.1 Provision shall be made for a licensed physician, a NATA certified athletic trainer, or a registered nurse to be present at all interscholastic football games in which a member school participates. The host school shall provide this service.

13.2 Failure by the host school to provide this service shall result in the school being assessed a \$100.00 fine.

14.0 Use of Ineligible Athlete

14.1 The deliberate or inadvertent use of an ineligible athlete in the sports of soccer, football, volleyball, field hockey, basketball, baseball, softball, and lacrosse shall require the offending school to forfeit the contest(s) in which the ineligible athlete participated.

14.1.1 If the infraction occurs during a tournament, the offending school shall be replaced by its most recently defeated opponent. Teams eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament.

14.1.2 Team and/or individual awards shall be returned to the event sponsor.

14.1.3 Team and/or individual records and performances shall be nullified.

14.1.4 The offending school may appeal to the DSSAA Board of Directors for a waiver of the forfeiture penalty if the ineligible athlete had no tangible affect on the outcome of the contest(s). If the forfeiture penalty is waived, the offending school shall be reprimanded and fined \$200.00 unless the athlete or his/her parent(s) or court appointed legal guardian(s) knowingly withheld information or provided false information that caused him/her to be eligible for interscholastic competition. The burden of proof, in both cases, rests entirely with the offending school.

14.1.5 A forfeit shall constitute a loss for the offending school and a win for its opponent for purposes of standings.

14.1.6 A forfeit shall be automatic and not subject to refusal by the offending school's opponent.

14.2 The deliberate or inadvertent use of an ineligible athlete in the sports of cross country, wrestling, swimming, track, golf, and tennis shall require the offending school to forfeit the matches won and/or points earned by the ineligible athlete or by a relay team of which he/she was a member. The points contributed by an ineligible athlete to his/her team score shall be deleted.

14.2.1 If the infraction occurs during a tournament, the ineligible athlete shall be replaced by his/her most recently defeated opponent or next highest finisher. Contestants eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament.

14.2.2 Individual awards earned by the ineligible athlete and team awards, if necessary because of adjustments in the standings, shall be returned to the event sponsor.

14.2.3 Individual records and performances by the

ineligible athlete shall be nullified.

14.3 If an ineligible athlete participates in interscholastic competition contrary to DSSAA rules but in accordance with a temporary restraining order or injunction against his/her school and/or DSSAA, and the injunction is subsequently vacated, stayed, or reversed, or the courts determine that injunctive relief is not or was not justified, or the injunction expires without further judicial determination, the penalties stipulated in 14.1 and 14.2 above shall be imposed.

14.4 The intentional use of an ineligible athlete by a member school or repeated indifference to its responsibility to determine the eligibility of its athletes will subject the school to additional penalties which may include suspension for up to 180 school days from the date the charge is substantiated.

14.5 If a coach knowingly withholds information or provides false information that causes an athlete to be eligible for interscholastic competition, the coach shall be suspended from coaching in any sport at any DSSAA member school for up to 180 school days from the date the charge is substantiated.

14.6 If an athlete or his/her parent(s) or court appointed legal guardian(s) knowingly withholds information or provides false information that causes him/her to be eligible for interscholastic competition, the athlete shall be suspended from participation in any sport at any DSSAA member school for up to 180 school days from the date the charge is substantiated.

15.0 Reporting Violations

15.1 If a school violates a provision of the DSSAA Constitution and Bylaws, the administrative head or his/her designee shall notify the Executive Director in writing of the violation.

15.2 If a school uses an ineligible athlete, the administrative head or his/her designee shall notify the opposing school(s) or event sponsor, in the case of a tournament or meet, and the Executive Director in writing of the violation and the forfeiture of the appropriate game(s), match(es), and/or point(s) won.

15.3 All violations will be reviewed by the DSSAA Board of Directors which may impose additional penalties in accordance with 36.0.

16.0 Equivalent Rules

16.1 A full member school shall not participate in a scrimmage or contest with an in-state school that is not a member in good standing of DSSAA unless the opposing school, as part of a written contract, certifies that its contestants are eligible under DSSAA rules.

16.2 A full member school shall not participate in a scrimmage or contest with an associate or non-member school of another state association unless the opposing

school, as part of a written contract, certifies that its contestants are eligible under the rules of its home state association.

16.3 An associate member school shall not participate in a scrimmage or contest with an in-state school that is not a member in good standing of DSSAA unless the opposing school complies with the conditions specified in 16.1. However, the opposing school shall be exempt from those rules which DSSAA has waived for its associate member school.

16.4 An associate member school shall not participate in a scrimmage or contest with an associate or non-member school of another state association unless the opposing school complies with the conditions specified in 16.2. However, the opposing school shall be exempt from those rules which DSSAA has waived for its associate member school.

16.5 Member schools shall not participate in a practice, scrimmage, or contest with a non-school sponsored team.

16.6 Member schools shall not participate in a practice, scrimmage, or contest with ~~university, college students, or junior college undergraduates.~~

~~16.7~~ 16.6.1 This ~~rule~~ provision shall not apply to games played against the alumni or faculty of the school when the game is sponsored by school authorities.

~~16.8~~ 16.7 A school which participates in a game against an illegal opponent shall be required to forfeit the contest and be assessed a \$100.00 fine.

17.0 Codes

17.1 DSSAA is affiliated with the National Federation of State High School Associations (NFHS). The playing codes, sanctions, and other rules of the NFHS are adopted except as modified by the DSSAA Board of Directors.

17.2 The playing rules of the United States Tennis Association, the United States Golf Association and the United States Lacrosse Association are adopted for the sports of tennis, golf and girls' lacrosse respectively except as modified by the DSSAA Board of Directors.

18.0 Conferences

18.1 Member schools may establish voluntary conference organizations according to the following rules:

18.1.1 Any such organization may be composed of public and non-public schools.

18.1.2 Any conference so formed must submit its proposed membership and its constitution and bylaws to the DSSAA Board of Directors and they must be approved before the schools may enter into any contractual agreements.

18.1.2.1 All subsequent amendments to the constitution and bylaws of the conference must be approved by the DSSAA Board of Directors.

19.0 All-Star Contests

19.1 Junior high/middle school students shall not participate in an all-star event until they have completed their high school eligibility in that sport.

20.0 Sponsoring Interscholastic Teams

20.1 Definition of Interscholastic Athletics

20.1.1 Interscholastic competition is defined as any athletic contest between students representing two (2) or more schools. Students are considered to be representing a school if the school does any of the following:

20.1.1.1 Partially or wholly subsidizes the activity (providing equipment, uniforms, transportation, entry fees, etc.).

20.1.1.2 Controls and administers the funds, regardless of their source, needed to conduct the activity.

20.1.1.3 Permits the students to compete under the name of the school.

20.1.1.4 Publicizes or promotes the activity through announcements, bulletins, or school sponsored publications.

20.1.1.5 Presents or displays individual/team awards.

20.1.2 Members of school clubs who participate in non-competitive, recreational activities or compete unattached are not considered to be engaged in interscholastic competition.

20.2 Sponsorship of Teams

20.2.1 Schools may sponsor teams for interscholastic competition in a sport provided the following criteria are met:

20.2.1.1 The governing body of the participating district or non-public school approves participation in the sport. The administrative head of the school shall notify the Executive Director in writing of the school's intent to sponsor a team in a new sport.

20.2.1.2 The governing ~~body~~ bodies of the participating district or non-public school controls the funds needed to support the proposed team, regardless of their source, in the same manner as existing teams (coaches' salaries, purchase and repair of equipment, medical supervision, transportation, preparation and maintenance of practice and game facilities, awards, etc.). Requests from outside sources to make financial contributions or to donate equipment or services must be submitted in writing and must include an acknowledgement that the equipment becomes the property of the school. The contribution or donation must be approved in writing by the administrative head of the school.

20.2.1.3 The participating schools agree to comply with all applicable DSSAA rules and regulations as stated in the current DSSAA Official Handbook.

20.3 Levels of Participation

20.3.1 Level 1 or developmental sport - less than seven (7) participating schools.

20.3.1.1 All DSSAA rules and regulations shall be in effect except 22.0, 23.0, and 29.0.

20.3.1.2 Schools shall not be permitted to scrimmage or compete against a non-school sponsored team.

20.3.2 Level 2 or recognized sport - seven (7) or more participating schools.

20.3.2.1 At the time of official recognition, DSSAA shall provide rules publications to the participating schools, designate an approved officials' association, conduct an annual or biannual rules clinic for coaches and officials, and establish a maximum game schedule.

20.3.2.2 All DSSAA rules and regulations shall be in effect.

20.3.3 Withdrawal of level 2 status

20.3.3.1 If, for two (2) consecutive years, less than the required number of schools participate in a sport, DSSAA may withdraw official recognition for a period of time as determined by the Board of Directors.

21.0 Certified Coaches

21.1 Only those professional employees certified by the Department of Education and whose salary is paid by the State and/or local Board of Education, or in the case of charter and non-public schools by a similar governing body, if acceptable as a coach by the governing body, shall coach, assist in coaching, or direct member school teams in any district.

21.1.1 The terms of employment must be for the regular school year and the professional assignment shall be no less than 1/2 of the school day, exclusive of coaching duties.

~~21.1.2 All head coaches shall be required to attend the DSSAA rules clinic for their sport or pass an open book rules examination supplied by the DSSAA office.~~

21.2 Emergency coaches

21.2.1 An emergency coach shall be defined as an individual who is either not certified by the Department of Education, or is certified by the Department of Education but is not employed for the school year or whose professional assignment is less than 1/2 of the school day.

21.2.2 An individual who meets the requirements of a certified coach as specified in 21.1, but whose professional assignment is located in a different school or district than his/her coaching assignment shall not be considered an emergency coach by DSSAA.

21.2.3 Member schools shall be required to annually reopen all positions that are held by emergency coaches.

21.2.4 Emergency coaches may be employed provided the local governing body adheres to the following procedures:

21.2.4.1 The employing Board of Education must attempt to locate an acceptable, certified professional staff member by advertising the coaching vacancy in the

district for as many days as are required by the district's collective bargaining agreement.

21.2.4.2 If an acceptable, certified professional staff member is not available, an individual who is acceptable to the employing Board of Education may be hired as an emergency coach.

21.2.4.3 Any individual employed as a coach under the emergency provision must comply with the following regulations:

21.2.4.3.1 He/she must be officially appointed by the local Board of Education. The superintendent or his/her designee may temporarily appoint an individual if a coaching vacancy arises and the sport season begins during the interim between meetings of the local Board of Education.

21.2.4.3.2 His/her coaching salary must be paid exclusively by the local Board of Education.

21.3 Students who are practice teaching in a member school shall be permitted to assist in all professional activities during their practice teaching period.

21.4 In addition to the members of the school's regular coaching staff, who must come from 21.1 through 21.3, the local governing body may supplement a school's coaching staff with volunteer coaches. Volunteer coaches are individuals who donate their services to a school and who have been approved by that school's local governing body. A current list of approved volunteer coaches shall be on file in the school's administrative office before any coaching duties are assumed.

21.5 All head coaches shall be required to attend the DSSAA rules clinic for their sport or, if applicable, pass an open book rules examination supplied by the DSSAA office.

21.5.1 A school shall be assessed a \$50.00 fine and the head coach shall be placed on probation if he/she fails to attend the DSSAA rules clinic or pass the open book rules examination in his/her sport. Failure to comply for a second consecutive year shall result in the school being assessed a \$50.00 fine and the coach being suspended for up to five (5) contests as determined by the Executive Director.

21.6 Beginning with the ~~2000-01~~ 2001-02 school year, ~~all head coaches certified and emergency coaches at all levels of competition~~ shall be required to hold a current certification in adult CPR.

~~21.6.1 Beginning with the 2001-02 school year, all assistant coaches shall be required to hold a current certification in adult CPR.~~

22.0 Sports Seasons and Practices

22.1 The fall sports season shall begin on August 25 and end not later than December 1.

22.2 The winter sports season shall begin 21 days before the first Friday in December and end not later than March 1.

22.3 The spring sports season shall begin on March 1

and end not later than the last school day.

22.4 Practice for any fall sport shall not begin earlier than August 25. Practice for any winter sport shall not begin earlier than 21 days before the first Friday in December and practice for any spring sport shall not begin earlier than March 1.

22.4.1 The first three (3) days of football practice shall be primarily for the purpose of physical conditioning and shall be restricted to non-contact activities. Coaches may introduce offensive formations and defensive alignments, run plays "on air," practice non-contact phases of the kicking game, and teach non-contact positional skills. Protective equipment shall be restricted to helmets, mouthguards, and shoes. The use of dummies, hand shields, and sleds in contact drills is prohibited. Blocking, tackling, and block protection drills which involve any contact between players are also prohibited.

22.5 A school which participates in a game prior to the first allowable date ~~or after the start of the state championship~~ shall be required to forfeit the contest and be assessed a \$100.00 fine.

22.6 A school which conducts practice prior to the first allowable date shall be assessed a fine of \$100.00 per illegal practice day.

22.7 A certified, emergency, or volunteer coach shall not be allowed to provide instruction out of the designated season in his/her assigned sport to returning members of the teams of the school at which he/she coaches.

22.7.1 A coach shall not be allowed to participate on a team in his/her assigned sport with the aforementioned players.

22.7.2 A coach shall also be prohibited from officiating contests in his/her assigned sport if the aforementioned players are participating except in organized league competition.

22.7.2.1 The league shall not be organized and conducted by the employing school, the employing school's booster club, or the employing school's coaching staff.

22.7.2.2 The league shall have written rules and regulations that govern the conduct of contests and establish the duties of contest officials.

22.7.2.3 The league shall have registration/entry procedures, forms, and fees; eligibility requirements; and fixed team rosters, team standings, and a master schedule of contests.

22.8 A certified, emergency, or volunteer coach shall not be allowed to provide instruction during the designated season in his/her assigned sport to current members of the teams of the school at which he/she coaches outside of school sponsored practices, scrimmages, and contests.

22.9 A coach who is determined to be in violation of 22.7 and 22.8 shall be suspended from coaching in the specified sport at any DSSAA member school for up to 180 school days from the date the charge is substantiated.

FINAL REGULATIONS

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23.0 Maximum Game Schedules and Designated Sport Season

23.1 The maximum number of regularly scheduled interscholastic contests/competition dates for each team and individual in the recognized sports and their designated season shall be as follows:

23.2 The preceding game limitations, with the

exception of the individual daily limitation, shall not prohibit the rescheduling of postponed games at the discretion and convenience of the member schools involved provided the game was postponed due to inclement weather, unplayable field conditions, failure of the assigned officials to appear for the game, breakdown of the bus or van carrying the visiting team, or any other circumstances beyond the control of site management which preclude playing the game. However, a

Sport <u>Season</u>	Team Limitations		Individual Limitations	
	<u>Week</u>		<u>Week</u>	<u>Day</u>
Fall				
Cross Country (boys and girls)	12 competition dates	+2 competition dates	+2 competition dates	
Field Hockey (girls)	12 contests	2 contests	2 competition dates	2 halves
Football (boys)	8 contests	1 contest	4 quarters	
Soccer (boys)	12 contests	2 contests	2 competition dates	2 halves
Volleyball (girls)	12 competition dates of which 1 date may involve more than 2 teams	2 competition dates	2 competition dates	
Winter				
Basketball (boys and girls)	14 contests	2 contests	2 competition dates	4 quarters
Wrestling (boys)	*10 contests	2 competition dates	2 competition dates	5 matches
Spring				
Baseball (boys)	12 contests	2 contests	2 contests	
Softball (girls)	12 contests	2 contests	2 contests	
Tennis (boys and girls)	12 contests	2 contests	2 contests	
Outdoor Track (boys and girls)	10 competition dates	+2 competition dates	+2 competition dates	
Soccer (girls)	12 contests	2 contests	2 competition dates	2 halves

+ A team may not participate in two different cross country or outdoor track meets on the same day.

*Participation in a triangular meet shall count as two contests and participation in a quadrangular meet shall count as three contests toward the seasonal limitation.

Participation in any part of a quarter/half shall count as a quarter/half toward the weekly and daily limitations in that sport. However, in the case of football, participation on a free kick or a play from a scrimmage kick formation shall not count as a quarter. Overtime periods shall be considered as part of the fourth quarter or second ~~half~~ half.

team may not participate in more than three (3) contests/competition dates in a week.

23.3 A student shall participate in a particular sport for only one season during each academic year.

~~23.3~~ 23.4 A school which participates in more than the allowable number of contests in a season shall be fined \$200.00.

~~23.4~~ 23.5 A school which exceeds the weekly contest limitation shall be required to forfeit the contest and be assessed a \$100.00 fine.

~~23.5~~ 23.6 A student who exceeds the weekly or daily contest limitation shall be considered an ineligible athlete and the school subject to the penalties stipulated in 14.0.

24.0 Practice Sessions

24.1 Member schools shall conduct a minimum of three (3) weeks of practice under the supervision of the school's coaching staff prior to the first scheduled contest in all sports.

~~24.1.1 The intent of this regulation is for each school to conduct regular daily practice during the aforementioned 21-day period, provided weather conditions and other safety related factors permit, without being required to practice on holidays and weekends. Practicing on holidays and weekends shall be left to the discretion of the individual schools and conferences.~~

24.2 A student shall be required to practice for a period of at least seven (7) calendar days prior to participating in a contest. However, if a an eighth-grade student has been participating in a state tournament during the preceding sports season and is unable to begin practicing at least seven (7) calendar days before his/her team's first contest, he/she shall be exempt from this requirement.

24.3 A practice session shall be defined as any instructional or conditioning activity on the field, court, mat, or track or in the pool, weight room, or classroom such as team meetings, film reviews, ~~black chalkboard~~ sessions, warmup and cool down exercises, drills, and mandatory strength training, etc.

24.3.1 All activities shall be under the supervision of a certified, emergency, or approved volunteer coach.

24.4 Practice sessions shall be limited to two (2) hours on official school days.

24.4.1 Split sessions may be conducted, but practice time shall not exceed two (2) hours for any individual athlete.

24.4.2 The two-hour practice limitation does not include time for non-instructional activities such as dressing, showering, transportation, or training room care.

24.5 A school which deliberately exceeds the two-hour practice limitation shall be assessed a \$100.00 fine.

25.0 Awards

25.1 A member school and/or support group affiliated with a member school, such as an alumni association or booster club, shall be allowed to present recognition awards for team and/or individual accomplishments.

25.1.1 The awards, including artwork and lettering, shall require the approval of the administrative head of the school and their value shall be mostly symbolic.

25.1.2 Permissible awards include trophies, plaques, medals, letters, certificates, photographs, and similar items. Jackets, sweaters, shirts, watches, rings, charms and similar items if properly inscribed (reference to the team or individual accomplishment) are also acceptable.

25.1.3 Member schools and such support groups shall also be permitted to sponsor ~~team~~ banquets.

25.2 A non-profit group such as a coaches association, booster club not affiliated with a member school, or community service organization shall be allowed to present recognition awards for team and/or individual accomplishments with the approval of the administrative head of the school.

25.2.1 The awards shall have symbolic value only. Awards that have with utilitarian value are prohibited.

25.2.2 Non-profit groups shall also be permitted to sponsor ~~team~~ banquets.

~~25.2.3 Tournament sponsors shall be allowed to present the members of participating teams with a complimentary item(s) in accordance with 1.5.1.5.~~

25.3 Commercial organizations shall be allowed to present recognition awards for team and/or individual accomplishments with the approval of the administrative head of the school.

25.3.1 The awards shall have symbolic value only. Awards with utilitarian value are prohibited. The aggregate retail value of the award shall not exceed \$50.00 per team or per recipient.

25.4 Non-symbolic competition awards (based on team's or individual's place finish), regardless of sponsor, shall have a ~~utilitarian~~ an aggregate retail value not to exceed \$50.00 per recipient and shall require the prior approval of the Executive Director.

26.0 Boxing

Member schools shall not participate in interscholastic boxing.

27.0 Protests and Complaints

All protests and complaints brought before DSSAA shall be in writing and shall be acted on only after the administrative head of the school involved has been given an opportunity to appear before the Board of Directors.

28.0 Wrestling Weight Control Code

28.1 Each year, four (4) weeks from the first day he/she appears at practice, a wrestler must establish his/her

minimum weight class at a weigh-in witnessed by and attested to in writing by the athletic director or a designated staff member (excluding coaches) of the school the wrestler attends. Thereafter, a wrestler may not compete in a weight class below his duly established weight class.

28.2 The weight classifications shall be as follows:

76 lbs. 100 lbs. 124 lbs. 148 lbs.
 82 lbs. 106 lbs. 130 lbs. 155 lbs.
 88 lbs. 112 lbs. 136 lbs. 165 lbs.
 94 lbs. 118 lbs. 142 lbs. 250 lbs. (minimum weight 164 lbs.)

28.3 With the exception of the above weight classifications, the current edition of the NFHS Wrestling Rules Book shall apply.

28.4 By the end of four (4) weeks of practice, a certified team roster listing the established minimum weight class of each wrestler shall be sent to the Executive Director ~~of DSSAA~~. Further, duly attested notices of additions to the certified roster shall be sent to the Executive Director without delay.

28.5 Schools which desire to conduct their wrestling program at a time other than the season specified in 23.1 must request permission from the Executive Director.

28.5.1 A team which begins its season in October shall receive a one-pound growth allowance in November and an additional pound in December. A team which begins its season in November shall receive a one-pound growth allowance in December, an additional pound in January, and a third pound in February.

~~28.6 Violation of this code on the part of any coach shall be considered evidence of unethical conduct as shall other attempts to circumvent its intent which is to prevent harmful weight reduction.~~

29.0 Use of Officials

29.1 Member schools and tournament sponsors shall be required to use officials approved by DSSAA for interscholastic contests.

29.1.1 In the case of emergencies such as an act of God, refusal by an officials' association to work games, or a shortage of qualified officials, schools which desire to use other than approved officials must obtain permission from the Executive Director.

29.2 Officials shall be required each year to attend the DSSAA rules interpretation clinic and pass the rules examination provided by the DSSAA office for the sport(s) they officiate.

29.2.1 Failure on the part of an official to attend the DSSAA rules interpretation clinic and pass the rules examination in the same season shall cause the official to be placed on probation and to lose his/her eligibility to officiate in a state tournament contest ~~until both requirements have been satisfied in the same season during that season.~~

29.2.2 Failure to ~~fulfill this obligation within one~~

~~(1) year~~ satisfy both requirements in the same season for two (2) consecutive years shall cause the official to lose varsity officiating status during the second season. Failure to fulfill this obligation in subsequent years shall cause the official to continue to be restricted to subvarsity contests until both requirements have been satisfied in the same season.

29.2.3 Attending the fall soccer rules interpretation clinic shall satisfy the clinic attendance requirement for both the boys' and girls' soccer seasons. Attending the spring soccer rules interpretation clinic shall satisfy the clinic attendance requirement for only the girls' soccer season.

29.2.4 If, for a legitimate reason which is documented by the president of his/her association, an official is unable to attend the DSSAA rules interpretation clinic, he/she may view a videotape of the DSSAA clinic or, in the absence of a videotape, attend a clinic conducted by another NFHS member state association provided the following procedures are observed:

29.2.4.1 No later than the day of the DSSAA rules interpretation clinic, the president of the association notifies the Executive Director, in writing, of the official's inability to attend the clinic.

29.2.4.2 The out-of-state clinic is conducted by an individual either trained by the NFHS or designated as a clinician by the state's athletic association.

29.2.4.3 The official arranges for a letter to be sent to the Executive Director from the state's athletic association office verifying his/her attendance at the clinic.

29.3 Use of non-approved officials without permission from the Executive Director shall result in the school or tournament sponsor being assessed a \$50.00 fine per non-approved official.

30.0 ~~Summer~~ Out of Season Athletic Camp and Clinic Sponsorship

30.1 DSSAA does not restrict a student's decision to attend ~~a summer an out of season~~ athletic camp/clinic. However, schools, school organizations, coaches, or school related groups, such as booster clubs, may not sponsor an athletic camp/clinic which limits membership to their own district, locale, or teams. Coaches employed by ~~a summer an out of season~~ athletic camp/clinic may not instruct their own athletes as per 22.8.

30.2 School related groups, such as booster clubs, which desire to sponsor the attendance of their school's enrolled students at ~~summer an out of season~~ athletic camps camp/clinic, may do so with the approval of the local school board or governing body. The disbursement of funds to pay for camp/clinic related expenses (fees, travel costs, etc.) shall be administered by the principal or his/her designee and the funds shall be allocated according to the following guidelines:

30.2.1 All students and team members shall be notified of the available sponsorship by announcement,

publication, etc.

30.2.2 All applicants shall share equally in the funds provided.

30.2.3 All applicants shall be academically eligible to participate in interscholastic athletics.

30.2.4 All applicants shall have one year of prior participation in the sport for which the camp/clinic is intended or, absent any prior participation, he/she shall be judged by the coach to benefit substantially from participation in the camp/clinic.

31.0 Sanctions – School Team Competition

31.1 Member schools may participate in tournaments/meets involving four (4) or more schools only if the event has been sanctioned by DSSAA and, if applicable, by the NFHS. Tournaments/meets shall be sanctioned in accordance with the following criteria:

31.1.1 The event shall not be for determining a regional or national champion.

31.1.2 The event shall be organized, promoted, and conducted by and all profits go to a nonprofit organization. Involvement by a commercial organization shall be limited to providing financial support.

31.1.3 Nonsymbolic competition awards shall have a value of not more than \$50.00 per recipient and shall require the prior approval of the Executive Director.

31.1.4 Non-school event organizers shall submit a full financial report to the DSSAA office within ninety (90) calendar days of the completion of the event.

31.1.5 The event organizer shall submit a list of out-of-state schools which have been invited to participate and such schools shall be subject to approval by the Executive Director.

31.1.6 Out-of-state schools which are not members of their state athletic association shall verify in writing that their participating athletes are in compliance with their state athletic association's eligibility rules and regulations.

31.1.7 The event organizer shall not accept financial support or sell advertising to companies involved in the production or distribution of alcohol and tobacco products.

31.1.8 The event organizer shall comply with all applicable NFHS sanctioning requirements.

31.2 Participation in a non-sanctioned event shall result in the offending school being assessed a \$25.00 fine. A second offense shall result in a \$50.00 fine and loss of eligibility to participate in sanctioned events for the remainder of the sport season. A third offense shall result in a \$100.00 fine and loss of eligibility to participate in sanctioned events for the remainder of the school year.

32.0 Coed Teams

32.1 If a school sponsors a boys' team and a girls' team in a particular sport, boys shall participate on the boys' team

and girls shall participate on the girls' team even if the teams compete during different seasons.

32.1.1 A student shall participate in a particular sport for only one season during each academic year.

32.2 If a school sponsors only a boys' team in a particular sport, girls shall be permitted to participate on the boys' team.

32.3 If a school sponsors only a girls' team in a particular sport, boys shall not be permitted to participate on the girls' team.

33.0 Non-School Instructional Camps and Clinics

33.1 A student may participate in a commercial camp or clinic, including private lessons, both during and out of the designated sport season provided the following conditions are observed:

33.1.1 The student must participate unattached and may not wear school uniforms or use school equipment.

33.1.2 The student may use only school equipment whose primary purpose is to protect the wearer from physical injury.

~~33.1.2~~ 33.1.3 The school may not provide transportation or pay fees.

~~33.1.3~~ 33.1.4 The school coach may not require his/her athletes to participate in a camp or clinic or provide instruction to his/her returning athletes in a camp or clinic.

34.0 Open Gym Programs

34.1 A member school may open its gymnasium or other facility for informal, recreational activities in accordance with the following provisions:

34.1.1 The open gym must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

34.1.2 Student participation must be voluntary and the open gym must not be a prerequisite for trying out for a particular team.

34.1.3 The activities must be unstructured and student-generated. Organized drills in the skills or techniques of a particular sport are prohibited. Organized competition with fixed team rosters is also prohibited.

34.1.3.1 A coach may not predetermine that the open gym will include only his/her sport and publicize the open gym as being restricted to that sport. It is the responsibility of the adult supervisor to permit as many different activities as the facility can effectively and safely accommodate.

34.1.4 A coach may open the facility and distribute playing equipment but may not instruct, officiate, participate, organize the activities, or choose teams in his/her assigned sport.

34.1.5 Playing equipment is restricted to that which is customarily used in a contest in a particular sport. Playing equipment which is only used in a practice session is

prohibited.

34.1.6 The participants must provide their own workout clothing.

35.0 Conditioning Programs

35.1 A member school may conduct a conditioning program in accordance with the following provisions:

35.1.1 The conditioning program must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

35.1.2 Student participation must be voluntary. The conditioning program must not be a prerequisite for trying out for a particular team.

35.1.3 Permissible activities include stretching, lifting weights, jumping rope, running, calisthenics, aerobics, and similar generic conditioning activities. Organized drills in the skills or techniques of a particular sport are prohibited.

35.1.4 A coach may not provide instruction in sport specific skills or techniques.

35.1.5 Sport specific equipment is prohibited.

35.1.6 The participants must provide their own workout clothing.

36.0 Additional Penalties

Additional penalties may be imposed by the Executive Director or the DSSAA Board of Directors for repeat offenses or as deemed necessary to ensure the proper conduct of interscholastic competition.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,
Section 505 (31 Del.C. §505)

ORDER

Nature of the Proceedings:

The Delaware Department of Health and Social Services ("Department") / Division of Social Services / Medicaid/Medical Assistance Program proposed to implement a Medicaid State Plan change related to the reimbursement methodology for Nursing Facility Services. This change is made as a result of State law, which establishes minimum staffing levels for residential health facilities in Delaware. State law also mandates changes to the Delaware Medical Assistance Program reimbursement methodology to reflect the additional costs associated with the increased staffing levels.

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 April, 2001 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 30, 2001 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Three comments, of which two are similar were received and evaluated from the following two organizations: State Council For Persons With Disabilities (SCPD) and, Governor's Advisory Council For Exceptional Citizens (GACEC). The results of that evaluation are summarized below.

Summary of Comments Submitted, with Agency Response:

Comment from SCPD: First, there is a grammatical error in Section I.B.1, second sentence regarding how providers are reimbursed.

DSS Response: The wording is a choice of style, and not a grammatical error. Providers receive rates, which are based on reported costs; they do not receive payment based on rates. Respectfully, the wording of the second sentence will not be changed.

Comment from SCPD and GACEC: Second, the regulations in Sections II.B., II.C., and II.G.3. are inconsistent in addressing dental services.

DSS Response: Dental services are included in the per diem rates paid to State operated facilities. Dental services are not included in a private facility's per diem rate. Section II.B. and Section II.G.3., Paragraph 2 will be amended to clarify that this applies only to State operated facilities.

Comment from SCPD and GACEC: It is not clear how Assistive Technology or Durable Medical Equipment are reimbursed for both public and private facilities.

DSS Response: Assistive Technology (AT) and Durable Medical Equipment (DME) are not included in the per diem for either private or State operated nursing facilities. DME requires a physician's order, and may be billed by the provider. Assistive Technology (AT) requires the specific direction of a physician, and is specific to the needs of each patient. Because it is a service independent of nursing home care, it is reimbursed separately, and not addressed in the nursing home reimbursement policy.

Findings of Fact:

The Department finds that the proposed changes as set forth in the April, 2001 Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulations related to the Medicaid reimbursement methodology for Nursing Facility Services are adopted and shall be final effective June 10, 2001.

Vincent P. Meconi, Secretary, DHSS

**REVISION
METHODS AND STANDARDS FOR ESTABLISHING
PAYMENT RATES
PROSPECTIVE REIMBURSEMENT SYSTEM
FOR LONG TERM CARE FACILITIES**

STATE PLAN AMENDMENT 4.19-D

I. General Provisions**A. Purpose**

This plan establishes a reimbursement system for long-term care facilities that complies with federal requirements, including but not limited to:

- Requirements of the Omnibus Reconciliation Act of 1981 that nursing facility provider reimbursements be reasonable and adequate to assure an efficient and economically operated facility.
- The requirement that Medicaid payments in the aggregate do not exceed what would have been paid by Medicare based on allowable cost principles.
- Limitations on the revaluation of assets subsequent to a change of ownership since July 18, 1984.
- Requirements of the Omnibus Reconciliation Act of 1987 to establish one level of nursing care, i.e., Nursing Facility Care, to eliminate the designation of Skilled and Intermediate Care, and to provide sufficient staff to meet these requirements.
- The requirement to employ only nurse aides who have successfully completed a training and competency evaluation program or a competency evaluation program.

B. Reimbursement Principles

1. Providers of nursing facility care shall be reimbursed prospectively determined per diem rates based on a patient based classification system. Providers of ICF-MR and ICF-IMD services shall be reimbursed prospectively determined per diem rates.

2. The Delaware Medicaid Program shall reimburse qualified providers of long-term care based on the individual Medicaid recipient's days of care multiplied by the applicable per diem rate for that patient's classification

less any payments made by recipients or third parties.

II. Rate Determination for Nursing Facilities**A. Basis for Reimbursement**

Per Diem reimbursement for nursing facility services shall be composed of five prospectively determined rate components that reimburse providers for primary patient care, secondary patient care, support services, administration, and capital costs.

The primary patient care component of the per diem rate is based on the nursing care costs related specifically to each patient's classification. In addition to assignment to case mix classifications, patients may qualify for supplementary primary care reimbursement based on their characteristics and special service needs. Primary care component reimbursement for each basic patient classification will be the same for each facility within a group. A schedule of primary rates, including rate additions, is established for each of three groups of facilities:

- Private facilities in New Castle County
- Private facilities in Kent and Sussex Counties
- Public facilities

Payment for the secondary, support, administrative, and capital costs comprise the base rate, and is unique to each facility. Provider costs are reported annually to Medicaid and are used to establish rate ceilings for the secondary, support, and administrative cost centers in each provider group.

The sections that follow provide specific details on rate computation for each of the five rate components.

B. Rate Components

Payment for services is based on the sum of five rate components. The rate components are defined as:

- **Primary Patient Care.** This cost center encompasses all costs that are involved in the provision of basic nursing care for nursing home patients and is inclusive of nursing staff salaries, fringe benefits, and training costs. Costs of completing Resident Assessment and Plans of Care will be covered in this cost center.
- **Secondary Patient Care.** This cost center encompasses other patient care costs that directly affect patient health status and quality of care and is inclusive of clinical consultants, social services, raw food, medical supplies, and non prescription drugs, dietitian services, dental services [**in public facilities only**], and activities personnel.
- **Support Services.** This cost center includes costs for departments that provide supportive services other than medical care and is inclusive of dietary, operation and maintenance of the facility, housekeeping, laundry and linen, and patient recreation.
- **Administrative.** This category includes costs that

are not patient related and is inclusive of owner/administrator salary, medical and nursing director salary (excluding such time spent in direct patient care), administrative salaries, medical records, working capital, benefits associated with administrative personnel, home office expenses, management of resident personal funds, and monitoring and resolving patient's rights issues.

- **Capital.** This category includes costs related to the purchase and lease of property, plant and equipment and is inclusive of lease costs, mortgage interest, property taxes and depreciation.

C. Excluded Services

Those services to residents of private long term care facilities that are ordinarily billed directly by practitioners will continue to be billed separately and are not covered by the rate component categories. This includes prescription drugs, Medicare Part B covered services, physician services, hospitalization and dental services, laboratory, radiology, and certain ancillary therapies.

For public facilities, laboratory, radiology, prescription drugs, physician services, dental services, and ancillary therapies are included in the per diem.

Costs of training and certification of nurse aides are billed separately by the facilities as they are incurred, and reimbursed directly by Medicaid.

D. Primary Payment Component Computations

The primary patient care rate component is based on a patient index system in which all nursing home patients are classified into patient classes. The lowest resource intensive clients are placed in the lowest class.

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

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

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

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

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

Each patient classification is related to specific nursing time ~~factors requirements determined by the time and motion study last updated in 1994.~~ These time factors are multiplied by the ~~median~~ 75th percentile nurse wage in each provider group to determine the per diem rate for each classification.

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

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

The Department will evaluate new facility-developed rehabilitative/preventive care plans during its patient classification reviews of nursing homes.

Interim provisional approval of plans can be provided by Department review nurses. When reviewed, the Department will examine facility documentation on the provision of rehabilitative/preventive services to patients with previously approved care plans as well as progress towards patient goals.

3. Patients exhibiting disruptive psycho social behaviors on a frequent basis as defined and classified by the Department shall receive an additional 10 percent of the primary care rate component for the appropriate classification.

The specific psycho social behaviors that will be considered for added reimbursement under this provision are those that necessitate additional nursing staff intervention in the provision of personal and nursing care. Such behaviors include: verbal and physically disruptive actions, inappropriate social behavior, non-territorial wandering, and any other similar patient problems as designated by the Department.

Facilities must have complete documentation on frequency of such behaviors in a patient's chart for the Department to consider the facility for added reimbursement under this provision. This documentation will be evaluated during patient classification reviews of a nursing home.

4. Patient class rates are determined based on the

time required to care for patients in each classification, and nursing wage, fringe benefit, and training costs tabulated separately for private facilities in New Castle County, private facilities in Kent and Sussex Counties, and public facilities statewide.

Primary rates are established by the following methodology

- Annual wage surveys and cost reports required of each provider are used to determine ~~median~~ 75th percentile hourly nursing wages.

The cost report used in the calculations will represent the fiscal year ending June 30th of the previous reimbursement year. The Delaware reimbursement year, for purposes of rate setting, is from October 1 through September 30.

This is calculated by first dividing total pay by total hours for each nursing classification (RN, LPN, Aide) in each facility, then arraying the representative averages 75th percentile wages of each facility to determine the ~~median~~ 75th percentile within each provider group. Based on cost data from each provider group, hourly wage rates are adjusted to include hourly training and fringe benefit costs within each provider group.

- In each of the three provider groups (private facilities in New Castle County, Kent and Sussex Counties, and public facilities), the rates are established in the same manner.

The primary component of the Medicaid nursing home rate is determined by multiplying the ~~median~~ 75th percentile hourly nursing wage for RNs, LPNs, and Aides by standard nursing time factors for each of the base levels of patient acuity. ~~The nursing time factor was determined by a 1981 Maryland work measurement study, and updated in 1987 by Peat Marwick and again in 1991 by Lewin/ICF. The time factors based on this, the most recent time and motion study, are included in the Delaware reimbursement calculation documentation.~~

- Providers will be reimbursed for agency nurse costs if their use of agency nurses does not exceed the allowable agency nurse cap determined each year by the Delaware Medicaid staff. Any nursing cost incurred in excess of the allowable cap will not be included in the nursing cost calculation. ~~The caps on the agency nurse contribution to hourly nursing costs is set at the median utilization ratio of agency to staff nurse hours for those facilities that use agency nurses.~~
- Within each of the patient classes, Medicaid provides "Incentive Add-ons" to encourage rehabilitative and preventive programs. Rehabilitative and preventive services shall be reimbursed at the same rate as the next highest patient class. In the case of patients in the highest

class, the facility will receive an additional 10 percent of the primary care rate component. Incentive payments discourage the deterioration of patients into higher classifications.

E. Non-Primary Rate Component Computations

Facility rates for the four non-primary components of secondary, support, administrative, and capital are computed from annual provider cost report data on reimbursable costs. Reimbursable costs are defined to be those that are allowable based on Medicare principles, according to HIM 15. Costs applicable to services, facilities, and supplies furnished to a provider by commonly owned, controlled or related organizations shall not exceed the lower cost of comparable services purchased elsewhere.

The cost report used in the calculations will represent the fiscal year ending June 30th of the previous reimbursement year. The Delaware reimbursement year, for purposes of rate setting, is from October 1 through September 30.

The discussion that follows explains rate computation for the secondary, support, administrative, and capital payment centers.

1. Secondary patient care rates are reimbursed according to the cost of care determined prospectively up to a calculated ceiling (115 percent of median per diem costs). Three steps are required:

- Facilities are grouped into the three peer groups - private facilities in New Castle County, private facilities in Kent and Sussex Counties, and public facilities.
- Individual allowable cost items from cost reports for each facility comprising the secondary care component are summed and divided by patient days. For established facilities, the patient day amount used in this computation equals actual patient days or estimated days based on a 90 percent occupancy of Medicaid certified beds, whichever is greater. The day amount for new facilities¹ equals actual patient days for the period of operation, or estimated days based on a 75 percent occupancy of Medicaid certified beds, whichever is greater.
- The median per diem cost is determined for each category of facility and inflated by 15 percent. The secondary care per diem assigned to a facility is the actual allowable cost up to a maximum of 115

1. * "New facility" is defined as: (1) New construction built to provide a new service of either intermediate or skilled nursing care for which the existing facility has never before been certified, or (2) construction of an entirely new facility totally and administratively independent of an existing facility.

percent of the median.

2. Support service component rates are determined in a manner that parallels the secondary component rate calculation process. However, the ceiling is set at 110 percent of median support costs per day for the appropriate category of facility. In addition, facilities which maintain costs below the cap are entitled to an incentive payment 25 percent of the difference between the facility's actual per day cost and the applicable cap, up to a maximum incentive of 5 percent of the cap amount.

3. Administrative component rates are determined in a manner parallel to the secondary component. However, the ceiling is set at 105 percent of median costs per day. A facility is entitled to an incentive payment of 50 percent of the difference between its actual costs and the cap. The incentive payment is limited to 10 percent of the ceiling amount.

4. Capital component rates are determined prospectively and are subject to a rate floor and rate ceiling. The dollar amounts representing the 20th percentile of actual per diem capital cost (floor) and the 80th percentile of actual per diem capital cost (ceiling) are calculated. If the facility's costs are greater than or equal to the floor, and less than or equal to the ceiling, the facility's prospective rate is equal to its actual cost. If the facility's costs are below the floor, the prospective rate is equal to the lower of the floor or actual cost plus twenty-five percent of actual cost. If the facility's cost are greater than the ceiling, the prospective rate is equal to the higher of the ceiling or ninety-five percent of actual cost. Costs associated with revaluation of assets of a facility will not be recognized.

F. Computation of Total Rate from Components

A facility's secondary, support, administrative, and capital payments will be summed and called its basic rate. The total rate for a patient is then determined by adding the primary rate for which a patient qualifies to the facility's basic rate component. The basic payment amount will not vary across patients in a nursing home. However, the primary payment will depend on a patient's class and qualification for added rehabilitative/preventive and/or psycho social reimbursement.

G. OBRA '87 Additional Costs

1. Nurse Aide Training and Certification

Providers of long-term care services will be reimbursed directly for the reasonable costs of training, competency testing and certification of nurse aides in compliance with the requirements of OBRA '87. The training and competency testing must be in a program approved by the Delaware Department of Health and Social Services, Division of Public Health. A "Statement of Reimbursement Cost of Nurse Aide Training" is submitted to the state by each facility quarterly.

Costs reported on the Statement of Reimbursement

Cost are reimbursed directly and claimed by the State as administrative costs. They include:

- Costs incurred in testing and certifying currently employed nurse aides, i.e., testing fees, tuition, books, and training materials.
- Costs of providing State approved training or refresher training in preparation for competency evaluation testing to employed nurse aides who have not yet received certification.
- Salaries of in-service instructions to conduct State approved training programs for the portion of their time involved with training, or fees charged by providers of a State approved training program.
- Costs of transporting nurse aides from the nursing facility to a testing or training site.

The following costs of nurse aide training are considered operational, and will be reported annually on the Medicaid cost report. These costs will be reimbursed through the Primary cost component of the per diem rate.

- Salaries of nurse aides while in training or competency evaluation.
- Costs of additional staff to replace nurse aides participating in training or competency evaluation.
- Continuing education or nurse aides following certification.

2. Additional Nurse Staff Requirements

Additional nurse staff required by a nursing facility to comply with the requirements of OBRA '87 will be reimbursed under the provisions of the Delaware Medicaid Patient Index Reimbursement System (PIRS). This system makes no distinction between levels of care for reimbursement. Nursing costs are derived from average hourly wage, benefit, and training cost data provided on the Nursing Wage Survey submitted by each facility. Prospective rates for each patient acuity classification are calculated by these costs by the minimum nursing time factors. Although representative of actual costs incurred, these prospectively determined rates are independent of the number employed or the number of staff vacancies at any given time.

3. Additional Non-Nursing Requirements

The Delaware Medicaid reimbursement system will recognize the incremental costs of additional staff and services incurred by nursing facilities to comply with the mandates of OBRA '87. Prospective rate calculations will be adjusted to account for costs incurred on or after October 1, 1990.

Where services are currently contracted by the nursing facility to a practitioner, additional services may be billed directly. These services are not covered by the rate component categories **[for private facilities, but may be included in the rate for public facilities]**. ~~[This]~~ **[These services]** include ~~fs~~ therapies, physician services, dental services, and prescription drugs.

A supplemental schedule to the Statement of Reimbursement Costs (Medicaid Cost Report) will be submitted by each facility to demonstrate projected staff and service costs required to comply with OBRA'87. For the rate year beginning October 1, 1990, facilities may project full year costs onto prior year reported actual costs to be included in the rate calculation.

The supplemental schedule will be used to project costs incurred for programs effective October 1, 1990 into the prospective reimbursement rates. Where nursing care facilities indicate new and anticipated staff positions, those costs will be included with the actual SFY '90 costs when calculating the reimbursement rates effective October 1, 1990.

Additional staff requirements include dietitian, medical director, medical records, activities personnel, and social worker.

H. Hold Harmless Provision

For the first year under the patient index reimbursement system the Department will have in effect a hold-harmless provision. The purpose of the provision is to give facilities an opportunity to adjust their operations to the new system. Under this provision, no facility will be paid less by Medicaid under the patient index system than it would have been paid had Federal Fiscal Year 1988 rates, adjusted by an inflation factor, been retained.

For the period October 1, 1990 to September 30, 1991, the Department will have in effect a hold-harmless provision with respect to capital reimbursement rates. The purpose of this provision is to give facilities an opportunity to adjust their operations to the new system. Under this provision, facilities will be paid the greater of the rate under the prospective capital rate methodology or the rate based on reimbursable costs. Beginning October 1, 1991, all facilities will be subject to the prospective capital rate methodology described in Section II.E.4.

I. Annual Rate Recalculation

1. Primary Payment Component

Rates for the primary patient care component will be rebased annually. Two sources of provider-supplied data will be used in this rate rebasing:

- An annual nursing wage and salary survey that the Department will conduct of all Medicaid-participating nursing facilities in Delaware.
- Nursing home cost report data on nurses' fringe benefits and training costs.

~~Median~~ The 75th percentile wages will be redetermined annually from the wage and salary survey, and the standard nurse time factors will be applied for each patient classification. The cost report and wage and salary survey will be for the previous year ending June 30.

2. Non-Primary Payment Components

The payment caps for the secondary, support, and

administrative components will be rebased every fourth year using the computation methods specified in Section E above. For the interim periods between rebasing, the payment caps will be inflated annually based on reasonable inflation estimates as published by the Department. Facility-specific payment rates for these cost centers shall then be calculated using these inflated caps and cost report data from the most recently available cost reporting period.

The capital floor and ceiling will be rebased annually.

3. Inflation Adjustment

Per diem caps for primary, secondary, support and administrative cost centers will be adjusted each year by inflation indices. The inflation indices are obtained from the Department of Economics of the University of Delaware and include both regional and national health care-specific economic trends. The inflation forecast is based on the U.S. Consumer Price Indexed. Factors reviewed on the demand side include recent growth rates in the money supply, employment, and business and government debt, as well as the state of the business cycle. Current capacity utilization rates and new capital spending plans, production delivery delays, employment to population ratios, wages, and trends in energy, housing, and food are studies on the supply side. The forecast is also confirmed by reviewing the Consumer Estimates and Columbia University Leading Index of Inflation, interest rates in the futures markets, the Commodity Research Bureau's Index of Futures Prices, and the trade weighted price of the dollar.

The inflation factors are applied to the actual nursing wage rates to compensate for the annual inflation in nursing costs. This adjustment is made before the nurse training and benefits are added and the wages are multiplied by the standard nurse time factors.

Cost center caps are used to set an upper limit on the amount a provider will be reimbursed for the costs in the secondary, support, and administrative cost centers. Initially, these caps are computed by determining the median value of the provider's actual daily costs, then adjusting upwardly according to the particular cost center. The Secondary cost center cap is 115% of the provider group median, and Administrative costs are capped at 105% of the median. Delaware Medicaid will recalculate non-primary cost center caps every three years. In interim rate years, these cost center caps will not be recomputed. Instead, cost center caps will be adjusted by inflation factors. The inflation index provided by the University of Delaware will be applied to the current cap in each cost center in each provider group to establish the new cap. The actual reported costs will be compared to the cap. Facilities with costs above the cap will receive the amount of the cap.

J. Medicare Aggregate Upper Limitations

The State of Delaware assures HCFA that in no case shall aggregate payments made under this plan,

inclusive of DEFRA capital limitations, exceed the amount that would have been paid under Medicare principles of reimbursement. As a result of a change of ownership, on or after July 18, 1984, the State will not increase payments to providers for depreciation, interest on capital and return on equity, in the aggregate, more than the amount that would be recognized under section 1861(v)(1)(O) of the Social Security Act. Average projected rates of payment shall be tested against such limitations. In the event that average payment rates exceed such limitations, rates shall be reduced for those facilities exceeding Medicare principles as applied to all nursing facilities.

III. Rate Determination ICF/MR and ICF/IMD Facilities

Delaware will recalculate the prospective per diem rates for ICF/MRs and ICF/IMDs annually for the reimbursement year or October through September 30. ICF/MR and ICF/IMD facilities shall be reimbursed actual total per diem costs determined prospectively up to a ceiling. The ceiling is set at the 75th percentile of the distribution of costs of the facilities in each class. There are four (4) classes of facilities, which are:

1. Public ICF/MR facilities of 8 beds or less.
2. Public ICF/MR facilities of greater than 8 beds.
3. Private ICF/MR facilities of 60 beds or less.
4. Public ICF/IMD facilities.

An inflation factor (as described in II.H.3 above) will be applied to prior year's costs to determine the current year's rate.

IV. Rate Reconsideration

A. Primary Rate Component

Long-term care providers shall have the right to request a rate reconsideration for alleged patient misclassification relating to the Department's assignment of the ~~class~~ case mix classification. Conditions for reconsideration are specified in the Department's nursing home appeals process as specified in the long-term care provider manual.

1. Exclusions from Reconsideration

Specifically excluded from patient class reconsiderations are:

- Changes in patient status between regular patient class reviews.
- Patient classification determinations, unless the loss of revenues for a month's period of alleged misclassification equals ten percent or more of the facility's Medicaid revenues in that month.

2. Procedures for Filing

Facilities shall submit requests for reconsiderations within sixty days after patient classifications are provided to a facility. All requests shall be submitted in writing and must be accompanied by supporting documentation as required by the Department.

3. Patient Reclassifications

Any reclassification resulting from the reconsideration process will become effective on the first day of the month following such reclassification.

B. Non-Primary Rate Components

Long-term care providers shall have the right to request a rate reconsideration for any alleged Department miscalculation of one or more non-primary payment rates. Miscalculation is defined as incorrect computation of payment rates from provider supplied data in annual cost reports.

1. Exclusions from Reconsideration

Specifically excluded from rate consideration are:

- Department classification of cost items into payment centers.
- Peer-group rate ceilings.
- Department inflation adjustments.
- Capital floor and ceiling rate percentiles.

2. Procedures for Filing

Rate reconsiderations shall be submitted within sixty days after payment rate schedules are provided to a facility. All requests shall be submitted in writing and must be accompanied by supporting documentation as requested by the Department.

3. Rate Adjustments

Any rate adjustments resulting from the reconsideration process will take place on the first day of the month following such adjustment. Rate adjustments resulting from this provision will only affect the facility that had rate miscalculations. Payment ceilings and incentive amounts for other facilities in a peer group will not be altered by these adjustments.

V. Reimbursement for Super Skilled Care

A higher rate will be paid for individuals who need a greater level of skilled care than that which is currently reimbursed in Delaware nursing facilities. For patients in the Super Skilled program prior to 4/1/93, the rate will be determined as follows:

A summary of each individual who qualified under the Medicaid program's criteria for a "Super Skilled" level of care will be sent to local nursing facilities which have expressed an interest in providing this level of care. They will be asked to submit bids, within a specific time frame, for their per diem charge for caring for the individual. The Medicaid program will review the bids and select the one that most meets the needs of the patient at the lowest cost.

Effective 4/1/93, all new patients who would have formerly been placed in a super skilled level will be placed in one of the patient class levels and reimbursed as any other client. The Medicaid program will pay outside of the per diem rate for the exceptional costs of their care, such as ventilator equipment and special supplies required.

VI. Reporting and Audit Requirements**A. Reporting**

All facilities certified to participate in the Medicaid program are required to maintain cost data and submit cost reports on the form and in the format specified by the Department. Such reports shall be filed annually. Cost reports are due within ninety days of the close of the state fiscal year. All Medicaid participating facilities shall report allowable costs on a state fiscal year basis, which begins on July 1 and ends the following June 30. The allowable costs recognized by Delaware are those defined by Medicare principles.

In addition, all facilities are required to complete and submit an annual nursing wage survey on a form specified by the Department. All facilities must provide nursing wage data for the time periods requested on the survey form.

For patients in the Super Skilled program prior to 4/1/93, annual Super Skilled bids will be considered the cost report for Super Skilled services. The nursing facility cost report must be adjusted to reflect costs associated with care for Super Skilled patients.

Failure to submit timely cost reports or nursing wage surveys within the allowed time periods, when the facility has not been granted an extension by the Department, shall be grounds for suspension from the program. The Department may levy fines for failure to submit timely data as described in Section II.D. of the General Instructions to the Medicaid nursing facility cost report.

B. Audit

The Department shall conduct a field audit of ~~facilities each year in at least 15 percent of~~ participating facilities, in accordance with federal regulation and State law. Both cost reports and the nursing wage surveys will be subject to audit.

Overpayments identified and documented as a result of field audit activities, or other findings made available to the Department, will be recovered. Such overpayments will be accounted for on the Quarterly Report of Expenditures ~~within 60 days of the time the error is found~~ as required by regulation.

Rate revisions resulting from field audit will only affect payments to those facilities that had an identified overpayment. Payment ceilings and incentive payments for other facilities within a peer group will not be altered by these revisions.

C. Desk Review

All cost reports and nursing wage surveys shall be subjected to a desk review annually. Only desk reviewed cost report and nursing wage survey data will be used to calculate rates.

VII. Reimbursement for Out-of-State Facilities

Facilities located outside of Delaware will be paid the lesser of the Medicaid reimbursement rate from the state

in which they are located or the highest rate established by Delaware for comparably certified non-state operated facilities as specified above.

VIII. Reimbursement of Ancillary Service for Private Facilities

Oxygen, physical therapy, occupational therapy, and speech therapy will be reimbursed on a fee-for-service basis. The rates for these services are determined by a survey of all enrolled facilities' costs. The costs are then arrayed and a cap set at the median rate. Facilities will be paid the lower of their cost or the cap. The cap will be recomputed every three years based on new surveys.

The Delaware Medicaid Program's nursing home rate calculation, the Patient Index Reimbursement System, complies with requirements found in the Nursing Home Reform Act and all subsequent revisions. A detailed description of the methodology and analysis used in determining the adjustment in payment amount for nursing facilities to take into account the cost of services required to attain or maintain the highest practicable physical, mental and psycho social well-being of each resident eligible for benefits under Title XIX is found in Attachment A.

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL
DIVISION OF AIR & WASTE MANAGEMENT**

Statutory Authority: 7 Delaware Code,
Chapters 60 & 63, (7 Del.C. Ch. 60, 63)

**Secretary's Order No.: 2001-A-0018
RE: 2001 Proposed Amendments to the Delaware
Regulations Governing Hazardous Waste**

**Date of Issuance: April 23, 2001
Effective Date of the Amendment: June 11, 2001**

I. Background

On Tuesday, April 10, 2001, at approximately 7:00 p.m., a public hearing was held in the DNREC Auditorium at 89 Kings Highway, Dover, Delaware. The purpose of this hearing was to receive public comment on the proposed amendments the **Delaware Regulations Governing Hazardous Waste**. After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared his report and recommendation in the form of a memorandum to the Secretary dated April 20, 2001, and that memorandum is expressly incorporated herein by reference.

II. Findings and Conclusions

All of the findings and conclusions contained in the Hearing Officer's Memorandum dated April 20, 2001, are expressly incorporated herein and explicitly adopted as the findings and conclusions of the Secretary.

III. Order

In view of the above, I hereby order that the proposed amendments to the **Delaware Regulations Governing Hazardous Waste** be promulgated and implemented in the manner and form provided for by law pursuant to the changes proposed prior to the hearing and as recommended in the Hearing Officer's memorandum.

IV. Reasons

Adopting the proposed amendments to the **Delaware Regulations Governing Hazardous Waste** will be beneficial to the State of Delaware, in that these amendments will add consistency and/or clarification to the existing regulations. Additionally, some of these amendments will enable the State of Delaware to improve and/or enhance the overall performance of the hazardous waste management program. Furthermore, the adoption of these amendments will permit the State of Delaware to maintain its RCRA program delegation, and remain current with the Federal hazardous waste program.

Nicholas A. DiPasquale, Secretary

**2001 AMENDMENTS TO
DELAWARE REGULATIONS GOVERNING
HAZARDOUS WASTE
SUMMARY**

This summary presents a brief description of the 2001 amendments to *Delaware Regulations Governing Hazardous Waste* (DRGHW) and a list of those sections generally affected by the amendments. This summary is provided solely for the convenience of the reader.

These changes incorporate certain Federal RCRA amendments into Delaware's hazardous waste management program. The State is required to adopt these amendments in order to maintain its RCRA program delegation and remain current with the Federal hazardous waste program.

The State is also making miscellaneous changes to the existing regulations for the purpose of correcting errors and to add consistency or clarification to the existing regulations. Some amendments are being made to the existing regulations in order to improve or enhance the performance of the hazardous waste management program.

Summaries for the regulatory amendments are listed

below and organized by EPA's promulgating Federal Register notice. For additional information, please contact the Solid and Hazardous Waste Management Branch at (302) 739-3689.

1. Title: Hazardous Air Pollutant Standards for Combusters

Federal Register References: 64 FR 52828-53077 and 64 FR 63209-63213

Federal Promulgation Date: September 30, 1999 and November 19, 1999 respectively

SUMMARY:

(1) This amendment finalizes National Emissions Standards for Hazardous Air Pollutants (NESHAPS) for three source categories referred to collectively as hazardous waste combustors. Hazard waste combustors include hazardous waste burning incinerators, hazardous waste burning cement kilns, and hazardous waste burning lightweight aggregate kilns. These standards are promulgated under joint authority of the Clean Air Act (CAA) and the Resource Conservation and Recovery Act (RCRA). The amendment establishes emission standards for chlorinated dioxins and furans, other toxic organic compounds, toxic metals, hydrochloric acid, chlorine gas and particulate matter. The standards reflect the performance of Maximum Achievable Control Technologies (MACT). After submittal of the Notification of Compliance (NOC) under the CAA, and after modification of the RCRA permit at individual facilities, the RCRA national stack emission standards will no longer apply to hazardous waste combustors. By using both authorities, EPA consolidates regulatory control of hazardous waste combustion into a single set of regulations, eliminating conflicting or duplicative federal requirements while increasing protection of human health and the environment.

(2) This amendment added a requirement that permits for miscellaneous units must include appropriate terms and conditions from 40 CFR part 63, subpart EEE standards.

(3) This amendment The amendment establishes emission standards for chlorinated dioxins and furans, other toxic organic compounds, toxic metals, hydrochloric acid, chlorine gas and particulate matter. The smelter must provide a one-time notice to the State identifying each hazardous waste burned and stating that the facility claims an exemption from other BIF requirements. Those secondary lead smelters who have already provided notice pursuant to 266.100(c) do not have to renotify.

(4) This amendment incorporates the term "treatment" into 266.101(c) to clarify that fuel-blending activities that are conducted in units other than 90-day tanks or containers also are subject to full regulation.

(5) This amendment amends the comparable fuels portion to make necessary conforming changes to the

comparable fuels specifications as listed in Table 1 of 261.38.

(6) This amendment corrects a typographical error to section 122.42 Appendix I entry L (9) adopted August 23, 1999.

Sections of the DRGHW effected by this amendment: 260.10; 261.38/Table 1; 264.340(b), (c)-(e); 264.601; 265.340(b) and (c); 266.100; 266.101(c); 266.105(c) and (d); 266.112(b); 266 Appendix VIII; 122.19; 122.22; 122.42 Appendix I; 122.62; 122.66.

2. Title: Land Disposal Restrictions Phase IV – Technical corrections

Federal Register Reference: 64 FR 56469-56472

Federal Promulgation Date: October 20, 1999

SUMMARY: This amendment makes minor corrections to previously adopted amendments relating to Phase IV Land Disposal Restrictions.

Sections of the DRGHW effected by this amendment: 261.32; 262.34(a); 268.7(a); 268.40(j); 268.40/Table; 268.49(c).

3. Title: Accumulation Time for Waste Water Treatment Sludges

Federal Register Reference: 65 FR 12378-12398

Federal Promulgation Date: March 8, 2000

SUMMARY: This rule promulgates regulations that allow large quantity generators of F006 wastes up to 180 days (or 270 days in certain circumstances) to accumulate F006 waste on-site in tanks, containers, or containment buildings without a hazardous waste storage permit or interim status, provided that these generators (1) have implemented pollution prevention practices, (2) recycle the F006 waste through metals recovery, (3) accumulate no more than 20,000 kg of F006 waste at any one time, and (4) comply with applicable management standards. The same management standards that apply to 90-day on-site accumulation of hazardous waste apply to the new 180-day (or 270-day, as applicable) on-site accumulation of F006 waste. The extension of the accumulation time addresses economic barriers to the recycling of F006 waste through metals recovery. This change will provide large quantity generators of F006 waste an incentive to choose recycling instead of treatment and land disposal as their final waste management option.

Sections of the DRGHW effected by this amendment: 262.34(a); 262.34(g); 262.34(h); 262.34(i)

4. Title: Organobromine Production Wastes Vacatur

Federal Register Reference: 65 FR 14472-14475

Federal Promulgation Date: March 17, 2000

SUMMARY: The amendment addressed in this Federal Register vacates EPA's March 4, 1998 listing of K140 and U408 wastes. While Delaware adopted EPA's March 4, 1998 listings on August 23, 1999, it will remove the K140 and U408 listings in accordance with the March 17, 2000 Federal Register.

Sections of the DRGHW effected by this amendment: 261.32/Table; 261.33(f)/Table; 261 Appendix VII; 261 Appendix VIII; 268.33; 268.40/Table; 268.48(a)/Table.

5. Title: Petroleum Refining Process Wastes – Clarification

Federal Register Reference: 65 FR 36365-36367

Federal Promulgation Date: June 8, 2000

SUMMARY: This amendment corrects a typographical error in the description for EPA Hazardous Waste Code F037.

Sections of the DRGHW effected by this amendment: 261.31(a)/Table.

6. Miscellaneous Changes:

SUMMARY: Miscellaneous changes will be made to the *Delaware Regulations Governing Hazardous Waste* to correct errors and inconsistencies in the regulations. In some cases, changes will be made to enhance the performance of the State's hazardous waste management program.

Of the proposed changes that would enhance the hazardous waste program, the State is proposing to require Conditionally Exempt Small Quantity Generators to ensure that containers of hazardous waste be closed at all times except when adding or removing waste from the container, and to mark the containers with the words "Hazardous Waste" or other words identifying the contents of the container. A second proposed enhancement includes a requirement for owners or operators of facilities undergoing closure or post closure at a facility using a Trust Fund to include the fees charged by the trustee of the fund in their closure/post closure cost estimates. And, a comment is being added at the end of the definition of "Personnel or facility personnel" in §260.10 to emphasize that for the purposes of personnel training, the definition includes emergency coordinators.

Sections or portions of DRGHW affected by these changes include but are not limited to: 260.10; 261.5; 262.23; 265.16; 265.56; 265.194; and 122.1.

**DEPARTMENT OF STATE
OFFICE OF THE STATE BANKING
COMMISSIONER**

Statutory Authority: 5 Delaware Code,
Section 121(b) (5 **Del.C.** §121(b))

**NOTICE OF PROPOSED AMENDMENT OF
REGULATIONS OF THE STATE BANK
COMMISSIONER****Order Adopting Amended Regulation 5.761.0017 And
New Regulation 5.2202(b).0007**

IT IS HEREBY ORDERED, this 4th day of May, 2001, that amended regulation 5.761.0017 and new regulation 5.2202(b).0007 are adopted as regulations of the State Bank Commissioner. Copies of amended regulation 5.761.0017 and new regulation 5.2202(b).0007 are attached hereto and incorporated herein by reference. Amended regulation 5.761.0017 supersedes previous regulation 5.761.0017. The effective date of amended regulation 5.761.0017 and new regulation 5.2202(b).0007 is June 11, 2001. Amended regulation 5.761.0017 and new regulation 5.2202(b).0007 are adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code.

Amended regulation 5.761.0017 and new regulation 5.2202(b).0007 are adopted pursuant to the requirements of Chapter 11 and 101 of Title 29 of the Delaware Code, as follows:

1. Notice of proposed amended regulation 5.761.0017 and new regulation 5.2202(b).0007 and the text of those proposed regulations were published in the April 1, 2001 issue of the Delaware Register of Regulations. The Notice also was published in The News Journal and the Delaware State News on April 10, 2001, and was mailed to all persons who had made timely written requests to the Office of the State Bank Commissioner for advance notice of its regulation-making proceedings. The Notice included, among other things, a summary of the proposed amended and new regulations, invited interested persons to submit written comments to the Office of the State Bank Commissioner on or before May 2, 2001, and stated that the proposed amended regulations were available for inspection at the Office of the State Bank commissioner, that copies were available upon request, and that a public hearing would be held on May 2, 2001 at 10:00 a.m. at the Office of the State Bank Commissioner.

2. No comments about the proposed amended and new regulations were received on or before May 2, 2001.

3. A public hearing was held on May 2, 2001 at 10:00 a.m. regarding proposed amended regulation 5.761.0017 and new regulation 5.2202(b).0007. The State Bank Commissioner, the Deputy Bank Commissioner for

Supervisory Affairs and the Court Reporter attended the hearing. No other person attended the hearing. The State Bank Commissioner and the Deputy Bank Commissioner for Supervisory Affairs summarized the proposed amended and new regulations for the record. No other comments were made or received at the hearing.

4. After review and consideration, the State Bank Commissioner decided to adopt amended regulation 5.761.0017 and new regulation 5.2202(b).0007 as proposed.

Robert A. Glen, State Bank Commissioner

Regulation No.: 5.2202(b).0007

[Proposed Effective Date: June 11, 2001]

EXEMPTION OF LICENSED LENDERS**1. Purpose**

This regulation governs the procedures and requirements for exemptions pursuant to 5 Del. C. §2202(b).

2. Definitions

For the purpose of this regulation, the following definitions apply:

“Person” means an individual, corporation, partnership, or any other business entity or group or combination of individuals however organized.

“Statute” means 5 Del. C. Chapter 22.

“Commissioner” means the State Bank Commissioner.

“Existing exemption” means an exemption from the Statute granted before the effective date of this regulation.

“Exempt person” means a person that has been granted an exemption from the Statute pursuant to 5 Del. C. §2202(b) and this regulation.

3. Applicability

(a) This regulation and the Statute apply only to persons engaged in consumer credit transactions, including but not limited to mortgage lending secured by one to four family residential, owner occupied property located in Delaware and intended for personal, family or household purposes.

(b) This regulation and the Statute’s licensing requirements do not apply to:

1) Any person who makes 5 or less loans within any 12 month period;

2) Any banking organization, as defined by 5 Del. C. §101;

3) Any federal credit union;

4) Any insurance company;

5) Any person if and to the extent that such person is lending money in accordance with, and as authorized by, any other applicable law of the State of Delaware; and

6) Any person if and to the extent that such person is lending money in accordance with, and as authorized by,

any applicable law of the United States of America.

(c) A person shall not be deemed to be transacting the business of lending money within the meaning of 5 Del. C. §2202 and shall not be subject to this regulation or the licensing requirements of the Statute solely because the person is a participating merchant as the term is used in the Statute.

4. Qualifications

An exempt person shall at all times maintain such financial responsibility, experience, character, and general fitness as to command the confidence of the community and to warrant belief that its business will be operated honestly, fairly, and efficiently within the purposes of the Statute.

5. Grant of Exemptions

Upon finding the qualifications of Section 4 of this regulation have been met, the Commissioner may grant an exemption to:

(a) Any person whose lending operations are regularly examined, either separately or as part of an examination of an affiliated company, by an agency of the State of Delaware or the United States of America, if that agency regulates banks.

(b) Any person exempt from federal taxation under 26 USC §501(c)(3), as amended.

(c) Any other person whom the Commissioner determines to be inappropriate to include within the coverage of the Statute, including any person whose operations and financial condition are regularly examined by any other agency of the State of Delaware, the United States of America, or another state.

6. Nature of Exemption

(a) An exemption granted pursuant to Section 5(a) and (b) of this regulation shall include at minimum an exemption from the licensing and surety bond requirements of the Statute. The Commissioner may also grant an exemption from any other provision of the Statute that the Commissioner deems appropriate.

(b) The Commissioner shall determine the nature and extent of any exemption granted pursuant to Section 5(c) of this regulation.

7. Application of the Statute to Exempt Persons

Unless the Commissioner specifies otherwise, Subchapter II and Subchapter III of the Statute shall apply to all exempt persons as if they were licensees.

8. Expiration

Except as otherwise provided in this regulation, exemptions shall expire one year from the date granted.

9. Application and Renewals

(a) Any person who desires an exemption from the Statute shall apply to the Commissioner on such forms as the Commissioner may designate.

(b) An exempt person shall apply for a renewal of the exemption at least 30 days before the expiration of the exemption on such forms as the Commissioner may designate.

10. Changed Information

Exempt persons shall notify the Commissioner within 30 days of any changes in the information contained in the application for its exemption or the renewal thereof.

11. Extensions on License Applications

An exempt person who applies for a license under the Statute before the expiration or revocation of its exemption shall have the exemption automatically extended until a final decision is made on the license application.

12. Existing Exemptions

(a) Existing exemptions shall expire on July 1, 2002.

(b) Persons with existing exemptions may apply for a renewal of their exemption pursuant to this regulation at any time before June 30, 2000.

(c) The provisions of all existing exemptions shall remain in effect until the exemption expires pursuant to subsection 12(a) of this regulation.

13. Suspension or Revocation

(a) The Commissioner may suspend or revoke any exemption upon a finding that:

1) The exempt person has violated any statute, judicial order, administrative order, rule, regulation or other law of the State of Delaware, any other state or the United States of America;

2) Any fact or condition exists which if it had existed at the time of the application or renewal for the exemption, would have warranted the Commissioner in refusing to issue the exemption or its renewal;

3) The exempt person has engaged in unfair or deceptive business activities or practices in connection with extensions of credit to consumers. Unfair or deceptive activities and practices include, but are not limited to, the use of tactics which mislead the consumer, misrepresent the consumer transaction or any part thereof, or otherwise create false expectations on the part of the consumer; or

4) The exempt person does not meet the qualifications specified in Section 4 of this regulation.

(b) No exemption shall be suspended or revoked except in accordance with the procedures for suspending or revoking a license that are specified in the Statute and in the Delaware Administrative Procedures Act, 29Del.C., Chapter 101.

(c) No suspension or revocation of an exemption shall

impair or affect the obligation of any preexisting lawful contract between the exempt person and any other person.

14. Exemption Denials

If the Commissioner denies an exemption or the renewal of an exemption, the Commissioner shall promptly send the applicant or exempt person a written order to that effect which states the grounds for the denial. The applicant or exempt person may request that the Commissioner hold a hearing to reconsider that denial, in accordance with the procedures for requesting a hearing on the denial of a license application that are specified in the Statute and in the Delaware Administrative Procedures Act, 29 Del. C. Chapter 101. The Commissioner may extend the term of any exemption whose renewal has been denied until the final resolution of that hearing.

15. Fees

(a) The investigation fee for an application for an exemption shall be \$250.00.

(b) The investigation fee for renewal of an exemption shall be \$100.00. A renewal application must be submitted more than 30 days in advance of the exemption's expiration.

(c) A renewal application submitted less than 30 days in advance of the exemption's expiration shall be treated as a new application for an exemption and shall be subject to the investigation fee of \$250.

Regulation No.: 5.761.0017

[Proposed Effective Date: June 11, 2001]

INCIDENTAL POWERS

(5 Del. C. §761(a)(17))

1. Purpose and Scope

(a) This regulation specifies certain activities that are within the scope of the powers incident to a banking corporation under 5 Del. C. §761(a)(17) and also establishes the procedure for a bank to exercise its powers under that section by engaging in those and other activities, either directly or through a subsidiary.

(b) This regulation is not intended to limit, restrict or define any other powers granted to a bank or any of its subsidiaries by any other Delaware statute, legislative charter, or regulation.

2. Definitions

(a) "Bank" means any bank as defined by 5 Del. C. §101 that is established pursuant to 5 Del. C. Chapter 7, or pursuant to any other law of this State if the bank is entitled to amend its charter or certificate of incorporation in

accordance with 5 Del. C. §749.

(b) "Commissioner" means the State Bank Commissioner.

3. Specified Activities

(a) Any bank that desires to exercise its incidental powers under 5 Del. C. §761(a)(17) by engaging in any of the following specified activities, either directly or through a subsidiary, shall notify the Commissioner in writing before commencing that activity:

(1) Any activity that is permissible for a national bank as principal.

(2) Any activity that is permissible for a bank holding company pursuant to Section 4(c)(8) of the Bank Holding Company Act of 1956, as amended (12 USC §1843(c)(8)).

(3) Any activity that is permissible in accordance with Part 362.3 of the Rules and Regulations of the Federal Deposit Insurance Corporation (the "FDIC") (12 CFR §362.3), which implements provisions of Section 24 of the Federal Deposit Insurance Act (12 USC §1831a), other than activities that are otherwise specifically limited or prohibited under Delaware law.

(4) The provision of travel agency services. Banks chartered by the Delaware General Assembly before 1933 traditionally provided travel agency services to their customers, in reliance on the broad grants of agency power typically conferred by their charters. Delaware bank customers historically relied upon Delaware banks as providers of travel agency services, and continue to look to Delaware banks for such services. Accordingly, the Commissioner has concluded that travel agency services constituted part of the generally accepted business of banking when Delaware's Corporation Law for State Banks and Trust Companies was enacted in 1933, and that the provision of travel agency services continues to be authorized by the powers incident to a banking corporation pursuant to 5 Del. C. §761(a)(17).

(5) The provision of general management consulting services. Many banks chartered by the Delaware General Assembly before 1933 were given broad powers to act in a fiduciary capacity, and the fulfillment of fiduciary duties in the context of banking affairs ordinarily involves the provision by banks of disinterested advice on many business and financial matters. Accordingly, the Commissioner has concluded that general management consulting services constituted part of the generally accepted business of banking when Delaware's Corporation Law for State Banks and Trust Companies was enacted in 1933, and that the provision of general management consulting services continues to be authorized by the powers incident to a banking corporation pursuant to 5 Del. C. §761(a)(17).

(b) Any bank that desires to exercise its incidental powers under 5 Del. C. §761(a)(17) by engaging in any of

the following specified activities through a subsidiary shall notify the Commissioner in writing before commencing that activity:

(1) Any activity that is permissible for a financial subsidiary of a national bank pursuant to Section 5136A of the Revised Statutes of the United States, as amended (12 USC §24a), other than activities that are otherwise specifically limited or prohibited under Delaware law;

(2) Any activity that is permissible in accordance with Part 362.3 or Part 362.4 of the Rules and Regulations of the FDIC (12 CFR §362.3 or §362.4), which implement provisions of Section 24 of the Federal Deposit Insurance Act (12 USC §1831a), other than activities that are otherwise specifically limited or prohibited under Delaware law.

(c) If the Commissioner does not object in writing to the proposed activity within 30 days of receiving the notice, the bank may then exercise its incidental powers by engaging in the specified activity described in the notice. The Commissioner may also permit the bank to engage in the specified activity before the end of the 30-day notice period.

(d) The Commissioner may require the bank to conduct the specified activity only through a subsidiary, and may also impose any conditions related to the conduct of that activity that are necessary or appropriate for the bank's safety and soundness, as the Commissioner may determine.

(e) (1) If the Commissioner objects in writing to the proposed activity within 30 days of receiving the bank's notice, the bank may not engage in that activity either directly or through a subsidiary, until the Commissioner issues a written order approving such activity.

(2) The bank or its subsidiary may submit an application to the Commissioner seeking approval of the proposed activity. The Commissioner has discretion to require any additional information deemed necessary and the application shall not be considered complete until such additional information is provided. Within 30 days of receiving the completed application, the Commissioner shall issue an order approving or disapproving the application.

4. Other Activities

A bank may apply to the Commissioner for permission to exercise its incidental powers under 5 Del. C. §761(a)(17) by engaging, either directly or through a subsidiary, in any activity that is not specified in Section 3 of this regulation.

(a) The bank's application must describe the proposed activity in detail and demonstrate that the activity is within the powers, rights, privileges and franchises incident to a banking corporation, and is also necessary and proper to the transaction of the business of the corporation within the meaning of 5 Del. C. §761(a)(17).

(b) Upon receipt of the application, the Commissioner may require additional information appropriate to evaluate the request, and the application shall not be considered

complete until such additional information is received.

(c) Within 30 days of receiving the completed application, the Commissioner shall issue a written order approving or disapproving the bank's application. In issuing that order, the Commissioner shall consider all information that the bank has provided as well as the bank's general financial condition and performance.

(d) The Commissioner may require that the activity be conducted only through a subsidiary, and may also impose any conditions related to the conduct of the activity that are necessary or appropriate to the bank's safety and soundness, as the Commissioner may determine.

GOVERNOR'S EXECUTIVE ORDERS

1997

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

**EXECUTIVE ORDER
NUMBER FIFTEEN**

**TO: HEADS OF ALL STATE DEPARTMENTS
AND AGENCIES**

**RE: AMENDMENT OF EXECUTIVE ORDER
NUMBER THREE**

Ruth Ann Minner, Governor
Harriet Smith Windsor, Secretary of State

WHEREAS, the Strategic Economic Council was created by Executive Order No. 3 dated January 5, 2001, and

WHEREAS, the Council is seeking to expand participation in its proceedings and increase the frequency of its meetings,

I, RUTH ANN MINNER, GOVERNOR OF THE STATE OF DELAWARE, hereby ORDER on this 19th day of April, 2001, that Executive Order No. 3, dated January 5, 2001 ("the Order"), is amended in the following fashion:

1. The clause of paragraph 2 of the Order preceding subparagraph (a) is amended to read as follows: "the Council shall consist of at least 22 members, to be selected as follows:"

2. A new subparagraph 2(r) is added to the Order, to read as follows: "(r) Additional members to be nominated by the chair and approved by the Governor."

3. The first sentence of paragraph 6 of the Order is amended to read as follows: "The Council shall meet at least every other month, at a time and location to be determined by the chairman."

Ruth Ann Minner, Governor

ATTEST:
Harriet Smith Windsor, Secretary of State

**EXECUTIVE ORDER
NUMBER SIXTEEN**

**TO: HEADS OF ALL STATE DEPARTMENTS
AND AGENCIES**

**RE: AMENDMENT OF EXECUTIVE ORDER
NUMBER FOUR**

Ruth Ann Minner, Governor
Harriett Smith Windsor, Secretary of State

WHEREAS, the Judicial Nominating Commission was created by Executive Order No. 4, and

WHEREAS, the Superior Court, Court of Common Pleas, and Family Court have increased the decision-making roles of Commissioners in recent years, and

WHEREAS, it is desirable that the Judicial Nominating Commission assist the Governor with the selection of Commissioners for the Superior Court, Court of Common Pleas, and Family Court,

I, RUTH ANN MINNER, GOVERNOR OF THE STATE OF DELAWARE, hereby ORDER on this 27th day of April, 2001 that Executive Order No. 4 ("the Order"), is amended in the following fashion: the first Whereas clause of the Order is deleted in its entirety and replaced with the following:

"WHEREAS, under Article IV of the Delaware Constitution and Title 10 of the Delaware Code, the Governor appoints, by and with the consent of the State Senate, the Chief Justice and Associate Justices of the Delaware Supreme Court, the Chancellor and Vice Chancellors of the Court of Chancery, the President Judge, Associate Judges, and Commissioners of the Superior Court, the Chief Judge, Associate Judges, and Commissioners of the Family Court, the Chief Judge, other Judges, and Commissioners of the Court of Common Pleas, and the Chief Magistrate of the Justice of the Peace Courts (collectively, "judges"); and"

Ruth Ann Minner, Governor

ATTEST:
Harriet Smith Windsor, Secretary of State

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

EXECUTIVE ORDER
NUMBER SEVENTEEN

**TO: HEADS OF ALL STATE DEPARTMENTS
AND AGENCIES**

**RE: DEPARTMENT OF EDUCATION TASK
FORCE**

Ruth Ann Minner, Governor
Harriett Smith Windsor, Secretary of State

WHEREAS, the restructuring of the Department of Education to create a Secretary of Education reporting directly to the Governor has given the State a valuable opportunity to pursue significant reforms in recent years; and

WHEREAS, further definition and alignment of roles and responsibilities in the Department of Education may increase the efficiency and quality of the Department's services; and

WHEREAS, the Department of Education is staffed by skilled, hard-working employees who deserve a department structure that maximizes their talents;

I, RUTH ANN MINNER, GOVERNOR OF THE STATE OF DELAWARE, hereby ORDER on this 7th day of May, 2001:

1. The Department of Education Review Committee is created for the purpose of providing a report to the Governor on potential changes to the structure of the Department of Education in order to improve the quality and efficiency of services offered by the Department.

2. The Committee shall consist of 20 members, to be selected by the Governor as follows:

- a. One chairperson
- b. Three school superintendents, one from each county.
- c. Three school principals, one from each county. One principal shall be an elementary school principal, one shall be a middle school principal, and one shall be a high school principal.
- d. Three representatives of the Delaware business community.
- e. One representative of the State Board of Education.
- f. Two school district administrators below the level of superintendent, at least one of whom must be a

member of the Delaware Association of School Administrators.

g. One representative from the Council of College Presidents.

h. Two active school teachers, at least one of whom must be a member of the Delaware State Education Association.

i. One representative from each of the following organizations: State Budget Office, Delaware School Boards Association, Delaware Professional Standards Board, Office of the Governor.

3. Members of the Committee shall receive no compensation.

4. Staff support for the Committee shall be provided by the Department of Education, provided that no more than ten hours of staff time per week shall be provided to the Committee.

5. Within 180 days of the date of this Order, the Committee shall report to the Governor on the following specific subjects:

a. Whether any changes in the roles and responsibilities as well as the structure of the Department of Education below the level of cabinet secretary would allow the Department to improve the efficiency or quality of services it offers to Delaware schools, teachers and students.

b. Whether the Department is performing any functions that should be performed by another branch or level of government.

c. Whether the Department should assume any functions that are currently being performed by another branch or level of government.

6. To the extent that any members of the Committee dissent from any recommendations of the Committee, those members shall be given the opportunity to have their dissenting views attached to any final report provided to the Governor.

7. All recommendations made by the Committee shall contain an analysis of the fiscal impact of said recommendation.

Ruth Ann Minner, Governor

ATTEST:

Harriet Smith Windsor, Secretary of State

GOVERNOR'S APPOINTMENTS

1999

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Brandywine and Christina Gateway Corporation	The Honorable Harriet Nichols Smith-Windsor	Pleasure of the Governor
	Ms. Lee Ann Walling	Pleasure of the Governor
	The Honorable John Wik	Pleasure of the Governor
Child Placement Review Board	Ms. Caroline N. Bither	2/13/04
	Ms. Phyllis N. Faulkner	2/26/04
	Ms. Joyce K. Hayes	2/13/04
Council on Forestry	Mr. Steven L. Ditmer	2/13/04
Council on Housing	Mr. Christopher W. White	2/13/04
Council on Police Training	Mr. Richard D. Carmean	Pleasure of the Governor
Criminal Justice Council	Mr. Andre G. Bouchard	Pleasure of the Governor
	The Honorable John C. Carney	Pleasure of the Governor
	Ms. Vivian M. Longo, Esq.	Pleasure of the Governor
	Mr. Thomas P. McGonigle	Pleasure of the Governor
Delaware Advisory Council on Natural Areas	Ms. Mary Maloney-Huss	7/05/04
Delaware Arts Council	Ms. Michele Schiavoni	2/13/04
Delaware Bicycle Council	Ms. Lee Ann Walling	10/15/03
Delaware Board of Medical Practice	Dr. Stephan M. Fanto	2/23/04
	Dr. Bentley A. Hollander	2/23/04
	Dr. Galicano F. Inguito	3/15/04
	Dr. Edward J. McConnell	2/23/04
	Dr. Karl W. McIntosh	3/06/04
Delaware Commission on Interstate Cooperation	Mr. Thomas W. Castaldi	Pleasure of the Governor
	Mr. Gary Patterson	Pleasure of the Governor
	Ms. Lee Ann Walling	Pleasure of the Governor
Delaware Economic and Financial Advisory Council	Ms. Donna Beestman	Pleasure of the Governor
	Mr. Andrew M. Lubin	Pleasure of the Governor

2000**GOVERNOR'S APPOINTMENTS**

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Delaware Economic and Financial Advisory Council	Mr. Calvert Morgan, Jr.	Pleasure of the Governor
	Mr. David Swayze, Esq.	Pleasure of the Governor
Delaware Harness Racing Commission	Mr. Thomas P. Conaty, IV	4/22/07
	Mr. Robert L. Everett, II	4/22/07
	Mr. Kenneth E. Williamson	4/22/07
Delaware Health Fund Advisory Committee	Dr. Anthony D. Alfieri, D.O.	Pleasure of the Governor
Delaware Technology Board	Mr. Anthony S. Felicia, Jr.	2/13/04
	Dr. David A. Simpson	2/13/04
Delaware Thoroughbred Racing Commission	Ms. Carolyn Wilson	9/22/04
Domestic Violence Coordinating Council	The Honorable Carol Ann DeSantis	Pleasure of the Governor
Governor's Council on Agriculture	Mr. Kenneth Wicks	12/30/03
Governor's Council on Hispanic Affairs	Mr. Efrain Lozano, Jr.	2/13/04
	Ms. Maria Madera	2/13/04
	Ms. Maria Matos	2/13/04
	Dr. Jaime Rivera	2/13/04
	Ms. Sharon Saez	2/13/04
Merit Employee Relations Board	Mr. Paul Houck	3/27/04
	Mr. John F. Schmutz	3/27/04
New Castle County Vocational-Technical Board of Education	Mr. Pedro M. Correa	7/01/07
	Mr. Arnetta McRae	7/01/05
Pension Board of Trustees	Ms. Nancy J. Shevock	5/04/02
Real Estate Commission of Delaware	Mr. Joseph P. Connor, Jr.	2/13/04
Sentencing Accountability Commission	Mr. Andre G. Bouchard	3/05/03
	Mr. Joseph C. Schoell	3/05/05
State Board of Education	Mrs. Jean W. Allen	3/27/05
Unemployment Insurance Appeals Board	Ms. Taube R. Carpenter	5/01/06
University of Delaware Board of Trustees	Mr. Charles Cawley	3/29/07
	Mr. Robert A. Fischer, Jr.	3/27/07
Violence Against Women Act	Ms. Jennifer L. Barber	Pleasure of the

GOVERNOR'S APPOINTMENTS

2001

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Violence Against Women Act	The Honorable Patricia M. Blevins	Governor Pleasure of the Governor
	The Honorable, Richard S. Gebelein	Pleasure of the Governor
	The Honorable Vincent J. Poppiti	Pleasure of the Governor
	Ms. Natalie S. Wolf	Pleasure of the Governor
Workforce Investment Board	Ms. Patricia Creedon	Pleasure of the Governor
	Mr. David Gibson, Sr.	Pleasure of the Governor
	Mr. Ron Neal	Pleasure of the Governor
	Ms. Mildred Ofosu	Pleasure of the Governor
	Mr. Nello Paoli	Pleasure of the Governor
	Mr. Paul Seitz	Pleasure of the Governor
	Ms. Debra Singletary	Pleasure of the Governor
	Ms. Diane Sole	Pleasure of the Governor

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
DELAWARE REAL ESTATE COMMISSION**

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Section 2905(a)(1), the Delaware Real Estate Commission proposes to revise its Rules and Regulations. The proposed amendments revise the rules and regulations regarding advertising and the maintenance of offices located in this State. Substantive changes to the rules regarding advertising include requiring the business name that is registered with the Commission and the office phone number of the broker of record to be contained in most advertisements, clarifying that the rules apply to advertisements on the Internet, and adding a new rule to address offers to purchase property by licensees. In addition, the proposed revisions clarify that each office location in this State, including a branch or home office, is to be registered with and approved by the Commission.

A public hearing will be held on the proposed Rules and Regulations on Thursday, August 9, 2001 at 9:00 a.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Commission will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Commission in care of Joan O'Neill at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Joan O'Neill at the above address by calling (302) 739-4522, extension 219.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF FUNERAL SERVICES**

The Delaware Board of Funeral Services, in accordance with 24 **Del.C.** §3105(a)(1) has proposed changes to its rules and regulations. The changes clarify Rule 4.0 relating to establishment permits by defining terms and clarifying the statutory exemptions. A proposed change to Rule 9.2 requires continuing education to be related to the practice of funeral services.

A public hearing will be held at 10:00 a.m. on July 25, 2001 in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware

where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Funeral Services, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

STATE BOARD OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, June 21, 2001 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES
DIVISION OF LONG TERM CARE
RESIDENTS PROTECTION**

**Delaware Regulations for the
Delaware Adult Abuse Registry**

PUBLIC NOTICE

Delaware Health and Social Services (DHSS) has prepared draft regulations that replace, in their entirety, existing regulations governing the Delaware Adult Abuse Registry as authorized by Title 11 **Del.C.** Chapter 85.

These regulations govern the placement upon the registry of persons for whom an allegation of abuse, neglect, mistreatment or financial exploitation has been substantiated. Additionally, the regulations establish the procedures for employers to follow when conducting checks of the registry of potential employees. Lastly, they establish procedures for private individuals to follow when conducting checks of potential employees for services in a private residence.

INVITATION FOR PUBLIC COMMENT

Public hearings will be held as follows:
Monday, July 9, 2001, 10:00 AM

Department of Natural Resources & Environmental
Control Auditorium
89 Kings Highway
Dover

Thursday, July 12, 2001, 10:00 AM
Springer Building Training Room
Herman Holloway Campus
1901 N. DuPont Highway
New Castle

For clarification or directions, please call Gina Loughery or Joan Reynolds at 302-577-6661.

Written comments are also invited on these proposed new regulations and should be sent to the following address:

John T. Murray
Division of Long Term Care Residents Protection
3 Mill Road
Wilmington, DE 19806

The last time to submit written comments will be at the public hearing July 12, 2001.

**DIVISION OF LONG TERM CARE
RESIDENTS PROTECTION**

**Delaware Regulations for Group Home Facilities for
Persons with Aids**

PUBLIC NOTICE

Delaware Health & Social Services (DHSS) has prepared draft regulations governing Group Home Facilities for Persons with AIDS as authorized by Title 16 **Del. Code** Chapter 11.

These regulations are designed specifically for Group Homes for eight (8) or less persons with AIDS and establishes the minimum acceptable level of living, programmatic and licensure standards for such homes.

INVITATION FOR PUBLIC COMMENT

Public hearing will be held as follows:
Thursday, July 12, 2001, 9:00 AM
Springer Building Training Room
Herman Holloway Campus
Delaware Health and Social Services
1901 N. DuPont Highway
New Castle, Delaware

For clarifications or directions, please call Gina Loughery or Joan Reynolds at 302-577-6661.

Written comments are also invited on these proposed

new regulations and should be sent to the following address:

Robert Smith
Division of Long Term Care Residents Protection
3 Mill Road, Suite 308
Wilmington, DE 19806

The last time to submit written comments will be at the public hearing.

**DIVISION OF PUBLIC HEALTH
OFFICE OF DRINKING WATER**

NOTICE OF PUBLIC HEARING

The Office of Drinking Water, Division of Public Health of the Department of Health and Social Services (DHSS), will hold a public hearing to discuss proposed revisions to the "State of Delaware Regulations Governing Public Drinking Water Systems." The DHSS is proposing to adopt a new arsenic standard of 0.01 mg/l.

The public hearing will be held June 26, 2001 at 1:00 PM in Room 309, third floor conference room at the Jesse Cooper Building, Federal and Water Street, Dover, Delaware.

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

Office of Drinking Water
Blue Hen Corporate Center, Suite 203
655 Bay Road
Dover, DE 19901
Telephone: (302) 739-5410

Anyone wishing to present his or her oral comments at this hearing should contact Mr. Edward Hallock at (302) 739-5410 by June 24, 2001. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by July 5, 2001:

Dave Walton, Hearing Officer
Division of Public Health
PO Box 637
Dover, DE 19903

DIVISION OF SOCIAL SERVICES

**PUBLIC NOTICE
Medicaid/Medical Assistance Programs**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social

Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Programs is proposing to implement policy changes to the Division of Social Services Manual, Sections 17170.2 and 17170.3 to cite a more specific rule for children and to include a statement on who performs the disability reviews.

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 the Director, Medicaid/Medical Assistance Programs, Division of Social Services, P.O. Box 906, New Castle, Delaware by June 30, 2001.

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

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

TITLE OF THE REGULATIONS:

TIDAL FINFISH REGULATIONS

BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The Department proposes to continue an amendment to TIDAL FINFISH REGULATION No.4, SUMMER FLOUNDER SIZE LIMITS; POSSESSION LIMITS; SEASONS, previously implemented by Emergency Order No. 2001-F-0015 on May 5, 2001 that increases the minimum size of summer flounder to 17.5 inches, reduces the creel limit to 4 per day and opens the recreational fishing season on May 5, 2001.

POSSIBLE TERMS OF THE AGENCY ACTION:

Delaware is required to reduce recreational landings of summer flounder by 48% relative to the 1998 landings in Delaware to remain in compliance with the fishery management plan for summer flounder approved by the Atlantic States Marine Fisheries Commission. Failure to do so could result in a complete closure of the summer flounder fisheries in Delaware.

NOTICE OF PUBLIC COMMENT:

Individuals may present their comments or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover DE 19901, (302) 739-3441. A public hearing on this proposed amendment will be held on June 28, 2001 at 7:30 PM in the

DNREC Auditorium, 89 Kings Highway, Dover, DE 19901. The record will remain open for written comments until 4:30 PM, July 2, 2001.

PUBLIC SERVICE COMMISSION

ORDER NO. 5704

CONSIDERATION OF RULES, STANDARDS, AND INDICES TO ENSURE RELIABLE ELECTRICAL SERVICE BY ELECTRIC DISTRIBUTION COMPANIES (OPENED SEPTEMBER 26, 2000)

The Commission hereby solicits written comments, suggestions, compilations of data, briefs, or other written materials concerning the proposed Rules and Regulations. Ten (10) copies of such materials shall be filed with the Commission at its office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, DE 19904. All such materials should be filed on or before July 6, 2001. A workshop to be conducted by the Staff of the Commission will be held on July 16, 2001, at 10:00 AM. in the Commission's hearing room at the above address. In addition, the Commission's duly appointed hearing examiner will conduct a public hearing concerning the proposed Rules and Regulations. The Hearing Examiner will schedule such a hearing and provide the appropriate notice.

The Commission hereby solicits separate written comments on the Report. Ten (10) copies of such materials shall be filed with the Commission at its office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, DE 19904. All such materials should be filed on or before July 6, 2001.

The Report and proposed reliability Rules and Regulations, and the materials submitted in connection therewith, will be available for public inspection and copying at the Commission's Dover office during normal business hours and will be available on the Commission's web site at <http://www.state.de.us/delpsc>. The fee for copying is \$0.25 per page.

Any individual with disabilities who wishes to participate in, or to review these proceedings, should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, by telephone, or otherwise. For inquires, the Commission's toll free telephone number (in Delaware) is 1-800-282-8574. Any person with questions may also contact the Commission Staff at (302) 739-4247 or by Text Telephone at (302) 739-4333. Inquiries can also be sent by Internet e-mail to kneilson@state.de.us.

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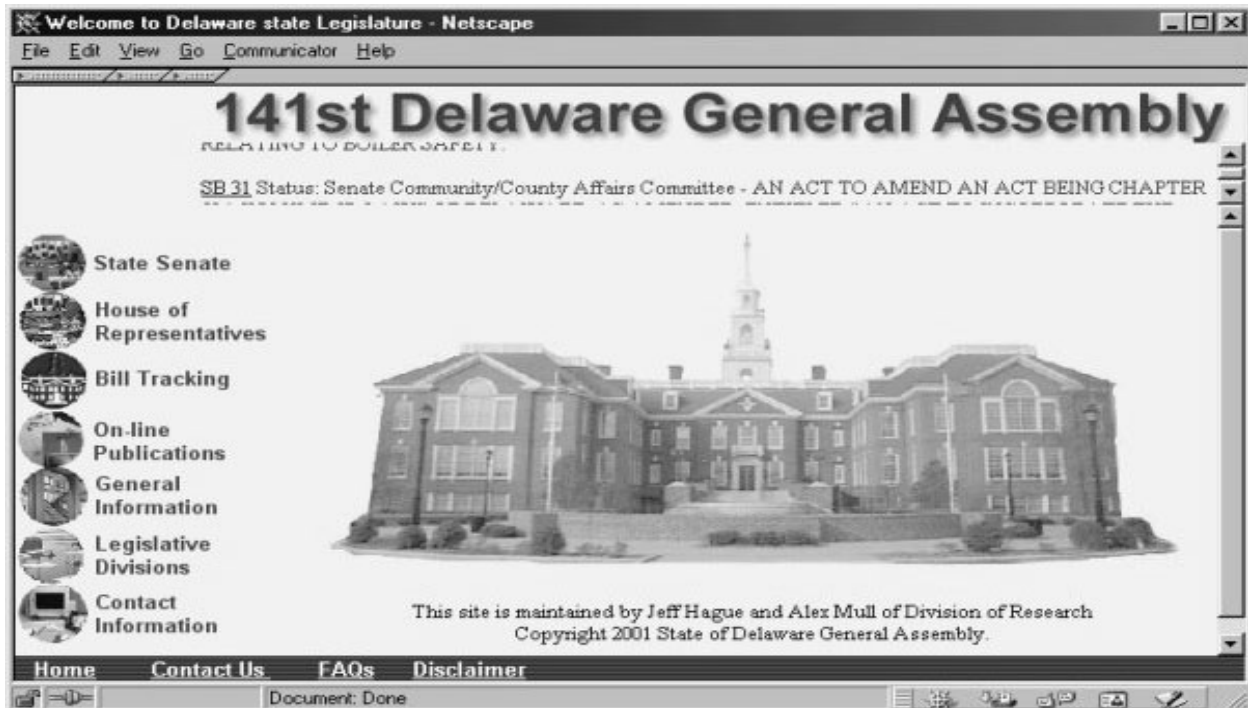
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